

By: Representative Dixon

To: Judiciary B

## HOUSE BILL NO. 543

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  
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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  
AND 47-4-5, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR PRIVATELY  
OPERATED CORRECTIONAL FACILITIES; TO AMEND SECTION 47-5-5,  
MISSISSIPPI CODE OF 1972, TO CORRECT THE REFERENCE TO THE STATE  
FISCAL MANAGEMENT BOARD, WHICH IS NOW REFERRED TO AS THE  
DEPARTMENT OF FINANCE AND ADMINISTRATION; TO AMEND SECTION  
47-5-37, MISSISSIPPI CODE OF 1972, TO CORRECT THE REFERENCE TO THE  
STATE FISCAL MANAGEMENT BOARD, WHICH IS NOW REFERRED TO AS THE  
DEPARTMENT OF FINANCE AND ADMINISTRATION; TO REFLECT THE NAME  
CHANGE OF A STANDING COMMITTEE OF THE HOUSE OF REPRESENTATIVES TO  
THE CORRECTIONS COMMITTEE; TO AMEND SECTIONS 47-5-54, 47-7-17 AND  
47-7-37, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF MAKING  
GRAMMATICAL CORRECTION AND STATUTORY CITATIONS; TO AMEND SECTION  
47-5-138, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF MAKING A  
GRAMMATICAL CORRECTION IN PUNCTUATION; TO BRING FORWARD SECTIONS  
47-5-1, 47-5-3, 47-5-4, 47-5-8, 47-5-10, 47-5-20, 47-5-23,  
47-5-24, 47-5-26, 47-5-35, 47-5-49, 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,  
47-5-139, 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, 47-7-5, 47-7-9,  
47-7-23, 47-7-25, 47-7-27, 47-7-29, 47-7-31, 47-7-33, 47-7-35,  
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:



186 **ARTICLE 1**

187 **SECTION 1.**

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

189 (2) Except as provided in subsections (3) and (4) of this  
190 section, this act does not apply to offenses committed prior to  
191 its effective date and prosecutions for such offenses shall be  
192 governed by the prior law, which is continued in effect for that  
193 purpose, as if this act were not in force. For the purposes of  
194 this section, an offense was committed prior to the effective date  
195 of this act if any of the elements of the offense occurred prior  
196 thereto.

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

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

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

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

207 (4) Provisions of this act governing the treatment and the  
208 release or discharge of prisoners, probationers and parolees shall  
209 apply to persons under sentence for offenses committed prior to  
210 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:



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

262 (b) Conduct occurring outside the state is sufficient  
263 under the law of this state to constitute an attempt to commit an  
264 offense within the state; or

265 (c) Conduct occurring outside the state is sufficient  
266 under the law of this state to constitute a conspiracy to commit  
267 an offense within the state and an overt act in furtherance of  
268 such conspiracy occurs within the state; or

269 (d) Conduct occurring within the state establishes  
270 complicity in the commission of, or an attempt, solicitation or  
271 conspiracy to commit, an offense in another jurisdiction which  
272 also is an offense under the law of this state; or

273 (e) The offense consists of the omission to perform a  
274 legal duty imposed by the law of this state with respect to  
275 domicile, residence or a relationship to a person, thing or  
276 transaction in the state; or

277 (f) The offense is based on a statute of this state  
278 which expressly prohibits conduct outside the state, when the  
279 conduct bears a reasonable relation to a legitimate interest of  
280 this state and the actor knows or should know that his conduct is  
281 likely to affect that interest.

282 (2) Subsection (1)(a) does not apply when either causing a  
283 specified result or a purpose to cause or danger of causing such a





284 result is an element of an offense and the result occurs or is  
285 designed or likely to occur only in another jurisdiction where the  
286 conduct charged would not constitute an offense, unless a  
287 legislative purpose plainly appears to declare the conduct  
288 criminal regardless of the place of the result.

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

294 (4) When the offense is homicide, either the death of the  
295 victim or the bodily impact causing death constitutes a "result,"  
296 within the meaning of subsection (1)(a) and if the body of a  
297 homicide victim is found within the state, it is presumed that  
298 such result occurred within the state.

299 (5) This state includes the land and water and the air space  
300 above such land and water with respect to which the state has  
301 legislative jurisdiction.

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

306 (2) A crime is a felony if it is so designated in this act  
307 or if persons convicted thereof may be sentenced to death or to



imprisonment for a term which, apart from an extended term, is in excess of one (1) year.

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

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

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

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



(7) An offense defined by any statute of this state other than this act shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall 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:

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

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

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

(5) A prosecution is commenced either when an indictment is found or information filed or when a warrant or other process is



issued, provided that such warrant or process is executed without unreasonable delay.

(6) The period of limitation does not run:

(a) During any time when the accused is continuously absent from the state or has no reasonably ascertainable place of 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 (1) offense is included in the other, as defined in subsection (4) of this section; or

(b) One (1) 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



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

408           (2) **Limitation on separate trials for multiple offenses.**

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

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

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

425           (a) It is established by proof of the same or less than  
426 all the facts required to establish the commission of the offense  
427 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





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

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

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

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

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

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

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

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

500                           (iii) The same conduct, unless 1. the offense of  
501 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;



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

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

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

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

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

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

612           (h) "Person," "he" and "actor" include any natural  
613 person and, where relevant, a corporation or an unincorporated  
614 association;

615           (i) "Element of an offense" means (i) such conduct or  
616 (ii) such attendant circumstances or (iii) such a result of  
617 conduct as:

618                       1. Is included in the description of the  
619 forbidden conduct in the definition of the offense; or

620                       2. Establishes the required kind of  
621 culpability; or

622                       3. Negatives an excuse or justification for  
623 such conduct; or

624                       4. Negatives a defense under the statute of  
625 limitations; or



5. Establishes jurisdiction or venue;

(j) "Material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with (i) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (ii) the existence 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;
- (b) A bodily movement during unconsciousness or sleep;
- (c) Conduct during hypnosis or resulting from hypnotic suggestion;
- (d) A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

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

- (a) The omission is expressly made sufficient by the law defining the offense; or
- (b) A duty to perform the omitted act is otherwise imposed by law.

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

**SECTION 15.**

(1) **Minimum requirements of culpability.**





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

679 (2) **Kinds of culpability defined.**

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

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

685 (ii) If the element involves the attendant  
686 circumstances, he is aware of the existence of such circumstances  
687 or he believes or hopes that they exist.

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

690 (i) If the element involves the nature of his  
691 conduct or the attendant circumstances, he is aware that his  
692 conduct is of that nature or that such circumstances exist; and

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

696 (c) A person acts recklessly with respect to a material  
697 element of an offense when he consciously disregards a substantial  
698 and unjustifiable risk that the material element exists or will  
699 result from his conduct. The risk must be of such a nature and



700 degree that, considering the nature and purpose of the actor's  
701 conduct and the circumstances known to him, its disregard involves  
702 a gross deviation from the standard of conduct that a law-abiding  
703 person would observe in the actor's situation.

704 (d) A person acts negligently with respect to a  
705 material element of an offense when he should be aware of a  
706 substantial and unjustifiable risk that the material element  
707 exists or will result from his conduct. The risk must be of such  
708 a nature and degree that the actor's failure to perceive it,  
709 considering the nature and purpose of his conduct and the  
710 circumstances known to him, involves a gross deviation from the  
711 standard of care that a reasonable person would observe in the  
712 actor's situation.

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

718 (4) **Prescribed culpability requirement applies to all**  
719 **material elements.** When the law defining an offense prescribed  
720 the kind of culpability that is sufficient for the commission of  
721 an offense, without distinguishing among the material elements  
722 thereof, such provision shall apply to all the material elements  
723 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 affect or that the injury or harm designed or contemplated would have been more serious or more extensive than that caused; or



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

778 (3) When recklessly or negligently causing a particular  
779 result is an element of an offense, the element is not established  
780 if the actual result is not within the risk of which the actor is  
781 aware or, in the case of negligence, of which he should be aware  
782 unless:

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

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

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

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



797           (a) The ignorance or mistake negatives the purpose,  
798 knowledge, belief, recklessness or negligence required to  
799 establish a material element of the offense; or

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

802           (2) Although ignorance or mistake would otherwise afford a  
803 defense to the offense charged, the defense is not available if  
804 the defendant would be guilty of another offense had the situation  
805 been as he supposed. In such case, however, the ignorance or  
806 mistake of the defendant shall reduce the grade and degree of  
807 which he would be guilty had the situation been as he supposed.

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

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

814           (b) He acts in reasonable reliance upon an official  
815 statement of the law, afterward determined to be invalid or  
816 erroneous, contained in (i) a statute or other enactment; (ii) a  
817 judicial decision, opinion or judgment; (iii) an administrative  
818 order or grant of permission; or (iv) an official interpretation  
819 of the public officer or body charged by law with responsibility  
820 for the interpretation, administration or enforcement of the law  
821 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

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

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

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

(b) Although absolute liability is imposed by law with respect to one or more of the material elements of an offense defined by a statute other than this act, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes sufficient culpability and the classification of the offense and the sentence



that may be imposed therefor upon conviction are determined by  
Section 4 and Article 6 of this act.

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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

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



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



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

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

924                 (a) The offense is defined by a statute other than this  
925 act which expressly provides for the liability of such an  
926 association and the conduct is performed by an agent of the  
927 association acting in behalf of the association within the scope  
928 of his office or employment, except that if the law defining the  
929 offense designates the agents for whose conduct the association is  
930 accountable or the circumstances under which it is accountable,  
931 such provisions shall apply; or

932                 (b) The offense consists of an omission to discharge a  
933 specific duty of affirmative performance imposed on associations  
934 by law.

935           (4) As used in this section:

936                 (a) "Corporation" does not include an entity organized  
937 or as by a governmental agency for the execution of a governmental  
938 program;

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



943           (c) "High managerial agent" means an officer of a  
944 corporation or an unincorporated association, or, in the case of a  
945 partnership, a partner, or any other agent of a corporation or  
946 association having duties of such responsibility that his conduct  
947 may fairly be assumed to represent the policy of the corporation  
948 or association.

949           (5) In any prosecution of a corporation or an unincorporated  
950 association for the commission of an offense included within the  
951 terms of subsection (1)(a) or subsection (3)(a) of this section,  
952 other than an offense for which absolute liability has been  
953 imposed, it shall be a defense if the defendant proves by a  
954 preponderance of evidence that the high managerial agent having  
955 supervisory responsibility over the subject matter of the offense  
956 employed due diligence to prevent its commission. This paragraph  
957 shall not apply if it is plainly inconsistent with the legislative  
958 purpose in defining the particular offense.

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

963           (b) Whenever a duty to act is imposed by law upon a  
964 corporation or an unincorporated association, any agent of the  
965 corporation or association having primary responsibility for the  
966 discharge of the duty is legally accountable for a reckless



omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.

(c) When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense 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:



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

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

999 (c) "Pathological intoxication" means intoxication  
1000 grossly excessive in degree, given the amount of the intoxicant,  
1001 to which the actor does not know he is susceptible.

1002 **SECTION 22.** (1) It is an affirmative defense that the actor  
1003 engaged in the conduct charged to constitute an offense because he  
1004 was coerced to do so by the use of, or a threat to use, unlawful  
1005 force against his person or the person of another, which a person  
1006 of reasonable firmness in his situation would have been unable to  
1007 resist.

1008 (2) The defense provided by this section is unavailable if  
1009 the actor recklessly placed himself in a situation in which it was  
1010 probable that he would be subjected to duress. The defense is  
1011 also unavailable if he was negligent in placing himself in such a  
1012 situation, whenever negligence suffices to establish culpability  
1013 for the offense charged.



1014           (3) It is not a defense that a women acted on the command of  
1015 her husband, unless she acted under such coercion as would  
1016 establish a defense under this section. The presumption that a  
1017 woman, acting in the presence of her husband, is coerced is  
1018 abolished.

1019           (4) When the conduct of the actor would otherwise be  
1020 justifiable under Section 28 of this act, this section does not  
1021 preclude such defense.

1022           **SECTION 23.** It is an affirmative defense that the actor, in  
1023 engaging in the conduct charged to constitute an offense, does no  
1024 more than execute an order of his superior in the armed services  
1025 which he does not know to be unlawful.

1026           **SECTION 24.** (1) **In general.** The consent of the victim to  
1027 conduct charged to constitute an offense or to the result thereof  
1028 is a defense if such consent negatives an element of the offense  
1029 or precludes the infliction of the harm or evil sought to be  
1030 prevented by the law defining the offense.

1031           (2) **Consent to bodily harm.** When conduct is charged to  
1032 constitute an offense because it causes or threatens bodily harm,  
1033 consent to such conduct or to the infliction of such harm is a  
1034 defense if:

1035                   (a) The bodily harm consented to or threatened by the  
1036 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





1062 infringed nor inconsistent with the purpose of the law defining  
1063 the offense; or

1064 (b) Did not actually cause or threaten the harm or evil  
1065 sought to be prevented by the law defining the offense or did so  
1066 only to an extent too trivial to warrant the condemnation of  
1067 conviction; or

1068 (c) Presents such other extenuations that it cannot  
1069 reasonably be regarded as envisaged by the Legislature in  
1070 forbidding the offense.

1071 The court shall not dismiss a prosecution under subsection  
1072 (3) of this section without filing a written statement of its  
1073 reasons.

1074 **SECTION 26.** (1) A public law enforcement official or a  
1075 person acting in cooperation with such an official perpetrates an  
1076 entrapment if for the purpose of obtaining evidence of the  
1077 commission of an offense, he induces or encourages another person  
1078 to engage in conduct constituting such offense by either:

1079 (a) Making knowingly false representations designed to  
1080 induce the belief that such conduct is not prohibited; or

1081 (b) Employing methods of persuasion or inducement which  
1082 create a substantial risk that such an offense will be committed  
1083 by persons other than those who are ready to commit it.

1084 (2) Except as provided in subsection (3) of this section, a  
1085 person prosecuted for an offense shall be acquitted if he proves  
1086 by a preponderance of evidence that his conduct occurred in



1087 response to an entrapment. The issue of entrapment shall be tried  
1088 by the court in the absence of the jury.

1089 (3) The defense afforded by this section is unavailable when  
1090 causing or threatening bodily injury is an element of the offense  
1091 charged and the prosecution is based on conduct causing or  
1092 threatening such injury to a person other than the person  
1093 perpetrating the entrapment.

### 1094 **ARTICLE 3**

#### 1095 **GENERAL PRINCIPLES OF JUSTIFICATION**

1096 **SECTION 27.** (1) In any prosecution based on conduct which  
1097 is justifiable under this article, justification is an affirmative  
1098 defense.

1099 (2) The fact that conduct is justifiable under this article  
1100 does not abolish or impair any remedy for such conduct which is  
1101 available in any civil action.

1102 **SECTION 28.** (1) Conduct which the actor believes to be  
1103 necessary to avoid a harm or evil to himself or to another is  
1104 justifiable, provided that:

1105 (a) The harm or evil sought to be avoided by such  
1106 conduct is greater than that sought to be prevented by the law  
1107 defining the offense charged; and

1108 (b) Neither this act nor other law defining the offense  
1109 provides exceptions or defenses dealing with the specific  
1110 situation involved; and



1111 (c) A legislative purpose to exclude the justification  
1112 claimed does not otherwise plainly appear.

1113 (2) When the actor was reckless or negligent in bringing  
1114 about the situation requiring a choice of harms or evils or in  
1115 appraising the necessity for his conduct, the justification  
1116 afforded by this section is unavailable in a prosecution for any  
1117 offense for which recklessness or negligence, as the case may be,  
1118 suffices to establish culpability.

1119 **SECTION 29.** (1) Except as provided in subsection (2) of  
1120 this section, conduct is justifiable when it is required or  
1121 authorized by:

1122 (a) The law defining the duties or functions of a  
1123 public officer or the assistance to be rendered to such officer in  
1124 the performance of his duties; or

1125 (b) The law governing the execution of legal process;  
1126 or

1127 (c) The judgment or order of a competent court or  
1128 tribunal; or

1129 (d) The law governing the armed services or the lawful  
1130 conduct of war; or

1131 (e) Any other provision of law imposing a public duty.

1132 (2) The other sections of this article apply to:

1133 (a) The use of force upon or toward the person of  
1134 another for any of the purposes dealt with in such sections; and



1135           (b) The use of deadly force for any purpose, unless the  
1136 use of such force is otherwise expressly authorized by law or  
1137 occurs in the lawful conduct of war.

1138           (3) The justification afforded by subsection (1) of this  
1139 section applies:

1140           (a) When the actor believes his conduct to be required  
1141 or authorized by the judgment or direction of a competent court or  
1142 tribunal or in the lawful execution of legal process,  
1143 notwithstanding lack of jurisdiction of the court or defect in the  
1144 legal process; and

1145           (b) When the actor believes his conduct to be required  
1146 or authorized to assist a public officer in the performance of his  
1147 duties, notwithstanding that the officer exceeded his legal  
1148 authority.

1149           **SECTION 30.** (1) **Use of force justifiable for protection of**  
1150 **the person.** Subject to the provisions of this section and of  
1151 Section 35 of this act, the use of force upon or toward another  
1152 person is justifiable when the actor believes that such force is  
1153 immediately necessary for the purpose of protecting himself  
1154 against the use of unlawful force by such other person on the  
1155 present occasion.

1156           (2) **Limitations on justifying necessity for use of force.**

1157           (a) The use of force is not justifiable under this  
1158 section:



1159                   (i) To resist an arrest which the actor knows is  
1160 being made by a peace officer, although the arrest is unlawful; or

1161                   (ii) To resist force used by the occupier or  
1162 possessor of property or by another person on his behalf, where  
1163 the actor knows that the person using the force is doing so under  
1164 a claim of right to protect the property, except that this  
1165 limitation shall not apply if:

1166                   1. The actor is a public officer acting in  
1167 the performance of his duties or a person lawfully assisting him  
1168 therein or a person making or assisting in a lawful arrest; or

1169                   2. The actor has been unlawfully dispossessed  
1170 of the property and is making a reentry or recaption justified by  
1171 Section 32 of this act; or

1172                   3. The actor believes that such force is  
1173 necessary to protect himself against death or serious bodily harm.

1174                   (b) The use of deadly force is not justifiable under  
1175 this section unless the actor believes that such force is  
1176 necessary to protect himself against death, serious bodily harm,  
1177 kidnapping or sexual intercourse compelled by force or threat; nor  
1178 is it justifiable if:

1179                   (i) The actor, with the purpose of causing death  
1180 or serious bodily harm, provoked the use of force against himself  
1181 in the same encounter; or

1182                   (ii) The actor knows that he can avoid the  
1183 necessity of using such force with complete safety by retreating



1184 or by surrendering possession of a thing to a person asserting a  
1185 claim of right thereto or by complying with a demand that he  
1186 abstain from any action which he has no duty to take, except that:

1187           1. The actor is not obliged to retreat from  
1188 his dwelling or place of work, unless he was the initial aggressor  
1189 or is assailed in his place of work by another person whose place  
1190 of work the actor knows it to be; and

1191           2. A public officer justified in using force  
1192 in the performance of his duties or a person justified in using  
1193 force in his assistance or a person justified in using force in  
1194 making an arrest or preventing an escape is not obliged to desist  
1195 from efforts to perform such duty, effect such arrest or prevent  
1196 such escape because of resistance or threatened resistance by or  
1197 on behalf of the person against whom such action is directed.

1198           (c) Except as required by paragraphs (a) and (b) of  
1199 this subsection, a person employing protective force may estimate  
1200 the necessity thereof under the circumstances as he believes them  
1201 to be when the force is used, without retreating surrendering  
1202 possession, doing any other act which he has no legal duty to do  
1203 or abstaining from any lawful action.

1204           (3) **Use of confinement as protective force.** The  
1205 justification afforded by this section extends to the use of  
1206 confinement as protective force only if the actor takes all  
1207 reasonable measures to terminate the confinement as soon as he



1208 knows that he safely can, unless the person confined has been  
1209 arrested on a charge of crime.

1210 **SECTION 31.** (1) Subject to the provisions of this section  
1211 and of Section 35 of this act, the use of force upon or toward the  
1212 person of another is justifiable to protect a third person when:

1213 (a) The actor would be justified under Section 30 of  
1214 this act in using such force to protect himself against the injury  
1215 he believes to be threatened to the person whom he seeks to  
1216 protect; and

1217 (b) Under the circumstances as the actor believes them  
1218 to be, the person whom he seeks to protect would be justified in  
1219 using such protective force; and

1220 (c) The actor believes that his intervention is  
1221 necessary for the protection of such other person.

1222 (2) Notwithstanding subsection (1) of this section:

1223 (a) When the actor would be obliged under Section 30 of  
1224 this act to retreat, to surrender the possession of a thing or to  
1225 comply with a demand before using force in self-protection, he is  
1226 not obliged to do so before using force for the protection of  
1227 another person, unless he knows that he can thereby secure the  
1228 complete safety of such other person; and

1229 (b) When the person whom the actor seeks to protect  
1230 would be obliged under Section 30 of this act to retreat, to  
1231 surrender the possession of a thing or to comply with a demand if  
1232 he knew that he could obtain complete safety by so doing, the



1233 actor is obliged to try to cause him to do so before using force  
1234 in his protection if the actor knows that he can obtain complete  
1235 safety in that way; and

1236 (c) Neither the actor nor the person whom he seeks to  
1237 protect is obliged to retreat when in the other's dwelling or  
1238 place of work to any greater extent than in his own.

1239 **SECTION 32.** (1) **Use of force justifiable for protection of**  
1240 **property.** Subject to the provisions of this section and Section  
1241 35 of this act, the use of force upon or toward the person of  
1242 another is justifiable when the actor believes that such force is  
1243 immediately necessary:

1244 (a) To prevent or terminate an unlawful entry or other  
1245 trespass upon land or a trespass against or the unlawful carrying  
1246 away of tangible, movable property, provided that such land or  
1247 movable property is, or is believed by the actor to be, in his  
1248 possession or in the possession of another person for whose  
1249 protection he acts; or

1250 (b) To effect an entry or reentry upon land or to  
1251 retake tangible movable property, provided that the actor believes  
1252 that he or the person by whose authority he acts or a person from  
1253 whom he or such other person derives title was unlawfully  
1254 dispossessed of such land or movable property and is entitled to  
1255 possession, and provided further, that:

1256 (i) The force is used immediately or on fresh  
1257 pursuit after such dispossession; or





1258                   (ii) The actor believes that the person against  
1259 whom he uses force has no claim of right to the possession of the  
1260 property and, in the case of land, the circumstances, as the actor  
1261 believes them to be, are of such urgency that it would be an  
1262 exceptional hardship to postpone the entry or reentry until a  
1263 court order is obtained.

1264           (2) **Meaning of possession.** For the purposes of subsection  
1265 (1) of this section:

1266                   (a) A person who has parted with the custody of  
1267 property to another who refuses to restore it to him is no longer  
1268 in possession, unless the property is movable and was and still is  
1269 located on land in his possession;

1270                   (b) A person who has been dispossessed of land does not  
1271 regain possession thereof merely by setting foot thereon;

1272                   (c) A person who has a license to use or occupy real  
1273 property is deemed to be in possession thereof except against the  
1274 licensor acting under claim of right.

1275           (3) **Limitations on justifiable use of force.**

1276                   (a) **Request to desist.** The use of force is justifiable  
1277 under this section only if the actor first requests the person  
1278 against whom such force is used to desist from his interference  
1279 with the property, unless the actor believes that:

1280                           (i) Such request would be useless; or

1281                           (ii) It would be dangerous to himself or another  
1282 person to make the request; or



1283                   (iii) Substantial harm will be done to the  
1284 physical condition of the property which is sought to be protected  
1285 before the request can effectively be made.

1286                   (b) **Exclusion of trespasser.** The use of force to  
1287 prevent or terminate a trespass is not justifiable under this  
1288 section if the actor knows that the exclusion of the trespasser  
1289 will expose him to substantial danger of serious bodily harm.

1290                   (c) **Resistance of lawful reentry or recaption.** The use  
1291 of force to prevent an entry or reentry upon land or the recaption  
1292 of movable property is not justifiable under this section,  
1293 although the actor believes that such reentry or recaption is  
1294 unlawful, if:

1295                   (i) The reentry or recaption is made by or on  
1296 behalf of a person who was actually dispossessed of the property;  
1297 and

1298                   (ii) It is otherwise justifiable under paragraph  
1299 (1)(b) of this section.

1300                   (d) **Use of deadly force.** The use of deadly force is  
1301 not justifiable under this section unless the actor believes that:

1302                   (i) The person against whom the force is used is  
1303 attempting to dispossess him of his dwelling otherwise than under  
1304 a claim of right to its possession; or

1305                   (ii) The person against whom the force is used is  
1306 attempting to commit or consummate arson, burglary, robbery or  
1307 other felonious theft or property destruction and either:



1308                   1. Has employed or threatened deadly force  
1309 against or in the presence of the actor; or

1310                   2. The use of force other than deadly force  
1311 to prevent the commission or the consummation of the crime would  
1312 expose the actor or another in his presence to substantial danger  
1313 of serious bodily harm.

1314           (4) **Use of confinement as protective force.** The  
1315 justification afforded by this section extends to the use of  
1316 confinement as protective force only if the actor takes all  
1317 reasonable measures to terminate the confinement as soon as he  
1318 knows that he can do so with safety to the property, unless the  
1319 person confined has been arrested on a charge of crime.

1320           (5) **Use of device to protect property.** The justification  
1321 afforded by this section extends to the use of a device for the  
1322 purpose of protecting property only if:

1323                   (a) The device is not designed to cause or known to  
1324 create a substantial risk of causing death or serious bodily harm;  
1325 and

1326                   (b) The use of the particular device to protect the  
1327 property from entry or trespass is reasonable under the  
1328 circumstances, as the actor believes them to be; and

1329                   (c) The device is one customarily used for such a  
1330 purpose or reasonable care is taken to make known to probable  
1331 intruders the fact that it is used.



1332           (6) **Use of force to pass wrongful obstructor.** The use of  
1333 force to pass a person whom the actor believes to be purposely or  
1334 knowingly and unjustifiably obstructing the actor from going to a  
1335 place to which he may lawfully go is justifiable, provided that:

1336           (a) The actor believes that the person against whom he  
1337 uses force has no claim of right to obstruct the actor; and

1338           (b) The actor is not being obstructed from entry or  
1339 movement on land which he knows to be in the possession or custody  
1340 of the person obstructing him, or in the possession or custody of  
1341 another person by whose authority the obstructor acts, unless the  
1342 circumstances, as the actor believes them to be, are of such  
1343 urgency that it would not be reasonable to postpone the entry or  
1344 movement on such land until a court order is obtained; and

1345           (c) The force used is not greater than would be  
1346 justifiable if the person obstructing the actor were using force  
1347 against him to prevent his passage.

1348           **SECTION 33.** (1) **Use of force justifiable to effect an**  
1349 **arrest.** Subject to the provisions of this section and of Section  
1350 35 of this act, the use of force upon or toward the person of  
1351 another is justifiable when the actor is making or assisting in  
1352 making an arrest and the actor believes that such force is  
1353 immediately necessary to effect a lawful arrest.

1354           (2) **Limitations on the use of force.**

1355           (a) The use of force is not justifiable under this  
1356 section unless:



1357 (i) The actor makes known the purpose of the  
1358 arrest or believes that it is otherwise known by or cannot  
1359 reasonably be made known to the person to be arrested; and

1360 (ii) When the arrest is made under a warrant, the  
1361 warrant is valid or believed by the actor to be valid.

1362 (b) The use of deadly force is not justifiable under  
1363 this section unless:

1364 (i) The arrest is for a felony; and

1365 (ii) The person effecting the arrest is authorized  
1366 to act as a peace officer or is assisting a person whom he  
1367 believes to be authorized to act as a peace officer; and

1368 (iii) The actor believes that the force employed  
1369 creates no substantial risk of injury to innocent persons; and

1370 (iv) The actor believes that:

1371 1. The crime for which the arrest is made  
1372 involved conduct including the use or threatened use of deadly  
1373 force; or

1374 2. There is a substantial risk that the  
1375 person to be arrested will cause death or serious bodily harm if  
1376 his apprehension is delayed.

1377 (3) **Use of force to prevent escape from custody.** The use of  
1378 force to prevent the escape of an arrested person from custody is  
1379 justifiable when the force could justifiably have been employed to  
1380 effect the arrest under which the person is in custody, except  
1381 that a guard or other person authorized to act as a peace officer



1382 is justified in using any force, including deadly force, which he  
1383 believes to be immediately necessary to prevent the escape of a  
1384 person from a jail, prison or other institution for the detention  
1385 of persons charged with or convicted of a crime.

1386 (4) **Use of force by private person assisting an unlawful**  
1387 **arrest.**

1388 (a) A private person who is summoned by a peace officer  
1389 to assist in effecting an unlawful arrest, is justified in using  
1390 any force which he would be justified in using if the arrest were  
1391 lawful, provided that he does not believe the arrest is unlawful.

1392 (b) A private person who assists another private person  
1393 in effecting an unlawful arrest, or who, not being summoned,  
1394 assists a peace officer in effecting an unlawful arrest, is  
1395 justified in using any force which he would be justified in using  
1396 if the arrest were lawful, provided that (i) he believes the  
1397 arrest is lawful, and (ii) the arrest would be lawful if the facts  
1398 were as he believes them to be.

1399 (5) **Use of force to prevent suicide or the commission of a**  
1400 **crime.**

1401 (a) The use of force upon or toward the person of  
1402 another is justifiable when the actor believes that such force is  
1403 immediately necessary to prevent such other person from committing  
1404 suicide, inflicting serious bodily harm upon himself, committing  
1405 or consummating the commission of a crime involving or threatening



1406   bodily harm, damage to or loss of property or a breach of the  
1407   peace, except that:

1408                   (i)   Any limitations imposed by the other  
1409   provisions of this article on the justifiable use of force in  
1410   self-protection, for the protection of others, the protection of  
1411   property, the effectuation of an arrest or the prevention of an  
1412   escape from custody shall apply notwithstanding the criminality of  
1413   the conduct against which such force is used; and

1414                   (ii)   The use of deadly force is not in any event  
1415   justifiable under this subsection unless:

1416                   1.   The actor believes that there is a  
1417   substantial risk that the person whom he seeks to prevent from  
1418   committing a crime will cause death or serious bodily harm to  
1419   another unless the commission or the consummation of the crime is  
1420   prevented and that the use of such force presents no substantial  
1421   risk of injury to innocent persons; or

1422                   2.   The actor believes that the use of such  
1423   force is necessary to suppress a riot or mutiny after the rioters  
1424   or mutineers have been ordered to disperse and warned, in any  
1425   particular manner that the law may require, that such force will  
1426   be used if they do not obey.

1427                   (b)   The justification afforded by this subsection  
1428   extends to the use of confinement as preventive force only if the  
1429   actor takes all reasonable measures to terminate the confinement



1430 as soon as he knows that he safely can, unless the person confined  
1431 has been arrested on a charge of crime.

1432 **SECTION 34.** The use of force upon or toward the person of  
1433 another is justifiable if:

1434 (a) The actor is the parent or guardian or other person  
1435 similarly responsible for the general care and supervision of a  
1436 minor or a person acting at the request of such parent, guardian  
1437 or other responsible person and:

1438 (i) The force is used for the purpose of  
1439 safeguarding or promoting the welfare of the minor, including the  
1440 prevention or punishment of his misconduct; and

1441 (ii) The force used is not designed to cause or  
1442 known to create a substantial risk of causing death, serious  
1443 bodily harm, disfigurement, extreme pain or mental distress or  
1444 gross degradation; or

1445 (b) The actor is a teacher or a person otherwise  
1446 entrusted with the care or supervision for a special purpose of a  
1447 minor; and

1448 (i) The actor believes that the force used is  
1449 necessary to further such special purpose, including the  
1450 maintenance of reasonable discipline in a school, class or other  
1451 group, and that the use of such force is consistent with the  
1452 welfare of the minor; and





1453                   (ii) The degree of force, if it had been used by  
1454 the parent or guardian of the minor, would not be unjustifiable  
1455 under paragraph (a)(ii) of this section; or

1456                   (c) The actor is the guardian or other person similarly  
1457 responsible for the general care and supervision of an incompetent  
1458 person; and

1459                   (i) The force is used for the purpose of  
1460 safeguarding or promoting the welfare of the incompetent person,  
1461 including the prevention of his misconduct, or, when such  
1462 incompetent person is in a hospital or other institution for his  
1463 care and custody, for the maintenance of reasonable discipline in  
1464 such institution; and

1465                   (ii) The force used is not designed to cause or  
1466 known to create a substantial risk of causing death, serious  
1467 bodily harm, disfigurement, extreme or unnecessary pain, mental  
1468 distress, or humiliation; or

1469                   (d) The actor is a doctor or other therapist or a  
1470 person assisting him at his direction; and

1471                   (i) The force is used for the purpose of  
1472 administering a recognized form of treatment which the actor  
1473 believes to be adapted to promoting the physical or mental health  
1474 of the patient; and

1475                   (ii) The treatment is administered with the  
1476 consent of the patient or, if the patient is a minor or an  
1477 incompetent person, with the consent of his parent or guardian or



1478 other person legally competent to consent in his behalf, or the  
1479 treatment is administered in an emergency when the actor believes  
1480 that no one competent to consent can be consulted and that a  
1481 reasonable person, wishing to safeguard the welfare of the  
1482 patient, would consent; or

1483           (e) The actor is a warden or other authorized official  
1484 of a correctional institution; and

1485           (i) He believes that the force used is necessary  
1486 for the purpose of enforcing the lawful rules or procedures of the  
1487 institution, unless his belief in the lawfulness of the rule or  
1488 procedure sought to be enforced is erroneous and his error is due  
1489 to ignorance or mistake as to the provisions of this act, any  
1490 other provision of the criminal law or the law governing the  
1491 administration of the institution; and

1492           (ii) The nature or degree of force used is not  
1493 forbidden by Sections 27 through 37 of this act; and

1494           (iii) If deadly force is used, its use is  
1495 otherwise justifiable under this article; or

1496           (f) The actor is a person responsible for the safety of  
1497 a vessel or an aircraft or a person acting at his direction; and

1498           (i) He believes that the force used is necessary  
1499 to prevent interference with the operation of the vessel or  
1500 aircraft or obstruction of the execution of a lawful order, unless  
1501 his belief in the lawfulness of the order is erroneous and his



error is due to ignorance or mistake as to the law defining his authority; and

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

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

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

(ii) The force used is not designed to cause or known to create a substantial risk of causing death, bodily harm 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



1527 negligent in having such belief or in acquiring or failing to  
1528 acquire any knowledge or belief which is material to the  
1529 justifiability of his use of force, the justification afforded by  
1530 those sections is unavailable in a prosecution for an offense for  
1531 which recklessness or negligence, as the case may be, suffices to  
1532 establish culpability.

1533 (3) When the actor is justified under Sections 29 through 34  
1534 of this act in using force upon or toward the person of another  
1535 but he recklessly or negligently injures or creates a risk of  
1536 injury to innocent persons, the justification afforded by those  
1537 sections is unavailable in a prosecution for such recklessness or  
1538 negligence towards innocent persons.

1539 **SECTION 36.** Conduct involving the appropriation, seizure or  
1540 destruction of, damage to, intrusion on or interference with  
1541 property is justifiable under circumstances which would establish  
1542 a defense of privilege in a civil action based thereon, unless:

1543 (a) This act or the law defining the offense deals with  
1544 the specific situation involved; or

1545 (b) A legislative purpose to exclude the justification  
1546 claimed otherwise plainly appears.

1547 **SECTION 37.** In this article, unless a different meaning  
1548 plainly is required:

1549 (a) "Unlawful force" means force, including  
1550 confinement, which is employed without the consent of the person  
1551 against whom it is directed and the employment of which



1552 constitutes an offense or actionable tort or would constitute such  
1553 offense or tort except for a defense (such as the absence of  
1554 intent, negligence, or mental capacity; duress; youth; or  
1555 diplomatic status) not amounting to a privilege to use the force.  
1556 Assent constitutes consent, within the meaning of this section,  
1557 whether or not it otherwise is legally effective, except assent to  
1558 the infliction of death or serious bodily harm.

1559           (b) "Deadly force" means force which the actor uses  
1560 with the purpose of causing or which he knows to create a  
1561 substantial risk of causing death or serious bodily harm.  
1562 Purposely firing a firearm in the direction of another person or  
1563 at a vehicle in which another person is believed to be,  
1564 constitutes deadly force. A threat to cause death or serious  
1565 bodily harm, by the production of a weapon or otherwise, so long  
1566 as the actor's purpose is limited to creating an apprehension that  
1567 he will use deadly force if necessary, does not constitute deadly  
1568 force;

1569           (c) "Dwelling" means any building or structure, though  
1570 movable or temporary, or a portion thereof, which is for the time  
1571 being the actor's home or place of lodging.

1572                           **ARTICLE 4**

1573                           **RESPONSIBILITY**

1574           **SECTION 38.** (1) A person is not responsible for criminal  
1575 conduct if at the time of such conduct as a result of mental  
1576 disease or defect he lacks substantial capacity either to



1577 appreciate the criminality of his conduct or to conform his  
1578 conduct to the requirements of law.

1579 (2) As used in this article, the terms "mental disease or  
1580 defect" do not include an abnormality manifested only by repeated  
1581 criminal or otherwise antisocial conduct.

1582 **SECTION 39.** (1) Evidence that the defendant suffered from a  
1583 mental disease or defect is admissible whenever it is relevant to  
1584 prove that the defendant did or did not have a state of mind which  
1585 is an element of the offense.

1586 (2) Whenever the jury or the court is authorized to  
1587 determine or to recommend whether or not the defendant shall be  
1588 sentenced to death or imprisonment upon conviction, evidence that  
1589 the capacity of the defendant to appreciate the criminality of his  
1590 conduct or to conform his conduct to the requirements of law was  
1591 impaired as a result of mental disease or defect is admissible in  
1592 favor of sentence of imprisonment.

1593 **SECTION 40.** (1) Mental disease or defect excluding  
1594 responsibility is an affirmative defense.

1595 (2) Evidence of mental disease or defect excluding  
1596 responsibility is not admissible unless the defendant, at the time  
1597 of entering his plea of not guilty or within ten (10) days  
1598 thereafter or at such later time as the court may for good cause  
1599 permit, files a written notice of his purpose to rely on such  
1600 defense.



1601 (3) When the defendant is acquitted on the ground of mental  
1602 disease or defect excluding responsibility, the verdict and the  
1603 judgment shall so state.

1604 **SECTION 41.** No person who as a result of mental disease or  
1605 defect lacks capacity to understand the proceedings against him or  
1606 to assist in his own defense shall be tried, convicted or  
1607 sentenced for the commission of an offense so long as such  
1608 incapacity endures.

1609 **SECTION 42.** (1) Whenever the defendant has filed a notice  
1610 of intention to rely on the defense of mental disease or defect  
1611 excluding responsibility, or there is reason to doubt his fitness  
1612 to proceed, or reason to believe that mental disease or defect of  
1613 the defendant will otherwise become an issue in the cause, the  
1614 court shall appoint at least one (1) qualified psychiatrist or  
1615 shall request the Superintendent of the Mississippi State Hospital  
1616 to designate at least one (1) qualified psychiatrist, which  
1617 designation may be or include himself, to examine and report upon  
1618 the mental condition of the defendant. The court may order the  
1619 defendant to be committed to a hospital or other suitable facility  
1620 for the purpose of the examination for a period of not exceeding  
1621 sixty (60) days or such longer period as the court determines to  
1622 be necessary for the purpose and may direct that a qualified  
1623 psychiatrist retained by the defendant be permitted to witness and  
1624 participate in the examination.



1625           (2) In such examination any method may be employed which is  
1626 accepted by the medical profession for the examination of those  
1627 alleged to be suffering from mental disease or defect.

1628           (3) The report of the examination shall include the  
1629 following: (a) a description of the nature of the examination;  
1630 (b) a diagnosis of the mental condition of the defendant; (c) if  
1631 the defendant suffers from a mental disease or defect, an opinion  
1632 as to his capacity to understand the proceedings against him and  
1633 to assist in his own defense; (d) when a notice of intention to  
1634 rely on the defense of irresponsibility has been filed, an opinion  
1635 as to the extent, if any, to which the capacity of the defendant  
1636 to appreciate the criminality of his conduct or to conform his  
1637 conduct to the requirements of law was impaired at the time of the  
1638 criminal conduct charged; and (e) when directed by the court, an  
1639 opinion as to the capacity of the defendant to have a particular  
1640 state of mind which is an element of the offense charged.

1641           If the examination cannot be conducted by reason of the  
1642 unwillingness of the defendant to participate therein, the report  
1643 shall so state and shall include, if possible, an opinion as to  
1644 whether such unwillingness of the defendant was the result of  
1645 mental disease or defect.

1646           The report of the examination shall be filed with the clerk  
1647 of the court, who shall cause copies to be delivered to the  
1648 district attorney and to counsel for the defendant.





**SECTION 43.**

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

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (3) of this section and the court shall commit him to the custody of the Executive Director of the Department of Public Health to be placed in an appropriate institution of the Department of Public Health for so long as such unfitness shall endure. When the court, on its own motion or upon the application of the Executive Director of the Department of Public Health or the prosecuting attorney, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law



governing the civil commitment of persons suffering from mental disease or defect, order the defendant to be committed to an appropriate institution of the Department of Public Health.

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

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

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

(3) Upon the trial, the psychiatrists who reported pursuant to Section 42 of this act may be called as witnesses by the prosecution, the defendant or the court. If the issue is being



1699    tried before a jury, the jury may be informed that the  
1700    psychiatrists were designated by the court or by the  
1701    Superintendent of the Mississippi State Hospital at the request of  
1702    the court, as the case may be.  If called by the court, the  
1703    witness shall be subject to cross-examination by the prosecution  
1704    and by the defendant.  Both the prosecution and the defendant may  
1705    summon any other qualified psychiatrist or other expert to  
1706    testify, but no one who has not examined the defendant shall be  
1707    competent to testify to an expert opinion with respect to the  
1708    mental condition or responsibility of the defendant, as  
1709    distinguished from the validity of the procedure followed by, or  
1710    the general scientific propositions stated by, another witness.

1711           (4)  When a psychiatrist or other expert who has examined the  
1712    defendant testifies concerning his mental condition, he shall be  
1713    permitted to make a statement as to the nature of his examination,  
1714    his diagnosis of the mental condition of the defendant at the time  
1715    of the commission of the offense charged and his opinion as to the  
1716    extent, if any, to which the capacity of the defendant to  
1717    appreciate the criminality of his conduct or to conform his  
1718    conduct to the requirements of law or to have a particular state  
1719    of mind which is an element of the offense charged was impaired as  
1720    a result of mental disease or defect at that time.  He shall be  
1721    permitted to make any explanation reasonably serving to clarify  
1722    his diagnosis and opinion and may be cross-examined as to any



matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

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

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



1748           (3) If the court is satisfied by the report filed pursuant  
1749 to subsection (2) of this section and such testimony of the  
1750 reporting psychiatrists as the court deems necessary that the  
1751 committed person may be discharged or released on condition  
1752 without danger to himself or others, the court shall order his  
1753 discharge or his release on such conditions as the court  
1754 determines to be necessary. If the court is not so satisfied, it  
1755 shall promptly order a hearing to determine whether such person  
1756 may safely be discharged or released. Any such hearing shall be  
1757 deemed a civil proceeding and the burden shall be upon the  
1758 committed person to prove that he may safely be discharged or  
1759 released. According to the determination of the court upon the  
1760 hearing, the committed person shall thereupon be discharged or  
1761 released on such conditions as the court determines to be  
1762 necessary, or shall be recommitted to the custody of the Executive  
1763 Director of the Department of Public Health, subject to discharge  
1764 or release only in accordance with the procedure prescribed above  
1765 for a first hearing.

1766           (4) If, within five (5) years after the conditional release  
1767 of a committed person, the court shall determine, after hearing  
1768 evidence, that the conditions of release have not been fulfilled  
1769 and that for the safety of such person or for the safety of others  
1770 his conditional release should be revoked, the court shall  
1771 forthwith order him to be recommitted to the Executive Director of  
1772 the Department of Public Health, subject to discharge or release



1773 only in accordance with the procedure prescribed above for a first  
1774 hearing.

1775 (5) A committed person may make application for his  
1776 discharge or release to the court by which he was committed, and  
1777 the procedure to be followed upon such application shall be the  
1778 same as that prescribed above in the case of an application by the  
1779 Executive Director of the Department of Public Health. However,  
1780 no such application by a committed person need be considered until  
1781 he has been confined for a period of not less than six (6) months  
1782 from the date of the order of commitment, and if the determination  
1783 of the court be adverse to the application, such person shall not  
1784 be permitted to file a further application until one (1) year has  
1785 elapsed from the date of any preceding hearing on an application  
1786 for his release or discharge.

1787 **SECTION 46.** A statement made by a person subjected to  
1788 psychiatric examination or treatment pursuant to Sections 42, 43  
1789 or 45 of this act for the purposes of such examination or  
1790 treatment shall not be admissible in evidence against him in any  
1791 criminal proceeding on any issue other than that of his mental  
1792 condition but it shall be admissible upon that issue, whether or  
1793 not it would otherwise be deemed a privileged communication,  
1794 unless such statement constitutes an admission of guilt of the  
1795 crime charged.

1796 **SECTION 47.** (1) A person shall not be tried for or  
1797 convicted of an offense if:



1798 (a) At the time of the conduct charged to constitute  
1799 the offense he was under the jurisdiction of the youth court; or

1800 (b) At the time of the conduct charged to constitute  
1801 the offense he was sixteen (16) or seventeen (17) years of age,  
1802 unless:

1803 (i) The juvenile court has no jurisdiction over  
1804 him; or

1805 (ii) The juvenile court has entered an order  
1806 waiving jurisdiction, transferring jurisdiction to circuit court  
1807 and consenting to the institution of criminal proceedings against  
1808 him.

1809 (2) No court shall have jurisdiction to try or convict a  
1810 person of an offense if criminal proceedings against him are  
1811 barred by subsection (1) of this section. When it appears that a  
1812 person charged with the commission of an offense may be of such an  
1813 age that criminal proceedings may be barred under subsection (1)  
1814 of this section, the court shall hold a hearing thereon, and the  
1815 burden shall be on the prosecution to establish to the  
1816 satisfaction of the court that the criminal proceeding is not  
1817 barred upon such grounds. If the court determines that the  
1818 proceeding is barred, custody of the person charged shall be  
1819 surrendered to the youth court, and the case, including all papers  
1820 and processes relating thereto, shall be transferred.

1821 **ARTICLE 5**

1822 **INCHOATE CRIMES**



1823        **SECTION 48.**    (1)    **Definition of attempt.**    A person is guilty

1824    of an attempt to commit a crime if, acting with the kind of  
1825    culpability otherwise required for commission of the crime, he:

1826                (a)    Purposely engages in conduct which would constitute  
1827    the crime if the attendant circumstances were as he believes them  
1828    to be; or

1829                (b)    When causing a particular result is an element of  
1830    the crime, does or omits to do anything with the purpose of  
1831    causing or with the belief that it will cause such result without  
1832    further conduct on his part; or

1833                (c)    Purposely does or omits to do anything which, under  
1834    the circumstances as he believes them to be, is an act or omission  
1835    constituting a substantial step in a course of conduct planned to  
1836    culminate in his commission of the crime.

1837                (2)    **Conduct which may be held substantial step under**  
1838    **subsection (1) (c).**    Conduct shall not be held to constitute a  
1839    substantial step under subsection (1)(c) of this section unless it  
1840    is strongly corroborative of the actor's criminal purpose.

1841    Without negating the sufficiency of other conduct, the  
1842    following, if strongly corroborative of the actor's criminal  
1843    purpose, shall not be held insufficient as a matter of law:

1844                (a)    Lying in wait, searching for or following the  
1845    contemplated victim of the crime;





1846                   (b) Enticing or seeking to entice the contemplated  
1847 victim of the crime to go to the place contemplated for its  
1848 commission;

1849                   (c) Reconnoitering the place contemplated for the  
1850 commission of the crime;

1851                   (d) Unlawful entry of a structure, vehicle or enclosure  
1852 in which it is contemplated that the crime will be committed;

1853                   (e) Possession of materials to be employed in the  
1854 commission of the crime, which are specially designed for such  
1855 unlawful use or which can serve no lawful purpose of the actor  
1856 under the circumstances;

1857                   (f) Possession, collection or fabrication of materials  
1858 to be employed in the commission of the crime, at or near the  
1859 place contemplated for its commission, where such possession,  
1860 collection or fabrication serves no lawful purpose of the actor  
1861 under the circumstances;

1862                   (g) Soliciting an innocent agent to engage in conduct  
1863 constituting an element of the crime.

1864           (3) **Conduct designed to aid another in commission of a**  
1865 **crime.** A person who engages in conduct designed to aid another to  
1866 commit a crime which would establish his complicity under Section  
1867 19 of this act if the crime were committed by such other person,  
1868 is guilty of an attempt to commit the crime, although the crime is  
1869 not committed or attempted by such other person.



1870           (4) **Renunciation of criminal purpose.** When the actor's  
1871 conduct would otherwise constitute an attempt under subsection  
1872 (1)(b) or (1)(c) of this section, it is an affirmative defense  
1873 that he abandoned his effort to commit the crime or otherwise  
1874 prevented its commission, under circumstances manifesting a  
1875 complete and voluntary renunciation of his criminal purpose. The  
1876 establishment of such defense does not, however, affect the  
1877 liability of an accomplice who did not join in such abandonment or  
1878 prevention.

1879           Within the meaning of this article, renunciation of criminal  
1880 purpose is not voluntary if it is motivated, in whole or in part,  
1881 by circumstances, not present or apparent at the inception of the  
1882 actor's course of conduct, which increase the probability of  
1883 detection or apprehension or which make more difficult the  
1884 accomplishment of the criminal purpose. Renunciation is not  
1885 complete if it is motivated by a decision to postpone the criminal  
1886 conduct until a more advantageous time or to transfer the criminal  
1887 effort to another but similar objective or victim.

1888           **SECTION 49.** (1) **Definition of solicitation.** A person is  
1889 guilty of solicitation to commit a crime if with the purpose of  
1890 promoting or facilitating its commission he commands, encourages  
1891 or requests another person to engage in specific conduct which  
1892 would constitute such crime or an attempt to commit such crime or  
1893 which would establish his complicity in its commission or  
1894 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

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

(2) **Scope of conspiratorial relationship.** If a person guilty of conspiracy, as defined by subsection (1) of this section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or



1919 persons, whether or not he knows their identity, to commit such  
1920 crime.

1921       (3) **Conspiracy with multiple criminal objectives.** If a  
1922 person conspires to commit a number of crimes, he is guilty of  
1923 only one (1) conspiracy so long as such multiple crimes are the  
1924 object of the same agreement or continuous conspiratorial  
1925 relationship.

1926       (4) **Joinder and venue in conspiracy prosecutions.**

1927           (a) Subject to the provisions of paragraph (b) of this  
1928 subsection, two (2) or more persons charged with criminal  
1929 conspiracy may be prosecuted jointly if:

1930               (i) They are charged with conspiring with one  
1931 another; or

1932               (ii) The conspiracies alleged, whether they have  
1933 the same or different parties, are so related that they constitute  
1934 different aspects of a scheme of organized criminal conduct.

1935           (b) In any joint prosecution under paragraph (a) of  
1936 this subsection:

1937               (i) No defendant shall be charged with a  
1938 conspiracy in any county or district other than one in which he  
1939 entered into such conspiracy or in which an overt act pursuant to  
1940 such conspiracy was done by him or by a person with whom he  
1941 conspired; and



1942                   (ii) Neither the liability of any defendant nor  
1943 the admissibility against him of evidence of acts or declarations  
1944 of another shall be enlarged by such joinder; and

1945                   (iii) The court shall order a severance or take a  
1946 special verdict as to any defendant who so requests, if it deems  
1947 it necessary or appropriate to promote the fair determination of  
1948 his guilt or innocence, and shall take any other proper measures  
1949 to protect the fairness of the trial.

1950           (5) **Overt Act.** No person may be convicted of conspiracy to  
1951 commit a crime, other than a felony of the first or second degree,  
1952 unless an overt act in pursuance of such conspiracy is alleged and  
1953 proved to have been done by him or by a person with whom he  
1954 conspired.

1955           (6) **Renunciation of criminal purpose.** It is an affirmative  
1956 defense that the actor, after conspiring to commit a crime,  
1957 thwarted the success of the conspiracy, under circumstances  
1958 manifesting a complete and voluntary renunciation of his criminal  
1959 purpose.

1960           (7) **Duration of conspiracy.** For purposes of Section 6(4) of  
1961 this act:

1962                   (a) Conspiracy is a continuing course of conduct which  
1963 terminates when the crime or crimes which are its object are  
1964 committed or the agreement that they be committed is abandoned by  
1965 the defendant and by those with whom he conspired; and



1966                   (b) Such abandonment is presumed if neither the  
1967 defendant nor anyone with whom he conspired does any overt act in  
1968 pursuance of the conspiracy during the applicable period of  
1969 limitation; and

1970                   (c) If an individual abandons the agreement, the  
1971 conspiracy is terminated as to him only if and when he advises  
1972 those with whom he conspired of his abandonment or he informs the  
1973 law enforcement authorities of the existence of the conspiracy and  
1974 of his participation therein.

1975           **SECTION 51.** (1) Except as provided in subsection (2) of  
1976 this section, it is immaterial to the liability of a person who  
1977 solicits or conspires with another to commit a crime that:

1978                   (a) He or the person whom he solicits or with whom he  
1979 conspires does not occupy a particular position or have a  
1980 particular characteristic which is an element of such crime, if he  
1981 believes that one of them does; or

1982                   (b) The person whom he solicits or with whom he  
1983 conspires is irresponsible or has an immunity to prosecution or  
1984 conviction for the commission of the crime.

1985                   (2) It is a defense to a charge of solicitation or  
1986 conspiracy to commit a crime that if the criminal object were  
1987 achieved, the actor would not be guilty of a crime under the law  
1988 defining the offense or as an accomplice under Section 19(5) or  
1989 19(6) (a) or (b) of this act.



1990           **SECTION 52.** (1) **Grading.** Except as otherwise provided in  
1991 this section, attempt, solicitation and conspiracy are crimes of  
1992 the same grade and degree as the most serious offense which is  
1993 attempted or solicited or is an object of the conspiracy. An  
1994 attempt, solicitation or conspiracy to commit a capital crime or a  
1995 felony of the first degree is a felony of the second degree.

1996           (2) **Mitigation.** If the particular conduct charged to  
1997 constitute a criminal attempt, solicitation or conspiracy is so  
1998 inherently unlikely to result or culminate in the commission of a  
1999 crime that neither such conduct nor the actor presents a public  
2000 danger warranting the grading of such offense under this section,  
2001 the court shall exercise its power under Section 66 of this act to  
2002 enter judgment and impose sentence for a crime of lower grade or  
2003 degree or, in extreme cases, may dismiss the prosecution.

2004           (3) **Multiple convictions.** A person may not be convicted of  
2005 more than one (1) offense defined by this article for conduct  
2006 designed to commit or to culminate in the commission of the same  
2007 crime.

2008           **SECTION 53.** (1) **Criminal Instruments Generally.** A person  
2009 commits a misdemeanor if he possesses any instrument of crime with  
2010 purpose to employ it criminally. "Instrument of crime" means:

2011           (a) Anything specially made or specially adapted for  
2012 criminal use; or



2013                   (b) Anything commonly used for criminal purposes and  
2014 possessed by the actor under circumstances which do not have  
2015 negative unlawful purpose.

2016           (2) **Presumption of criminal purpose from possession of**  
2017 **weapon.** If a person possesses a firearm or other weapon on or  
2018 about his person, in a vehicle occupied by him, or otherwise  
2019 readily available for use, it is presumed that he had the purpose  
2020 to employ it criminally, unless:

2021                   (a) The weapon is possessed in the actor's home or  
2022 place of business;

2023                   (b) The actor is licensed or otherwise authorized by  
2024 law to possess such weapon; or

2025                   (c) The weapon is of a type commonly used in lawful  
2026 sport.

2027           "Weapon" means anything readily capable of lethal use and  
2028 possessed under circumstances not manifestly appropriate for  
2029 lawful uses which it may have; the term includes a firearm which  
2030 is not loaded or lacks a clip or other component to render it  
2031 immediately operable, and components which can readily be  
2032 assembled into a weapon.

2033           (3) **Presumptions as to possession of criminal instruments in**  
2034 **automobiles.** Where a weapon or other instrument of crime is found  
2035 in an automobile, it shall be presumed to be in the possession of  
2036 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 (1) 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.

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

(3) Except as provided in subsection (2) of this section and subject to the applicable provisions of this act, the court may



2087 suspend the imposition of sentence on a person who has been  
2088 convicted of a crime, may order him to be committed in lieu of  
2089 sentence, in accordance with Section 67 of this act, or may  
2090 sentence him as follows:

2091 (a) To pay a fine authorized by Section 56 of this act;  
2092 or

2093 (b) To be placed on probation, and, in the case of a  
2094 person convicted of a felony or misdemeanor to imprisonment for a  
2095 term fixed by the court not exceeding thirty (30) days to be  
2096 served as a condition of probation; or

2097 (c) To imprisonment for a term authorized by Sections  
2098 59, 60, 61, 62, 63 or 73 of this act; or

2099 (d) To fine and probation or fine and imprisonment, but  
2100 not to probation and imprisonment, except as authorized in  
2101 paragraph (b) of this subsection.

2102 (4) The court may suspend the imposition of sentence on a  
2103 person who has been convicted of a violation or may sentence him  
2104 to pay a fine authorized by Section 57 of this act.

2105 (5) This article does not deprive the court of any authority  
2106 conferred by law to decree a forfeiture of property, suspend or  
2107 cancel a license, remove a person from office, or impose any other  
2108 civil penalty. Such a judgment or order may be included in the  
2109 sentence.

2110 **SECTION 57.** A person who has been convicted of an offense  
2111 may be sentenced to pay a fine not exceeding:



2112 (a) Ten Thousand Dollars (\$10,000.00), when the  
2113 conviction is of a felony of the first or second degree;  
2114 (b) Five Thousand Dollars (\$5,000.00), when the  
2115 conviction is of a felony of the third degree;  
2116 (c) One Thousand Dollars (\$1,000.00), when the  
2117 conviction is of a misdemeanor;  
2118 (d) Five Hundred Dollars (\$500.00), when the conviction  
2119 is of a petty misdemeanor or a violation;  
2120 (e) Any higher amount equal to double the pecuniary  
2121 gain derived from the offense by the offender;  
2122 (f) Any higher amount specifically authorized by  
2123 statute.

2124 **SECTION 58.** (1) The court may suspend the sentence of a  
2125 corporation or an unincorporated association which has been  
2126 convicted of an offense or may sentence it to pay a fine  
2127 authorized by Section 57 of this act.

2128 (2) (a) The prosecuting attorney is authorized to institute  
2129 civil proceedings in the appropriate court of general jurisdiction  
2130 to forfeit the charter of a corporation organized under the laws  
2131 of this state or to revoke the certificate authorizing a foreign  
2132 corporation to conduct business in this state. The court may  
2133 order the charter forfeited or the certificate revoked upon  
2134 finding (i) that the board of directors or a high managerial agent  
2135 acting in behalf of the corporation has, in conducting the  
2136 corporation's affairs, purposely engaged in a persistent course of



2137 criminal conduct and (ii) that for the prevention of future  
2138 criminal conduct of the same character, the public interest  
2139 requires the charter of the corporation to be forfeited and the  
2140 corporation to be dissolved or the certificate to be revoked.

2141 (b) When a corporation is convicted of a crime or a  
2142 high managerial agent of a corporation, as defined in Section 20  
2143 of this act, is convicted of a crime committed in the conduct of  
2144 the affairs of the corporation, the court, in sentencing the  
2145 corporation or the agent, may direct the prosecuting attorney to  
2146 institute proceedings authorized by paragraph (a) of this  
2147 subsection.

2148 (c) The proceedings authorized by paragraph (a) of this  
2149 subsection shall be conducted in accordance with the procedures  
2150 authorized by law for the involuntary dissolution of a corporation  
2151 or the revocation of the certificate authorizing a foreign  
2152 corporation to conduct business in this state. Such proceedings  
2153 shall be deemed additional to any other proceedings authorized by  
2154 law for the purpose of forfeiting the charter of a corporation or  
2155 revoking the certificate of a foreign corporation.

2156 **SECTION 59.** (1) **Specialized correctional treatment.** A  
2157 young adult offender is a person convicted of a crime who, at the  
2158 time of sentencing, is sixteen (16) but less than twenty-two (22)  
2159 years of age. A young adult offender who is sentenced to a term  
2160 of imprisonment which may exceed thirty (30) days shall be  
2161 committed to the custody of the Department of Corrections, and



2162 shall receive, as far as practicable, such special and  
2163 individualized correctional and rehabilitative treatment as may be  
2164 appropriate to his needs.

2165       (2) **Special term.** A young adult offender convicted of a  
2166 felony may, in lieu of any other sentence of imprisonment  
2167 authorized by this article, be sentenced to a special term of  
2168 imprisonment without a minimum and with a maximum of four (4)  
2169 years, regardless of the degree of the felony involved, if the  
2170 court is of the opinion that such special term is adequate for his  
2171 correction and rehabilitation and will not jeopardize the  
2172 protection of the public.

2173       (3) **Removal of disabilities; vacation of conviction.**

2174           (a) In sentencing a young adult offender to the special  
2175 term provided by this section or to any sentence other than one of  
2176 imprisonment, the court may order that so long as he is not  
2177 convicted of another felony, the judgment shall not constitute a  
2178 conviction for the purposes of any disqualification or disability  
2179 imposed by law upon conviction of a crime.

2180           (b) When any young adult offender is unconditionally  
2181 discharged from probation or parole before the expiration of the  
2182 maximum term thereof, the court may enter an order vacating the  
2183 judgment of conviction.

2184       (4) **Commitment for observation.** If, after presentence  
2185 investigation, the court desires additional information concerning  
2186 a young adult offender before imposing sentence, it may order that



he be committed, for a period not exceeding ninety (90) days, to the custody of the Department of Corrections for observation and study at an appropriate reception or classification center. Such division of the Department of Corrections and the Parole Board shall advise the court of their findings and recommendations on or before the expiration of such ninety-day period.

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

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

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

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

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

(a) In the case of a felony of the first degree, for a term the minimum of which shall be fixed by the court at not less



2212 than five (5) years nor more than ten (10) years, and the maximum  
2213 of which shall be life imprisonment;

2214 (b) In the case of a felony of the second degree, for a  
2215 term the minimum of which shall be fixed by the court at not less  
2216 than one (1) year nor more than five (5) years, and the maximum of  
2217 which shall be fixed by the court at not less than ten (10) nor  
2218 more than twenty (20) years;

2219 (c) In the case of a felony of the third degree, for a  
2220 term the minimum of which shall be fixed by the court at not less  
2221 than one (1) year nor more than three (3) years, and the maximum  
2222 of which shall be fixed by the court at not less than five (5) nor  
2223 more than ten (10) years.

2224 **SECTION 62.** A person who has been convicted of a misdemeanor  
2225 or a petty misdemeanor may be sentenced to imprisonment for a  
2226 definite term which shall be fixed by the court and shall not  
2227 exceed one (1) year in the case of a misdemeanor or thirty (30)  
2228 days in the case of a petty misdemeanor.

2229 **SECTION 63.** (1) In the cases designated in Section 71 of  
2230 this act, a person who has been convicted of a misdemeanor or a  
2231 petty misdemeanor may be sentenced to an extended term of  
2232 imprisonment, as follows:

2233 (a) In the case of a misdemeanor, for a term the  
2234 minimum of which shall be fixed by the court at not more than one  
2235 (1) year and the maximum of which shall be three (3) years;





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

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

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

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

**SECTION 64.** (1) **First release of all offenders on parole.**

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

(2) **Sentence of imprisonment includes separate parole term; length of parole term.** A sentence to an indefinite term of imprisonment in excess of one (1) year under Section 59, 60, 61, 63 or 73 of this act includes as a separate portion of the



2261 sentence a term of parole or of recommitment for violation of the  
2262 conditions of parole which governs the duration of parole or  
2263 recommitment after the offender's first conditional release on  
2264 parole. The minimum of such term is one (1) year and the maximum  
2265 is five (5) years, unless the sentence was imposed under Section  
2266 59 or Section 63 of this act, in which case the maximum is two (2)  
2267 years.

2268 (3) **Length of recommitment and reparole after revocation of**  
2269 **parole.** If an offender is recommitted upon revocation of his  
2270 parole, the term of further imprisonment upon such recommitment  
2271 and of any subsequent reparole or recommitment under the same  
2272 sentence shall be fixed by the Parole Board but shall not exceed  
2273 in aggregate length the unserved balance of the maximum parole  
2274 term provided by subsection (2) of this section.

2275 (4) **Final unconditional release.** When the maximum of his  
2276 parole term has expired or he has been sooner discharged from  
2277 parole under Section 31, an offender shall be deemed to have  
2278 served his sentence and shall be released unconditionally.

2279 **SECTION 65.** (1) When a person is sentenced to imprisonment  
2280 for an indefinite term with a maximum in excess of one (1) year,  
2281 the court shall commit him to the custody of the Department of  
2282 Corrections for the term of his sentence and until released in  
2283 accordance with law.

2284 (2) When a person is sentenced to imprisonment for a  
2285 definite term, the court shall designate the institution or agency



to which he is committed for the term of his sentence and until released in accordance with law.

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

**SECTION 67.** (1) When a person prosecuted for a felony of the third degree, misdemeanor or petty misdemeanor is a chronic alcoholic, narcotic addict or person suffering from mental abnormality and the court is authorized by law to order the civil commitment of such person to a hospital or other institution for medical, psychiatric or other rehabilitative treatment, the court may order such commitment and dismiss the prosecution. The order of commitment may be made after conviction in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

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

## **ARTICLE 7**

### **AUTHORITY OF COURT IN SENTENCING**



**SECTION 68.**

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

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

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

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

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

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

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

(c) The defendant acted under a strong provocation;

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



2336 (e) The victim of the defendant's criminal conduct  
2337 induced or facilitated its commission;

2338 (f) The defendant has compensated or will compensate  
2339 the victim of his criminal conduct for the damage or injury that  
2340 he sustained;

2341 (g) The defendant has no history of prior delinquency  
2342 or criminal activity or has led a law-abiding life for a  
2343 substantial period of time before the commission of the present  
2344 crime;

2345 (h) The defendant's criminal conduct was the result of  
2346 circumstances unlikely to recur;

2347 (i) The character and attitudes of the defendant  
2348 indicate that he is unlikely to commit another crime;

2349 (j) The defendant is particularly likely to respond  
2350 affirmatively to probationary treatment;

2351 (k) The imprisonment of the defendant would entail  
2352 excessive hardship to himself or his dependents.

2353 (3) When a person who has been convicted of a crime is not  
2354 sentenced to imprisonment, the court shall place him on probation  
2355 if he is in need of the supervision, guidance, assistance or  
2356 direction that the probation service can provide.

2357 **SECTION 69.** (1) The court shall not sentence a defendant  
2358 only to pay a fine, when any other disposition is authorized by  
2359 law, unless having regard to the nature and circumstances of the  
2360 crime and to the history and character of the defendant, it is of



2361 the opinion that the fine alone suffices for protection of the  
2362 public.

2363 (2) The court shall not sentence a defendant to pay a fine  
2364 in addition to a sentence of imprisonment or probation unless:

2365 (a) The defendant has derived a pecuniary gain from the  
2366 crime; or

2367 (b) The court is of the opinion that a fine is  
2368 specially adapted to deterrence of the crime involved or to the  
2369 correction of the offender.

2370 (3) The court shall not sentence a defendant to pay a fine  
2371 unless:

2372 (a) The defendant is or will be able to pay the fine;  
2373 and

2374 (b) The fine will not prevent the defendant from making  
2375 restitution or reparation to the victim of the crime.

2376 (4) In determining the amount and method of payment of a  
2377 fine, the court shall take into account the financial resources of  
2378 the defendant and the nature of the burden that its payment will  
2379 impose.

2380 **SECTION 70.** (1) The court may sentence a person who has  
2381 been convicted of a felony to an extended term of imprisonment if  
2382 it finds one or more of the grounds specified in this section.  
2383 The finding of the court shall be incorporated in the record.

2384 (2) The defendant is a persistent offender whose commitment  
2385 for an extended term is necessary for protection of the public.



2386           The court shall not make such a finding unless the defendant  
2387 is over twenty-one (21) years of age and has previously been  
2388 convicted of two (2) felonies or of one (1) felony and two (2)  
2389 misdemeanors, committed at different times when he was over  
2390 thirteen (13) years of age.

2391           (3) The defendant is a professional criminal whose  
2392 commitment for an extended term is necessary for protection of the  
2393 public.

2394           The court shall not make such a finding unless the defendant  
2395 is over twenty-one (21) years of age and:

2396                 (a) The circumstances of the crime show that the  
2397 defendant has knowingly devoted himself to criminal activity as a  
2398 major source of livelihood; or

2399                 (b) The defendant has substantial income or resources  
2400 not explained to be derived from a source other than criminal  
2401 activity.

2402           (4) The defendant is a dangerous, mentally abnormal person  
2403 whose commitment for an extended term is necessary for protection  
2404 of the public.

2405           The court shall not make such a finding unless the defendant  
2406 has been subjected to a psychiatric examination resulting in the  
2407 conclusions that his mental condition is gravely abnormal; that  
2408 his criminal conduct has been characterized by a pattern of  
2409 repetitive or compulsive behavior or by persistent aggressive



2410 behavior with heedless indifference to consequences; and that such  
2411 condition makes him a serious danger to others.

2412 (5) The defendant is a multiple offender whose criminality  
2413 was so extensive that a sentence of imprisonment for an extended  
2414 term is warranted.

2415 The court shall not make such a finding unless:

2416 (a) The defendant is being sentenced for two (2) or  
2417 more felonies, or is already under sentence of imprisonment for a  
2418 felony, and the sentences of imprisonment involved will run  
2419 concurrently under Section 73 of this act; or

2420 (b) The defendant admits in open court the commission  
2421 of one or more other felonies and asks that they be taken into  
2422 account when he is sentenced; and

2423 (c) The longest sentences of imprisonment authorized  
2424 for each of the defendant's crimes, including admitted crimes  
2425 taken into account, if made to run consecutively would exceed in  
2426 length the minimum and maximum of the extended term imposed.

2427 **SECTION 71.** (1) The court may sentence a person who has  
2428 been convicted of a misdemeanor or petty misdemeanor to an  
2429 extended term of imprisonment if it finds one or more of the  
2430 grounds specified in this section. The finding of the court shall  
2431 be incorporated in the record.

2432 (2) The defendant is a persistent offender whose commitment  
2433 for an extended term is necessary for protection of the public.





2434           The court shall not make such a finding unless the defendant  
2435 has previously been convicted of two (2) crimes, committed at  
2436 different times when he was over thirteen (13) years of age.

2437           (3) The defendant is a professional criminal whose  
2438 commitment for an extended term is necessary for protection of the  
2439 public.

2440           The court shall not make such a finding unless:

2441           (a) The circumstances of the crime show that the  
2442 defendant has knowingly devoted himself to criminal activity as a  
2443 major source of livelihood; or

2444           (b) The defendant has substantial income or resources  
2445 not explained to be derived from a source other than criminal  
2446 activity.

2447           (4) The defendant is a chronic alcoholic, narcotic addict,  
2448 prostitute or person of abnormal mental condition who requires  
2449 rehabilitative treatment for a substantial period of time.

2450           The court shall not make such a finding unless, with respect  
2451 to the particular category to which the defendant belongs, the  
2452 Commissioner of the Department of Corrections has certified that  
2453 there is a specialized institution or facility which is  
2454 satisfactory for the rehabilitative treatment of such persons and  
2455 which otherwise meets the requirements of Section 63, subsection  
2456 (2) of this act.



2457           (5) The defendant is a multiple offender whose criminality  
2458 was so extensive that a sentence of imprisonment for an extended  
2459 term is warranted.

2460           The court shall not make such a finding unless:

2461           (a) The defendant is being sentenced for a number of  
2462 misdemeanors or petty misdemeanors or is already under sentence of  
2463 imprisonment for crime of such grades, or admits in open court the  
2464 commission of one or more such crimes and asks that they be taken  
2465 into account when he is sentenced; and

2466           (b) Maximum fixed sentences of imprisonment for each of  
2467 the defendant's crimes, including admitted crimes taken into  
2468 account, if made to run consecutively, would exceed in length the  
2469 maximum period of the extended term imposed.

2470           **SECTION 72.** (1) For purposes of Section 70 or 71 of this  
2471 act, a conviction of the commission of a crime in another  
2472 jurisdiction shall constitute a previous conviction. Such  
2473 conviction shall be deemed to have been of a felony if sentence of  
2474 death or of imprisonment in excess of one (1) year was authorized  
2475 under the law of such other jurisdiction, of a misdemeanor if  
2476 sentence of imprisonment in excess of thirty (30) days but not in  
2477 excess of a year was authorized and of a petty misdemeanor if  
2478 sentence of imprisonment for not more than thirty (30) days was  
2479 authorized.

2480           (2) An adjudication by a court of competent jurisdiction  
2481 that the defendant committed a crime constitutes a conviction for



2482 purposes of Sections 70 through 72, of this act, although sentence  
2483 or the execution thereof was suspended, provided that the time to  
2484 appeal has expired and that the defendant was not pardoned on the  
2485 ground of innocence.

2486 (3) Prior conviction may be proved by any evidence,  
2487 including fingerprint records made in connection with arrest,  
2488 conviction or imprisonment, that reasonably satisfies the court  
2489 that the defendant was convicted.

2490 (4) When the defendant has asked that other crimes admitted  
2491 in open court be taken into account when he is sentenced and the  
2492 court has not rejected such request, the sentence shall bar the  
2493 prosecution or conviction of the defendant in this state for any  
2494 such admitted crime.

2495 **SECTION 73.** (1) **Sentences of imprisonment for more than one**  
2496 **(1) crime.** When multiple sentences of imprisonment are imposed on  
2497 a defendant for more than one (1) crime, including a crime for  
2498 which a previous suspended sentence or sentence of probation has  
2499 been revoked, such multiple sentences shall run concurrently or  
2500 consecutively as the court determines at the time of sentence,  
2501 except that:

2502 (a) A definite and an indefinite term shall run  
2503 concurrently and both sentences shall be satisfied by service of  
2504 the indefinite term; and

2505 (b) The aggregate of consecutive definite terms shall  
2506 not exceed one (1) year; and



2507           (c) The aggregate of consecutive indefinite terms shall  
2508 not exceed in minimum or maximum length the longest extended term  
2509 authorized for the highest grade and degree of crime for which any  
2510 of the sentences was imposed; and

2511           (d) Not more than one (1) sentence for an extended term  
2512 shall be imposed.

2513           (2) **Sentences of imprisonment imposed at different times.**

2514 When a defendant who has previously been sentenced to imprisonment  
2515 is subsequently sentenced to another term for a crime committed  
2516 prior to the former sentence, other than a crime committed while  
2517 in custody:

2518           (a) The multiple sentences imposed shall so far as  
2519 possible conform to subsection (1) of this section; and

2520           (b) Whether the court determines that the terms shall  
2521 run concurrently or consecutively, the defendant shall be credited  
2522 with time served in imprisonment on the prior sentence in  
2523 determining the permissible aggregate length of the term or terms  
2524 remaining to be served; and

2525           (c) When a new sentence is imposed on a prisoner who is  
2526 on parole, the balance of the parole term on the former sentence  
2527 shall be deemed to run during the period of the new imprisonment.

2528           (3) **Sentence of imprisonment for crime committed while on**  
2529 **parole.** When a defendant is sentenced to imprisonment for a crime  
2530 committed while on parole in this state, such term of imprisonment  
2531 and any period of reimprisonment that the Parole Board may require



the defendant to serve upon the revocation of his parole shall run concurrently, unless the court orders them to run consecutively.

(4) **Multiple sentences of imprisonment in other cases.**

Except as otherwise provided in this section, multiple terms of imprisonment shall run concurrently or consecutively as the court determines when the second or subsequent sentence is imposed.

(5) **Calculation of concurrent and consecutive terms of imprisonment.**

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

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

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

(6) **Suspension of sentence or probation and imprisonment; multiple terms of suspension and probation.** When a defendant is sentenced for more than one (1) offense or a defendant already



2556 under sentence is sentenced for another offense committed prior to  
2557 the former sentence:

2558 (a) The court shall not sentence to probation a  
2559 defendant who is under sentence of imprisonment with more than  
2560 thirty (30) days to run or impose a sentence of probation and a  
2561 sentence of imprisonment, except as authorized by Section 56(3)(b)  
2562 of this act; and

2563 (b) Multiple periods of suspension or probation shall  
2564 run concurrently from the date of the first such disposition; and

2565 (c) When a sentence of imprisonment is imposed for an  
2566 indefinite term, the service of such sentence shall satisfy a  
2567 suspended sentence on another count or a prior suspended sentence  
2568 or sentence to probation; and

2569 (d) When a sentence of imprisonment is imposed for a  
2570 definite term, the period of a suspended sentence on another count  
2571 or a prior suspended sentence or sentence to probation shall run  
2572 during the period of such imprisonment.

2573 (7) **Offense committed while under suspension of sentence or**  
2574 **probation.** When a defendant is convicted of an offense committed  
2575 while under suspension of sentence or on probation and such  
2576 suspension or probation is not revoked:

2577 (a) If the defendant is sentenced to imprisonment for  
2578 an indefinite term, the service of such sentence shall satisfy the  
2579 prior suspended sentence or sentence to probation; and



2580           (b) If the defendant is sentenced to imprisonment for a  
2581 definite term, the period of the suspension or probation shall not  
2582 run during the period of such imprisonment; and

2583           (c) If sentence is suspended or the defendant is  
2584 sentenced to probation, the period of such suspension or probation  
2585 shall run concurrently with or consecutively to the remainder of  
2586 the prior periods, as the court determines at the time of the  
2587 sentence.

2588           **SECTION 74.** (1) The court shall not impose sentence without  
2589 first ordering a presentence investigation of the defendant and  
2590 according due consideration to a written report of such  
2591 investigation where:

2592           (a) The defendant has been convicted of a felony; or

2593           (b) The defendant is less than twenty-two (22) years of  
2594 age and has been convicted of a crime; or

2595           (c) The defendant will be placed on probation or  
2596 sentenced to imprisonment for an extended term.

2597           (2) The court may order a presentence investigation in any  
2598 other case.

2599           (3) The presentence investigation shall include an analysis  
2600 of the circumstances attending the commission of the crime, the  
2601 defendant's history of delinquency or criminality, physical and  
2602 mental condition, family situation and background, economic  
2603 status, education, occupation and personal habits and any other



2604 matters that the probation officer deems relevant or the court  
2605 directs to be included.

2606 (4) Before imposing sentence, the court may order the  
2607 defendant to submit to psychiatric observation and examination for  
2608 a period of not exceeding sixty (60) days or such longer period as  
2609 the court determines to be necessary for the purpose. The  
2610 defendant may be remanded for this purpose to any available clinic  
2611 or mental hospital or the court may appoint a qualified  
2612 psychiatrist to make the examination. The report of the  
2613 examination shall be submitted to the court.

2614 (5) Before imposing sentence, the court shall advise the  
2615 defendant or his counsel of the factual contents and the  
2616 conclusions of any presentence investigation or psychiatric  
2617 examination and afford fair opportunity, if the defendant so  
2618 requests, to controvert them. The sources of confidential  
2619 information need not, however, be disclosed.

2620 (6) The court shall not impose a sentence of imprisonment  
2621 for an extended term unless the ground therefor has been  
2622 established at a hearing after the conviction of the defendant and  
2623 on written notice to him of the ground proposed. Subject to the  
2624 limitation of subsection (5) of this section, the defendant shall  
2625 have the right to hear and controvert the evidence against him and  
2626 to offer evidence upon the issue.

2627 (7) If the defendant is sentenced to imprisonment, a copy of  
2628 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 this section, for the period of one (1) year following the date when the offender is received in custody by the Department of Corrections.

(3) If, as a result of the examination and classification by the Department of Corrections of a person under sentence of imprisonment upon conviction of a felony, the Commissioner of the Department of Corrections is satisfied that the sentence of the



2654 court may have been based upon a misapprehension as to the  
2655 history, character or physical or mental condition of the  
2656 offender, the commissioner, during the period when the offender's  
2657 sentence is deemed tentative under subsection (2) of this section  
2658 shall file in the sentencing court a petition to resentence the  
2659 offender. The petition shall set forth the information as to the  
2660 offender that is deemed to warrant his resentence and may include  
2661 a recommendation as to the sentence to be imposed.

2662 (4) The court may dismiss a petition filed under subsection  
2663 (3) of this section without a hearing if it deems the information  
2664 set forth insufficient to warrant reconsideration of the sentence.  
2665 If the court is of the view that the petition warrants such  
2666 reconsideration, a copy of the petition shall be served on the  
2667 offender, who shall have the right to be heard on the issue and to  
2668 be represented by counsel.

2669 (5) When the court grants a petition filed under subsection  
2670 (3) of this section, it shall resentence the offender and may  
2671 impose any sentence that might have been imposed originally for  
2672 the felony of which the defendant was convicted. The period of  
2673 his imprisonment prior to resentence and any reduction for good  
2674 behavior to which he is entitled shall be applied in satisfaction  
2675 of the final sentence.

2676 (6) For all purposes other than this section, a sentence of  
2677 imprisonment has the same finality when it is imposed that it  
2678 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**



2704       **SECTION 77.** In Articles 8, 9, 10 and 11, unless a different  
2705 meaning plainly is required:

2706           (a) "Human being" means a person who has been born and  
2707 is alive;

2708           (b) "Bodily injury" means physical pain, illness or any  
2709 impairment of physical condition;

2710           (c) "Serious bodily injury" means bodily injury which  
2711 creates a substantial risk of death or which causes serious,  
2712 permanent disfigurement, or protracted loss or impairment of the  
2713 function of any bodily member or organ;

2714           (d) "Deadly weapon" means any firearm, or other weapon,  
2715 device, instrument, material or substance, whether animate or  
2716 inanimate, which in the manner it is used or is intended to be  
2717 used is known to be capable of producing death or serious bodily  
2718 injury.

2719       **SECTION 78.** (1) A person is guilty of criminal homicide if  
2720 he purposely, knowingly, recklessly or negligently causes the  
2721 death of another human being.

2722           (2) Criminal homicide is murder, manslaughter or negligent  
2723 homicide.

2724       **SECTION 79.** (1) Except as provided in Section 80 of this  
2725 act, criminal homicide constitutes murder when:

2726           (a) It is committed purposely or knowingly; or

2727           (b) It is committed recklessly under circumstances  
2728 manifesting extreme indifference to the value of human life. Such



2729 recklessness and indifference are presumed if the actor is engaged  
2730 or is an accomplice in the commission of, or an attempt to commit,  
2731 or flight after committing or attempting to commit robbery, rape  
2732 or deviate sexual intercourse by force or threat of force, arson,  
2733 burglary, kidnapping or felonious escape.

2734 (2) Murder is a felony of the first degree but a person  
2735 convicted of murder may be sentenced to death, as provided in  
2736 Section 83 of this act.

2737 **SECTION 80.** (1) Criminal homicide constitutes manslaughter  
2738 when:

2739 (a) It is committed recklessly; or

2740 (b) A homicide which would otherwise be murder is  
2741 committed under the influence of extreme mental or emotional  
2742 disturbance for which there is reasonable explanation or excuse.  
2743 The reasonableness of such explanation or excuse shall be  
2744 determined from the viewpoint of a person in the actor's situation  
2745 under the circumstances as he believes them to be.

2746 (2) Manslaughter is a felony of the second degree.

2747 **SECTION 81.** (1) Criminal homicide constitutes negligent  
2748 homicide when it is committed negligently.

2749 (2) Negligent homicide is a felony of the third degree.

2750 **SECTION 82.** (1) **Causing suicide as criminal homicide.** A  
2751 person may be convicted of criminal homicide for causing another  
2752 to commit suicide only if he purposely causes such suicide by  
2753 force, duress or deception.



(2) **Aiding or soliciting suicide as an independent offense.**

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

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

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

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

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

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

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

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



2778           (2) **Determination by court or by court and jury.** Unless the  
2779 court imposes sentence under subsection (1) of this section, it  
2780 shall conduct a separate proceeding to determine whether the  
2781 defendant should be sentenced for a felony of the first degree or  
2782 sentenced to death. The proceeding shall be conducted before the  
2783 court alone if the defendant was convicted by a court sitting  
2784 without a jury or upon his plea of guilty or if the prosecuting  
2785 attorney and the defendant waive a jury with respect to sentence.  
2786 In other cases it shall be conducted before the court sitting with  
2787 the jury which determined the defendant's guilt or, if the court  
2788 for good cause shown discharges that jury, with a new jury  
2789 empaneled for the purpose.

2790           In the proceeding, evidence may be presented as to any matter  
2791 that the court deems relevant to sentence, including, but not  
2792 limited to, the nature and circumstances of the crime, the  
2793 defendant's character, background, history, mental and physical  
2794 condition and any of the aggravating or mitigating circumstances  
2795 enumerated in subsections (3) and (4) of this section. Any such  
2796 evidence, not legally privileged, which the court deems to have  
2797 probative force, may be received regardless of its admissibility  
2798 under the exclusionary rules of evidence, provided that the  
2799 defendant's counsel is accorded a fair opportunity to rebut such  
2800 evidence. The prosecuting attorney and the defendant or his  
2801 counsel shall be permitted to present argument for or against  
2802 sentence of death.



2803           The determination whether sentence of death shall be imposed  
2804 shall be in the discretion of the court, except that when the  
2805 proceeding is conducted before the court sitting with a jury, the  
2806 court shall not impose sentence of death unless it submits to the  
2807 jury the issue whether the defendant should be sentenced to death  
2808 or to imprisonment and the jury returns a verdict that the  
2809 sentence should be death. If the jury is unable to reach a  
2810 unanimous verdict, the court shall dismiss the jury and impose  
2811 sentence for a felony of the first degree.

2812           The court, in exercising its discretion as to sentence, and  
2813 the jury, in determining upon its verdict, shall take into account  
2814 the aggravating and mitigating circumstances enumerated in  
2815 subsections (3) and (4) and any other facts that it deems  
2816 relevant, but it shall not impose or recommend sentence of death  
2817 unless it finds one (1) of the aggravating circumstances  
2818 enumerated in subsection (3) and further finds that there are no  
2819 mitigating circumstances sufficiently substantial to call for  
2820 leniency. When the issue is submitted to the jury, the court  
2821 shall so instruct and also shall inform the jury of the nature of  
2822 the sentence of imprisonment that may be imposed, including its  
2823 implication with respect to possible release upon parole, if the  
2824 jury verdict is against sentence of death.

2825           (3) **Aggravating circumstances.** (a) The murder was  
2826 committed by a convict under sentence of imprisonment.





2827                   (b) The defendant was previously convicted of another  
2828 murder or of a felony involving the use or threat of violence to  
2829 the person.

2830                   (c) At the time the murder was committed the defendant  
2831 also committed another murder.

2832                   (d) The defendant knowingly created a great risk of  
2833 death to many persons.

2834                   (e) The murder was committed while the defendant was  
2835 engaged or was an accomplice in the commission of, or an attempt  
2836 to commit, or flight after committing or attempting to commit  
2837 robbery, rape or deviate sexual intercourse by force or threat of  
2838 force, arson, burglary or kidnapping.

2839                   (f) The murder was committed for the purpose of  
2840 avoiding or preventing a lawful arrest or effecting an escape from  
2841 lawful custody.

2842                   (g) The murder was committed for pecuniary gain.

2843                   (h) The murder was especially heinous, atrocious or  
2844 cruel, manifesting exceptional depravity.

2845           (4) **Mitigating circumstances.** (a) The defendant has no  
2846 significant history of prior criminal activity.

2847                   (b) The murder was committed while the defendant was  
2848 under the influence of extreme mental or emotional disturbance.

2849                   (c) The victim was a participant in the defendant's  
2850 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.

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

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

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



2876 (c) Attempts by physical menace to put another in fear  
2877 of imminent serious bodily injury.

2878 Simple assault is a misdemeanor unless committed in a fight  
2879 or scuffle entered into by mutual consent, in which case it is a  
2880 petty misdemeanor.

2881 (2) **Aggravated assault.** A person is guilty of aggravated  
2882 assault if he:

2883 (a) Attempts to cause serious bodily injury to another,  
2884 or causes such injury purposely, knowingly or recklessly under  
2885 circumstances manifesting extreme indifference to the value of  
2886 human life; or

2887 (b) Attempts to cause or purposely or knowingly causes  
2888 bodily injury to another with a deadly weapon.

2889 Aggravated assault under paragraph (a) is a felony of the  
2890 second degree; aggravated assault under paragraph (b) is a felony  
2891 of the third degree.

2892 **SECTION 86.** A person commits a misdemeanor if he recklessly  
2893 engages in conduct which places or may place another person in  
2894 danger of death or serious bodily injury. Recklessness and danger  
2895 shall be presumed where a person knowingly points a firearm at or  
2896 in the direction of another, whether or not the actor believed the  
2897 firearm to be loaded.

2898 **SECTION 87.** A person is guilty of a felony of the third  
2899 degree if he threatens to commit any crime of violence with  
2900 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, guardian or other lawful custodian, when he has no privilege to do so. It is an affirmative defense that:

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

(b) The child, being at the time not less than fourteen (14) years old, was taken away at its own instigation without



2950 enticement and without purpose to commit a criminal offense with  
2951 or against the child.

2952         Proof that the child was below the critical age gives rise to  
2953 a presumption that the actor knew the child's age or acted in  
2954 reckless disregard thereof. The offense is a misdemeanor unless  
2955 the actor, not being a parent or person in equivalent relation to  
2956 the child, acted with knowledge that his conduct would cause  
2957 serious alarm for the child's safety, or in reckless disregard of  
2958 a likelihood of causing such alarm, in which case the offense is a  
2959 felony of the third degree.

2960         (2) **Custody of committed persons.** A person is guilty of a  
2961 misdemeanor if he knowingly or recklessly takes or entices any  
2962 committed person away from lawful custody when he is not  
2963 privileged to do so. "Committed person" means, in addition to  
2964 anyone committed under judicial warrant, any orphan, neglected or  
2965 delinquent child, mentally defective or insane person, or other  
2966 dependent or incompetent person entrusted to another's custody by  
2967 or through a recognized social agency or otherwise by authority of  
2968 law.

2969         **SECTION 93.** (1) **Offense defined.** A person is guilty of  
2970 criminal coercion if, with purpose unlawfully to restrict  
2971 another's freedom of action to his detriment, he threatens to:

2972                 (a) Commit any criminal offense; or

2973                 (b) Accuse anyone of a criminal offense; or



2974 (c) Expose any secret tending to subject any person to  
2975 hatred, contempt or ridicule, or to impair his credit or business  
2976 repute; or

2977 (d) Take or withhold action as an official, or cause an  
2978 official to take or withhold action.

2979 It is an affirmative defense to prosecution based on  
2980 paragraphs (b), (c) or (d) that the actor believed the accusation  
2981 or secret to be true or the proposed official action justified and  
2982 that his purpose was limited to compelling the other to behave in  
2983 a way reasonably related to the circumstances which were the  
2984 subject of the accusation, exposure or proposed official action,  
2985 as by desisting from further misbehavior, making good a wrong  
2986 done, refraining from taking any action or responsibility for  
2987 which the actor believes the other disqualified.

2988 (2) **Grading.** Criminal coercion is a misdemeanor unless the  
2989 threat is to commit a felony or the actor's purpose is felonious,  
2990 in which cases the offense is a felony of the third degree.

2991 **ARTICLE 11**

2992 **SEXUAL OFFENSES**

2993 **SECTION 94.** In this article, unless a different meaning  
2994 plainly is required:

2995 (a) The definitions given in Section 77 of this act  
2996 apply;



2997 (b) "Sexual intercourse" includes intercourse per os or  
2998 per anus, with some penetration however slight; emission is not  
2999 required;

3000 (c) "Deviate sexual intercourse" means sexual  
3001 intercourse per os or per anus between human beings who are not  
3002 husband and wife, and any form of sexual intercourse with an  
3003 animal.

3004 **SECTION 95.** (1) **Rape.** A male who has sexual intercourse  
3005 with a female not his wife is guilty of rape if:

3006 (a) He compels her to submit by force or by threat of  
3007 imminent death, serious bodily injury, extreme pain or kidnapping,  
3008 to be inflicted on anyone; or

3009 (b) He has substantially impaired her power to appraise  
3010 or control her conduct by administering or employing, without her  
3011 knowledge, drugs, intoxicants or other means for the purpose of  
3012 preventing resistance; or

3013 (c) The female is unconscious; or

3014 (d) The female is less than ten (10) years old.

3015 Rape is a felony of the second degree unless (i) in the  
3016 course thereof the actor inflicts serious bodily injury upon  
3017 anyone, or (ii) the victim was not a voluntary social companion of  
3018 the actor upon the occasion of the crime and had not previously  
3019 permitted him sexual liberties, in which cases the offense is a  
3020 felony of the first degree.





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

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

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

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

**SECTION 96.** (1) **By force or its equivalent.** A person who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, commits a felony of the second degree if:

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

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

(c) The other person is unconscious; or

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



(2) **By other imposition.** A person who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, commits a felony of the third degree if:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



3096 (g) The other person is less than twenty-one (21) years  
3097 old and the actor is his guardian or otherwise responsible for  
3098 general supervision of his welfare; or

3099 (h) The other person is in custody of law or detained  
3100 in a hospital or other institution and the actor has supervisory  
3101 or disciplinary authority over him.

3102 Sexual contact is any touching of the sexual or other  
3103 intimate parts of the person for the purpose of arousing or  
3104 gratifying sexual desire.

3105 **SECTION 99.** A person commits a misdemeanor if, for the  
3106 purpose of arousing or gratifying sexual desire of himself or of  
3107 any person other than his spouse, he exposes his genitals under  
3108 circumstances in which he knows his conduct is likely to cause  
3109 affront or alarm.

3110 **SECTION 100.** (1) **Mistake as to age.** Whenever in this  
3111 article the criminality of conduct depends on a child's being  
3112 below the age of ten (10), it is no defense that the actor did not  
3113 know the child's age, or reasonably believed the child to be older  
3114 than ten (10). When criminality depends on the child's being  
3115 below a critical age other than ten (10), it is a defense for the  
3116 actor to prove by a preponderance of the evidence that he  
3117 reasonably believed the child to be above the critical age.

3118 (2) **Spouse relationships.** Whenever in this article the  
3119 definition of an offense excludes conduct with a spouse, the  
3120 exclusion shall be deemed to extend to persons living as man and



3121 wife, regardless of the legal status of their relationship. The  
3122 exclusion shall be inoperative to respective spouses living apart  
3123 under a decree of judicial separation. Where the definition of an  
3124 offense excludes conduct with a spouse or conduct by a woman, this  
3125 shall not preclude conviction of a spouse or woman as accomplice  
3126 in a sexual act which he or she causes another person, not within  
3127 the exclusion, to perform.

3128       (3) **Sexually promiscuous complainants.** It is a defense to  
3129 prosecution under Section 97 of this act and paragraphs (f), (g)  
3130 and (h) of Section 98 of this act for the actor to prove by a  
3131 preponderance of the evidence that the alleged victim had, prior  
3132 to the time of the offense charged, engaged promiscuously in  
3133 sexual relations with others.

3134       (4) **Prompt complaint.** No prosecution may be instituted or  
3135 maintained under this article unless the alleged offense was  
3136 brought to the notice of public authority within three (3) months  
3137 of its occurrence or, where the alleged victim was less than  
3138 sixteen (16) years old or otherwise incompetent to make complaint,  
3139 within three (3) months after a parent, guardian or other  
3140 competent person specially interested in the victim learns of the  
3141 offense.

3142       (5) **Testimony of complainants.** No person shall be convicted  
3143 of any felony under this article upon the uncorroborated testimony  
3144 of the alleged victim. Corroboration may be circumstantial. In  
3145 any prosecution before a jury for an offense under this article,



the jury shall be instructed to evaluate the testimony of a victim or complaining witness with special care in view of the emotional involvement of the witness and the difficulty of determining the truth with respect to alleged sexual activities carried out in private.

**OFFENSES AGAINST PROPERTY**

**ARTICLE 12**

**ARSON, CRIMINAL MISCHIEF,  
AND OTHER PROPERTY DESTRUCTION**

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

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

(b) Destroying or damaging any property, whether his own or another's, to collect insurance for such loss. It shall be an affirmative defense to prosecution under this paragraph that the actor's conduct did not recklessly endanger any building or occupied structure of another or place any other person in danger of death or bodily injury.

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



3170 (a) Places another person in danger of death or bodily  
3171 injury; or

3172 (b) Places a building or occupied structure of another  
3173 in danger of damage or destruction.

3174 (3) **Failure to control or report dangerous fire.** A person  
3175 who knows that a fire is endangering life or a substantial amount  
3176 of property of another and fails to take reasonable measures to  
3177 put out or control the fire, when he can do so without substantial  
3178 risk to himself, or to give a prompt fire alarm, commits a  
3179 misdemeanor if:

3180 (a) He knows that he is under an official, contractual,  
3181 or other legal duty to prevent or combat the fire; or

3182 (b) The fire was started, albeit lawfully, by him or  
3183 with his assent, or on property in his custody or control.

3184 (4) **Definitions.** "Occupied structure" means any structure,  
3185 vehicle or place adapted for overnight accommodation of persons,  
3186 or for carrying on business therein, whether or not a person is  
3187 actually present. Property is that of another, for the purposes  
3188 of this section, if anyone other than the actor has a possessory  
3189 or proprietary interest therein. If a building or structure is  
3190 divided into separately occupied units, any unit not occupied by  
3191 the actor is an occupied structure of another.

3192 **SECTION 102.** (1) **Causing catastrophe.** A person who causes  
3193 a catastrophe by explosion, fire, flood, avalanche, collapse of  
3194 building, release of poison gas, radioactive material or other



3195 harmful or destructive force or substance, or by any other means  
3196 of causing potentially widespread injury or damage, commits a  
3197 felony of the second degree if he does so purposely or knowingly,  
3198 or a felony of the third degree if he does so recklessly.

3199 (2) **Risking catastrophe.** A person is guilty of a  
3200 misdemeanor if he recklessly creates a risk of catastrophe in the  
3201 employment of fire, explosives or other dangerous means listed in  
3202 subsection (1).

3203 (3) **Failure to prevent catastrophe.** A person who knowingly  
3204 or recklessly fails to take reasonable measures to prevent or  
3205 mitigate a catastrophe commits a misdemeanor if:

3206 (a) He knows that he is under an official, contractual  
3207 or other legal duty to take such measures; or

3208 (b) He did or assented to the act causing or  
3209 threatening the catastrophe.

3210 **SECTION 103.** (1) **Offense defined.** A person is guilty of  
3211 criminal mischief if he:

3212 (a) Damages tangible property of another purposely,  
3213 recklessly, or by negligence in the employment of fire,  
3214 explosives, or other dangerous means listed in Section 100 of this  
3215 act; or

3216 (b) Purposely or recklessly tampers with tangible  
3217 property of another so as to endanger person or property; or

3218 (c) Purposely or recklessly causes another to suffer  
3219 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.

**SECTION 105.** (1) **Burglary defined.** A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It



is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

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

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

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

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

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

**SECTION 106.** (1) **Buildings and occupied structures.** A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof. An offense under this subsection is a misdemeanor if it is committed in a dwelling at night; otherwise it is a petty misdemeanor.



3268           (2) **Defiant trespasser.** A person commits an offense if,  
3269 knowing that he is not licensed or privileged to do so, he enters  
3270 or remains in any place as to which notice against trespass is  
3271 given by:

3272                   (a) Actual communication to the actor; or

3273                   (b) Posting in a manner prescribed by law or reasonably  
3274 likely to come to the attention of intruders; or

3275                   (c) Fencing or other enclosure manifestly designed to  
3276 exclude intruders.

3277           An offense under this subsection constitutes a petty  
3278 misdemeanor if the offender defies an order to leave personally  
3279 communicated to him by the owner of the premises or other  
3280 authorized person; otherwise it is a violation.

3281           (3) **Defenses.** It is an affirmative defense to prosecution  
3282 under this section that:

3283                   (a) A building or occupied structure involved in an  
3284 offense under subsection (1) was abandoned; or

3285                   (b) The premises were at the time open to members of  
3286 the public and the actor complied with all lawful conditions  
3287 imposed on access to or remaining in the premises; or

3288                   (c) The actor reasonably believed that the owner of the  
3289 premises, or other person empowered to license access thereto,  
3290 would have licensed him to enter or remain.

3291                                   **ARTICLE 14**

3292                                   **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 a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or (ii) to dispose of the property so as to make it unlikely that the owner will recover it.



3317           (b) "Financial institution" means a bank, insurance  
3318 company, credit union, building and loan association, investment  
3319 trust or other organization held out to the public as a place of  
3320 deposit of funds or medium of savings or collective investment.

3321           (c) "Government" means the United States, any state,  
3322 county, municipality, or other political unit, or any department,  
3323 agency or subdivision of any of the foregoing, or any corporation  
3324 or other association carrying out the functions of government.

3325           (d) "Movable property" means property in which the  
3326 location can be changed, including things growing on, affixed to,  
3327 or found in land, and documents although the rights represented  
3328 thereby have no physical location. "Immovable property" is all  
3329 other property.

3330           (e) "Obtain" means: (i) in relation to property, to  
3331 bring about a transfer or purported transfer of a legal interest  
3332 in the property, whether to the obtainer or another; or (ii) in  
3333 relation to labor or service, to secure performance thereof.

3334           (f) "Property" means anything of value, including real  
3335 estate, tangible and intangible personal property, contract  
3336 rights, choses-in-action and other interests in or claims to  
3337 wealth, admission or transportation tickets, captured or domestic  
3338 animals, food and drink, electric or other power.

3339           (g) "Property of another" includes property in which  
3340 any person other than the actor has an interest which the actor is  
3341 not privileged to infringe, regardless of the fact that the actor



3342 also has an interest in the property and regardless of the fact  
3343 that the other person might be precluded from civil recovery  
3344 because the property was used in an unlawful transaction or was  
3345 subject to forfeiture as contraband. Property in possession of  
3346 the actor shall not be deemed property of another who has only a  
3347 security interest therein, even if legal title is in the creditor  
3348 pursuant to a conditional sales contract or other security  
3349 agreement.

3350       **SECTION 109.** (1) **Consolidation of theft offenses.** Conduct  
3351 denominated theft in this article constitutes a single offense.  
3352 An accusation of theft may be supported by evidence that it was  
3353 committed in any manner that would be theft under this article,  
3354 notwithstanding the specification of a different manner in the  
3355 indictment or information, subject only to the power of the court  
3356 to ensure fair trial by granting a continuance or other  
3357 appropriate relief where the conduct of the defense would be  
3358 prejudiced by lack of fair notice or by surprise.

3359       (2) **Grading of theft offenses.**

3360               (a) Theft constitutes a felony of the third degree if  
3361 the amount involved exceeds Five Hundred Dollars (\$500.00), or if  
3362 the property stolen is a firearm, automobile, airplane,  
3363 motorcycle, motorboat, or other motor-propelled vehicle, or in the  
3364 case of theft by receiving stolen property, if the receiver is in  
3365 the business of buying or selling stolen property.



3366 (b) Theft not within the preceding paragraph  
3367 constitutes a misdemeanor, except that if the property was not  
3368 taken from the person or by threat, or in breach of a fiduciary  
3369 obligation, and the actor proves by a preponderance of the  
3370 evidence that the amount involved was less than Fifty Dollars  
3371 (\$50.00), the offense constitutes a petty misdemeanor.

3372 (c) The amount involved in a theft shall be deemed to  
3373 be the highest value, by any reasonable standard, of the property  
3374 or services which the actor stole or attempted to steal. Amounts  
3375 involved in thefts committed pursuant to one (1) scheme or course  
3376 of conduct, whether from the same person or several persons, may  
3377 be aggregated in determining the grade of the offense.

3378 (3) **Claim of right.** It is an affirmative defense to  
3379 prosecution for theft that the actor:

3380 (a) Was unaware that the property or service was that  
3381 of another; or

3382 (b) Acted under an honest claim of right to the  
3383 property or service involved or that he had a right to acquire or  
3384 dispose of it as he did; or

3385 (c) Took property exposed for sale, intending to  
3386 purchase and pay for it promptly, or reasonably believing that the  
3387 owner, if present, would have consented.

3388 (4) **Theft from spouse.** It is no defense that theft was from  
3389 the actor's spouse, except that misappropriation of household and  
3390 personal effects, or other property normally accessible to both



3391 spouses, is theft only if it occurs after the parties have ceased  
3392 living together.

3393       **SECTION 110.** (1) **Movable property.** A person is guilty of  
3394 theft if he unlawfully takes, or exercises unlawful control over,  
3395 movable property of another with purpose to deprive him thereof.

3396       (2) **Immovable property.** A person is guilty of theft if he  
3397 unlawfully transfers immovable property of another or any interest  
3398 therein with purpose to benefit himself or another not entitled  
3399 thereto.

3400       **SECTION 111.** A person is guilty of theft if he purposely  
3401 obtains property of another by deception. A person deceives if he  
3402 purposely:

3403               (a) Creates or reinforces a false impression, including  
3404 false impressions as to law, value, intention or other state of  
3405 mind; but deception as to a person's intention to perform a  
3406 promise shall not be inferred from the fact alone that he did not  
3407 subsequently perform the promise; or

3408               (b) Prevents another from acquiring information which  
3409 would affect his judgment of a transaction; or

3410               (c) Fails to correct a false impression which the  
3411 deceiver previously created or reinforced, or which the deceiver  
3412 knows to be influencing another to whom he stands in a fiduciary  
3413 or confidential relationship; or

3414               (d) Fails to disclose a known lien, adverse claim or  
3415 other legal impediment to the enjoyment of property which he





transfers or encumbers in consideration for the property obtained,  
whether such impediment is or is not valid, or is or is not a  
matter of official record.

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

**SECTION 112.** A person is guilty of theft if he purposely  
obtains property of another by threatening to:

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

(b) Accuse anyone of a criminal offense; or

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

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

(e) Bring about or continue a strike, boycott or other  
collective unofficial action, if the property is not demanded or  
received for the benefit of the group in whose interest the actor  
purports to act; or

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

(g) Inflict any other harm which would not benefit the  
actor.



3441           It is an affirmative defense to prosecution based on  
3442 paragraphs (b), (c) or (d) that the property obtained by threat of  
3443 accusation, exposure, lawsuit or other invocation of official  
3444 action was honestly claimed as restitution or indemnification for  
3445 harm done in the circumstances to which such accusation, exposure,  
3446 lawsuit or other official action relates, or as compensation for  
3447 property or lawful services.

3448           **SECTION 113.** A person who comes into control of property of  
3449 another that he knows to have been lost, mislaid, or delivered  
3450 under a mistake as to the nature or amount of the property or the  
3451 identity of the recipient is guilty of theft if, with purpose to  
3452 deprive the owner thereof, he fails to take reasonable measures to  
3453 restore the property to a person entitled to have it.

3454           **SECTION 114.** (1) **Receiving.** A person is guilty of theft if  
3455 he purposely receives, retains, or disposes of movable property of  
3456 another knowing that it has been stolen, or believing that it has  
3457 probably been stolen, unless the property is received, retained or  
3458 disposed with purpose to restore it to the owner. "Receiving"  
3459 means acquiring possession, control or title, or lending on the  
3460 security of the property.

3461           (2) **Presumption of knowledge.** The requisite knowledge or  
3462 belief is presumed in the case of a dealer who:

3463                   (a) Is found in possession or control of property  
3464 stolen from two (2) or more persons on separate occasions; or



3465 (b) Has received stolen property in another transaction  
3466 within the year preceding the transaction charged; or

3467 (c) Being a dealer in property of the sort received,  
3468 acquires it for a consideration which he knows is far below its  
3469 reasonable value.

3470 "Dealer" means a person in the business of buying or selling  
3471 goods including a pawnbroker.

3472 **SECTION 115.** (1) A person is guilty of theft if he  
3473 purposely obtains services which he knows are available only for  
3474 compensation, by deception or threat, or by false token or other  
3475 means to avoid payment for the service. "Services" includes  
3476 labor, professional service, transportation, telephone or other  
3477 public service, accommodation in hotels, restaurants or elsewhere,  
3478 admission to exhibitions, use of vehicles or other movable  
3479 property. Where compensation for service is ordinarily paid  
3480 immediately upon the rendering of such service, as in the case of  
3481 hotels and restaurants, refusal to pay or absconding without  
3482 payment or offer to pay gives rise to a presumption that the  
3483 service was obtained by deception as to intention to pay.

3484 (2) A person commits theft if, having control over the  
3485 disposition of services of others, to which he is not entitled, he  
3486 knowingly diverts such services to his own benefit or to the  
3487 benefit of another not entitled thereto.

3488 **SECTION 116.** A person who purposely obtains property upon  
3489 agreement, or subject to a known legal obligation, to make



3490 specified payment or other disposition, whether from such property  
3491 or its proceeds or from his own property to be reserved in  
3492 equivalent amount, is guilty of theft if he deals with the  
3493 property obtained as his own and fails to make the required  
3494 payment or disposition. The foregoing applies notwithstanding  
3495 that it may be impossible to identify particular property as  
3496 belonging to the victim at the time of the actor's failure to make  
3497 the required payment or disposition. An officer or employee of  
3498 the government or of a financial institution is presumed: (a) to  
3499 know any legal obligation relevant to his criminal liability under  
3500 this section, and (b) to have dealt with the property as his own  
3501 if he fails to pay or account upon lawful demand, or if an audit  
3502 reveals a shortage or falsification of accounts.

3503 **SECTION 117.** A person commits a misdemeanor if he operates  
3504 another's automobile, airplane, motorcycle, motorboat or other  
3505 motor-propelled vehicle without consent of the owner. It is an  
3506 affirmative defense to prosecution under this section that the  
3507 actor reasonably believed that the owner would have consented to  
3508 the operation had he known of it.

## 3509 **ARTICLE 16**

### 3510 **FORGERY AND FRAUDULENT PRACTICES**

3511 **SECTION 118.** In this article, the definitions given in  
3512 Section 108 of this act apply unless a different meaning plainly  
3513 is required.



3514           **SECTION 119.**   (1)   **Definition.**   A person is guilty of forgery

3515   if, with purpose to defraud or injure anyone, or with knowledge  
3516   that he is facilitating a fraud or injury to be perpetrated by  
3517   anyone, the actor:

3518           (a)   Alters any writing of another without his  
3519   authority; or

3520           (b)   Makes, completes, executes, authenticates, issues  
3521   or transfers any writing so that it purports to be the act of  
3522   another who did not authorize that act, or to have been executed  
3523   at a time or place or in a numbered sequence other than was in  
3524   fact the case, or to be a copy of an original when no such  
3525   original existed; or

3526           (c)   Utters any writing which he knows to be forged in a  
3527   manner specified in paragraphs (a) or (b) of this subsection.

3528           "Writing" includes printing or any other method of recording  
3529   information, money, coins, tokens, stamps, seals, credit cards,  
3530   badges, trademarks and other symbols of value, right, privilege or  
3531   identification.

3532           (2)   **Grading.**   Forgery is a felony of the second degree if  
3533   the writing is or purports to be part of an issue of money,  
3534   securities, postage or revenue stamps, or other instruments issued  
3535   by the government, or part of an issue of stock, bonds or other  
3536   instruments representing interests in or claims against any  
3537   property or enterprise.   Forgery is a felony of the third degree  
3538   if the writing is or purports to be a will, deed, contract,



release, commercial instrument, or other document evidencing, creating, transferring, altering, terminating or otherwise affecting legal relations. Otherwise forgery is a misdemeanor.

**SECTION 120.** A person commits a misdemeanor if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess.

**SECTION 121.** A person commits a felony of the third degree if, with purpose to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

**SECTION 122.** A person commits a misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

**SECTION 123.** A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor. For the purposes of this section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or order (other than a postdated check or order) would not be paid, if:

(a) The issuer had no account with the drawee at the time the check or order was issued; or



3564           (b) Payment was refused by the drawee for lack of  
3565 funds, upon presentation within thirty (30) days after issue, and  
3566 the issuer failed to make good within ten (10) days after  
3567 receiving notice of that refusal.

3568           **SECTION 124.** A person commits an offense if he uses a credit  
3569 card for the purpose of obtaining property or services with  
3570 knowledge that:

3571           (a) The card is stolen or forged; or

3572           (b) The card has been revoked or cancelled; or

3573           (c) For any other reason his use of the card is  
3574 unauthorized by the issuer.

3575           It is an affirmative defense to prosecution under paragraph  
3576 (c) if the actor proves by a preponderance of the evidence that he  
3577 had the purpose and ability to meet all obligations to the issuer  
3578 arising out of his use of the card. "Credit card" means a writing  
3579 or other evidence of an undertaking to pay for property or  
3580 services delivered or rendered to or upon the order of a  
3581 designated person or bearer. An offense under this section is a  
3582 felony of the third degree if the value of the property or  
3583 services secured or sought to be secured by means of the credit  
3584 card exceeds Five Hundred Dollars (\$500.00); otherwise it is a  
3585 misdemeanor.

3586           **SECTION 125.** A person commits a misdemeanor if in the  
3587 course of business he:



3588           (a) Uses or possesses for use a false weight or  
3589 measure, or any other device for falsely determining or recording  
3590 any quality or quantity; or  
3591           (b) Sells, offers or exposes for sale, or delivers less  
3592 than the represented quantity of any commodity or service; or  
3593           (c) Takes or attempts to take more than the represented  
3594 quantity of any commodity or service when as buyer he furnishes  
3595 the weight or measure; or  
3596           (d) Sells, offers or exposes for sale adulterated or  
3597 mislabeled commodities. "Adulterated" means varying from the  
3598 standard of composition or quality prescribed by or pursuant to  
3599 any statute providing criminal penalties for such variance, or set  
3600 by established commercial usage. "Mislabeled" means varying from  
3601 the standard of truth or disclosure in labeling prescribed by or  
3602 pursuant to any statute providing criminal penalties for such  
3603 variance, or set by established commercial usage; or  
3604           (e) Makes a false or misleading statement in any  
3605 advertisement addressed to the public or to a substantial segment  
3606 thereof for the purpose of promoting the purchase or sale of  
3607 property or services; or  
3608           (f) Makes a false or misleading written statement for  
3609 the purpose of obtaining property or credit; or  
3610           (g) Makes a false or misleading written statement for  
3611 the purpose of promoting the sale of securities, or omits





3612 information required by law to be disclosed in written documents  
3613 relating to securities.

3614 It is an affirmative defense to prosecution under this  
3615 section if the defendant proves by a preponderance of the evidence  
3616 that his conduct was not knowingly or recklessly deceptive.

3617 **SECTION 126.** (1) A person commits a misdemeanor if he  
3618 solicits, accepts or agrees to accept any benefit as consideration  
3619 for knowingly violating or agreeing to violate a duty of fidelity  
3620 to which he is subject as:

3621 (a) Partner, agent or employee of another;

3622 (b) Trustee, guardian, or other fiduciary;

3623 (c) Lawyer, physician, accountant, appraiser, or other  
3624 professional adviser or informant;

3625 (d) Officer, director, manager or other participant in  
3626 the direction of the affairs of an incorporated or unincorporated  
3627 association; or

3628 (e) Arbitrator or other purportedly disinterested  
3629 adjudicator or referee.

3630 (2) A person who holds himself out to the public as being  
3631 engaged in the business of making disinterested selection,  
3632 appraisal, or criticism of commodities or services commits a  
3633 misdemeanor if he solicits, accepts or agrees to accept any  
3634 benefit to influence his selection, appraisal or criticism.



(3) A person commits a misdemeanor if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section.

**SECTION 127.** (1) A person commits a misdemeanor if, with purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:

(a) Confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or

(b) Tamperers with any person, animal or thing.

(2) **Soliciting or accepting benefit for rigging.** A person commits a misdemeanor if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under subsection (1) of this section.

(3) **Participation in rigged contest.** A person commits a misdemeanor if he knowingly engages in, sponsors, produces, judges, or otherwise participates in a publicly exhibited contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct which would be criminal under this section.

**SECTION 128.** A person commits a misdemeanor if he destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder enforcement of that interest.



3660        **SECTION 129.** A person commits a misdemeanor if, knowing that  
3661 proceedings have been or are about to be instituted for the  
3662 appointment of a receiver or other person entitled to administer  
3663 property for the benefit of creditors, or that any other  
3664 composition or liquidation for the benefit of creditors has been  
3665 or is about to be made, he:

3666            (a) Destroys, removes, conceals, encumbers, transfers  
3667 or otherwise deals with any property with purpose to defeat or  
3668 obstruct the claim of any creditor, or otherwise to obstruct the  
3669 operation of any law relating to administration of property for  
3670 the benefit of creditors; or

3671            (b) Knowingly falsifies any writing or record relating  
3672 to the property; or

3673            (c) Knowingly misrepresents or refuses to disclose to a  
3674 receiver or other person entitled to administer property for the  
3675 benefit of creditors, the existence, amount or location of the  
3676 property, or any other information which the actor could be  
3677 legally required to furnish in relation to such administration.

3678        **SECTION 130.** An officer, manager or other person directing  
3679 or participating in the direction of a financial institution  
3680 commits a misdemeanor if he receives or permits the receipt of a  
3681 deposit, premium payment or other investment in the institution  
3682 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:



3708 (a) The actor believes that the prior spouse is dead;  
3709 or

3710 (b) The actor and the prior spouse have been living  
3711 apart for five (5) consecutive years throughout which the prior  
3712 spouse was not known by the actor to be alive; or

3713 (c) A court has entered a judgment purporting to  
3714 terminate or annul any prior disqualifying marriage, and the actor  
3715 does not know that judgment to be invalid; or

3716 (d) The actor reasonably believes that he is legally  
3717 eligible to remarry.

3718 (2) **Polygamy.** A person is guilty of polygamy, a felony of  
3719 the third degree, if he marries or cohabits with more than one (1)  
3720 spouse at a time in purported exercise of the right of plural  
3721 marriage. The offense is a continuing one until all cohabitation  
3722 and claim of marriage with more than one (1) spouse terminates.  
3723 This section does not apply to parties to a polygamous marriage,  
3724 lawful in the country of which they are residents or nationals,  
3725 while they are in transit through or temporarily visiting this  
3726 state.

3727 (3) **Other party to bigamous or polygamous marriage.** A  
3728 person is guilty of bigamy or polygamy, as the case may be, if he  
3729 contracts or purports to contract marriage with another knowing  
3730 that the other is thereby committing bigamy or polygamy.

3731 **SECTION 134.** A person is guilty of incest, a felony of the  
3732 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) years 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



3758 abortion, shall have certified in writing the circumstances which  
3759 they believe to justify the abortion. Such certificate shall be  
3760 submitted before the abortion to the hospital where it is to be  
3761 performed and, in the case of abortion following felonious  
3762 intercourse, to the prosecuting attorney or the police. Failure  
3763 to comply with any of the requirements of this subsection gives  
3764 rise to a presumption that the abortion was unjustified.

3765       (4) **Self-abortion.** A woman whose pregnancy has continued  
3766 beyond the twenty-sixth week commits a felony of the third degree  
3767 if she purposely terminates her own pregnancy otherwise than by a  
3768 live birth, or if she uses instruments, drugs or violence upon  
3769 herself for that purpose. Except as justified under subsection  
3770 (2) of this section, a person who induces or knowingly aids a  
3771 woman to use instruments, drugs or violence upon herself for the  
3772 purpose of terminating her pregnancy otherwise than by a live  
3773 birth commits a felony of the third degree whether or not the  
3774 pregnancy has continued beyond the twenty-sixth week.

3775       (5) **Pretended abortion.** A person commits a felony of the  
3776 third degree if, representing that it is his purpose to perform an  
3777 abortion, he does an act adapted to cause abortion in a pregnant  
3778 woman although the woman is in fact not pregnant, or the actor  
3779 does not believe she is. A person charged with unjustified  
3780 abortion under subsection (1) of this section or an attempt to  
3781 commit that offense may be convicted thereof upon proof of conduct  
3782 prohibited by this subsection.



3783           (6) **Distribution of abortifacients.** A person who sells,  
3784 offers to sell, possesses with intent to sell, advertises, or  
3785 displays for sale anything specially designed to terminate a  
3786 pregnancy, or held out by the actor as useful for that purpose,  
3787 commits a misdemeanor, unless:

3788           (a) The sale, offer or display is to a physician or  
3789 druggist or to an intermediary in a chain of distribution to  
3790 physicians or druggists; or

3791           (b) The sale is made upon prescription or order of a  
3792 physician; or

3793           (c) The possession is with intent to sell as authorized  
3794 in paragraphs (a) and (b) of subsection (6); or

3795           (d) The advertising is addressed to persons named in  
3796 paragraph (a) of subsection (6) and confined to trade or  
3797 professional channels not likely to reach the general public.

3798           (7) **Section inapplicable to prevention of pregnancy.**

3799 Nothing in this section shall be deemed applicable to the  
3800 prescription, administration or distribution of drugs or other  
3801 substances for avoiding pregnancy, whether by preventing  
3802 implantation of a fertilized ovum or by any other method that  
3803 operated before, at or immediately after fertilization.

3804           **SECTION 136.** A parent, guardian, or other person supervising  
3805 the welfare of a child under eighteen (18) years of age commits a  
3806 misdemeanor if he knowingly endangers the child's welfare by  
3807 violating a duty of care, protection or support.





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

**OFFENSES AGAINST PUBLIC ADMINISTRATION**

**ARTICLE 18**

**BRIBERY AND CORRUPT INFLUENCE**

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

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

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

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

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



3833 examiner, commissioner, notary or other person taking testimony or  
3834 deposition in connection with any such proceeding;

3835           (e) "Party official" means a person who holds an  
3836 elective or appointive post in a political party in the United  
3837 States by virtue of which he directs or conducts, or participates  
3838 in directing or conducting party affairs at any level of  
3839 responsibility;

3840           (f) "Pecuniary benefit" is benefit in the form of  
3841 money, property, commercial interests or anything else the primary  
3842 significance of which is economic gain;

3843           (g) "Public servant" means any officer or employee of  
3844 government, including legislators and judges, and any person  
3845 participating as juror, advisor, consultant or otherwise, in  
3846 performing a governmental function; but the term does not include  
3847 witnesses;

3848           (h) "Administrative proceeding" means any proceeding,  
3849 other than a judicial proceeding, the outcome of which is required  
3850 to be based on a record or documentation prescribed by law, or in  
3851 which law or regulation is particularized in application to  
3852 individuals.

3853           **SECTION 139.** A person is guilty of bribery, a felony of the  
3854 third degree, if he offers, confers or agrees to confer upon  
3855 another, or solicits, accepts or agrees to accept from another:

3856           (a) Any pecuniary benefit as consideration for the  
3857 recipient's decision, opinion, recommendation, vote or other



3858 exercise of discretion as a public servant, party official or  
3859 voter; or

3860 (b) Any benefit as consideration for the recipient's  
3861 decision, vote, recommendation or other exercise of official  
3862 discretion in a judicial or administrative proceeding; or

3863 (c) Any benefit as consideration for a violation of a  
3864 known legal duty as public servant or party official.

3865 It is no defense to prosecution under this section that a  
3866 person whom the actor sought to influence was not qualified to act  
3867 in the desired way whether because he had not yet assumed office,  
3868 or lacked jurisdiction, or for any other reason.

3869 **SECTION 140.** (1) **Offenses defined.** A person commits an  
3870 offense if he:

3871 (a) Threatens unlawful harm to any person with purpose  
3872 to influence his decision, opinion, recommendation, vote or other  
3873 exercise of discretion as a public servant, party official or  
3874 voter; or

3875 (b) Threatens harm to any public servant with purpose  
3876 to influence his decision, opinion, recommendation, vote or other  
3877 exercise of discretion in a judicial or administrative proceeding;  
3878 or

3879 (c) Threatens harm to any public servant or party  
3880 official with purpose to influence him to violate his known legal  
3881 duty; or



3882 (d) Privately addresses to any public servant who has  
3883 or will have an official discretion in a judicial or  
3884 administrative proceeding any representation, entreaty, argument  
3885 or other communication with purpose to influence the outcome on  
3886 the basis of considerations other than those authorized by law.

3887 It is no defense to prosecution under this section that a  
3888 person whom the actor sought to influence was not qualified to act  
3889 in the desired way, whether because he had not yet assumed office,  
3890 or lacked jurisdiction, or for any other reason.

3891 (2) **Grading.** An offense under this section is a misdemeanor  
3892 unless the actor threatened to commit a crime or made a threat  
3893 with purpose to influence a judicial or administrative proceeding,  
3894 in which cases the offense is a felony of the third degree.

3895 **SECTION 141.** A person commits a misdemeanor if he solicits,  
3896 accepts or agrees to accept any pecuniary benefit as compensation  
3897 for having, as public servant, given a decision, opinion,  
3898 recommendation or vote favorable to another, or for having  
3899 otherwise exercised a discretion in his favor, or for having  
3900 violated his duty. A person commits a misdemeanor if he offers,  
3901 confers or agrees to confer compensation acceptance of which is  
3902 prohibited by this section.

3903 **SECTION 142.** A person commits a misdemeanor if he harms  
3904 another by any unlawful act in retaliation for anything lawfully  
3905 done by the latter in the capacity of public servant.



3906           **SECTION 143.**   (1)   **Regulatory and law enforcement officials.**

3907   No public servant in any department or agency exercising  
3908   regulatory functions, or conducting inspections or investigations,  
3909   or carrying on civil or criminal litigation on behalf of the  
3910   government, or having custody of prisoners, shall solicit, accept  
3911   or agree to accept any pecuniary benefit from a person known to be  
3912   subject to such regulation, inspection, investigation or custody,  
3913   or against whom such litigation is known to be pending or  
3914   contemplated.

3915           (2)   **Officials concerned with government contracts and**  
3916   **pecuniary transactions.**   No public servant having any  
3917   discretionary function to perform in connection with contracts,  
3918   purchases, payments, claims or other pecuniary transactions of the  
3919   government shall solicit, accept or agree to accept any pecuniary  
3920   benefit from any person known to be interested in or likely to  
3921   become interested in any such contract, purchase, payment, claim  
3922   or transaction.

3923           (3)   **Judicial and administrative officials.**   No public  
3924   servant having judicial or administrative authority and no public  
3925   servant employed by or in a court or other tribunal having such  
3926   authority, or participating in the enforcement of its decisions,  
3927   shall solicit, accept or agree to accept any pecuniary benefit  
3928   from a person known to be interested in or likely to become  
3929   interested in any matter before such public servant or a tribunal  
3930   with which he is associated.



3931           (4) **Legislative officials.** No legislator or public servant  
3932 employed by the Legislature or by any committee or agency thereof  
3933 shall solicit, accept or agree to accept any pecuniary benefit  
3934 from any person known to be interested in a bill, transaction or  
3935 proceeding, pending or contemplated, before the Legislature or any  
3936 committee or agency thereof.

3937           (5) **Exceptions.** This section shall not apply to:

3938                   (a) Fees prescribed by law to be received by a public  
3939 servant, or any other benefit for which the recipient gives  
3940 legitimate consideration or to which he is otherwise legally  
3941 entitled; or

3942                   (b) Gifts or other benefits conferred on account of  
3943 kinship or other personal, professional or business relationship  
3944 independent of the official status of the receiver; or

3945                   (c) Trivial benefits incidental to personal,  
3946 professional or business contacts and involving no substantial  
3947 risk of undermining official impartiality.

3948           (6) **Offering benefits prohibited.** No person shall knowingly  
3949 confer, or offer or agree to confer, any benefit prohibited by the  
3950 foregoing subsections.

3951           (7) **Grade of offense.** An offense under this section is a  
3952 misdemeanor.

3953           **SECTION 144.** (1) **Receiving compensation.** A public servant  
3954 commits a misdemeanor if he solicits, accepts or agrees to accept  
3955 compensation for advice or other assistance in preparing or



3956 promoting a bill, contract, claim, or other transaction or  
3957 proposal as to which he knows that he has or is likely to have an  
3958 official discretion to exercise.

3959       (2) **Paying compensation.** A person commits a misdemeanor if  
3960 he pays or offers or agrees to pay compensation to a public  
3961 servant with knowledge that acceptance by the public servant is  
3962 unlawful.

3963       **SECTION 145.** (1) **Selling political endorsement.** A person  
3964 commits a misdemeanor if he solicits, receives, agrees to receive,  
3965 or agrees that any political party or other person shall receive,  
3966 any pecuniary benefit as consideration for approval or disapproval  
3967 of an appointment or advancement in public service, or for  
3968 approval or disapproval of any person or transaction for any  
3969 benefit conferred by an official or agency of government.  
3970 "Approval" includes recommendation, failure to disapprove, or any  
3971 other manifestation of favor or acquiescence. "Disapproval"  
3972 includes failure to approve, or any other manifestation of  
3973 disfavor or nonacquiescence.

3974       (2) **Other trading in special influence.** A person commits a  
3975 misdemeanor if he solicits, receives or agrees to receive any  
3976 pecuniary benefit as consideration for exerting special influence  
3977 upon a public servant or procuring another to do so. "Special  
3978 influence" means power to influence through kinship, friendship or  
3979 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





4005 is no defense that the declarant mistakenly believed the  
4006 falsification to be immaterial. Whether a falsification is  
4007 material in a given factual situation is a question of law.

4008 (3) **Irregularities no defense.** It is not a defense to  
4009 prosecution under this section that the oath or affirmation was  
4010 administered or taken in an irregular manner or that the declarant  
4011 was not competent to make the statement. A document purporting to  
4012 be made upon oath or affirmation at any time when the actor  
4013 presents it as being so verified shall be deemed to have been duly  
4014 sworn or affirmed.

4015 (4) **Retraction.** No person shall be guilty of an offense  
4016 under this section if he retracted the falsification in the course  
4017 of the proceeding in which it was made before it became manifest  
4018 that the falsification was or would be exposed and before the  
4019 falsification substantially affected the proceeding.

4020 (5) **Inconsistent statements.** Where the defendant made  
4021 inconsistent statements under oath or equivalent affirmation, both  
4022 having been made within the period of the statute of limitations,  
4023 the prosecution may proceed by setting forth the inconsistent  
4024 statements in a single count alleging in the alternative that one  
4025 or the other was false and not believed by the defendant. In such  
4026 case it shall not be necessary for the prosecution to prove which  
4027 statement was false but only that one or the other was false and  
4028 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:



4054           (a) Makes any written false statement which he does not  
4055 believe to be true; or

4056           (b) Purposely creates a false impression in a written  
4057 application for any pecuniary or other benefit, by omitting  
4058 information necessary to prevent statements therein from being  
4059 misleading; or

4060           (c) Submits or invites reliance on any writing which he  
4061 knows to be forged, altered or otherwise lacking in authenticity;  
4062 or

4063           (d) Submits or invites reliance on any sample,  
4064 specimen, map, boundary mark, or other object which he knows to be  
4065 false.

4066           (2) **Statements "under penalty."** A person commits a petty  
4067 misdemeanor if he makes a written false statement which he does  
4068 not believe to be true, on or pursuant to a form bearing notice,  
4069 authorized by law, to the effect that false statements made  
4070 therein are punishable.

4071           (3) **Perjury provisions applicable.** Subsections (3) through  
4072 (6) of Section 146 of this act, apply to the present section.

4073           **SECTION 150.** A person who knowingly causes a false alarm of  
4074 fire or other emergency to be transmitted to or within any  
4075 organization, official or volunteer, for dealing with emergencies  
4076 involving danger to life or property commits a misdemeanor.



4077           **SECTION 151.** (1) **Falsely incriminating another.** A person

4078 who knowingly gives false information to any law enforcement  
4079 officer with purpose to implicate another commits a misdemeanor.

4080           (2) **Fictitious reports.** A person commits a petty  
4081 misdemeanor if he:

4082                 (a) Reports to law enforcement authorities an offense  
4083 or other incident within their concern knowing that it did not  
4084 occur;

4085                 (b) Pretends to furnish such authorities with  
4086 information relating to an offense or incident when he knows he  
4087 has no information relating to such offense or incident.

4088           **SECTION 152.** (1) **Tampering.** A person commits an offense  
4089 if, believing that an official proceeding or investigation is  
4090 pending or about to be instituted, he attempts to induce or  
4091 otherwise cause a witness or informant to:

4092                 (a) Testify or inform falsely; or

4093                 (b) Withhold any testimony, information, document or  
4094 thing; or

4095                 (c) Elude legal process summoning him to testify or  
4096 supply evidence; or

4097                 (d) Absent himself from any proceeding or investigation  
4098 to which he has been legally summoned.

4099           The offense is a felony of third degree if the actor employs  
4100 force, deception, threat or offer of pecuniary benefit. Otherwise  
4101 it is a misdemeanor.



4102           (2)   **Retaliation against witness or informant.** A person  
4103 commits a misdemeanor if he harms another by any unlawful act in  
4104 retaliation for anything lawfully done in the capacity of witness  
4105 or informant.

4106           (3)   **Witness or informant taking bribe.** A person commits a  
4107 felony of the third degree if he solicits, accepts or agrees to  
4108 accept any benefit in consideration of his doing any of the things  
4109 specified in paragraphs (a) through (d) of subsection (1) of this  
4110 section.

4111           **SECTION 153.** A person commits a misdemeanor if, believing  
4112 that an official proceeding or investigation is pending or about  
4113 to be instituted, he:

4114                   (a) Alters, destroys, conceals or removes any record,  
4115 document or thing with purpose to impair its verity or  
4116 availability in such proceeding or investigation; or

4117                   (b) Makes, presents or uses any record, document or  
4118 thing knowing it to be false and with purpose to mislead a public  
4119 servant who is or may be engaged in such proceeding or  
4120 investigation.

4121           **SECTION 154.** (1)   **Offense defined.** A person commits an  
4122 offense if he:

4123                   (a) Knowingly makes a false entry in, or false  
4124 alteration of, any record, document or thing belonging to, or  
4125 received or kept by, the government for information or record, or



required by law to be kept by others for information of the  
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) of this subsection (1); 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



4176 (e) Volunteers false information to a law enforcement  
4177 officer.

4178 The offense is a felony of third degree if the conduct which  
4179 the actor knows has been charged or is liable to be charged  
4180 against the person aided would constitute a felony of the first or  
4181 second degree. Otherwise it is a misdemeanor.

4182 **SECTION 160.** A person commits an offense if he purposely  
4183 aids another to accomplish an unlawful object of a crime, as by  
4184 safeguarding the proceeds thereof or converting the proceeds into  
4185 negotiable funds. The offense is a felony of the third degree if  
4186 the principal offense was a felony of the first or second degree.  
4187 Otherwise it is a misdemeanor.

4188 **SECTION 161.** A person commits a misdemeanor if he accepts or  
4189 agrees to accept any pecuniary benefit in consideration of  
4190 refraining from reporting to law enforcement authorities the  
4191 commission or suspected commission of any offense or information  
4192 relating to an offense. It is an affirmative defense to  
4193 prosecution under this section that the pecuniary benefit did not  
4194 exceed an amount which the actor believed to be due as restitution  
4195 or indemnification for harm caused by the offense.

4196 **SECTION 162.** (1) **Escape.** A person commits an offense if he  
4197 unlawfully removes himself from official detention or fails to  
4198 return to official detention following temporary leave granted for  
4199 a specific purpose or limited period. "Official detention" means  
4200 arrest, detention in any facility for custody of persons under





4201 charge or conviction of crime or alleged or found to be  
4202 delinquent, detention for extradition or deportation, or any other  
4203 detention for law enforcement purposes; but "official detention"  
4204 does not include supervision of probation or parole, or constraint  
4205 incidental to release on bail.

4206       (2) **Permitting or facilitating escape.** A public servant  
4207 concerned in detention commits an offense if he knowingly or  
4208 recklessly permits an escape. Any person who knowingly causes or  
4209 facilitates an escape commits an offense.

4210       (3) **Effect of legal irregularity in detention.** Irregularity  
4211 in bringing about or maintaining detention, or lack of  
4212 jurisdiction of the committing or detaining authority, shall not  
4213 be a defense to prosecution under this section if the escape is  
4214 from a prison or other custodial facility or from detention  
4215 pursuant to commitment by official proceedings. In the case of  
4216 other detentions, irregularity or lack of jurisdiction shall be a  
4217 defense only if:

4218               (a) The escape involved no substantial risk of harm to  
4219 the person or property of anyone other than the detainee; or

4220               (b) The detaining authority did not act in good faith  
4221 under color of law.

4222       (4) **Grading of offenses.** An offense under this section is a  
4223 felony of the third degree where:

4224               (a) The actor was under arrest for or detained on a  
4225 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



4251 apply to obligations to appear incident to release under suspended  
4252 sentence or on probation or parole.

4253 **ARTICLE 21**

4254 **ABUSE OF OFFICE**

4255 **SECTION 165.** In this article, unless a different meaning  
4256 plainly is required, the definitions given in Section 138 of this  
4257 act apply.

4258 **SECTION 166.** A person acting or purporting to act in an  
4259 official capacity or taking advantage of such actual or purported  
4260 capacity commits a misdemeanor if, knowing that his conduct is  
4261 illegal, he:

4262 (a) Subjects another to arrest, detention, search,  
4263 seizure, mistreatment, dispossession, assessment, lien or other  
4264 infringement of personal or property rights; or

4265 (b) Denies or impedes another in the exercise or  
4266 enjoyment of any right, privilege, power or immunity.

4267 **SECTION 167.** A public servant commits a misdemeanor if, in  
4268 contemplation of official action by himself or by a governmental  
4269 unit with which he is associated, or in reliance on information to  
4270 which he has access in his official capacity and which has not  
4271 been made public, he:

4272 (a) Acquires a pecuniary interest in any property,  
4273 transaction or enterprise which may be affected by such  
4274 information or official action; or



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

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

**OFFENSES AGAINST PUBLIC ORDER AND DECENCY**

**ARTICLE 22**

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

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

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

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

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

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



4299           **SECTION 169.**   (1)   **Offense defined.**   A person is guilty of

4300   disorderly conduct if, with purpose to cause public inconvenience,  
4301   annoyance or alarm, or recklessly creating a risk thereof, he:

4302               (a)   Engages in fighting or threatening, or in violent  
4303   or tumultuous behavior; or

4304               (b)   Makes unreasonable noise or offensively coarse  
4305   utterance, gesture or display, or addresses abusive language to  
4306   any person present; or

4307               (c)   Creates a hazardous or physically offensive  
4308   condition by any act which serves no legitimate purpose of the  
4309   actor.

4310           "Public" means affecting or likely to affect persons in a  
4311   place to which the public or a substantial group has access; among  
4312   the places included are highways, transport facilities, schools,  
4313   prisons, apartment houses, places of business or amusement, or any  
4314   neighborhood.

4315           (2)   **Grading.**   An offense under this section is a petty  
4316   misdemeanor if the actor's purpose is to cause substantial harm or  
4317   serious inconvenience, or if he persists in disorderly conduct  
4318   after reasonable warning or request to desist.   Otherwise  
4319   disorderly conduct is a violation.

4320           **SECTION 170.**   A person is guilty of a misdemeanor if he  
4321   initiates or circulates a report or warning of an impending  
4322   bombing or other crime or catastrophe, knowing that the report or  
4323   warning is false or baseless and that it is likely to cause



evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm.

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

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

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

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

(d) Subjects another to an offensive touching; or

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

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

**SECTION 173.** A person commits a violation if he loiters or prowls in a place, at a time, or in manner not usual for law-abiding individuals under circumstances that warrant alarm for



4349 the safety of persons or property in the vicinity. Among the  
4350 circumstances which may be considered in determining whether such  
4351 alarm is warranted is the fact that the actor takes flight upon  
4352 appearance of a peace officer, refuses to identify himself, or  
4353 manifestly endeavors to conceal himself or any object. Unless  
4354 flight by the actor or other circumstance makes it impracticable,  
4355 a peace officer shall prior to any arrest for an offense under  
4356 this section afford the actor an opportunity to dispel any alarm  
4357 which would otherwise be warranted, by requesting him to identify  
4358 himself and explain his presence and conduct. No person shall be  
4359 convicted of an offense under this section if the peace officer  
4360 did not comply with the preceding sentence, or if it appears at  
4361 trial that the explanation given by the actor was true and, if  
4362 believed by the peace officer at the time, would have dispelled  
4363 the alarm.

4364       **SECTION 174.** (1) A person, who, having no legal privilege  
4365 to do so, purposely or recklessly obstructs any highway or other  
4366 public passage, whether alone or with others, commits a violation,  
4367 or, in case he persists after warning by a law officer, a petty  
4368 misdemeanor. "Obstructs" means renders impassable without  
4369 unreasonable inconvenience or hazard. No person shall be deemed  
4370 guilty of recklessly obstructing in violation of this subsection  
4371 solely because of a gathering of persons to hear him speak or  
4372 otherwise communicate, or solely because of being a member of such  
4373 a gathering.



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

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

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

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

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

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





4397           **SECTION 177.** Except as authorized by law, a person who  
4398 treats a corpse in a way that he knows would outrage ordinary  
4399 family sensibilities commits a misdemeanor.

4400           **SECTION 178.** A person commits a misdemeanor if he purposely  
4401 or recklessly:

4402                   (a) Subjects any animal to cruel mistreatment; or

4403                   (b) Subjects any animal in his custody to cruel  
4404 neglect; or

4405                   (c) Kills or injures any animal belonging to another  
4406 without legal privilege or consent of the owner.

4407           Paragraphs (a) and (b) shall not be deemed applicable to  
4408 accepted veterinary practices and activities carried on for  
4409 scientific research.

4410           **SECTION 179.** (1) **Unlawful eavesdropping or surveillance.** A  
4411 person commits a misdemeanor if, except as authorized by law, he:

4412                   (a) Trespasses on property with purpose to subject  
4413 anyone to eavesdropping or other surveillance in a private place;  
4414 or

4415                   (b) Installs in any private place, without the consent  
4416 of the person or persons entitled to privacy there, any device for  
4417 observing, photographing, recording, amplifying or broadcasting  
4418 sounds or events in such place, or uses any such unauthorized  
4419 installation; or

4420                   (c) Installs or uses outside a private place any device  
4421 for hearing, recording, amplifying or broadcasting sounds



4422 originating in such place which would not ordinarily be audible or  
4423 comprehensible outside, without the consent of the person or  
4424 persons entitled to privacy there.

4425 "Private place" means a place where one may reasonably expect  
4426 to be safe from casual or hostile intrusion or surveillance, but  
4427 does not include a place to which the public or a substantial  
4428 group thereof has access.

4429 (2) **Other breach of privacy of messages.** A person commits a  
4430 misdemeanor if, except as authorized by law, he:

4431 (a) Intercepts without the consent of the sender or  
4432 receiver a message by telephone, telegraph, letter or other means  
4433 of communicating privately; but this paragraph does not extend to  
4434 (i) overhearing of messages through a regularly installed  
4435 instrument on a telephone party line or on an extension, or (ii)  
4436 interception by the telephone company or subscriber incident to  
4437 enforcement of regulations limiting use of the facilities or  
4438 incident to other normal operation and use; or

4439 (b) Divulges without the consent of the sender or  
4440 receiver the existence or contents of any such message if the  
4441 actor knows that the message was illegally intercepted, or if he  
4442 learned of the message in the course of employment with an agency  
4443 engaged in transmitting it.

4444 **ARTICLE 23**

4445 **PUBLIC INDECENCY**



4446           **SECTION 180.** A person commits a petty misdemeanor if he does  
4447 any lewd act which he knows is likely to be observed by others who  
4448 would be affronted or alarmed.

4449           **SECTION 181.** (1) **Prostitution.** A person is guilty of  
4450 prostitution, a petty misdemeanor, if he or she:

4451                   (a) Is an inmate of a house of prostitution or  
4452 otherwise engages in sexual activity as a business; or

4453                   (b) Loiters in or within view of any public place for  
4454 the purpose of being hired to engage in sexual activity. "Sexual  
4455 activity" includes homosexual and other deviate sexual relations.  
4456 A "house of prostitution" is any place where prostitution or  
4457 promotion of prostitution is regularly carried on by one (1)  
4458 person under the control, management or supervision of another.  
4459 An "inmate" is a person who engages in prostitution in or through  
4460 the agency of a house of prostitution. "Public place" means any  
4461 place to which the public or any substantial group thereof has  
4462 access.

4463           (2) **Promoting prostitution.** A person who knowingly promotes  
4464 prostitution of another commits a misdemeanor or felony as  
4465 provided in subsection (3) of this section. The following acts  
4466 shall, without limitation of the foregoing, constitute promoting  
4467 prostitution:

4468                   (a) Owning, controlling, managing, supervising or  
4469 otherwise keeping, alone or in association with others, a house of  
4470 prostitution or a prostitution business; or



4471           (b) Procuring an inmate for a house of prostitution or  
4472 a place in a house of prostitution for one who would be an inmate;  
4473 or

4474           (c) Encouraging, inducing, or otherwise purposely  
4475 causing another to become or remain a prostitute; or

4476           (d) Soliciting a person to patronize a prostitute; or

4477           (e) Procuring a prostitute for a patron; or

4478           (f) Transporting a person into or within this state  
4479 with purpose to promote that person's engaging in prostitution, or  
4480 procuring or paying for transportation with that purpose; or

4481           (g) Leasing or otherwise permitting a place controlled  
4482 by the actor, alone or in association with others, to be regularly  
4483 used for prostitution or the promotion of prostitution, or failure  
4484 to make reasonable effort to abate such use by ejecting the  
4485 tenant, notifying law enforcement authorities, or other legally  
4486 available means; or

4487           (h) Soliciting, receiving, or agreeing to receive any  
4488 benefit for doing or agreeing to do anything forbidden by this  
4489 subsection.

4490           (3) **Grading of offenses under subsection (2).** An offense  
4491 under subsection (2) constitutes a felony of the third degree if:

4492           (a) The offense falls within paragraph (a), (b) or (c)  
4493 of subsection (2) of this section; or

4494           (b) The actor compels another to engage in or promote  
4495 prostitution; or



4496 (c) The actor promotes prostitution of a child under  
4497 the age of sixteen (16), whether or not he is aware of the child's  
4498 age; or

4499 (d) The actor promotes prostitution of his wife, child,  
4500 ward or any person for whose care, protection or support he is  
4501 responsible. Otherwise the offense is a misdemeanor.

4502 (4) **Presumption from living off prostitutes.** A person,  
4503 other than the prostitute or the prostitute's minor child or other  
4504 legal dependent incapable of self-support, who is supported, in  
4505 whole or substantial part, by the proceeds of prostitution is  
4506 presumed to be knowingly promoting prostitution in violation of  
4507 subsection (2) of this act.

4508 (5) **Patronizing prostitutes.** A person commits a violation  
4509 if he hires a prostitute to engage in sexual activity with him, or  
4510 if he enters or remains in a house of prostitution for the purpose  
4511 of engaging in sexual activity.

4512 (6) **Evidence.** On the issue whether a place is a house of  
4513 prostitution the following shall be admissible evidence: its  
4514 general reputation; the reputation of the persons who reside in or  
4515 frequent the place; the frequency, timing and duration of visits  
4516 by nonresidents. Testimony of a person against his spouse shall  
4517 be admissible to prove offenses under this section.

4518 **SECTION 182.** A person is guilty of a petty misdemeanor if he  
4519 loiters in or near any public place for the purpose of soliciting  
4520 or being solicited to engage in deviate sexual relations.



**SECTION 183.**

(1) **Obscene defined.** Material is obscene if, considered as a whole, its predominant appeal is to prurient 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



4546           (e) Sells, advertises or otherwise commercially  
4547 disseminates material, whether or not obscene, by representing or  
4548 suggesting that it is obscene. A person who disseminates or  
4549 possesses obscene material in the course of his business is  
4550 presumed to do so knowingly or recklessly.

4551           (3) **Justifiable and noncommercial private dissemination.** It  
4552 is an affirmative defense to prosecution under this section that  
4553 dissemination was restricted to:

4554           (a) Institutions or persons having scientific,  
4555 educational, governmental or other similar justification for  
4556 possessing obscene material; or

4557           (b) Noncommercial dissemination to personal associates  
4558 of the actor.

4559           (4) **Evidence; Adjudication of obscenity.** In any prosecution  
4560 under this section evidence shall be admissible to show:

4561           (a) The character of the audience for which the  
4562 material was designed or to which it was directed;

4563           (b) What the predominant appeal of the material would  
4564 be for ordinary adults or any special audience to which it was  
4565 directed, and what effect, if any, it would probably have on  
4566 conduct of such people;

4567           (c) Artistic, literary, scientific, educational or  
4568 other merits of the material;

4569           (d) The degree of public acceptance of the material in  
4570 the United States;



(e) Appeal to prurient interest, or absence thereof, in 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;





4594                   (c) To undergo available medical or psychiatric  
4595 treatment and to enter and remain in a specified institution, when  
4596 required for that purpose;

4597                   (d) To pursue a prescribed secular course of study or  
4598 vocational training;

4599                   (e) To attend or reside in a facility established for  
4600 the instruction, recreation or residence of persons on probation;

4601                   (f) To refrain from frequenting unlawful or  
4602 disreputable places or consorting with disreputable persons;

4603                   (g) To have in his possession no firearm or other  
4604 dangerous weapon unless granted written permission;

4605                   (h) To make restitution of the fruits of his crime or  
4606 to make reparation, in an amount he can afford to pay, for the  
4607 loss or damage caused thereby;

4608                   (i) To remain within the jurisdiction of the court and  
4609 to notify the court or the probation officer of any change in his  
4610 address or his employment;

4611                   (j) To report as directed to the court or the probation  
4612 officer and to permit the officer to visit his home;

4613                   (k) To post a bond, with or without surety, conditioned  
4614 on the performance of any of the foregoing obligations;

4615                   (l) To satisfy any other conditions reasonably related  
4616 to the rehabilitation of the defendant and not unduly restrictive  
4617 of his liberty or incompatible with his freedom of conscience.



(3) When the court sentences a person who has been convicted of a felony or misdemeanor to be placed on probation, it may require him to serve a term of imprisonment not exceeding thirty (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



4717 general funds of the state and shall be subject to general  
4718 appropriation.

4719       **SECTION 191.** (1) When a defendant sentenced to pay a fine  
4720 defaults in the payment thereof or of any installment, the court,  
4721 upon the motion of the state or upon its own motion, may require  
4722 him to show cause why his default should not be treated as  
4723 contumacious and may issue a summons or a warrant of arrest for  
4724 his appearance, unless the defendant shows that his default was  
4725 not attributable to a willful refusal to obey the order of the  
4726 court, or to a failure on his part to make a good faith effort to  
4727 obtain the funds required for the payment, the court shall find  
4728 that his default was contumacious and may order him committed  
4729 unless the fine or a specified part thereof is paid. The term of  
4730 imprisonment for such contumacious nonpayment of the fine shall be  
4731 specified in the order of commitment and shall not exceed one (1)  
4732 day for each Five Dollars (\$5.00) of the fine, thirty (30) days if  
4733 the fine was imposed upon conviction of a violation or a petty  
4734 misdemeanor or one (1) year in any other case, whichever is the  
4735 shorter period. When a fine is imposed on a corporation or an  
4736 unincorporated association, it is the duty of the person or  
4737 persons authorized to make disbursements from the assets of the  
4738 corporation or association to pay it from such assets and their  
4739 failure so to do may be held contumacious under this subsection.  
4740 A person committed for nonpayment of a fine shall be given credit



towards its payment for each day of imprisonment, at the rate specified in the order of commitment.

(2) If it appears that the defendant's default in the payment of a fine is not contumacious, the court may make an order 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.



4766 **ARTICLE 26**

4767 **SHORT-TERM IMPRISONMENT**

4768 **SECTION 193.** (1) Within the appropriation allotted

4769 therefor, the several counties, cities and the Department of  
4770 Corrections may construct, equip and maintain suitable buildings,  
4771 structures and facilities for the operation and for the necessary  
4772 expansion and diversification of local short-term institutions,  
4773 including lockups, jails, houses of correction, work farms and  
4774 such other institutions as may be required for the following  
4775 purposes:

4776 (a) The custody, control, correctional treatment and  
4777 rehabilitation of persons sentenced or committed to imprisonment  
4778 for a fixed term of one (1) year or less;

4779 (b) The custody, control and temporary detention of  
4780 persons committed to the Department of Corrections, until they are  
4781 removed to the reception center or to another institution in the  
4782 department;

4783 (c) The detention of persons charged with crime and  
4784 committed for hearing or for trial;

4785 (d) The detention of persons committed to secure their  
4786 attendance as witnesses, and for other detentions authorized by  
4787 law.

4788 (2) The Commissioner of the Department of Corrections shall  
4789 annually review, on the basis of visitation, inspection and  
4790 reports pursuant to Section 248 of this act, the adequacy of the





4791 institutions for short-term imprisonment in the several counties,  
4792 cities and other political subdivisions of the state in the light  
4793 of the number of persons committed thereto, the physical  
4794 facilities thereof and programs conducted therein. No later than  
4795 his next annual report, the commissioner shall report on any  
4796 inadequacies of such facilities, including his recommendations for  
4797 the alteration or expansion of existing institutions, for the  
4798 construction of new institutions, for the combination of two (2)  
4799 or more local institutions of the same or of different political  
4800 subdivisions of the state, or for such other measures to meet the  
4801 situation as may be appropriate. In making his recommendations,  
4802 the commissioner may indicate whether, in his opinion, the  
4803 alteration, expansion or new construction can best be undertaken  
4804 by the political subdivisions concerned, or by the Department of  
4805 Corrections.

4806       (3) In reviewing the adequacy of the institutions for  
4807 short-term imprisonment, the Commissioner of the Department of  
4808 Corrections shall consider whether the facilities available in the  
4809 several political subdivisions of the state afford adequate  
4810 opportunity for the segregation and classification of prisoners,  
4811 for the isolation and treatment of ill prisoners, for the  
4812 treatment of alcoholic and drug-addicted prisoners, for  
4813 diversified security and custody, and for opportunities for  
4814 vocational and rehabilitative training.



4815           (4) Upon the recommendation or with the approval of the  
4816 Commissioner of the Department of Corrections, counties, cities,  
4817 and other political subdivisions of the state having institutions  
4818 for short-term imprisonment may establish joint institutions or  
4819 combine two (2) or more existing facilities for short-term  
4820 imprisonment, and may make such agreements for the sharing of the  
4821 costs of construction and maintenance as may be authorized by law.

4822           (5) No county, city, or other political subdivision of the  
4823 state shall construct or establish an institution for short-term  
4824 imprisonment, unless the plans for the establishment and  
4825 construction of such institution are approved by the Commissioner  
4826 of the Department of Corrections.

4827           **SECTION 194.** (1) The warden, or other administrative head  
4828 of an institution for short-term imprisonment, shall establish and  
4829 maintain, in accordance with the regulations of the Department of  
4830 Corrections, a central file in the institution containing an  
4831 individual file for each prisoner. Each prisoner's file shall as  
4832 far as practicable include: (a) his admission summary; (b) his  
4833 presentence investigation report, if any; (c) the official records  
4834 of his conviction and commitment, as well as earlier criminal  
4835 records, if any; (d) progress reports from treatment and custodial  
4836 staff; (e) reports of his disciplinary infractions and of their  
4837 disposition; and (f) other pertinent data concerning his  
4838 background, conduct, associations and family relationships. The  
4839 content of the prisoners' files shall be confidential and shall



4840 not be subject to public inspection except by court order for good  
4841 cause shown and shall not be accessible to prisoners in the  
4842 institution.

4843 (2) The governing body of each county, city or other  
4844 political subdivision of the state having one or more institutions  
4845 for short-term imprisonment shall appoint a classification  
4846 committee consisting of five (5) members of the institutional  
4847 staffs and of qualified citizens of the county, city or other  
4848 political subdivision. If a physician has been appointed to serve  
4849 the institutions, he shall be an ex officio member of the  
4850 committee. All committee members shall serve without compensation  
4851 but shall be paid their necessary travel expenses and per diem as  
4852 provided by law.

4853 (3) As soon as practicable after a prisoner who has been  
4854 sentenced to a definite term of thirty (30) days or more is  
4855 received in the institution, and no later than the expiration of  
4856 the first third of his term, the classification committee shall  
4857 study his file and interview him, and shall aid the warden or  
4858 other administrative head of the institution in determining the  
4859 prisoner's program of treatment, training, employment, care and  
4860 custody. The classification committee may also recommend the  
4861 transfer of the prisoner to another institution which in its  
4862 opinion is more suitable for him.

4863 (4) The warden or other administrative head of the  
4864 institution may, on his own motion or upon the recommendation of



4865 the classification committee, apply to the court for an order to  
4866 transfer the prisoner to another institution for short-term  
4867 imprisonment, within or outside of the county, city or other  
4868 political subdivision of the state.

4869 **SECTION 195.** (1) In institutions for short-term  
4870 imprisonment the following groups shall be segregated from each  
4871 other:

4872 (a) Female prisoners from male prisoners; and

4873 (b) Prisoners under the age of twenty-two (22) from  
4874 older prisoners; and

4875 (c) Persons detained for hearing or trial from  
4876 prisoners under sentence of imprisonment or committed for  
4877 contumacious default in the payment of fines; and

4878 (d) Persons detained for hearing or trial or under  
4879 sentence from material witnesses and other persons detained under  
4880 civil commitment.

4881 (2) When an institutional physician finds that a prisoner  
4882 suffers from a physical disease or defect, or when an  
4883 institutional physician or psychologist finds that a prisoner  
4884 suffers from a mental disease or defect, the warden or other  
4885 administrative head may order such prisoner to be segregated from  
4886 other prisoners, and if the physician or psychologist, as the case  
4887 may be, is of the opinion that he cannot be given proper treatment  
4888 at the institution, the warden or other administrative head may  
4889 transfer him to another institution in the county, city or other



4890 political subdivision of the state where proper treatment is  
4891 available, or to a hospital, if any, operated by the county, city  
4892 or other political subdivision of the state if such hospital has  
4893 adequate facilities, including detention facilities when  
4894 necessary, to receive and treat the prisoner. If proper treatment  
4895 or facilities are not available in an institution or a hospital  
4896 operated by the county, city, or other political subdivision of  
4897 the state, the warden or other administrative head may transfer  
4898 him to an institution or hospital operated by another county, city  
4899 or other political subdivision of the state, where such treatment  
4900 and facilities are available, if such hospital or institution is  
4901 ready to receive him, under such arrangements for reimbursement of  
4902 costs as may be authorized by law. The warden or other  
4903 administrative head may request the Commissioner of the Department  
4904 of Corrections to permit such prisoner to be transferred for  
4905 examination, study and treatment to the medical-correctional  
4906 facility, if any, or to another institution in the department  
4907 where proper treatment is available. The Commissioner of the  
4908 Department of Corrections shall permit such transfer whenever such  
4909 institutions in the department have available room to receive the  
4910 prisoner.

4911 (3) When an institutional physician finds upon examination  
4912 that a prisoner suffers from a physical disease or defect that  
4913 cannot, in his opinion, be properly treated in any institution or  
4914 hospital of the county, city or other political subdivision of the



4915 state or of another county, city or other subdivision of the  
4916 state, or in the Department of Corrections, such prisoner, upon  
4917 the direction of the warden or other administrative head and with  
4918 the approval of the Commissioner of the Department of Corrections,  
4919 may receive treatment in, or may be transferred to, for the  
4920 purpose of receiving treatment in, any other available hospital.  
4921 The warden or other administrative head, in accordance with  
4922 regulations of the Department of Corrections, shall make  
4923 appropriate arrangements with other public or private agencies for  
4924 the transportation to, and for the care, custody and security of  
4925 the prisoner in such hospital. While receiving treatment in such  
4926 hospital, the prisoner shall remain subject to the jurisdiction  
4927 and custody of the institution to which he was committed, and  
4928 shall be returned thereto when, prior to the expiration of his  
4929 sentence, such hospital treatment is no longer necessary.

4930 (4) When two (2) psychiatrists approved by the Department of  
4931 Health find upon examination that a prisoner suffers from a mental  
4932 disease or defect that cannot, in their opinion, be properly  
4933 treated in any institution in the Department of Corrections, such  
4934 prisoner, upon the direction of the warden or other administrative  
4935 head and with the approval of the Commissioner of the Department  
4936 of Corrections, may be transferred for treatment, with the  
4937 approval of the Department of Health, to a psychiatric facility in  
4938 such department. The warden or other administrative head, in  
4939 accordance with the regulations 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 institution to which he was committed, and shall be returned thereto 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 (5) of this section.

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

**SECTION 196.** (1) Upon admission to a facility for short-term imprisonment, each prisoner shall be given a physical examination, and if he is suspected of having a communicable



disease, he shall be quarantined until he is known to be free from such disease. Each prisoner shall receive such medical and dental care as may be necessary during his period of commitment, but at his request, he may be permitted to provide such care for himself at his own expense.

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

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

**SECTION 198.** (1) The warden or other administrative head of each correctional institution shall be responsible for the discipline, control and safe custody of the prisoners therein. No prisoner shall be punished except upon the order of the warden or





4990 other administrative head of the institution or of a deputy  
4991 designated by him for the purpose; nor shall any punishment be  
4992 imposed otherwise than in accordance with the provisions of this  
4993 section. The right to punish or to inflict punishment shall not  
4994 be delegated to any prisoner or group of prisoners and no warden  
4995 or other administrative head shall permit any such prisoner or  
4996 group of prisoners to assume authority over any other prisoner or  
4997 group of prisoners.

4998 (2) Except in flagrant or serious cases, punishment for a  
4999 breach of discipline shall consist of deprivation of privileges.  
5000 In case of assault, escape, or attempt to escape, or other serious  
5001 or flagrant breach of discipline, the warden or other  
5002 administrative head may order that a prisoner's reduction of term  
5003 for good behavior in accordance with Section 200 of this act be  
5004 forfeited. For serious or flagrant breach of discipline, the  
5005 warden or other administrative head may confine the prisoner, in  
5006 accordance with the regulations of the Department of Corrections,  
5007 to a disciplinary cell for a period not to exceed ten (10) days,  
5008 and may order that the prisoner, during all or part of the period  
5009 of such solitary confinement, be put on a monotonous but adequate  
5010 and healthful diet. A prisoner in solitary confinement shall be  
5011 visited by a physician at least once every twenty-four (24) hours.

5012 (3) No cruel, inhuman or corporal punishment shall be used  
5013 on any prisoner, nor is the use of force on any prisoner



5014 justifiable except as provided by this act and the rules and  
5015 regulations of the Department of Corrections consistent therewith.

5016 (4) The warden or other administrative head of an  
5017 institution shall maintain a record of breaches of rules, of the  
5018 disposition of each case, and of the punishment, if any, for each  
5019 such breach. Each breach of the rules by a prisoner shall be  
5020 entered in his file, together with the disposition or punishment  
5021 therefor.

5022 **SECTION 199.** (1) To establish good habits of work and  
5023 responsibility, for the vocational training of prisoners, and to  
5024 reduce the cost of institutional operation, prisoners shall be  
5025 employed so far as possible in constructive and diversified  
5026 activities in the production of goods, services and foodstuffs to  
5027 maintain the institution and its inmates, for the use of the  
5028 county, city or other political subdivision of the state, and for  
5029 other purposes expressly authorized by law. To accomplish these  
5030 purposes, the warden or other administrative head, with the  
5031 approval of the Commissioner of the Department of Corrections,  
5032 shall establish and maintain work programs, including, to the  
5033 extent practicable, prison industries and prison farms in his  
5034 institution, and may enter into arrangements with the departments  
5035 of the state, or of the county, city or other political  
5036 subdivision of the state, for the employment of prisoners in the  
5037 improvement of public works and ways, and in the improvement and  
5038 conservation of the natural resources owned by the state.



5039           (2) No prisoner shall be required to engage in excessive  
5040 labor, and no prisoner shall be required to perform any work for  
5041 which he is declared unfit by the institutional physician.

5042           (3) The Commissioner of the Department of Corrections shall  
5043 make rules and regulations governing the hours and conditions of  
5044 labor of prisoners in correctional institutions of the counties,  
5045 cities or other political subdivision of the state and the rates  
5046 of prisoners' compensation for employment. In determining the  
5047 rates of compensation, such regulations may take into  
5048 consideration the quantity and quality of the work performed by a  
5049 prisoner, whether or not such work was performed during regular  
5050 working hours, the skill required for its performance, as well as  
5051 the economic value of similar work outside of correctional  
5052 institutions. Prisoners' wage payments shall be set aside by the  
5053 warden or other administrative head in a separate fund. The  
5054 regulations may provide for the making of deductions from  
5055 prisoners' wages to defray part or all of the cost of prisoner  
5056 maintenance, but a sufficient amount shall remain after such  
5057 deduction to enable the prisoner to contribute to the support of  
5058 his dependents, if any, to make necessary purchases from the  
5059 commissary, and to set aside sums to be paid to him at the time of  
5060 his release from the institution.

5061           (4) The labor or time of a prisoner shall not be sold,  
5062 contracted or hired out, but prisoners may work for other  
5063 departments of the state or of the county, city or other political



5064 subdivision of the state in accordance with arrangements made  
5065 pursuant to subsection (1) of this section.

5066 (5) All departments and agencies of the county, city or  
5067 other political subdivision of the state and institutions and  
5068 agencies which are supported, in whole or in part, by such  
5069 political subdivision, shall purchase or draw from the  
5070 correctional institution all articles and products required by  
5071 them which are produced or manufactured by prison labor in such  
5072 correctional institutions, unless excepted from this requirement  
5073 by the appropriate authority of the county, city or other  
5074 political subdivision of the state in accordance with rules and  
5075 regulations of such authority to carry out the purposes of this  
5076 subsection. Any surplus articles and products not so purchased  
5077 shall be disposed of to the departments and agencies of the state  
5078 and of other counties, cities or other political subdivisions of  
5079 the state. The Governor or other appropriate authority may, by  
5080 rule or regulations, provide for the manner in which standards and  
5081 qualifications for such articles and products shall be set, for  
5082 the manner in which the needs of departments, agencies and  
5083 institutions of the state and its political subdivisions shall be  
5084 estimated in advance, for the manner in which the price for such  
5085 articles and products shall be determined, and for the manner in  
5086 which purchases shall be made and payment credited.

5087 (6) Within the appropriation allotted therefor, the warden  
5088 or other administrative head shall make appropriate arrangements



for the compensation of prisoners for damages from injuries arising out of their employment.

**SECTION 200.** For good behavior and faithful performance of duties, the term of imprisonment of a prisoner sentenced or committed for a definite term of more than thirty (30) days shall be reduced by five (5) days for each month of such term. Such reductions of terms may be forfeited, withheld or restored by the warden or other administrative head of the institution, in accordance with the regulations of the Department of Corrections.

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

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

(2) Whenever a prisoner who has been granted the privilege of leaving the institution under this section is not engaged in



5113 the activity for which such leave is granted, he shall be confined  
5114 in the institution.

5115 (3) A prisoner sentenced to ordinary confinement may  
5116 petition the court at any time after sentence for the privilege of  
5117 leaving the institution under this section and may renew his  
5118 petition in the discretion of the court. The court may withdraw  
5119 the privilege at any time by order entered with or without notice.

5120 (4) If the prisoner has been granted permission to leave the  
5121 institution to seek or take employment, the court's probation  
5122 department shall assist him in obtaining suitable employment.  
5123 Employment shall not be deemed suitable if the wages or working  
5124 conditions or other circumstances present a danger of exploitation  
5125 or of interference in a labor dispute in the establishment in  
5126 which the prisoner would be employed.

5127 (5) If a prisoner is employed for wages or salary, the  
5128 warden or other administrative head shall collect the same, or  
5129 shall require the prisoner to turn over his wages or salary in  
5130 full when received, and shall deposit the same in a trust account  
5131 and shall keep a ledger showing the status of the account of each  
5132 prisoner. Earnings levied upon pursuant to writ of attachment or  
5133 execution or in other lawful manner shall not be collected  
5134 hereunder, but when the warden or other administrative head has  
5135 requested transmittal of earnings prior to levy, such request  
5136 shall have priority. When an employer transmits such earnings to  
5137 the warden or other administrative head pursuant to this



5138 subsection he shall have no liability to the prisoner for such  
5139 earnings. From such earnings the probation service shall pay the  
5140 prisoner's board and personal expenses both inside and outside the  
5141 institution, shall deduct so much of the costs of administration  
5142 of this section as is allocable to such prisoner, and shall deduct  
5143 installments on fines, if any, and, to the extent directed by the  
5144 court, shall pay the support of the prisoner's dependents. If  
5145 sufficient funds are available after making the foregoing  
5146 payments, the warden or other administrative head may, with the  
5147 consent of the prisoner, pay, in whole or in part, any unpaid  
5148 debts of the prisoner. Any balance shall be retained, and shall  
5149 be paid to the prisoner at the time of his discharge.

5150 (6) A prisoner who is serving his sentence pursuant to this  
5151 section shall be eligible for a reduction of his term for good  
5152 behavior and faithful performance of duties in accordance with  
5153 Section 200 of this act in the same manner as if he had served his  
5154 term in ordinary confinement.

5155 (7) The warden or other administrative head may deny the  
5156 prisoner the exercise of this privilege to leave the institution  
5157 for a period not to exceed five (5) days for any breach of  
5158 discipline or other violation of regulations.

5159 (8) The court shall not make an order granting the privilege  
5160 of leaving the institution under this section unless it is  
5161 satisfied the warden or other administrative head has certified  
5162 that there are adequate facilities for the administration of such



privilege in the institution in which the defendant will be confined.

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





5187           (2) The Commissioner of the Department of Corrections shall  
5188 appoint a reception classification board for each reception  
5189 center, which shall include a representative of the Commissioner  
5190 of the Department of Corrections, a physician, a psychiatrist or  
5191 clinical psychologist, a representative of the treatment services,  
5192 a representative of the custodial services, and such other persons  
5193 as the commissioner may designate. Members of a reception  
5194 classification board shall serve at the pleasure of the  
5195 Commissioner of the Department of Corrections.

5196           (3) Reception classification boards shall examine and study  
5197 all persons committed to the Department of Corrections and may  
5198 retain any prisoner in the reception center only for such period  
5199 as may be required to complete such examination and study and to  
5200 effect his transfer to another institution. The board shall  
5201 investigate each prisoner's medical, psychological, social,  
5202 educational and vocational condition and history, and the  
5203 motivation of his offense.

5204           Upon the conclusion of its study of a prisoner, a reception  
5205 classification board shall submit its report, including its  
5206 recommendations and the reasons therefor, to the Commissioner of  
5207 the Department of Corrections. The board's recommendation shall  
5208 include the classification of the prisoner according to such  
5209 system of prisoner classification as the Commissioner of the  
5210 Department of Corrections may establish by regulation, the  
5211 institution or unit to which the prisoner's transfer is



recommended, the degree and kind of custodial control recommended for the protection of society, and the program of treatment for the rehabilitation of the prisoner, including in such program such recommendations for medical and psychological treatment and educational and vocational training as may be appropriate. The board's report may, in addition, contain the dissenting views, if any, of any of its members.

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

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

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

**SECTION 204.** (1) Within the appropriation allotted therefor, the Commissioner of the Department of Corrections shall



5237 construct, equip and maintain suitable buildings, structures and  
5238 facilities for the operation and for the necessary expansion and  
5239 diversification of the state correctional system, including  
5240 prisons, reformatories, reception centers, parole and probation  
5241 hostels and such other institutions as may be required for the  
5242 custody, control, correctional treatment and rehabilitation of  
5243 persons committed to the Department of Corrections.

5244       (2) The Commissioner of the Department of Corrections shall  
5245 annually review the adequacy of the state correctional system in  
5246 the light of the number of persons committed thereto as well as in  
5247 the light of the need for diversified facilities. No later than  
5248 his next annual report, the commissioner shall report on any  
5249 inadequacies of the state correctional system, including his  
5250 recommendations for the alteration or expansion of the existing  
5251 institutions, for the construction of new institutions, or for  
5252 such other measures to meet the situation as may be appropriate,  
5253 whenever the system fails to provide, when practicable, the  
5254 following institutions:

5255           (a) One or more maximum security institutions  
5256 accommodating in each such institution or in separate units  
5257 thereof no more than two thousand (2,000) prisoners;

5258           (b) One or more medium security institutions  
5259 accommodating in each such institution or in separate units  
5260 thereof no more than two thousand (2,000) prisoners;



5261           (c) One or more minimum security institutions  
5262   accommodating in each such institution or in separate units  
5263   thereof no more than two thousand (2,000) prisoners, which  
5264   institutions may include unfenced farms, camps, colonies, housing  
5265   for outside work areas, and similar facilities, and may, in  
5266   addition to their regular uses, be employed also for parole  
5267   preparation of prisoners and for the detention of prisoners during  
5268   temporary suspension of parole, and for other similar purposes;

5269           (d) Special institutional facilities for the vocational  
5270   and rehabilitative training of young adult offenders, as defined  
5271   in Section 59 of this act, providing, if need be by separate  
5272   units, for diversified security and custody;

5273           (e) A medical-correctional facility to keep prisoners  
5274   with difficult or chronic medical and psychiatric problems, which,  
5275   if the number of persons committed to the department reaches four  
5276   hundred (400), is a separate institution;

5277           (f) One or more institutions for female prisoners  
5278   committed to the department, providing, if need be by separate  
5279   units, for diversified security and custody.

5280           (3) When the Commissioner of the Department of Corrections  
5281   finds that certain classes or categories of persons committed to  
5282   the department require specialized treatment, or treatment of a  
5283   kind that it is not feasible to provide within the state  
5284   correctional system, the Commissioner of the Department of  
5285   Corrections shall seek to place such prisoners in institutions



5286 providing such treatment in another jurisdiction, and may agree to  
5287 pay reimbursement therefor. A prisoner so transferred to an  
5288 out-of-state institution shall be subject to the rules and  
5289 regulations of such institution concerning the custody, conduct  
5290 and discipline of its inmates, but shall remain subject to the  
5291 provisions of this act concerning his term, reduction of term for  
5292 good behavior and release on parole.

5293       **SECTION 205.** (1) The warden or other administrative head of  
5294 a correctional institution shall establish and maintain, in  
5295 accordance with the regulations of the department, a central file  
5296 in the institution containing an individual file for each  
5297 prisoner. Each prisoner's file shall include: (a) his admission  
5298 summary; (b) his presentence investigation report; (c) the report  
5299 and recommendation of the reception classification board; (d) the  
5300 official records of his conviction and commitment as well as  
5301 earlier criminal records, if any; (e) progress reports and  
5302 admission-orientation reports from treatment and custodial staff;  
5303 (f) reports of his disciplinary infractions, and of their  
5304 disposition; (g) his parole plan, prepared in accordance with  
5305 Section 219 of this act; and (h) other pertinent data concerning  
5306 his background, conduct, associations and family relationships.  
5307 Each prisoner's file shall be carefully reviewed before any  
5308 decision is made concerning his classification, reclassification  
5309 or parole release. The content of the prisoner's files shall be  
5310 confidential and shall not be subject to public inspection except



5311 by court order for good cause shown and shall not be accessible to  
5312 prisoners in the institution.

5313 (2) The warden or other administrative head in each  
5314 correctional institution shall appoint a treatment classification  
5315 committee with himself or his representative as chairman, and  
5316 consisting of representatives of the treatment, custodial and  
5317 parole services, of medical, psychiatric or psychological  
5318 personnel, of personnel concerned with the education and  
5319 vocational training of inmates, and of such other persons, as he  
5320 may designate. Members of the treatment classification committee  
5321 shall serve at the pleasure of the warden or other administrative  
5322 head.

5323 (3) When a prisoner is transferred to a correctional  
5324 institution from a reception center or from any other institution,  
5325 the classification committee of such receiving institution shall,  
5326 within two (2) months of receiving the prisoner, study his  
5327 presentence investigation report, his criminal history and escape  
5328 record, if any, the report of the reception classification board,  
5329 the admission-orientation reports of the custodial and treatment  
5330 officers of the institution, the attitudes and preferences of the  
5331 prisoner and such other relevant information as may be available  
5332 in the prisoner's file or from other sources and shall aid the  
5333 warden or other administrative head of the institution in  
5334 determining the prisoner's program of treatment, training,  
5335 employment, care and custody.



5336           (4) The classification committee, or a subcommittee thereof  
5337 designated by the warden or other administrative head, shall  
5338 review the program of each prisoner at regular intervals and  
5339 whenever a member of the committee so requests, and shall  
5340 recommend to the warden such changes in the prisoner's program of  
5341 treatment, training, employment, care and custody as it considers  
5342 necessary or desirable.

5343           (5) Approximately three (3) months before a prisoner will be  
5344 considered by the Parole Board for release on parole, the  
5345 classification committee shall reexamine the prisoner's individual  
5346 file, shall prepare a report summarizing and evaluating the  
5347 prisoner's progress, and may recommend to the warden or other  
5348 administrative head (a) that the prisoner be reclassified for  
5349 preparole preparation at that institution or at another  
5350 institution after transfer thereto or (b) that the prisoner's  
5351 reclassification for preparole preparation be postponed, for a  
5352 definite or indefinite period of time, stating the reason for such  
5353 recommendation in the record. A copy of the classification  
5354 committee's report shall be forwarded to the Parole Board, and  
5355 shall be available to such board in advance of the prisoner's  
5356 hearing before the Parole Board.

5357           (6) The warden or other administrative head of the  
5358 institution shall have final authority to determine matters of  
5359 treatment classification within his institution and to recommend



to the Commissioner of the Department of Corrections the transfer of any prisoner.

**SECTION 206.** (1) When an institutional physician finds that a prisoner suffers from a physical disease or defect, or when an institutional physician or psychologist finds that a prisoner suffers from a mental disease or defect, the warden or other administrative head may order such prisoner to be segregated from other prisoners, and if the physician or psychologist, as the case may be, is of the opinion that he cannot be given proper treatment at that institution, the warden or other administrative head shall recommend to the Commissioner of the Department of Corrections that such prisoner be transferred for examination, study and treatment to the medical-correctional facility, if any, or to another institution in the department where proper treatment is available.

(2) When an institutional physician finds upon examination that a prisoner suffers from a physical disease or defect that cannot, in his 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 receive treatment in, or may be transferred to, for the purpose of receiving treatment in, a hospital outside the Department of Corrections. The Commissioner of the Department of Corrections, shall make appropriate arrangements with other public or private





5385 agencies for the transportation to, and for the care, custody and  
5386 security of the prisoner in, such outside hospital. While  
5387 receiving treatment in such outside hospital, the prisoner shall  
5388 remain subject to the jurisdiction and custody of the Department  
5389 of Corrections, and shall be returned to the Department of  
5390 Corrections when, prior to the expiration of his sentence, such  
5391 hospital treatment is no longer necessary.

5392       (3) When two (2) psychiatrists approved by the Department of  
5393 Health find upon examination that a prisoner suffers from a mental  
5394 disease or defect that cannot, in their opinion, be properly  
5395 treated in any institution in the Department of Corrections, such  
5396 prisoner, upon the recommendation of the warden or other  
5397 administrative head and the order of the Commissioner of the  
5398 Department of Corrections, may be transferred for treatment, with  
5399 the approval of the Department of Health, to a psychiatric  
5400 facility in such department. The Commissioner of the Department  
5401 of Corrections shall make appropriate arrangements with the  
5402 Department of Health for the transportation to, and for the  
5403 custody and security of the prisoner in such psychiatric facility.  
5404 A prisoner receiving treatment in such a psychiatric facility  
5405 shall remain subject to the jurisdiction and custody of the  
5406 Department of Corrections, and shall be returned to the Department  
5407 of Corrections when, prior to the expiration of his sentence,  
5408 treatment in such facility is no longer necessary. A prisoner  
5409 receiving treatment in a psychiatric facility in the Department of



5410 Health who continues in need of treatment at the time of his  
5411 release or discharge shall be dealt with in accordance with  
5412 subsection (4) of this section.

5413 (4) When two (2) psychiatrists approved by the Department of  
5414 Health find upon examination that a prisoner about to be released  
5415 or discharged from an institution suffers from a mental disease or  
5416 defect of such a nature that his release or discharge will  
5417 endanger the public safety or the safety of the prisoner, the  
5418 Commissioner of the Department of Corrections shall transfer him  
5419 to, or if he has already been transferred, permit him to remain in  
5420 the care of the Department of Health to be dealt with in  
5421 accordance with law applicable to the civil commitment and  
5422 detention of persons suffering from such disease or defect.

5423 **SECTION 207.** (1) Upon admission to a state correctional  
5424 institution, each prisoner shall be given a physical examination,  
5425 and shall be kept apart from other prisoners for a period of  
5426 quarantine until he is known to be free from communicable disease  
5427 and until he has been classified in accordance with Section 205 of  
5428 this act. Each prisoner shall have regular medical and dental  
5429 care.

5430 (2) Each prisoner shall be adequately fed and clothed in  
5431 accordance with regulations of the Department. No prisoner shall  
5432 be required to wear stripes or other degrading apparel.

5433 **SECTION 208.** The Commissioner of the Department of  
5434 Corrections, shall establish an appropriate program for each



5435 institution, designed as far as practicable to prepare and assist  
5436 each prisoner to assume his responsibilities and to conform to the  
5437 requirements of law. In developing such programs, the  
5438 commissioner shall seek to make available to each prisoner capable  
5439 of benefiting therefrom academic or vocational training,  
5440 participation in productive work, religious and recreational  
5441 activities and such therapeutic measures as are practicable. No  
5442 prisoner shall be ordered or compelled, however, to participate in  
5443 religious activities.

5444       **SECTION 209.** (1) The warden or other administrative head of  
5445 each correctional institution shall be responsible for the  
5446 discipline, control and safe custody of the prisoners therein. No  
5447 prisoner shall be punished except upon the order of the warden or  
5448 other administrative head of the institution or of a deputy  
5449 designated by him for the purpose; nor shall any punishment be  
5450 imposed otherwise than in accordance with the provisions of this  
5451 section.

5452       (2) The warden or other administrative head of each  
5453 correctional institution shall appoint a committee on adjustment  
5454 from among the staff of the institution, which shall include a  
5455 member of the treatment service, a member of the custodial  
5456 service, and an institutional physician. The warden or other  
5457 administrative head may designate himself or a deputy as chairman  
5458 of the committee. The committee shall give notice to any prisoner  
5459 who has been reported for a breach of discipline, shall determine



5460 after a hearing whether the prisoner has committed an intentional  
5461 breach of the rules, and shall recommend to the warden or other  
5462 administrative head an appropriate disposition of the matter  
5463 subject to the provisions of this section. No prisoner shall be  
5464 punished until he has had such a hearing, but the recommendation  
5465 of the committee shall not be binding on the warden or other  
5466 administrative head or his deputy.

5467 (3) Except in flagrant or serious cases, punishment for a  
5468 breach of the rules shall consist of deprivation of privileges.  
5469 In cases of assault, escape, or attempt to escape, or other  
5470 serious or flagrant breach of the rules, the committee on  
5471 adjustment may recommend to the warden or other administrative  
5472 head, and he may order, that a prisoner's reduction of term for  
5473 good behavior and faithful performance of duties be forfeited or  
5474 withheld in accordance with Section 216 of this act. For serious  
5475 or flagrant breach of the rules, the committee on adjustment, in  
5476 accordance with the regulations of the department, may also  
5477 recommend, and the warden or other administrative head may order,  
5478 that the offender be confined in a disciplinary cell for a period  
5479 not to exceed thirty (30) days. The committee on adjustment may  
5480 recommend, and the warden or other administrative head may order,  
5481 that a prisoner, during all or part of the period of such solitary  
5482 confinement, be put on a monotonous but adequate and healthful  
5483 diet. A prisoner in solitary confinement shall be visited by a  
5484 physician at least once every twenty-four (24) hours.



5485           (4) No cruel, inhuman or corporal punishment shall be used  
5486 on any prisoner, nor is the use of force on any prisoner  
5487 justifiable except as provided by Article 3 of this act and the  
5488 rules and regulations of the department consistent therewith.

5489           (5) The warden or other administrative head of an  
5490 institution shall maintain a record of breaches of rules, of the  
5491 disposition of each case, and of the punishment, if any, for each  
5492 such breach. Each breach of the rules by a prisoner shall be  
5493 entered in his file, together with the disposition or punishment  
5494 therefor.

5495           (6) The committee on adjustment shall recommend to the  
5496 warden or other administrative head that a prisoner who is  
5497 considered to be incorrigible by reason of frequent intentional  
5498 breaches of discipline, or who is detrimental to the discipline or  
5499 the morale of the institution, be reported to the Commissioner of  
5500 the Department of Corrections for transfer to another institution  
5501 for stricter safekeeping and close confinement.

5502           **SECTION 210.** (1) To establish good habits of work and  
5503 responsibility, for the vocational training of prisoners, and to  
5504 reduce the cost of prison operation, prisoners shall be employed  
5505 so far as possible in constructive and diversified activities in  
5506 the production of goods, services and foodstuffs to maintain the  
5507 institution and its inmates, for state use and for other purposes  
5508 expressly authorized by law. To accomplish these purposes, the  
5509 Commissioner of the Department of Corrections shall establish and



5510 maintain prison industries and prison farms in appropriate  
5511 correctional institutions, and may enter into arrangements with  
5512 other departments for the employment of prisoners in the  
5513 improvement of public works and ways and in the improvement and  
5514 conservation of the natural resources owned by the state.

5515 (2) No prisoner shall be required to engage in excessive  
5516 labor, and no prisoner shall be required to perform any work for  
5517 which he is declared unfit by the medical department.

5518 (3) The commissioner shall make rules and regulations  
5519 governing the hours and conditions of labor of prisoners in  
5520 correctional institutions, and the rates of prisoners'  
5521 compensation for employment. In determining the rates of  
5522 compensation, such regulations may take into consideration the  
5523 quantity and quality of the work performed by a prisoner whether  
5524 or not such work was performed during regular working hours, the  
5525 skill required for its performance, as well as the economic value  
5526 of similar work outside of correctional institutions. Prisoners'  
5527 wage payments shall be set aside by the warden or other  
5528 administrative head in a separate fund. The regulations may  
5529 provide for the making of deductions from prisoners' wages to  
5530 defray part or all of the cost of prisoner maintenance, but a  
5531 sufficient amount shall remain after such deduction to enable the  
5532 prisoner to contribute to the support of his dependents, if any,  
5533 to make necessary purchases from the commissary, and to set aside



5534 sums to be paid to him at the time of his release from the  
5535 institution.

5536 (4) The labor or time of any prisoner committed to the  
5537 Department of Corrections shall not be sold, contracted or hired  
5538 out, but prisoners may work for other departments of the state in  
5539 accordance with arrangements made pursuant to subsection (1) of  
5540 this section.

5541 (5) All departments and agencies of the state, and all  
5542 institutions and agencies which are supported, in whole or in  
5543 part, by the state shall purchase from the Department of  
5544 Corrections all articles and products required by them which are  
5545 produced or manufactured by prison labor in state correctional  
5546 institutions, unless excepted from this requirement by the  
5547 Governor or other appropriate authority in accordance with rules  
5548 and regulations promulgated by the Governor or other appropriate  
5549 authority to carry out the purposes of this subsection. The  
5550 Governor or other appropriate authority may, by rule or  
5551 regulation, provide for the manner in which standards and  
5552 qualifications for such articles and products shall be set, for  
5553 the manner in which the needs of departments, agencies and  
5554 institutions shall be estimated in advance, for the manner in  
5555 which the price for such articles and products shall be  
5556 determined, and for the manner in which purchases shall be made  
5557 and payment credited.



5558           (6) Within the appropriation allotted therefor, the  
5559 commissioner shall make appropriate arrangements for the  
5560 compensation of prisoners for damages from injuries arising out of  
5561 their employment.

5562           **SECTION 211.** (1) The Commissioner of the Department of  
5563 Corrections shall formulate rules or regulations governing  
5564 compassionate leave from institutions and, in accordance with such  
5565 rules or regulations, may permit any prisoner to leave his  
5566 institution for short periods of time, either by himself or in the  
5567 custody of an officer, to visit a close relative who is seriously  
5568 ill, to attend the funeral of a close relative, to return to his  
5569 home during what appears to be his own last illness, or to return  
5570 to his home for other compelling reasons which strongly appeal to  
5571 compassion.

5572           (2) The rules or regulations shall provide for the manner in  
5573 which compassionate leave shall be granted, for its duration, and  
5574 for the custody, transportation and care of the prisoner during  
5575 his leave. They shall also provide for the manner in which the  
5576 expense connected with such leave shall be borne, and may allow  
5577 the prisoner, or anyone in his behalf, to reimburse the state for  
5578 such expense.

5579           (3) The Commissioner of the Department of Corrections, on  
5580 the recommendation of the Parole Board, may grant a pre-parole  
5581 furlough, not to exceed two (2) weeks, to any prisoner whose  
5582 parole release date has been fixed in accordance with Section 220





5583 of this act by the Parole Board. The purpose of such a furlough  
5584 shall be to enable the prisoner to secure employment, to find  
5585 adequate living quarters for himself and his family, or,  
5586 generally, to make more effective plans and arrangements towards  
5587 his release on parole.

5588       **SECTION 212.** When a prisoner is released from an  
5589 institution, either on parole or upon final discharge, he shall be  
5590 returned any personal possessions taken from him upon his  
5591 commitment, and the warden or other administrative head shall  
5592 furnish him with decent clothing appropriate for the season of the  
5593 year, a transportation ticket to the place where he will reside,  
5594 the earnings set aside for him in the wage fund, and such  
5595 additional sum of money as may be prescribed by regulation of the  
5596 department to enable him to meet his immediate needs. If at the  
5597 time of his release a prisoner is too ill or feeble or otherwise  
5598 unable to use public means of transportation, the warden or other  
5599 administrative head may, subject to the rules and regulations of  
5600 the department, make special arrangements for his transportation  
5601 to the place where he will reside.

5602                                   **ARTICLE 28**

5603                                   **RELEASE ON PAROLE**

5604       **SECTION 213.** For good behavior and faithful performance of  
5605 duties, the term of a prisoner sentenced to imprisonment for an  
5606 indefinite term with a maximum in excess of one (1) year, shall be  
5607 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.



5633           **SECTION 216.**   (1) Reductions of terms of imprisonment for  
5634 good behavior and faithful performance of duties may be forfeited,  
5635 withheld and restored by the warden of the institution after  
5636 hearing by the Committee on Adjustment of the institution, but no  
5637 reduction of a prison term shall be forfeited or withheld after a  
5638 prisoner is released on parole.

5639           (2) Reductions of parole terms for good behavior may be  
5640 forfeited, withheld and restored by the Parole Board.

5641           **SECTION 217.**   The warden of the institution shall regularly  
5642 report all reductions of prison terms for good behavior and  
5643 faithful performance of duties, and all forfeitures and  
5644 restorations of such reductions to the Commissioner of the  
5645 Department of Corrections. On the basis of such report, the  
5646 commissioner shall inform the Parole Board of all prisoners who  
5647 are expected to become eligible for release on parole or whose  
5648 release on parole will become mandatory within the next three (3)  
5649 months.

5650           **SECTION 218.**   Every prisoner sentenced to an indefinite term  
5651 of imprisonment shall be eligible for release on parole upon  
5652 completion of his minimum term less reductions granted in  
5653 accordance with Section 213 of this act, or, if there is no  
5654 minimum, at any time. Within sixty (60) days before the  
5655 expiration of such minimum less reductions, or, if there is no  
5656 minimum, within ninety (90) days of his commitment, the prisoner  
5657 shall have a hearing before the Parole Board or a member or



5658 members designated by the board. The hearing shall be conducted  
5659 in an informal manner, but a verbatim record of the proceedings  
5660 shall be made and preserved.

5661 **SECTION 219.** (1) Each prisoner in advance of his parole  
5662 hearing shall prepare a parole plan, setting forth the manner of  
5663 life he intends to lead if released on parole, including such  
5664 specific information as to where and with whom he will reside and  
5665 what occupation or employment he will follow. The institutional  
5666 parole staff shall render reasonable aid to the prisoner in the  
5667 preparation of his plan and in securing information for submission  
5668 to the Parole Board.

5669 (2) A prisoner shall be permitted to advise with any persons  
5670 whose assistance he reasonably desires, including his own legal  
5671 counsel, in preparing for a hearing before the Parole Board.

5672 **SECTION 220.** (1) The Parole Board shall render its decision  
5673 regarding a prisoner's release on parole within a reasonable time  
5674 after hearing. The decision shall be by majority vote of the  
5675 Parole Board. The decision shall be based on the entire record  
5676 before the board, which shall include the opinion of the member  
5677 who presided at the hearing. In its decision the board shall  
5678 either fix the prisoner's release date, or it shall defer the case  
5679 for later reconsideration.

5680 (2) If the board fixes the release date, such date shall be  
5681 not less than sixty (60) days nor more than six (6) months from  
5682 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.



5708           (2) In making its determination regarding a prisoner's  
5709 release on parole, it shall be the policy of the Parole Board to  
5710 take into account each of the following factors:

5711           (a) The prisoner's personality, including his maturity,  
5712 stability, sense of responsibility and any apparent development in  
5713 his personality which may promote or hinder his conformity to law;

5714           (b) The adequacy of the prisoner's parole plan;

5715           (c) The prisoner's ability and readiness to assume  
5716 obligations and undertake responsibilities;

5717           (d) The prisoner's intelligence and training;

5718           (e) The prisoner's family status and whether he has  
5719 relatives who display an interest in him, or whether he has other  
5720 close and constructive associations in the community;

5721           (f) The prisoner's employment history, his occupational  
5722 skills and the stability of his past employment;

5723           (g) The type of residence, neighborhood or community in  
5724 which the prisoner plans to live;

5725           (h) The prisoner's past use of narcotics, or past  
5726 habitual and excessive use of alcohol;

5727           (i) The prisoner's mental or physical makeup, including  
5728 any disability or handicap which may affect his conformity to law;

5729           (j) The prisoner's prior criminal record, including the  
5730 nature and circumstances, recency and frequency of previous  
5731 offenses;

5732           (k) The prisoner's attitude toward law and authority;



5733                   (1) The prisoner's conduct in the institution,  
5734 including particularly whether he has taken advantage of the  
5735 opportunities for self-improvement afforded by the institutional  
5736 program, whether he has been punished for misconduct within six  
5737 (6) months prior to his hearing or reconsideration for parole  
5738 release, whether he has forfeited any reductions of term during  
5739 his period of imprisonment and whether such reductions have been  
5740 restored at the time of hearing or reconsideration;

5741                   (m) The prisoner's conduct and attitude during any  
5742 previous experience of probation or parole and the recency of such  
5743 experience.

5744                   **SECTION 222.** Before making a determination regarding a  
5745 prisoner's release on parole, the Parole Board shall cause to be  
5746 brought before it all of the following records and information  
5747 regarding the prisoner:

5748                   (a) A report prepared by the institutional parole  
5749 staff, relating to his personality, social history and adjustment  
5750 to authority, and including any recommendations which the  
5751 institutional staff may make;

5752                   (b) All official reports of his prior criminal record,  
5753 including reports and records of earlier probation and parole  
5754 experiences;

5755                   (c) The presentence investigation report of the  
5756 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





5782 refrain from engaging in criminal conduct. The Parole Board may  
5783 also require, either at the time of his release on parole or at  
5784 any time and, from time to time, while he remains under parole,  
5785 that he conform to any of the following conditions of parole:

5786 (a) Meet his specified family responsibilities;

5787 (b) Devote himself to an approved employment or  
5788 occupation;

5789 (c) Remain within the geographic limits fixed in his  
5790 certificate of parole, unless granted written permission to leave  
5791 such limits;

5792 (d) Report, as directed, in person and within  
5793 thirty-six (36) hours of his release, to his parole officer;

5794 (e) Report in person to his parole officer at such  
5795 regular intervals as may be required;

5796 (f) Reside at the place fixed in his certificate of  
5797 parole and notify his parole officer of any change in his address  
5798 or employment;

5799 (g) Have in his possession no firearm or other  
5800 dangerous weapon unless granted written permission;

5801 (h) Submit himself to available medical or psychiatric  
5802 treatment, if the board shall so require;

5803 (i) Refrain from associating with persons known to him  
5804 to be engaged in criminal activities or, without permission of his  
5805 parole officer, with persons known to him to have been convicted  
5806 of a crime;



5807           (j) Satisfy any other conditions specially related to  
5808 the cause of his offense and not unduly restrictive of his liberty  
5809 or incompatible with his freedom of conscience.

5810           (2) Before release on parole, a parolee shall be provided  
5811 with a certificate of parole setting forth the conditions of his  
5812 parole.

5813           **SECTION 226.** The Parole Board may in appropriate cases  
5814 require a parolee, as a condition of his parole, either at the  
5815 time of his release on parole or at any time and, from time to  
5816 time, while he remains under parole supervision, to reside in a  
5817 parole hostel, boarding home, hospital or other special residence  
5818 facility for such a period and under such supervision or treatment  
5819 as the board may deem appropriate.

5820           **SECTION 227.** (1) When a parolee has been returned to the  
5821 institution, the Parole Board shall hold a hearing within sixty  
5822 (60) days of his return to determine whether his parole should be  
5823 revoked. The parolee shall have reasonable notice of the charges  
5824 filed. The institutional parole staff shall render reasonable aid  
5825 to the parolee in preparation for the hearing and he shall be  
5826 permitted to advise with his own legal counsel. At the hearing  
5827 the parolee may admit, deny or explain the violation charged, and  
5828 he may present proof, including affidavits and other evidence, in  
5829 support of his contention. A verbatim record of the hearing shall  
5830 be made and preserved.



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

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

(b) The violation of condition involves:

(i) The commission of another crime; or

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

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

(3) Parole revocation shall be by majority vote of the board.

**SECTION 228.** (1) If the parole administrator has reasonable cause to believe that a parolee has violated a condition of parole, he shall notify the Parole Board, and shall cause the appropriate district parole supervisor to submit the parolee's record to the board. After consideration of the records submitted, and after such further investigation as it may deem appropriate, the board may order:

(a) That the parolee receive a reprimand and warning from the board;

(b) That parole supervision and reporting be intensified;



5855                   (c) That reductions for good behavior be forfeited or  
5856 withheld;

5857                   (d) That the parolee be remanded, without revocation of  
5858 parole, to a residence facility specified in Section 226 of this  
5859 act for such a period and under such supervision or treatment as  
5860 the board may deem appropriate;

5861                   (e) That the parolee be required to conform to one or  
5862 more additional conditions of parole which may be imposed in  
5863 accordance with Section 225 of this act;

5864                   (f) That the parolee be arrested and returned to  
5865 prison, there to await a hearing to determine whether his parole  
5866 should be revoked.

5867                   (2) If a parole officer or district parole supervisor has  
5868 reasonable cause to believe that a parolee has violated or is  
5869 about to violate a condition of his parole and that an emergency  
5870 situation exists, so that awaiting action by the Parole Board  
5871 under subsection (1) of this section would create an undue risk to  
5872 the public or to the parolee, such parole officer or district  
5873 parole supervisor may arrest such parolee without a warrant, and  
5874 may call on any peace officer to assist him in so doing. The  
5875 parolee, whether arrested hereunder with or without a warrant,  
5876 shall be detained in the local jail, lockup or other detention  
5877 facility, pending action by the Parole Board. Immediately after  
5878 such arrest and detention, the parole officer or district parole  
5879 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



5905 who has absconded from the jurisdiction, or from his place of  
5906 residence, shall be treated as a parole violator and whenever he  
5907 is apprehended shall be subject to recommitment or to supervision  
5908 for the balance of his parole term remaining on the date when he  
5909 absconded.

5910       **SECTION 230.** (1) If a warrant or detainer is placed against  
5911 a prisoner by a court, parole agency or other authority of this or  
5912 any other jurisdiction, the parole administrator shall inquire and  
5913 seek to determine, before such prisoner becomes eligible for  
5914 parole, whether the authority concerned intends to execute or  
5915 withdraw the writ when the prisoner is released.

5916       (2) If the authority notifies the parole administrator that  
5917 it intends to execute such writ when the prisoner is released, the  
5918 parole administrator shall advise the authority concerned of the  
5919 sentence under which the prisoner is held, the time of parole  
5920 eligibility, any decision of the Parole Board relating to the  
5921 prisoner, and of the nature of his adjustment during imprisonment,  
5922 and shall give reasonable notice to such authority of the  
5923 prisoner's release date.

5924       (3) The Parole Board may parole a prisoner who is eligible  
5925 for release to a warrant or detainer. If a prisoner is paroled to  
5926 such a warrant or detainer the Parole Board may provide, as a  
5927 condition of his release, that if the charges on which the warrant  
5928 or detainer is based are dismissed, or are satisfied after  
5929 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



5955 revocation of parole, the termination or restoration of parole  
5956 supervision or the discharge from parole or from reimprisonment  
5957 before the end of the parole term.

5958 **ARTICLE 29**

5959 **LOSS AND RESTORATION OF RIGHTS INCIDENT**  
5960 **TO CONVICTION OR IMPRISONMENT**

5961 **SECTION 232.** (1) No person shall suffer any legal  
5962 disqualification or disability because of his conviction of a  
5963 crime or his sentence on such conviction, unless the  
5964 disqualification or disability involves the deprivation of a right  
5965 or privilege which is:

5966 (a) Necessarily incident to execution of the sentence  
5967 of the court; or

5968 (b) Provided by the Constitution or this act; or

5969 (c) Provided by a statute other than this act, when the  
5970 conviction is of a crime defined by such statute; or

5971 (d) Provided by the judgment, order or regulation of a  
5972 court, agency or official exercising a jurisdiction conferred by  
5973 law, or by the statute defining such jurisdiction, when the  
5974 commission of the crime or the conviction or the sentence is  
5975 reasonably related to the competency of the individual to exercise  
5976 the right or privilege of which he is deprived.

5977 (2) Proof of a conviction as relevant evidence upon the  
5978 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



6004 testify at the place designated in the order. Such order shall be  
6005 issued whenever the court is satisfied that the testimony of the  
6006 prisoner is required in a judicial or administrative proceeding  
6007 and that the ends of justice cannot be satisfied by taking his  
6008 deposition at the institution where he is confined.

6009 (3) Subject to regulations of the Department of Corrections  
6010 as to institutions subject to its jurisdiction, the warden or  
6011 other administrative head of an institution in which a prisoner is  
6012 confined may, in his discretion, permit the prisoner to leave the  
6013 institution, either alone or in the custody of an officer, for the  
6014 purpose of testifying in a legal proceeding in which he is a party  
6015 or has been called as a witness. In granting such permission, the  
6016 warden or administrative head may require that the prisoner or  
6017 party calling him to testify defray the reasonable costs of  
6018 providing for his custody while absent from the institution.

6019 (4) Subject to regulations of the Department of Corrections  
6020 as to institutions subject to its jurisdiction, the warden or  
6021 other administrative head of an institution in which a prisoner is  
6022 confined shall permit the prisoner to give testimony by deposition  
6023 or in response to interrogatories, when such testimony is desired  
6024 in a legal proceeding, and shall make suitable arrangements to  
6025 facilitate the taking of such deposition in the institution.

6026 **SECTION 236.** (1) A person confined under a sentence of  
6027 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



6053 parole, has fully complied with the conditions of parole and has  
6054 been discharged; or

6055 (d) When the court has theretofore sentenced the  
6056 defendant, the defendant has fully satisfied the sentence and has  
6057 since led a law-abiding life for at least two (2) years.

6058 (2) In the cases specified in this subsection, the court  
6059 which sentenced a defendant may enter an order vacating the  
6060 judgment of conviction:

6061 (a) When an offender has been discharged from probation  
6062 or parole before the expiration of the maximum term thereof; or

6063 (b) When a defendant has fully satisfied the sentence  
6064 and has since led a law-abiding life for at least five (5) years.

6065 (3) An order entered under subsection (1) or (2) of this  
6066 section:

6067 (a) Has only prospective operation and does not require  
6068 the restoration of the defendant to any office, employment or  
6069 position forfeited or lost in accordance with this article; and

6070 (b) Does not preclude proof of the conviction as  
6071 evidence of the commission of the crime, whenever the fact of its  
6072 commission is relevant to the determination of an issue involving  
6073 the rights or liabilities of someone other than the defendant; and

6074 (c) Does not preclude consideration of the conviction  
6075 for purposes of sentence if the defendant subsequently is  
6076 convicted of another crime; and



6077 (d) Does not preclude proof of the conviction as  
6078 evidence of the commission of the crime, whenever the fact of its  
6079 commission is relevant to the exercise of the discretion of a  
6080 court, agency or official authorized to pass upon the competency  
6081 of the defendant to perform a function or to exercise a right or  
6082 privilege which such court, agency or official is empowered to  
6083 deny, except that in such case the court, agency or official shall  
6084 also give due weight to the issuance of the order; and

6085 (e) Does not preclude proof of the conviction as  
6086 evidence of the commission of the crime, whenever the fact of its  
6087 commission is relevant for the purpose of impeaching the defendant  
6088 as a witness, except that the issuance of the order may be adduced  
6089 for the purpose of his rehabilitation; and

6090 (f) Does not justify a defendant in stating that he has  
6091 not been convicted of a crime, unless he also calls attention to  
6092 the order.

6093 **ARTICLE 30**

6094 **DEPARTMENT OF CORRECTIONS**

6095 **SECTION 238.** There shall be in the state government a  
6096 Department of Corrections, which shall be charged with the  
6097 following responsibilities:

6098 (a) To maintain, administer, and to establish state  
6099 correctional institutions, including prisons, reformatories,  
6100 reception centers, parole and probation hostels, state  
6101 misdemeanor institutions and such other facilities as may be



6102 required for the custody, control, correctional treatment and  
6103 rehabilitation of committed offenders, and for the safekeeping of  
6104 such other persons as may be remanded thereto in accordance with  
6105 law;

6106 (b) To administer the release of prisoners under parole  
6107 supervision and to administer parole services in the institutions  
6108 and in the community;

6109 (c) To establish personnel standards and supervision  
6110 policies for all probation services in the state, and to  
6111 administer probation field services in any county or other  
6112 governmental subdivision of this state which has no probation  
6113 service of its own;

6114 (d) To develop policies and programs for the  
6115 correctional treatment and rehabilitation of offenders committed  
6116 to institutions in the department;

6117 (e) To establish standards for the management,  
6118 operation, personnel and program of, and to exercise powers of  
6119 supervision, visitation and inspection over, all institutions in  
6120 the state for the detention of persons charged with or convicted  
6121 of an offense, or for the safekeeping of such other persons as may  
6122 be remanded thereto in accordance with law, and to close any such  
6123 institution which is inadequate.

6124 **SECTION 239.** (1) The Department of Corrections shall be  
6125 under the direction of the Commissioner of the Department of  
6126 Corrections, who shall be appointed by the Governor for a term



6127 which shall be concurrent with the term of the appointing  
6128 Governor. His salary shall be fixed by the Legislature within the  
6129 appropriation therefor.

6130 (2) The Commissioner of Corrections shall:

6131 (a) Supervise and be responsible for the administration  
6132 of the department;

6133 (b) Establish and administer, with the advice of the  
6134 Commission of Correction and Community Services, programs and  
6135 policies for the operation of the institutions in the department,  
6136 and for the correction and rehabilitation of prisoners;

6137 (c) Appoint and remove deputy directors as provided by  
6138 law and delegate appropriate powers and duties to them;

6139 (d) Appoint and remove subordinate officers of the  
6140 department, other than the board and Division of Parole, in  
6141 accordance with law, and delegate appropriate powers and duties to  
6142 them;

6143 (e) Make rules and regulations for the government,  
6144 correctional treatment and rehabilitation of prisoners, the  
6145 administration of institutions in the department, and the  
6146 regulation of officers and employees under his jurisdiction;

6147 (f) Order the assignment and transfer of prisoners  
6148 committed to the custody of the Department of Corrections to  
6149 institutions of the department;

6150 (g) Collect, develop and maintain statistical  
6151 information concerning offenders, sentencing practices and



6152 correctional treatment as may be useful in practical penological  
6153 research or in the development of treatment programs;

6154 (h) Exercise, in accordance with law, supervisory power  
6155 over all institutions in the state for the detention of persons  
6156 charged with or convicted of an offense, or for the safekeeping of  
6157 such other persons as may be remanded thereto in accordance with  
6158 law;

6159 (i) Transmit to the Governor annually, on or before the  
6160 first day of January, a detailed report of the operations of the  
6161 department for the preceding calendar year, which report shall be  
6162 transmitted by the Governor to the Legislature;

6163 (j) Exercise all powers and perform all duties  
6164 necessary and proper in carrying out his responsibilities.

6165 **SECTION 240.** (1) There shall be in the Department of  
6166 Corrections the following divisions and independent boards:

6167 (a) Division of Treatment Services;

6168 (b) Division of Custodial Services;

6169 (c) Division of Young Adult Correction;

6170 (d) Division of Fiscal Control;

6171 (e) Division of Prison Industries;

6172 (f) Division of Research and Training;

6173 (g) Division of Parole;

6174 (h) Division of Probation;

6175 (i) Commission of Correction and Community Services;

6176 (j) Parole Board.





6177           The Commissioner of the Department of Corrections may, after  
6178 consultation with and on the advice of the Commission of  
6179 Correction and Community Services, establish additional divisions,  
6180 consolidate such additional divisions with other divisions, or  
6181 abolish them, and he may establish, consolidate or abolish bureaus  
6182 or other administrative subdivisions in any division.

6183           (2) There shall be in each institution in the Department of  
6184 Corrections a warden or other administrative head and two (2)  
6185 associate wardens or administrative heads designated,  
6186 respectively, as associate warden on treatment and associate  
6187 warden on custody. The warden in each institution shall be  
6188 responsible to the Commissioner of the Department of Corrections  
6189 for the custody, control and correctional treatment of prisoners  
6190 and for the general administration of the institution. Associate  
6191 wardens in each institution shall advise and be responsible to the  
6192 warden, and shall have such powers and duties as the warden may  
6193 delegate to them in accordance with law or pursuant to the  
6194 directions of the Commissioner of Corrections.

6195           **SECTION 241.** (1) The Division of Treatment Services shall  
6196 be charged with the supervision of programs of education and  
6197 training, including academic, vocational and industrial training,  
6198 and correctional treatment and rehabilitation, and parole  
6199 preparation in the institutions of the department, excepting only  
6200 institutions for young adult offenders.



6201           (2) The Division of Treatment Services shall be headed by  
6202 the Deputy Director of Treatment Services, who shall act as the  
6203 staff advisor of the Commissioner of the Department of Corrections  
6204 in regard to correctional treatment, and who shall exercise such  
6205 power and perform such duties as the commissioner may delegate to  
6206 him. The Deputy Director of Treatment Services shall be appointed  
6207 by, and serve during the pleasure of, the commissioner. He shall  
6208 be a person with appropriate experience in the field of education,  
6209 correctional treatment or rehabilitation and appropriate training  
6210 in relevant disciplines. His salary shall be fixed by the  
6211 commissioner within the appropriation therefor.

6212           **SECTION 242.** (1) The Division of Custodial Services shall  
6213 be charged with the custody, control, safekeeping, protection and  
6214 discipline of prisoners in the institutions of the department,  
6215 excepting only institutions for young adult offenders.

6216           (2) The Division of Custodial Services shall be headed by  
6217 the Deputy Director for Custodial Services, who shall act as the  
6218 staff advisor of the Commissioner of the Department of Corrections  
6219 in regard to matters of custody and discipline, and who shall  
6220 exercise such powers and perform such duties as the commissioner  
6221 may delegate to him. The Deputy Director for Custodial Services  
6222 shall be appointed by, and serve during the pleasure of, the  
6223 commissioner. He shall be a person with appropriate experience in  
6224 a position of responsibility in the management of institutions or



6225 in law enforcement work. His salary shall be fixed by the  
6226 commissioner within the appropriation therefor.

6227 **SECTION 243.** (1) The Division of Young Adult Correction  
6228 shall be charged with the supervision of institutions and  
6229 facilities for the custody, control, treatment and rehabilitation  
6230 of young adult offenders, and in cooperation with the Commission  
6231 of Correction and Community Services, with the planning and  
6232 establishment of diversified facilities and programs for the  
6233 treatment and rehabilitation of young adult offenders.

6234 (2) The Division of Young Adult Correction shall be headed  
6235 by the Deputy Director for Young Adult Correction, who shall act  
6236 as the staff advisor of the Commissioner of the Department of  
6237 Corrections in regard to matters of custody, control and treatment  
6238 of young adult offenders, and who shall exercise such powers and  
6239 perform such duties as the commissioner may delegate to him. The  
6240 Deputy Director for Young Adult Correction shall be appointed by,  
6241 and serve during the pleasure of, the commissioner. He shall be a  
6242 person with appropriate experience in the fields of youth  
6243 guidance, correctional treatment and rehabilitation, or  
6244 appropriate training in relevant disciplines at a recognized  
6245 university. His salary shall be fixed by the commissioner with  
6246 the appropriation therefor.

6247 **SECTION 244.** (1) The Division of Prison Industries shall be  
6248 charged with the general supervision of industries in the  
6249 institutions of the department.



6250           (2) The Division of Prison Industries shall be headed by the  
6251 Deputy Director for Prison Industries, who shall be the staff  
6252 advisor of the Commissioner of the Department of Corrections in  
6253 regard to the industries in the institutions of the department,  
6254 and who shall exercise such powers and perform such duties as the  
6255 commissioner may delegate to him. The Deputy Director for Prison  
6256 Industries shall be appointed by, and serve during the pleasure  
6257 of, the commissioner. He shall be a person with appropriate  
6258 experience in the management of institutional industries, or in  
6259 industrial management. His salary shall be fixed by the  
6260 commissioner within the appropriation therefor.

6261           **SECTION 245.** (1) The Division of Fiscal Control shall be  
6262 charged with the establishment and maintenance of an accounting  
6263 and auditing system in accordance with the state finance law for  
6264 the Department of Corrections, its institutions, and all of its  
6265 divisions, and boards other than the Division of Parole and the  
6266 Parole Board. The Division of Fiscal Control shall also be  
6267 responsible for the preparation of the department's proposed  
6268 annual budget, except for the annual budget of the Division of  
6269 Parole and the Parole Board, which shall be prepared in accordance  
6270 with Section 256 of this act.

6271           (2) The Division of Fiscal Control shall be headed by the  
6272 Deputy Director for Fiscal Control, who shall be the staff advisor  
6273 of the Commissioner of the Department of Corrections in regard to  
6274 fiscal matters, and who shall exercise such powers and perform



6275 such duties as the commissioner may delegate to him. The Deputy  
6276 Director for Fiscal Control shall be appointed by, and serve  
6277 during the pleasure of, the commissioner. He shall be a person  
6278 with appropriate experience in a position of responsibility in  
6279 accounting or managerial work, or with appropriate training in  
6280 relevant disciplines at a recognized university or school of  
6281 business or administration. His salary shall be fixed by the  
6282 commissioner within the appropriation therefor.

6283 **SECTION 246.** (1) The Division of Research and Training  
6284 shall be charged:

6285 (a) With the collection, development and maintenance of  
6286 statistical and other information concerning the dispositions by  
6287 criminal courts of the state, length of sentences imposed and  
6288 length of sentences actually served, release on parole, success or  
6289 failure on parole, discharge from parole supervision, success or  
6290 failure on probation, recidivism, and concerning such other  
6291 aspects of sentencing practice and correctional treatment as may  
6292 be useful in practical penological research or in the development  
6293 of treatment programs; and

6294 (b) With the conduct of training programs designed to  
6295 equip personnel for duty in the correctional institutions and  
6296 services of the state and to raise and maintain the educational  
6297 standards and the level of performance of correctional personnel.

6298 (2) The Division of Research and Training shall be headed by  
6299 the Deputy Director for Research and Training, who shall be the



6300 staff advisor of the Commissioner of the Department of Corrections  
6301 in regard to all matters of penological research in the department  
6302 and who shall exercise such powers and perform such duties as the  
6303 commissioner may delegate to him. The Deputy Director for  
6304 Research and Training shall be appointed by, and serve during the  
6305 pleasure of, the commissioner. He shall be a person with  
6306 appropriate experience in statistical research or research in the  
6307 social sciences, with appropriate training in relevant  
6308 disciplines. His salary shall be fixed by the commissioner within  
6309 the appropriation therefor.

6310       **SECTION 247.** (1) The Commission of Correction and Community  
6311 Services shall consist of the Commissioner of the Department of  
6312 Corrections, the Chairman of the Parole Board, the parole  
6313 administrator, the probation administrator, the Deputy Director  
6314 for Treatment Services, the Deputy Director for Young Adult  
6315 Correction, two (2) judges sitting in courts of general criminal  
6316 jurisdiction, one (1) of which shall be a youth court judge,  
6317 designated by the Governor, and four (4) public members, appointed  
6318 by the Governor, one (1) of whom shall be a psychiatrist and one  
6319 (1) a professional educator. The judicial and public members  
6320 shall be appointed for a term of four (4) years; all other members  
6321 shall serve during their terms of office. The commissioner shall  
6322 act as chairman of the commission. All members of the commission  
6323 shall serve without compensation, but each member shall receive  
6324 per diem and shall be reimbursed for his necessary travel and



6325 other expenses actually incurred in the discharge of his duties on  
6326 the commission.

6327 (2) The Commission of Correction and Community Services  
6328 shall meet at least every three (3) months, and whenever called  
6329 into session by the chairman, at the request of the Governor, of  
6330 the Deputy Director for Young Adult Correction under subsection  
6331 (4) of this section, of any two (2) or more members of the  
6332 commission, or on his own motion.

6333 (3) The Commission of Correction and Community Services  
6334 shall advise the Governor and the Director of Corrections  
6335 concerning correctional policy and programs, including  
6336 particularly the following:

6337 (a) The need for, and the development of new or  
6338 specialized institutions, facilities or programs;

6339 (b) The need for, and the effectuation of collaboration  
6340 and liaison within the department, and between the department and  
6341 community agencies and resources, in order to promote the  
6342 readjustment and rehabilitation of offenders in institutions or  
6343 under parole or probation supervision in the community;

6344 (c) The need for, and the development of useful  
6345 researches in penology, correctional treatment, criminal law or in  
6346 the disciplines relevant thereto.

6347 (4) Whenever requested by the Deputy Director for Young  
6348 Adult Correction, the Commission of Correction and Community  
6349 Services shall meet to consider, and to advise the Department of



6350 Corrections concerning the need for, and the development of,  
6351 services and facilities for young adult offenders, and concerning  
6352 researches necessary or useful in evaluating the effectiveness of  
6353 correctional treatment of such offenders.

6354 (5) The commission or one or more of its members may visit  
6355 and inspect any institution, state or local, for the detention of  
6356 persons charged with or convicted of an offense, and for the  
6357 safekeeping of such other persons as may be remanded thereto in  
6358 accordance with law, and may inform and advise the Commissioner of  
6359 the Department of Corrections in regard to any such institution's  
6360 physical or other condition, its discipline, management, program  
6361 and its general adequacy or inadequacy. The commission or one or  
6362 more of its members shall have full access to the grounds and  
6363 buildings and to the books and records belonging or relating to  
6364 any such institution, as well as the right to subpoena witnesses,  
6365 take proof or hear testimony under oath relating to any such  
6366 institution.

6367 (6) The commission may employ a staff director and such  
6368 other personnel as may be necessary to help perform its functions,  
6369 and may prescribe their duties.

6370 **SECTION 248.** (1) The Commissioner of the Department of  
6371 Corrections, or any person to whom he has delegated such power in  
6372 writing, shall visit and inspect any institution in the state for  
6373 the detention of persons charged with or convicted of an offense,  
6374 or for the safekeeping of such other persons as may be remanded





6375 thereto in accordance with law. He shall have full access to the  
6376 grounds, buildings, books and records belonging or relating to any  
6377 such institution, and may require the warden or other head of such  
6378 institution to provide information relating thereto in person or  
6379 in written response to a questionnaire. He shall have the power,  
6380 in connection with the inspection of any such institution, to  
6381 issue subpoenas, compel the attendance of witnesses and the  
6382 production of books, papers and other documents relating to such  
6383 institution or its officers, and to administer oaths and to take  
6384 the testimony of persons under oath.

6385       (2) If the commissioner finds, after inspection of an  
6386 institution, that the laws or regulations relating to the  
6387 construction, management and affairs of such institution and the  
6388 care, custody, treatment and discipline of its prisoners are being  
6389 violated, or that the prisoners are cruelly, negligently or  
6390 improperly treated, or that there is improper or inadequate  
6391 provision for their sustenance, clothing, care or other condition  
6392 necessary to their discipline and welfare, the commissioner may in  
6393 writing order the warden or other head of such institution to  
6394 remedy the situation within such period of time as the  
6395 commissioner may deem appropriate under the circumstances. If the  
6396 commissioner's order is not complied within the time provided, the  
6397 commissioner may order the institution to be closed until such  
6398 time as he finds that his order has been or is being complied  
6399 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



6425 appointed for the remainder of the unexpired term of the member  
6426 whom he succeeds. Members may be reappointed for additional  
6427 six-year terms. They may be removed by the Governor solely for  
6428 corruption or disability, and after an opportunity to be heard.  
6429 The Governor shall, from time to time, designate one (1) of the  
6430 members to serve as chairman of the board during such member's  
6431 term of office.

6432 (2) Each member shall devote full time to the duties of his  
6433 office, and shall not engage in any other business or profession,  
6434 or hold any other public office. No member shall, at the time of  
6435 his appointment or during his tenure, serve as the representative  
6436 of any political party, or of any executive committee or governing  
6437 body thereof, or as an executive officer or employee of any  
6438 political party, organization, association or committee. Each  
6439 member of the board shall receive an annual salary to be fixed by  
6440 the Legislature, within the appropriation therefor, and shall be  
6441 reimbursed for his necessary travel and other expenses actually  
6442 incurred in the discharge of his duties.

6443 **SECTION 251.** (1) The Parole Board shall, in accordance with  
6444 Article 28:

6445 (a) Determine the time of release on parole of  
6446 prisoners eligible for such release;

6447 (b) Fix the conditions of parole, revoke parole, issue  
6448 or authorize the issuance of warrants for the arrest of parole



6449 violators, and impose other sanctions short of revocation for  
6450 violation of conditions of parole;

6451 (c) Determine the time of discharge from parole.

6452 (2) The Parole Board shall, when requested by the Governor,  
6453 advise him concerning applications for pardon, reprieve, or  
6454 commutation, and shall when so requested make such investigation  
6455 and collect such records concerning the facts and circumstances of  
6456 a prisoner's crime, his past criminal record, social history, and  
6457 physical, mental or psychiatric condition as may bear on such  
6458 application.

6459 (3) The Parole Board shall cooperate with the Commission of  
6460 Correction and Community Services in the development and promotion  
6461 of effective parole policies.

6462 (4) The Parole Board shall annually, on or before the first  
6463 day of January, transmit to the Commissioner of the Department of  
6464 Corrections a detailed report of its work for the preceding  
6465 calendar year. The annual report shall be transmitted by the  
6466 commissioner to the Governor for submission to the Legislature.

6467 (5) The board or any member thereof shall have the power, in  
6468 the performance of official duties, to issue subpoenas, compel the  
6469 attendance of witnesses, and the production of books, papers and  
6470 other documents pertinent to the subject of its inquiry, and to  
6471 administer oaths and to take the testimony of persons under oath.

6472 **SECTION 252.** (1) The Board of Parole may, from time to  
6473 time, designate one or more of its members to serve as a young



6474 adult division of the board. All decisions of the young adult  
6475 division shall be by majority vote, but if the young adult  
6476 division consists of less than three (3) members, its decisions  
6477 shall not be effective until voted by a majority of a quorum of  
6478 the whole Parole Board. When the young adult division has been  
6479 established, it shall have all of the powers and duties of the  
6480 board in respect to young adult offenders committed to the custody  
6481 of the Division of Young Adult Correction of the Department of  
6482 Corrections.

6483 (2) The Parole Board, or if the young adult division has  
6484 been established, the division shall:

6485 (a) Hold a parole hearing of every young adult offender  
6486 sentenced in accordance with Section 59 of this act to a term of  
6487 imprisonment without a minimum and with a maximum of four (4)  
6488 years, within ninety (90) days of such offender's date of  
6489 commitment, in order to fix his release date or to defer the case  
6490 for later reconsideration;

6491 (b) Interview every young adult offender who has been  
6492 remanded to the Department of Corrections prior to sentence for  
6493 observation and study in a reception center, to study his record  
6494 and advise the court of its findings and recommendations before  
6495 sentence;

6496 (c) Consult with the Deputy Director of Young Adult  
6497 Correction concerning correctional policy and programs in  
6498 institutions and treatment facilities serving young adult



6499 offenders, and concerning such special programs of intensive  
6500 correctional and rehabilitative treatment as may be required for  
6501 such offenders.

6502 **ARTICLE 32**

6503 **ADMINISTRATION OF INSTITUTIONS**

6504 **SECTION 253.** (1) The Commissioner of the Department of  
6505 Corrections by and with the advice of the Commission of Correction  
6506 and Community Services shall appoint and assign the wardens or  
6507 other administrative heads for each of the correctional  
6508 institutions of the department. The commissioner shall appoint  
6509 professional, technical, skilled, and other subordinate officers  
6510 and employees as may be required for the effective administration  
6511 of the correctional institutions of the department and in the case  
6512 of institutional employees he shall consider the recommendations  
6513 of the respective wardens or other administrative heads of  
6514 institutions.

6515 (2) The governing authorities of the county, municipality or  
6516 other political subdivision of the state shall appoint and assign  
6517 the wardens or other administrative heads for each of the  
6518 correctional institutions of such political subdivision, subject  
6519 to approval by the commissioner. In the case of correctional  
6520 institutions serving more than one (1) such political subdivision  
6521 of the state, the appointment shall be made in the same manner by  
6522 the governing authorities of such subdivisions acting jointly.  
6523 The warden or other administrative head of such correctional



institution shall appoint professional, technical, skilled, and other subordinate officers and employees as may be required for the effective administration of the correctional institution in accordance with the regulations of the Department of Corrections.

(3) Personnel in the custodial and treatment program of institutions shall have such special training or experience in correctional matters as the commissioner may require.

(4) No male person shall be appointed or assigned to positions involving the immediate supervision and control of female prisoners.

(5) Civilian instructors certified by the State Department of Education shall, as far as practicable, be employed for the academic and vocational training of prisoners.

(6) Each new officer or employee in the custodial or treatment program of a correctional institution shall participate in an institutional training program for new employees. Every officer and employee in the Department of Corrections shall participate in such in-service training programs as the commissioner may require from time to time.

**SECTION 254.** The warden or other administrative head of each correctional institution in the Department of Corrections and of each correctional institution of a county, city or other appropriate political subdivision of the state shall be its chief executive officer, and, subject to the supervisory authority conferred by law on the Commissioner of the Department of



6549 Corrections, shall be responsible for its efficient and humane  
6550 maintenance and operation, and for its security. The duties and  
6551 powers of his office shall include the following:

6552           (a) To receive, retain in imprisonment, and to release,  
6553 in accordance with law, prisoners duly committed to the department  
6554 and transferred to the institution, or duly committed to the  
6555 institution;

6556           (b) To enforce the provisions of law and the  
6557 regulations of the department for the administration of the  
6558 institution, the government of its officers, and the treatment,  
6559 training, employment, care, discipline and custody of the  
6560 prisoners;

6561           (c) To take proper measures to protect the safety of  
6562 the prisoners and personnel of the institution;

6563           (d) To take proper measures to prevent the escape of  
6564 prisoners and to effect their recapture;

6565           (e) To maintain and improve the buildings, grounds and  
6566 appurtenances of the institution;

6567           (f) To make recommendations to the director concerning  
6568 the appointment of professional, technical, skilled and other  
6569 subordinate officers and employees, in accordance with Section  
6570 253(1) in the case of institutions in the Department of  
6571 Corrections, and to appoint such subordinate officers and  
6572 employees, in accordance with Section 253(2) of this act in the





6573 case of institutions of counties, cities or other political  
6574 subdivision of the state;

6575 (g) To establish and administer rules, including rules  
6576 for the operation of the institution and for the proper  
6577 classification and separation of prisoners therein, consistent  
6578 with the provisions of this act, the general policies and  
6579 regulations of the department, and subject to the prior approval  
6580 of such rules by the commissioner;

6581 (h) To maintain and preserve the central prisoner file,  
6582 in accordance with Section 194 or Section 205 of this act, and to  
6583 maintain and preserve records on the management and operation of  
6584 the institution, including records concerning its industries and  
6585 the wage funds of prisoners, and to report thereon to the  
6586 Commissioner of the Department of Corrections at such times as the  
6587 commissioner may require.

6588 **SECTION 255.** No female prisoner committed to the department  
6589 shall be kept in any correctional institution used for the  
6590 imprisonment of men.

6591 **ARTICLE 33**

6592 **DIVISION OF PAROLE**

6593 **SECTION 256.** (1) The Division of Parole shall be charged  
6594 with the administration of parole services in the community. The  
6595 division shall consist of the field parole service and of such  
6596 other employees as may be necessary in carrying out its functions.



6597           (2) The Division of Parole shall be under the direction of  
6598 the Parole Administrator, who shall be appointed by, and serve  
6599 during the pleasure of the Commissioner of the Department of  
6600 Corrections. The Parole Administrator shall be a person with  
6601 appropriate experience in a field of correctional administration,  
6602 or appropriate training in relevant disciplines at a recognized  
6603 university. His salary shall be fixed by the commissioner within  
6604 the appropriation therefor.

6605           (3) The Division of Parole shall establish and maintain its  
6606 own accounting and auditing system in accordance with the state  
6607 finance laws and shall prepare and submit its own proposed annual  
6608 budget, including therein, the proposed annual budget of the  
6609 Parole Board, separate from the proposed annual budget of the  
6610 Department of Corrections.

6611           **SECTION 257.** The Parole Administrator shall:

6612                   (a) Establish and administer standards, policies and  
6613 procedures for the field parole service;

6614                   (b) Appoint district parole supervisors, field parole  
6615 officers and such other employees as may be required to carry out  
6616 adequate parole supervision of all parolees from correctional  
6617 institutions of the state and prescribe their powers and duties;

6618                   (c) Cooperate closely with the Parole Board, the  
6619 criminal courts, the Deputy Director for Treatment Services, the  
6620 institutional parole staffs and other institutional personnel;



6621           (d) Make recommendations to the Parole Board in cases  
6622 of violation of the conditions of parole, issue warrants for the  
6623 arrest of parole violators when so instructed by the board, notify  
6624 the wardens or other administrative heads of institutions of  
6625 determinations made by the board, and upon instruction of the  
6626 board issue certificates of parole and of parole revocation to the  
6627 institutions, and certificates of discharge from parole to  
6628 parolees;

6629           (e) Carry out the provisions of Section 256 of this act  
6630 in cooperation with the Parole Board.

6631           **SECTION 258.** (1) The field parole service, consisting of  
6632 field parole officers working under the immediate direction of  
6633 district parole supervisors, and under the ultimate direction of  
6634 the Parole Administrator, shall be responsible for the  
6635 investigation, supervision and assistance of parolees. The field  
6636 parole service shall be sufficient in size to assure that no  
6637 parole officer carries a case load larger than is compatible with  
6638 adequate parole investigation or supervision.

6639           (2) Field parole officers shall:

6640           (a) Make investigations, prior to a prisoner's release  
6641 on parole, in cooperation with institutional parole officers and  
6642 the Parole Board, to determine the adequacy of parole plans  
6643 submitted by prisoners who are candidates for parole, and made  
6644 reasonable advance preparations for their release on parole;



(b) Help parolees in conforming to the conditions of parole, and in making a successful adjustment in the community;

(c) Supervise parolees, and in supervising them, visit each parolee's home, from time to time, and require that each 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 of this state which has no probation service of its own. The division shall consist of the field probation service and of such other employees as, may be necessary, in carrying out its functions.

(2) The Division of Probation shall be under the direction of the probation administrator, who shall be appointed by, and serve during the pleasure of, the Commissioner of the Department of Corrections. The probation administrator shall be a person with appropriate experience in a field of correctional administration, or appropriate training in relevant disciplines at a recognized university. His salary shall be fixed by the commissioner within the appropriation therefor.

**SECTION 260.**

The probation administrator shall:

(a) Supervise the administration of probation services in the state and, with the advice of the Commission of Correction and Community Services, establish policies and standards and make rules and regulations regarding probation investigation, supervision, casework and caseloads, record keeping and the qualification of probation officers;



6694           (b) Keep informed of the operations of all probation  
6695 departments throughout the state and inquire into their conduct  
6696 and efficiency, and, in this connection, he shall have access to  
6697 all probation records and probation offices in the state, and he  
6698 may issue subpoenas to compel the attendance of witnesses or the  
6699 production of books and papers;

6700           (c) Recommend, in an appropriate case, the removal of  
6701 any probation officer from any probation department in the state;

6702           (d) Appoint district probation supervisors, field  
6703 probation officers and such other employees as may be required to  
6704 carry out adequate probation supervision of persons sentenced to  
6705 probation in any county or other governmental subdivision of this  
6706 state which has no probation service of its own, and prescribe  
6707 their powers and duties;

6708           (e) Cooperate closely with the Commission of Correction  
6709 and Community Services and with the criminal courts.

6710           **SECTION 261.** The probation administrator, with the advice of  
6711 the Commission of Correction and Community Services, may direct  
6712 the extension of probation field services to any county or other  
6713 governmental subdivision if he finds that such county or other  
6714 governmental subdivision is not supplying adequate probation  
6715 services to its criminal courts. The administrator shall  
6716 determine, after consultation with the criminal courts in the  
6717 county or other governmental subdivision concerned, the extent and  
6718 duration of such services to be furnished. The administrator may



6719 make agreements with the appropriate authorities concerning  
6720 partial or full reimbursement to the Department of Corrections for  
6721 the costs of such services.

6722       **SECTION 262.** (1) The field probation service, consisting of  
6723 probation officers working under the immediate direction of  
6724 district probation supervisors, and under the ultimate direction  
6725 of the probation administrator, shall be responsible for  
6726 presentence and other probation investigations and for the  
6727 supervision of persons sentenced to probation by a court in any  
6728 county or other governmental subdivision which receives field  
6729 probation services in accordance with Section 261 of this act.  
6730 The field probation service shall be sufficient in size to assure  
6731 that no probation officer carries a caseload larger than is  
6732 compatible with adequate probation investigation or supervision.

6733       (2) Probation officers shall:

6734               (a) Make presentence and other probation  
6735 investigations, as may be required by law or directed by the court  
6736 in which they are serving;

6737               (b) Supervise probationers, and in supervising them,  
6738 visit each probationer's home, from time to time, and require that  
6739 he report to the probation officer as frequently as may be  
6740 required by the order of the court in accordance with Section 184  
6741 of this act, or as may be required by the probation officer  
6742 himself in the light of the probationer's personality and



6743 adjustment, but no less frequently than twice a month during the  
6744 first year of probation, except in unusual cases;

6745 (c) Admonish probationers who appear in danger of  
6746 violating the conditions of the order of probation, in accordance  
6747 with Section 184 of this act, and report, in accordance with  
6748 procedures established by the appropriate district probation  
6749 supervisor, serious or persistent violations to the sentencing  
6750 court;

6751 (d) Advise the sentencing court, in accordance with  
6752 procedures established by the appropriate district probation  
6753 supervisor, when the situation of a probationer requires a  
6754 modification of the conditions of the order of probation, or when  
6755 a probationer's adjustment is such as to warrant termination of  
6756 probation, in accordance with Section 185 of this act.

6757 (3) District probation supervisors shall:

6758 (a) Establish procedures for the direction and guidance  
6759 of probation officers under their jurisdiction, and advise such  
6760 officers in regard to the most effective performance of their  
6761 duties;

6762 (b) Supervise probation officers under their  
6763 jurisdiction and evaluate the effectiveness of their casework;

6764 (c) Make regular reports to the probation administrator  
6765 concerning the activities of probation officers under their  
6766 jurisdiction and concerning the adjustment of probationers under  
6767 their supervision.





6768           **SECTION 263.** Sections 97-1-1, 97-1-7 and 97-1-9, Mississippi  
6769 Code of 1972, which provide for the criminal offenses of  
6770 conspiracy and attempts, are repealed.

6771           **SECTION 264.** Sections 97-3-3 and 97-3-5, Mississippi Code of  
6772 1972, which provide for the criminal offense of abortion, are  
6773 repealed.

6774           **SECTION 265.** Section 97-3-7, Mississippi Code of 1972, which  
6775 provides for criminal assaults, is repealed.

6776           **SECTION 266.** Sections 97-3-19, 97-3-21, 97-3-23, 97-3-25,  
6777 97-3-27, 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-37, 97-3-39,  
6778 97-3-41, 97-3-43, 97-3-45, 97-3-47, 97-3-49, 99-19-101 and  
6779 99-19-103, Mississippi Code of 1972, which provide for various  
6780 homicide offenses, capital cases sentencing and aiding suicide,  
6781 are repealed.

6782           **SECTION 267.** Section 97-3-53, Mississippi Code of 1972,  
6783 which provides for the criminal offense of kidnapping, is  
6784 repealed.

6785           **SECTION 268.** Sections 97-3-85 and 97-3-87, Mississippi Code  
6786 of 1972, which provide for the offense of criminal threats, are  
6787 repealed.

6788           **SECTION 269.** Sections 97-3-65, 97-3-71, 97-3-95, 97-3-97,  
6789 97-3-99, 97-3-101 and 97-3-103, Mississippi Code of 1972, which  
6790 provide for the crimes of rape and sexual assault, are repealed.



6791           **SECTION 270.** Sections 97-17-1, 97-17-3, 97-17-5, 97-17-7,  
6792 97-17-9, 97-17-11 and 97-17-13, Mississippi Code of 1972, which  
6793 provide for the crime of arson, are repealed.

6794           **SECTION 271.** Sections 97-17-23, 97-17-25, 97-17-29,  
6795 97-17-31, 97-17-33, 97-17-35 and 97-17-37, Mississippi Code of  
6796 1972, which provide for the crime of burglary, are repealed.

6797           **SECTION 272.** Sections 97-3-73, 97-3-75, 97-3-77, 97-3-79,  
6798 97-3-81 and 97-3-83, Mississippi Code of 1972, which provide for  
6799 the crime of robbery, are repealed.

6800           **SECTION 273.** Section 97-3-82, Mississippi Code of 1972,  
6801 which provides for the crime of extortion, is repealed.

6802           **SECTION 274.** Sections 97-17-45, 97-17-47, 97-17-49,  
6803 97-17-51, 97-17-53, 97-17-55, 97-17-58, 97-17-59, 97-17-61,  
6804 97-17-63 and 97-17-64, Mississippi Code of 1972, which provide for  
6805 the crime of larceny, are repealed.

6806           **SECTION 275.** Section 97-17-67, Mississippi Code of 1972,  
6807 which provides for the crime of malicious mischief, is repealed.

6808           **SECTION 276.** Section 97-17-70, Mississippi Code of 1972,  
6809 which provides for the crime of receiving stolen property, is  
6810 repealed.

6811           **SECTION 277.** Sections 97-21-1, 97-21-3, 97-21-7, 97-21-9,  
6812 97-21-11, 97-21-13, 97-21-15, 97-21-17, 97-21-19, 97-21-21,  
6813 97-21-23, 97-21-25, 97-21-27, 97-21-29, 97-21-31, 97-21-33,  
6814 97-21-35, 97-21-37, 97-21-39, 97-21-41, 97-21-43, 97-21-45,  
6815 97-21-47, 97-21-49, 97-21-51, 97-21-53, 97-21-55, 97-21-57,



6816 97-21-59, 97-21-61 and 97-21-63, Mississippi Code of 1972, which  
6817 provide for the crime of forgery, are repealed.

6818 **SECTION 278.** Sections 97-19-7, 97-19-9, 97-19-11, 97-19-13,  
6819 97-19-15, 97-19-17, 97-19-19, 97-19-21, 97-19-23, 97-19-25,  
6820 97-19-27, 97-19-29 and 97-19-31, Mississippi Code of 1972, which  
6821 provide for the crime of fraudulent use of credit cards, are  
6822 repealed.

6823 **SECTION 279.** Sections 97-19-55 and 97-19-67, Mississippi  
6824 Code of 1972, which provide for the crime of fraud for issuing bad  
6825 checks, are repealed.

6826 **SECTION 280.** Sections 97-29-13 and 97-29-15, Mississippi  
6827 Code of 1972, which provide for the crime of bigamy, are repealed.

6828 **SECTION 281.** Sections 97-29-5, 97-29-27 and 97-29-29,  
6829 Mississippi Code of 1972, which provide for the crime of incest,  
6830 are repealed.

6831 **SECTION 282.** Section 97-29-31, Mississippi Code of 1972,  
6832 which provides for the crime of indecent exposure, is repealed.

6833 **SECTION 283.** Sections 97-9-5, 97-9-7, 97-9-9, 97-9-10,  
6834 97-11-11, 97-11-13, 97-11-53, 97-13-1 and 97-13-3, Mississippi  
6835 Code of 1972, which provide for the crime of bribery, are  
6836 repealed.

6837 **SECTION 284.** Sections 97-9-59, 97-9-61, 97-9-63 and 97-9-65,  
6838 Mississippi Code of 1972, which provide for the crime of perjury,  
6839 are repealed.



6840           **SECTION 285.** Sections 97-9-45, 97-9-47 and 97-9-49,  
6841 Mississippi Code of 1972, which provide for the crime of escape,  
6842 are repealed.

6843           **SECTION 286.** Section 97-29-47, Mississippi Code of 1972,  
6844 which provides for the crime of public drunkenness, is repealed.

6845           **SECTION 287.** Sections 97-41-1, 97-41-5, 97-41-7, 97-41-9 and  
6846 97-41-11, Mississippi Code of 1972, which provide for the crime of  
6847 cruelty to animals, are repealed.

6848           **SECTION 288.** Section 47-1-1, Mississippi Code of 1972, is  
6849 brought forward as follows:

6850           47-1-1. Every convict sentenced to imprisonment in the  
6851 county jail, or to such imprisonment and the payment of a fine, or  
6852 the payment of a fine, shall be committed to jail, and shall  
6853 remain in close confinement for the full time specified for  
6854 imprisonment in the sentence of the court, and in like confinement  
6855 until the fine, costs and jail fees be fully paid, unless  
6856 discharged in due course of law, or as hereinafter provided. But  
6857 no convict shall be held in continuous confinement under a  
6858 conviction for any one (1) offense for failure to pay fine and  
6859 costs in such case for a period of more than two (2) years.

6860           **SECTION 289.** Section 47-1-3, Mississippi Code of 1972, is  
6861 brought forward as follows:

6862           47-1-3. It is the imperative duty of the board of  
6863 supervisors in each county in this state to require each convict  
6864 sentenced to imprisonment in the county jail and the payment of a



6865 fine and costs, or to imprisonment and payment of costs, or to  
6866 payment of fine and costs, to work out the sentence on the county  
6867 convict farm or on the public roads or other public works of the  
6868 county, or in a contiguous county, as herein provided. But any  
6869 convict who is sentenced to the payment of a fine and costs and  
6870 who pays such fine and costs shall thereby be relieved from  
6871 working out such fine and costs, but the payment in full of such  
6872 fine and costs shall not relieve such convict from working out the  
6873 full time of his imprisonment as adjudged in his sentence. The  
6874 board of supervisors of any county, however, may by an order  
6875 spread upon its minutes, giving the reason therefor, and with the  
6876 approval of the circuit judge of the district, discharge any aged  
6877 or infirm convict upon his making an affidavit of his insolvency  
6878 and inability to pay the fine and costs, and filing same with the  
6879 clerk of the board of supervisors at any time after the expiration  
6880 of his imprisonment.

6881 **SECTION 290.** Section 47-1-5, Mississippi Code of 1972, is  
6882 brought forward as follows:

6883 47-1-5. In order to carry out the provisions of Section  
6884 47-1-3, the board of supervisors of each county in this state are  
6885 authorized and directed, whenever it may be necessary to buy or  
6886 lease a sufficient number of acres of land within reasonable and  
6887 convenient distance of the county jail to be used by the county as  
6888 a county convict farm. They are also authorized to make any  
6889 necessary improvements thereon, such as erecting necessary and



6890 convenient buildings, clearing, terracing and ditching and  
6891 leveeing, or otherwise repairing and improving such farm, so that  
6892 it may be suitable to be used as a farm upon which to work the  
6893 convicts committed to the county jail, and they shall employ a  
6894 competent and suitable person to be known as foreman of county  
6895 farm to superintend such convict farm and manage it and to work  
6896 the convicts sentenced to the county jail thereon. The board of  
6897 supervisors in each county shall also have full and complete  
6898 authority to buy, or rent necessary mules or horses, tractors,  
6899 farming tools and implements and all other necessary things  
6900 incidental to the successful operation of such convict farm in  
6901 such numbers and amounts as they may reasonably contemplate will  
6902 be necessary to successfully operate such farm, having in view,  
6903 first, the continuous employment of all the convicts able to work  
6904 thereon at remunerative labor, and second, the operation of said  
6905 farm in the most economical manner consistent with the continuous  
6906 working of such convicts.

6907       **SECTION 291.** Section 47-1-7, Mississippi Code of 1972, is  
6908 brought forward as follows:

6909       47-1-7. In any county where there are not a sufficient  
6910 number of convicts to make it economically feasible for such  
6911 county to own and operate a county convict farm as provided for by  
6912 law, the board of supervisors of any such county may agree with  
6913 the board of supervisors of any contiguous county to own and  
6914 operate in common with such contiguous county, a county convict



6915 farm upon which prisoners of both such counties may be detained  
6916 and required to work. In like manner the board of supervisors of  
6917 any county in which there are not a sufficient number of convicts  
6918 to make it economically feasible to own and operate a county  
6919 convict farm, may make similar arrangements with any city, town or  
6920 village within said county to own and operate said farm in  
6921 connection with said city, town or village. In any county where  
6922 there are not a sufficient number of convicts to make it  
6923 economically feasible for such county to own a farm or to own and  
6924 operate a farm with a contiguous county or with a city or town,  
6925 the board of supervisors of such county may contract with the  
6926 board of supervisors of any contiguous county or with any county  
6927 in the same circuit or chancery court district, to have its  
6928 prisoners worked by the contiguous county or counties in the same  
6929 circuit or chancery court district upon payment made to the board  
6930 of supervisors of such contiguous county or counties in the same  
6931 circuit or chancery court district for the purpose of detaining  
6932 and working such prisoners. The terms of such a contract are to  
6933 be agreed upon by and between the two contracting boards and the  
6934 same shall not be in violation of the law. Where the board of  
6935 supervisors of one county so contracts to work convicts of another  
6936 county, all the provisions of Sections 47-1-1 through 47-1-37,  
6937 Sections 47-1-41, 47-1-45, 47-1-47, and 47-1-61, Mississippi Code  
6938 of 1972, and Section 226 of the Constitution in regard to the  
6939 working of convicts shall apply to the convicts contracted for as



6940 herein provided; and the name of the convict or convicts may be  
6941 entered on the jail docket of the county contracting to detain and  
6942 work the convict or convicts, together with all other information  
6943 required by Section 47-1-21.

6944       **SECTION 292.** Section 47-1-9, Mississippi Code of 1972, is  
6945 brought forward as follows:

6946       47-1-9. In any county where it is clearly more advantageous  
6947 to the county to work the county convicts or some of them on the  
6948 public roads of the county, or on other works of the county  
6949 exclusively public in their character, the board of supervisors  
6950 shall have the authority so to order, and in such cases the board  
6951 shall establish all proper regulations for the working, guarding,  
6952 safekeeping, clothing, housing and subsistence of convicts while  
6953 so working, and shall provide all the necessary equipment for such  
6954 purpose. The board shall establish regulations for the discipline  
6955 of convicts on said works, and on county farms, when a convict is  
6956 persistently idle or refractory, and may enforce such regulations  
6957 by penalties.

6958       **SECTION 293.** Section 47-1-11, Mississippi Code of 1972, is  
6959 brought forward as follows:

6960       47-1-11. If any convict committed to the county jail is  
6961 physically unable to do any kind of manual labor, then, upon the  
6962 certificate of the county health officer or physician designated  
6963 by the board of supervisors of the county, to this effect, such  
6964 convict shall not be required, during the period of such physical





6965 disability, to perform manual labor on the convict farm. But all  
6966 convicts shall be required each day to do and perform such work as  
6967 they are physically able to do and perform and which will not  
6968 impair the health of such convict, or as is not inhumane to  
6969 require of him.

6970       **SECTION 294.** Section 47-1-13, Mississippi Code of 1972, is  
6971 brought forward as follows:

6972       47-1-13. Any person being held in the county jail in default  
6973 of bail to await trial, except those held for treason, murder,  
6974 arson, or rape, and except such as the sheriff may deem it  
6975 improper to let out, may on application to the sheriff of the  
6976 county, be allowed to work on the county farm or on the public  
6977 roads or other county public works as other convicts are worked  
6978 and at the same wage. The board of supervisors shall settle with  
6979 prisoners so working at their regular meetings monthly. But if it  
6980 appears that it is not to the best interest of the county to work  
6981 such prisoners, the board may decline at any time to employ them.

6982       **SECTION 295.** Section 47-1-15, Mississippi Code of 1972, is  
6983 brought forward as follows:

6984       47-1-15. Any convict working under the direction of the  
6985 board of supervisors who renders efficient services and complies  
6986 with all necessary rules and regulations may have deducted from  
6987 the term of his imprisonment one-fourth (1/4) thereof.

6988       **SECTION 296.** Section 47-1-17, Mississippi Code of 1972, is  
6989 brought forward as follows:



6990           47-1-17. No convict shall be credited with any wages during  
6991 the time of his or her escape; and if any convict escapes while  
6992 being worked on a public road, or works on county farm, he or she  
6993 may be pursued and retaken by any person, or officer authorized to  
6994 make arrests, or board, or any one entitled to the custody or  
6995 services of said convict; and when retaken such convict shall be  
6996 required to work out the balance of his term of hire, not counting  
6997 the period of such escape, even if the term of imprisonment and  
6998 the time for which such convict was first hired had expired before  
6999 the recapture. Such convict shall be liable to indictment for  
7000 such escape and liable to the same punishment as for an escape  
7001 from the custody of the county jail.

7002           **SECTION 297.** Section 47-1-19, Mississippi Code of 1972, is  
7003 brought forward as follows:

7004           47-1-19. (1) It is unlawful for any county-housed state  
7005 inmate or county prisoner or prisoners to be leased or hired to  
7006 any individual or corporation for any purpose whatsoever. Nor  
7007 shall they be worked under any contractor; but in working them on  
7008 county farms, or on the public roads or on any other work, which  
7009 work must be of an exclusively public character, they shall be  
7010 under exclusive official control and management.

7011           (2) (a) It is lawful for a state, county or municipality to  
7012 provide prisoners for public service work for nonprofit charitable  
7013 organizations as defined under Section 501(c)(3) of the Internal  
7014 Revenue Code if that nonprofit charitable organization provides



7015 food to charities. In addition, it is lawful for a state, county  
7016 or municipality to provide prisoners for public service work for  
7017 churches according to criteria approved by the Department of  
7018 Corrections.

7019 (b) The prisoners participating in the public service  
7020 work under paragraph (a) shall remain under the exclusive control  
7021 and management of the county or municipality.

7022 (c) A prisoner performing public service work under  
7023 this subsection shall be entitled to earned credits as provided  
7024 under this chapter.

7025 **SECTION 298.** Section 47-1-21, Mississippi Code of 1972, is  
7026 brought forward as follows:

7027 47-1-21. The sheriff of each county shall keep a well bound  
7028 alphabetical jail docket. In it he shall promptly enter under the  
7029 proper initial the name, age, color and sex of each convict, the  
7030 date of his or her commitment, each day worked on the county farm,  
7031 time required to be served and amount of fine and costs and the  
7032 jail fees charged against the prisoner and the date of discharge.

7033 The sheriff shall submit his docket to the board of  
7034 supervisors at each of their regular meetings, and the same shall  
7035 be examined carefully by the president of the board, and by any  
7036 other members who desire to examine the same, in the presence of  
7037 the board while in session.

7038 **SECTION 299.** Section 47-1-23, Mississippi Code of 1972, is  
7039 brought forward as follows:



47-1-23. It shall be unlawful for convicts of different sexes to be confined or worked together.

**SECTION 300.** Section 47-1-25, Mississippi Code of 1972, is brought forward as follows:

47-1-25. Each county officer or officers, for any district of a county shall at all times have free access to convicts in the custody of any official for the purpose of investigating their condition and treatment. The sheriff or his deputies shall visit the convict camp or county farms where the convicts of his county are kept or worked at least once in every month and more often if necessary. He shall make a thorough inspection and investigation of the treatment of convicts and report the same in writing to the board of supervisors. For failure to perform duty in this respect the board of supervisors may fine the sheriff Twenty-five Dollars (\$25.00).

**SECTION 301.** Section 47-1-27, Mississippi Code of 1972, is brought forward as follows:

47-1-27. An official, or guard, or other employee, having the custody of any county prisoner, or any official or employee of the county having custody of any county prisoner, who shall maltreat or abuse any such convict, or who shall knowingly permit the same to be done, or who being under duty to provide sufficient and wholesome food, clothing, shelter, bathing facilities, or medical attention to such convict, shall willfully fail to furnish the same to such convict, shall be deemed guilty of a misdemeanor,



7065 and on conviction shall be fined in any sum not less than Ten  
7066 Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00), or  
7067 shall be imprisoned not less than one (1) month, or shall suffer  
7068 both such fine and imprisonment, in the discretion of the court,  
7069 and it shall be the duty of the judge of the circuit court of such  
7070 county to so charge the grand jury.

7071 **SECTION 302.** Section 47-1-29, Mississippi Code of 1972, is  
7072 brought forward as follows:

7073 47-1-29. On complaint by or on behalf of any convict to any  
7074 county or county district officer, that such convict had been  
7075 improperly treated in any respect, it shall be the duty of such  
7076 officer at once to investigate the complaint, and if it is  
7077 believed to be well founded, to report the facts to the president  
7078 of the board of supervisors, or to the board in session. Upon  
7079 such report the board shall cite the person complained of to  
7080 appear before it, and such action shall be taken by the board as  
7081 shall be proper.

7082 **SECTION 303.** Section 47-1-31, Mississippi Code of 1972, is  
7083 brought forward as follows:

7084 47-1-31. Each grand jury which is impaneled shall examine  
7085 the records of county prisoners and their treatment and condition  
7086 and report the same to the court.

7087 **SECTION 304.** Section 47-1-33, Mississippi Code of 1972, is  
7088 brought forward as follows:



7089           47-1-33. The sheriff on receiving each convict shall furnish  
7090 such convict with a certificate showing the amount of the fine and  
7091 costs, as far as the costs are then known, the beginning and  
7092 length of his term of imprisonment. The convict shall be allowed  
7093 to have and keep such certificate on or about his person, if he so  
7094 desires.

7095           **SECTION 305.** Section 47-1-35, Mississippi Code of 1972, is  
7096 brought forward as follows:

7097           47-1-35. (1) The board of supervisors of any county that  
7098 now maintains and operates a county penal farm, commonly known as  
7099 a "county farm," which farm contains more than five hundred (500)  
7100 acres and less than six hundred (600) acres of land, which said  
7101 farm has been continuously operating at a loss to the county for a  
7102 period of five (5) years or more, and provided said county  
7103 contains at least four hundred (400) square miles of territory and  
7104 less than four hundred twenty-five (425) square miles of territory  
7105 within its boundaries, shall sell, at public sale after receiving  
7106 bids as required by law for the letting of public contracts, to  
7107 the highest and best bidder for cash, said county farm; provided,  
7108 however, that the said board shall retain for the benefit of the  
7109 county and shall reserve from said sale, at least one-half (1/2)  
7110 of the mineral rights and interests in said lands, with full right  
7111 in the said board, in its discretion, to lease said retained and  
7112 reserved mineral interests and rights, to the highest and best



7113 bidder after receiving bids therefor in the same manner, at the  
7114 same or any other time.

7115 (2) Any and all amounts received from such sale of said  
7116 lands and from such lease of said mineral interests or rights,  
7117 shall be, on receipt by the board, applied to the payment of the  
7118 bonded indebtedness of said county.

7119 **SECTION 306.** Section 47-1-37, Mississippi Code of 1972, is  
7120 brought forward as follows:

7121 47-1-37. In the cultivation of crops and the gathering  
7122 thereof if it shall appear necessary, from the lack of convict  
7123 labor, the board of supervisors may employ free labor at current  
7124 prices to work on a county convict farm until such time as the  
7125 convict labor may become sufficient to complete and gather the  
7126 crops started on such a farm, and pay for the same out of the  
7127 county treasury.

7128 **SECTION 307.** Section 47-1-39, Mississippi Code of 1972, is  
7129 brought forward as follows:

7130 47-1-39. (1) The governing authorities of municipalities  
7131 shall have the power to construct and maintain a municipal prison,  
7132 and to regulate the keeping of the same and the prisoners therein,  
7133 and to contract with the board of supervisors, which is empowered  
7134 in the premises, for the use of the county jail by the  
7135 municipality; and to provide for the working of the streets by  
7136 municipal prisoners, and to contract with the county for such work  
7137 by county prisoners or the working of county roads by municipal



7138 prisoners, or for working same on the county farms. Municipal  
7139 prisoners shall be worked on county roads or county farms only in  
7140 the county in which the municipality is situated. Males and  
7141 females shall be confined in separate cells or compartments.

7142 (2) The municipality shall pay the tuition, living and  
7143 travel expenses incurred by a person attending and participating  
7144 in the basic and continuing education courses for jail officers.

7145 **SECTION 308.** Section 47-1-41, Mississippi Code of 1972, is  
7146 brought forward as follows:

7147 47-1-41. (1) Any person convicted of violating any  
7148 ordinance of any city, town or village in this state and sentenced  
7149 to pay a fine and costs therefor, and failing to do so, may be  
7150 worked on the streets or other public works of the municipality in  
7151 the custody of the street commissioner, or other person designated  
7152 by the mayor and board of aldermen, or councilmen of such  
7153 municipality and at its expense, and shall receive credit on such  
7154 fine and costs as provided in Section 99-19-20 for each day so  
7155 worked, and such municipality shall accord the same treatment to  
7156 its convicts that is required by this chapter to county convicts.  
7157 The responsibility of carrying out the provisions of this section  
7158 shall devolve on the mayor and board of aldermen or board of  
7159 councilmen of each municipality with reference to its convicts.  
7160 In the event it is, in the judgment of the ruling authorities of  
7161 any village in the state or of any small town in the state,  
7162 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.

(2) If a convict is unable to work or if the city, town or village is unable to provide work for the convict, the convict shall receive the credit provided in Section 99-19-20 for each day of confinement.

**SECTION 309.** Section 47-1-43, Mississippi Code of 1972, is brought forward as follows:

47-1-43. The board of supervisors of any county and the governing authorities of any municipality located within such county are hereby authorized to enter into agreements providing for the keeping of persons arrested for offenses committed within the county in which such municipality is located in the jail facilities of such municipality pending trial of such person. Such agreements may provide for the payment to the municipality by the board of supervisors from any available funds of the county of a sum not to exceed Five Dollars (\$5.00) for each day or part thereof during which an offender may be confined in the jail of the municipality.

**SECTION 310.** Section 47-1-45, Mississippi Code of 1972, is brought forward as follows:

47-1-45. The board of supervisors of each county is authorized to make contract with any village or small town within



the county to work its convicts on the county farm. But in agreeing to take and work such convicts the board of supervisors shall not agree to pay more per day for the labor of any municipal 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 convict shall receive the credit provided in Section 99-19-20 for each day of imprisonment.

**SECTION 312.** Section 47-1-49, Mississippi Code of 1972, is brought forward as follows:

47-1-49. In the case of a jail owned jointly by a county and municipality, under the provisions of Section 17-5-1, the governing authorities of the county and municipality are hereby vested with full and complete authority, jurisdiction and control over such jointly owned jail facility and the governing authority of the municipality may appoint a jailer who shall be responsible for all municipal prisoners lodged in said jail in the same manner in which the sheriff is responsible for state prisoners, and such jailer shall have the same right of access to the jail as the sheriff.

**SECTION 313.** Section 47-1-51, Mississippi Code of 1972, is brought forward as follows:

47-1-51. The jailer of a jail jointly owned by a county and a municipality shall, in regard to municipal prisoners, provide daily wholesome and sufficient food and drink, fire and lights when necessary and proper, and sufficient and clean bedding for all such prisoners committed to the jail, either before or after



conviction. Any prisoner may, if he thinks fit, supply himself with meat and drink and bedding, but the same shall pass through the hands of the jailer to the prisoner.

**SECTION 314.** Section 47-1-55, Mississippi Code of 1972, is brought forward as follows:

47-1-55. In the case of a jail jointly owned by a county and a municipality, the circuit judge in the district in which such jail is located, upon the request and recommendation of either the sheriff of the county or the marshal or chief of police of the municipality involved in the joint ownership, may authorize additional jail guards in cases of emergency and the cost thereof shall be paid in equal proportions by the county and municipality involved.

**SECTION 315.** Section 47-1-57, Mississippi Code of 1972, is brought forward as follows:

47-1-57. (1) When any person confined in jail shall be in need of medical or surgical aid, the sheriff shall immediately examine the condition of such prisoner and, if he is of the opinion that the prisoner needs such aid, he shall call in a nurse or physician to attend him. If the prisoner be unable to pay the cost, the account of the nurse or physician, when allowed and certified as required in respect to accounts of sheriffs for keeping prisoners, shall be paid, in like manner, out of the treasury of the county in which a prisoner is charged with the



crime for which he is imprisoned. The board of supervisors may contract with a physician for the jail by the year.

(2) The board of supervisors of any county may authorize the sheriff to establish a program under which prisoners expressing the need for nonemergency medical attention will have access to a registered nurse who will evaluate their condition and determine the necessity for treatment by a physician. Charges for such a visit with a registered nurse shall be paid by the prisoner by deductions made by the sheriff out of any funds of the prisoner held by the sheriff or in any other manner satisfactory to the sheriff; however, such prisoner shall not be required to pay out of funds of the prisoner held by the sheriff, more than Ten Dollars (\$10.00) per visit. If the prisoner is unable to pay the cost, the cost shall be paid out of the county treasury in the same manner as provided for payment of other medical costs in subsection (1) of this section.

**SECTION 316.** Section 47-1-59, Mississippi Code of 1972, is brought forward as follows:

47-1-59. (1) When the sheriff, marshal or any other peace officer of this state has in his lawful custody a prisoner who, through accident, injury or illness, is in need of hospitalization, such officer may take such prisoner to the nearest hospital in the county or if there be no hospital in that county, to the nearest hospital in an adjacent county and if upon arrival at such hospital any physician licensed to practice



7287 medicine in this state certifies that in his opinion such prisoner  
7288 is in need of hospitalization, such prisoner shall be hospitalized  
7289 in such hospital for as long as in the opinion of such physician  
7290 it is necessary to so hospitalize such prisoner. If, in the  
7291 opinion of the sheriff or other peace officer having custody of  
7292 such prisoner at the time he is delivered to the aforesaid  
7293 hospital, or in the opinion of the director of the university  
7294 hospital if the prisoner be brought to that institution, it is  
7295 necessary that he be placed under guard while a patient at such  
7296 hospital, the sheriff of the county in which the crime he was  
7297 placed in custody for committing was alleged to have taken place,  
7298 shall furnish the aforesaid guard. When the aforesaid physician  
7299 or other reputable physician shall certify that hospitalization no  
7300 longer is needed, the prisoner shall be returned to the original  
7301 place of detention.

7302       (2) The actual expense of guarding the prisoner in the  
7303 hospital shall be paid out of the general funds of the county  
7304 where the prisoner was originally confined or arrested. The  
7305 expense contracted incident to the hospitalization aforesaid shall  
7306 be paid by the prisoner; otherwise he may be hospitalized as a  
7307 state aid patient. However, if the prisoner is ineligible for  
7308 state aid or the amount available for hospitalization as a state  
7309 aid patient is inadequate to pay all such hospital expense of a  
7310 prisoner who is financially unable to pay his own expenses, the  
7311 board of supervisors of the county where the prisoner was



7312 originally confined or arrested shall, upon presentation of the  
7313 certificate of the physician certifying that said prisoner was in  
7314 need of hospitalization, pay from the general funds of the county  
7315 the reasonable and customary charges for such services or as much  
7316 thereof as is not paid by state aid. Any such payment to a  
7317 hospital shall be discretionary with the board of supervisors if  
7318 its county supports the hospital involved by a special tax levy  
7319 for its operation and maintenance.

7320       **SECTION 317.** Section 47-1-61, Mississippi Code of 1972, is  
7321 brought forward as follows:

7322       47-1-61. Any sheriff or other person having lawful custody  
7323 of any convict who shall fail to discharge such convict when he  
7324 shall have served the full time of his sentence and fully paid his  
7325 fine and the costs charged against him, shall be guilty of a  
7326 misdemeanor and punished accordingly.

7327       **SECTION 318.** Section 47-1-63, Mississippi Code of 1972, is  
7328 brought forward as follows:

7329       47-1-63. No person shall be deemed to be a resident of a  
7330 county solely because of being incarcerated in a facility under  
7331 the jurisdiction of the Department of Corrections that is located  
7332 in such county.

7333       **SECTION 319.** Section 47-4-1, Mississippi Code of 1972, is  
7334 brought forward as follows:

7335       47-4-1. (1) It is lawful for there to be located within  
7336 Wilkinson County and Leflore County a correctional facility



7337 operated entirely by a private entity pursuant to a contractual  
7338 agreement between such private entity and the federal government,  
7339 any state, or a political subdivision of any state to provide  
7340 correctional services to any such public entity for the  
7341 confinement of inmates subject to the jurisdiction of such public  
7342 entity. Any person confined in such a facility pursuant to the  
7343 laws of the jurisdiction from which he is sent shall be considered  
7344 lawfully confined within this state. The private entity shall  
7345 assume complete responsibility for the inmates and shall be liable  
7346 to the State of Mississippi for any illegal or tortious actions of  
7347 such inmates.

7348 (2) The Department of Corrections shall contract with the  
7349 Board of Supervisors of Leflore County for the private  
7350 incarceration of not more than one thousand (1,000) state inmates  
7351 at a facility in Leflore County. Any contract must comply with  
7352 the requirements of Section 47-5-1211 through Section 47-5-1227.

7353 (3) It is lawful for any county to contract with a private  
7354 entity for the purpose of providing correctional services for the  
7355 confinement of federal inmates subject to the jurisdiction of the  
7356 United States. Any person confined in such a facility pursuant to  
7357 the laws of the United States shall be considered lawfully  
7358 confined within this state. The private entity shall assume  
7359 complete responsibility for the inmates and shall be liable to the  
7360 county or the State of Mississippi, as the case may be, for any  
7361 illegal or tortious actions of the inmates.





(4) It is lawful for there to be located within any county a correctional facility operated entirely by a private entity and the federal government to provide correctional services to the United States for the confinement of federal inmates subject to the jurisdiction of the United States. Any person confined in a facility pursuant to the laws of the United States shall be considered lawfully confined within this state. The private entity shall assume complete responsibility for the inmates and shall be liable to the State of Mississippi for any illegal or tortious actions of the inmates.

A person convicted of simple assault on an employee of a private correctional facility while such employee is acting within the scope of his or her duty or employment shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than five (5) years, or both.

A person convicted of aggravated assault on an employee of a private correctional facility while such employee is acting within the scope of his or her duty or employment shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than thirty (30) years, or both.

(5) The Department of Corrections may contract with the Tallahatchie County Correctional Facility authorized in Chapter 904, Local and Private Laws of 1999, for the private incarceration of not more than one thousand (1,000) state inmates at a facility in Tallahatchie County. Any contract must comply with the



7387 requirements of Section 47-5-1211 through Section 47-5-1227. No  
7388 state inmate shall be assigned to the Tallahatchie County  
7389 Correctional Facility unless the inmate cost per day is at least  
7390 ten percent (10%) less than the inmate cost per day for housing a  
7391 state inmate at a state correctional facility.

7392 (6) If a private entity houses state inmates, the private  
7393 entity shall not displace state inmate beds with federal inmate  
7394 beds unless the private entity has obtained prior written approval  
7395 from the Commissioner of Corrections.

7396 (7) It is lawful for there to be located within Leflore  
7397 County a correctional facility operated entirely by a private  
7398 entity pursuant to a contractual agreement between such private  
7399 entity and the federal government, the State of Mississippi, or  
7400 Leflore County for the incarceration of federal inmates. Such  
7401 correctional facility may include a separate Leflore County jail  
7402 which may be located on or adjacent to the correctional facility  
7403 site. To further the provisions of this subsection:

7404 (a) Any private entity, the State of Mississippi, or  
7405 Leflore County may enter into any agreement regarding real  
7406 property or property, including, but not limited to, a lease, a  
7407 ground lease and leaseback arrangement, a sublease or any other  
7408 lease agreement or arrangement, as lessor or lessee. Such  
7409 agreements shall not exceed forty (40) years. The Department of  
7410 Corrections may enter such agreements or arrangements on behalf of  
7411 the State of Mississippi;



7412           (b) The powers conferred under this subsection shall be  
7413 additional and supplemental to the powers conferred by any other  
7414 law. Where the provisions of this subsection conflict with other  
7415 law, this subsection shall control; and

7416           (c) The private entity shall assume complete  
7417 responsibility for the inmates and shall be liable to the State of  
7418 Mississippi for any illegal or tortious actions of the inmates.

7419           **SECTION 320.** Section 47-4-3, Mississippi Code of 1972, is  
7420 brought forward as follows:

7421           47-4-3. (1) Before a private correctional facility may be  
7422 located in the county, the board of supervisors shall by  
7423 resolution duly adopted and entered on its minutes specify the  
7424 location of the facility, the nature and size of the facility, the  
7425 type of inmates to be incarcerated and the identity of the private  
7426 entity which will operate the facility. The board shall publish a  
7427 notice as hereinafter set forth in a newspaper having general  
7428 circulation in such county. Such notice shall include location of  
7429 the facility, the nature and size of the facility, the type of  
7430 inmates to be incarcerated and the identity of the entity which  
7431 will operate the facility. Such notice shall include a brief  
7432 summary of the provisions of this section pertaining to the  
7433 petition for an election on the question of the location of the  
7434 private correctional facility in such county. Such notice shall  
7435 be published not less than one (1) time each week for at least



three (3) consecutive weeks in at least one (1) newspaper having general circulation in the county.

(2) If a petition signed by twenty percent (20%), or fifteen hundred (1500), whichever is less, of the qualified electors of the county is filed within sixty (60) days of the date of the last publication of the notice with the board of supervisors requesting that an election be called on the question of locating such facility, then the board of supervisors shall adopt a resolution calling an election to be held within such county upon the question of the location of such facility. Such election shall be held, as far as practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of the county may vote, and the ballots used at such election shall have printed thereon a brief statement of the facility to be constructed and the words "For the construction of the private correctional facility in (here insert county name) County" and "Against the construction of the private correctional facility in (here insert county name) County." The voter shall vote by placing a cross (X) or check mark (✓) opposite his choice on the proposition. When the results of the election on the question of the construction of the facility shall have been canvassed by the election commissioners of the county and certified by them to the board of supervisors, it shall be the duty of the board of supervisors to determine and adjudicate whether or not a majority of the qualified electors who voted thereon in such election voted



in favor of the construction of the facility in such county. If a majority of the qualified electors who voted in such election vote against the construction of the facility, then the facility shall not be constructed in the county.

(3) If no petition as prescribed in subsection (2) of this section is filed with the board of supervisors within sixty (60) days of the date of the last publication of the notice, the board of supervisors shall by a resolution duly adopted and entered on its minutes, state that no petition was timely filed and the board may give final approval to the location of the facility.

**SECTION 321.** Section 47-4-5, Mississippi Code of 1972, is brought forward as follows:

47-4-5. Any local unit of government, or any local unit of government in cooperation with other local units of government, may enter into agreements with private sources for the operation and supervision of juvenile detention centers.

**SECTION 322.** Section 47-5-1, Mississippi Code of 1972, is brought forward as follows:

47-5-1. It shall be the policy of this state, in the operation and management of the correctional system, to so manage and conduct the same in that manner as will be consistent with the operation of a modern correctional system and with the view of making the system self-sustaining. Those convicted of violating the law and sentenced to a term in the state correctional system



shall have humane treatment, and be given opportunity,  
encouragement and training in the manner of reformation.

It shall be the policy of this state that the correctional  
system shall be operated and managed in the most efficient and  
economical manner possible. The Mississippi Department of  
Corrections shall so manage and operate the correctional system in  
that manner in order to make the system self-sustaining and to  
conserve state general fund revenues. The Mississippi Department  
of Corrections shall provide leadership to bring about the  
earliest possible construction of satisfactory prison inmate  
facilities, and shall utilize existing state resources, including  
inmates for prison construction labor, when and wherever  
practicable, in order to minimize the need for state general funds  
for prison construction.

It shall be the policy of this state that periodic  
independent internal investigations of the department shall be  
conducted to ensure the implementation of state correctional  
policies.

**SECTION 323.** Section 47-5-3, Mississippi Code of 1972, is  
brought forward as follows:

47-5-3. The plantation known as Parchman owned by the state  
in Sunflower and Quitman Counties, and in such other places as are  
now or may be hereafter owned or operated by the state for  
correctional purposes shall constitute the facilities of the  
correctional system for the custody, punishment, confinement at



7510 hard labor and reformation of all persons convicted of felony in  
7511 the courts of the state and sentenced to the custody of the  
7512 department, and whenever the term "Penitentiary" or "State  
7513 Penitentiary" appears in the laws of the State of Mississippi, it  
7514 shall mean any facility under the jurisdiction of the Department  
7515 of Corrections which is used for the purposes described herein.

7516       **SECTION 324.** Section 47-5-4, Mississippi Code of 1972, is  
7517 brought forward as follows:

7518       47-5-4. For purposes of this chapter, the following words  
7519 shall have the meaning ascribed herein unless the context shall  
7520 otherwise require:

7521           (a) "Adult" shall mean a person who is eighteen (18)  
7522 years of age or older, or any person convicted of any crime not  
7523 subject to the provisions of the Youth Court Law, or any person  
7524 "certified" to be tried as an adult by any youth court in the  
7525 state.

7526           (b) "Juvenile," "minor" or "youthful" shall mean a  
7527 person less than eighteen (18) years of age.

7528           (c) "Offender" shall mean any person convicted of a  
7529 crime or offense under the laws and ordinances of the state and  
7530 its political subdivisions.

7531           (d) "Facility or institution" shall mean any facility  
7532 for the custody, care, treatment and study of offenders which is  
7533 under the supervision and control of the Department of



7534 Corrections, including but not limited to the State Penitentiary  
7535 property located in Sunflower and Quitman Counties.

7536 (e) "Detention" shall mean the temporary care of  
7537 juveniles and adults who require secure custody for their own or  
7538 the community's protection in a physically restricting facility  
7539 prior to adjudication, or retention in a physically restricting  
7540 facility upon being taken into custody after an alleged parole or  
7541 probation violation.

7542 (f) "Unit of local government" shall mean a county,  
7543 city, town, village, or other general purpose political  
7544 subdivision of the state.

7545 (g) "Department" shall mean the Mississippi Department  
7546 of Corrections.

7547 (h) "Commissioner" shall mean the Commissioner of  
7548 Corrections.

7549 (i) "Correctional system" shall mean the facilities,  
7550 institutions, programs and personnel of the Department of  
7551 Corrections utilized for adult offenders who are committed to the  
7552 custody of the department.

7553 **SECTION 325.** Section 47-5-5, Mississippi Code of 1972, is  
7554 amended as follows:

7555 47-5-5. The commissioner, as soon as possible after passage  
7556 of this section, shall prepare a plan to bring about the limited  
7557 centralization of facilities within the state correctional system  
7558 grounds at Parchman, Mississippi. The commissioner is authorized





7559 and empowered to use any state funds appropriated for such  
7560 purposes, together with any available federal funds appropriated  
7561 by the United States Congress for improvement of correctional  
7562 institutions to construct modern security facilities for housing  
7563 of offenders to the end that the state correctional system  
7564 achieves the greatest degree of security for said offenders.  
7565 Provided, however, that no new facility to house offenders shall  
7566 be constructed within two-fifths (2/5) of a mile of any other  
7567 offender camp. The commissioner shall bring about centralization  
7568 of food facilities, recreational activities, utility services and  
7569 other related facilities and correctional services that are  
7570 presently decentralized within the correctional system.

7571 It is the intent of the Mississippi Legislature that the  
7572 commissioner shall fully utilize existing knowledge, architectural  
7573 plans and expertise currently available with the Federal Bureau of  
7574 Prisons and the Law Enforcement Assistance Administration to the  
7575 end that the State of Mississippi shall have an efficient, modern,  
7576 and properly secure state correctional system.

7577 The commissioner is authorized to receive and disburse  
7578 private and public grants, gifts and bequests which may be  
7579 available to this state for correctional facilities, offender  
7580 rehabilitation purposes and related purposes, which said sum so  
7581 received shall be subject to all of the laws applicable to  
7582 the \* \* \* Department of Finance and Administration.



7583           **SECTION 326.** Section 47-5-8, Mississippi Code of 1972, is  
7584 brought forward as follows:

7585           47-5-8. (1) There is created the Mississippi Department of  
7586 Corrections, which shall be under the policy direction of the  
7587 Governor. The chief administrative officer of the department  
7588 shall be the Commissioner of Corrections.

7589           (2) (a) There shall be a Division of Administration and  
7590 Finance within the department, which shall have as its chief  
7591 administrative officer a Deputy Commissioner for Administration  
7592 and Finance who shall be appointed by the commissioner, and shall  
7593 be directly responsible to the commissioner.

7594           (b) There shall be a Division of Community Corrections  
7595 within the department, which shall have as its chief  
7596 administrative officer a Deputy Commissioner for Community  
7597 Corrections, who shall be appointed by the commissioner, and shall  
7598 be directly responsible to the commissioner. The Probation and  
7599 Parole Board shall continue to exercise the authority as provided  
7600 by law, but after July 1, 1976, the Division of Community  
7601 Corrections shall serve as the administrative agency for the  
7602 Probation and Parole Board.

7603           (3) The department shall succeed to the exclusive control of  
7604 all records, books, papers, equipment and supplies, and all lands,  
7605 buildings and other real and personal property now or hereafter  
7606 belonging to or assigned to the use and benefit or under the  
7607 control of the Mississippi State Penitentiary and the Mississippi



7608 Probation and Parole Board, except the records of parole process  
7609 and revocation and legal matters related thereto, and shall have  
7610 the exercise and control of the use, distribution and disbursement  
7611 of all funds, appropriations and taxes now or hereafter in  
7612 possession, levied, collected or received or appropriated for the  
7613 use, benefit, support and maintenance of these two (2) agencies  
7614 except as otherwise provided by law, and the department shall have  
7615 general supervision of all the affairs of the two (2) agencies  
7616 herein named except as otherwise provided by law, and the care and  
7617 conduct of all buildings and grounds, business methods and  
7618 arrangements of accounts and records, the organization of the  
7619 administrative plans of each institution, and all other matters  
7620 incident to the proper functioning of the two (2) agencies.

7621 (4) The commissioner may lease the lands for oil, gas,  
7622 mineral exploration and other purposes, and contract with other  
7623 state agencies for the proper management of lands under such  
7624 leases or for the provision of other services, and the proceeds  
7625 thereof shall be paid into the General Fund of the state.

7626 **SECTION 327.** Section 47-5-10, Mississippi Code of 1972, is  
7627 brought forward as follows:

7628 47-5-10. The department shall have the following powers and  
7629 duties:

7630 (a) To accept adult offenders committed to it by the  
7631 courts of this state for incarceration, care, custody, treatment  
7632 and rehabilitation;



7633                   (b) To provide for the care, custody, study, training,  
7634 supervision and treatment of adult offenders committed to the  
7635 department;

7636                   (c) To maintain, administer and exercise executive and  
7637 administrative supervision over all state correctional  
7638 institutions and facilities used for the custody, training, care,  
7639 treatment and after-care supervision of adult offenders committed  
7640 to the department; provided, however, that such supervision shall  
7641 not extend to any institution or facility for which executive and  
7642 administrative supervision has been provided by law through  
7643 another agency;

7644                   (d) To plan, develop and coordinate a statewide,  
7645 comprehensive correctional program designed to train and  
7646 rehabilitate offenders in order to prevent, control and retard  
7647 recidivism;

7648                   (e) To maintain records of persons committed to it, and  
7649 to establish programs of research, statistics and planning:

7650                   (i) An offender's records shall include a single  
7651 cover sheet that contains the following information about the  
7652 offender: name, including any aliases; department inmate number;  
7653 social security number; photograph; court of conviction; cause  
7654 number; date of conviction; date of sentence; total number of days  
7655 in the department's custody or number of days creditable toward  
7656 time served on each charge; date of actual custody; and date of  
7657 any revocation of a suspended sentence;



7658                   (ii) The department shall maintain an offender's  
7659 cover sheet in the course of its regularly conducted business  
7660 activities and shall include an offender's cover sheet in each  
7661 request from a court, prosecutor or law enforcement agency for a  
7662 summary of an offender's records with the department, also known  
7663 as a "pen-pack." The cover sheet shall conform to Rules 803(6)  
7664 and 803(8) of the Mississippi Rules of Evidence for admission as  
7665 an exception to the hearsay rule and may be admissible when  
7666 properly authenticated according to evidentiary rules and when  
7667 offered for the purpose of enhanced sentencing under Section  
7668 41-29-147, 99-19-81 or 99-19-83 or other similar purposes; and

7669                   (iii) This subsection is not intended to conflict  
7670 with an offender's right of confrontation in criminal proceedings  
7671 under the state or federal constitution;

7672                   (f) To investigate the grievances of any person  
7673 committed to the department, and to inquire into any alleged  
7674 misconduct by employees; and for this purpose it may issue  
7675 subpoenas and compel the attendance of witnesses and the  
7676 production of writings and papers, and may examine under oath any  
7677 witnesses who may appear before it;

7678                   (g) To administer programs of training and development  
7679 of personnel of the department;

7680                   (h) To develop and implement diversified programs and  
7681 facilities to promote, enhance, provide and assure the  
7682 opportunities for the successful custody, training and treatment



7683 of adult offenders properly committed to the department or  
7684 confined in any facility under its control. Such programs and  
7685 facilities may include, but not be limited to, institutions, group  
7686 homes, halfway houses, diagnostic centers, work and educational  
7687 release centers, technical violation centers, restitution centers,  
7688 counseling and supervision of probation, parole, suspension and  
7689 compact cases, presentence investigating and other state and local  
7690 community-based programs and facilities;

7691 (i) To receive, hold and use, as a corporate body, any  
7692 real, personal and mixed property donated to the department, and  
7693 any other corporate authority as shall be necessary for the  
7694 operation of any facility at present or hereafter;

7695 (j) To provide those personnel, facilities, programs  
7696 and services the department shall find necessary in the operation  
7697 of a modern correctional system for the custody, care, study and  
7698 treatment of adult offenders placed under its jurisdiction by the  
7699 courts and other agencies in accordance with law;

7700 (k) To develop the capacity and administrative network  
7701 necessary to deliver advisory consultation and technical  
7702 assistance to units of local government for the purpose of  
7703 assisting them in developing model local correctional programs for  
7704 adult offenders;

7705 (l) To cooperate with other departments and agencies  
7706 and with local communities for the development of standards and  
7707 programs for better correctional services in this state;



7708                   (m) To administer all monies and properties of the  
7709 department;

7710                   (n) To report annually to the Legislature and the  
7711 Governor on the committed persons, institutions and programs of  
7712 the department;

7713                   (o) To cooperate with the courts and with public and  
7714 private agencies and officials to assist in attaining the purposes  
7715 of this chapter and Chapter 7 of this title. The department may  
7716 enter into agreements and contracts with other departments of  
7717 federal, state or local government and with private agencies  
7718 concerning the discharge of its responsibilities or theirs. The  
7719 department shall have the authority to accept and expend or use  
7720 gifts, grants and subsidies from public and private sources;

7721                   (p) To make all rules and regulations and exercise all  
7722 powers and duties vested by law in the department;

7723                   (q) The department may require a search of all persons  
7724 entering the grounds and facilities at the correctional system;

7725                   (r) To submit, in a timely manner, to the Oversight  
7726 Task Force established in Section 47-5-6 any reports required by  
7727 law or regulation or requested by the task force.

7728                   (s) To discharge any other power or duty imposed or  
7729 established by law.

7730                   **SECTION 328.** Section 47-5-20, Mississippi Code of 1972, is  
7731 brought forward as follows:



7732           47-5-20. The commissioner shall have the following powers  
7733 and duties:

7734           (a) To establish the general policy of the department;

7735           (b) To approve proposals for the location of new  
7736 facilities, for major renovation activities, and for the creation  
7737 of new programs and divisions within the department as well as for  
7738 the abolition of the same; provided, however, that the  
7739 commissioner shall approve the location of no new facility unless  
7740 the board of supervisors of the county or the governing  
7741 authorities of the municipality in which the new facility is to be  
7742 located shall have had the opportunity with at least sixty (60)  
7743 days' prior notice to disapprove the location of the proposed  
7744 facility. If either the board of supervisors or the governing  
7745 authorities shall disapprove the facility, it shall not be located  
7746 in that county or municipality. Said notice shall be made by  
7747 certified mail, return receipt requested, to the members of the  
7748 board or governing authorities and to the clerk thereof;

7749           (c) Except as otherwise provided or required by law, to  
7750 open bids and approve the sale of any products or manufactured  
7751 goods by the department according to applicable provisions of law  
7752 regarding bidding and sale of state property, and according to  
7753 rules and regulations established by the State Fiscal Management  
7754 Board; and

7755           (d) To adopt administrative rules and regulations  
7756 including, but not limited to, offender transfer procedures, award





7757 of administrative earned time, personnel procedures, employment  
7758 practices.

7759       **SECTION 329.** Section 47-5-23, Mississippi Code of 1972, is  
7760 brought forward as follows:

7761       47-5-23. The department shall be vested with the exclusive  
7762 responsibility for management and control of the correctional  
7763 system, and all properties belonging thereto, subject only to the  
7764 limitations of this chapter, and shall be responsible for the  
7765 management of affairs of the correctional system and for the  
7766 proper care, treatment, feeding, clothing and management of the  
7767 offenders confined therein. The commissioner shall have final  
7768 authority to employ and discharge all employees of the  
7769 correctional system, except as otherwise provided by law.

7770       **SECTION 330.** Section 47-5-24, Mississippi Code of 1972, is  
7771 brought forward as follows:

7772       47-5-24. (1) The Governor shall appoint a Commissioner of  
7773 Corrections, with the advice and consent of the Senate. Such  
7774 commissioner may be removed by the Governor. The commissioner  
7775 shall be the chief executive, administrative and fiscal officer of  
7776 the department.

7777       (2) The commissioner shall receive an annual salary fixed by  
7778 the Governor, not to exceed the maximum authorized by law, in  
7779 addition to all actual, necessary expenses incurred in the  
7780 discharge of official duties, including mileage as authorized by  
7781 law.



7782           (3) The commissioner shall possess the following minimum  
7783 qualifications:

7784           (a) A master's degree in corrections, criminal justice,  
7785 guidance, social work, or some related field, and at least six (6)  
7786 years full-time experience in corrections, including at least  
7787 three (3) years of correctional management experience; or

7788           (b) A bachelor's degree in a field described in  
7789 subparagraph (a) of this subsection and at least ten (10) years  
7790 full-time work in corrections, five (5) years of which shall have  
7791 been in correctional management; or

7792           (c) Shall possess at least a bachelor's degree and  
7793 relevant experience in fiscal management in the private or public  
7794 sector.

7795           (4) The commissioner shall be required, upon assuming the  
7796 duties of his office, to execute a good and sufficient bond  
7797 payable to the State of Mississippi in the sum of Two Hundred  
7798 Fifty Thousand Dollars (\$250,000.00), conditioned upon an accurate  
7799 accounting for all monies and property coming into his hands. The  
7800 commissioner, upon approval by the Governor, may require of other  
7801 officers, employees and agents of the department a good and  
7802 sufficient bond in such sum as he may determine, subject to the  
7803 minimum requirements set forth herein, payable to the State of  
7804 Mississippi upon like condition. The bonds shall be approved by  
7805 the Governor and filed with the Secretary of State, and shall be  
7806 executed by a surety company authorized to do business under the



7807 laws of this state. The premium on any such bond shall be paid by  
7808 the state out of the support and maintenance fund of the  
7809 department.

7810       **SECTION 331.** Section 47-5-26, Mississippi Code of 1972, is  
7811 brought forward as follows:

7812       47-5-26. (1) The commissioner shall employ the following  
7813 personnel:

7814               (a) A Deputy Commissioner for Administration and  
7815 Finance, who shall supervise and implement all fiscal policies and  
7816 programs within the department, supervise and implement all hiring  
7817 and personnel matters within the department, supervise the  
7818 department's personnel director, supervise and implement all  
7819 purchasing within the department and supervise and implement all  
7820 data processing activities within the department, and who shall  
7821 serve as the Chief Executive Officer of the Division of  
7822 Administration and Finance. He shall possess either:

7823               (i) A master's degree from an accredited four-year  
7824 college or university in public or business administration,  
7825 accounting, economics or a directly related field, and four (4)  
7826 years of experience in work related to the above-described duties,  
7827 one (1) year of which must have included line or functional  
7828 supervision; or

7829               (ii) A bachelor's degree from an accredited  
7830 four-year college or university in public or business  
7831 administration, accounting, economics or a directly related field,



7832 and six (6) years of experience in work related to the  
7833 above-described duties, one (1) year of which must have included  
7834 line or functional supervision. Certification by the State of  
7835 Mississippi as a certified public accountant may be substituted  
7836 for one (1) year of the required experience.

7837           (b) A Deputy Commissioner for Community Corrections,  
7838 who shall initiate and administer programs, including, but not  
7839 limited to, supervision of probationers, parolees and  
7840 suspensioners, counseling, community-based treatment, interstate  
7841 compact administration and enforcement, prevention programs,  
7842 halfway houses and group homes, technical violation centers,  
7843 restitution centers, presentence investigations, and work and  
7844 educational releases, and shall serve as the Chief Executive  
7845 Officer of the Division of Community Services. The Deputy  
7846 Commissioner for Community Corrections is charged with full and  
7847 complete cooperation with the State Parole Board and shall make  
7848 monthly reports to the Chairman of the Parole Board in the form  
7849 and type required by the chairman, in his discretion, for the  
7850 proper performance of the probation and parole functions. After a  
7851 plea or verdict of guilty to a felony is entered against a person  
7852 and before he is sentenced, the Deputy Commissioner for Community  
7853 Corrections shall procure from any available source and shall file  
7854 in the presentence records any information regarding any criminal  
7855 history of the person such as fingerprints, dates of arrests,  
7856 complaints, civil and criminal charges, investigative reports of



7857 arresting and prosecuting agencies, reports of the National Crime  
7858 Information Center, the nature and character of each offense,  
7859 noting all particular circumstances thereof and any similar data  
7860 about the person. The Deputy Commissioner for Community  
7861 Corrections shall keep an accurate and complete duplicate record  
7862 of this file and shall furnish the duplicate to the department.  
7863 This file shall be placed in and shall constitute a part of the  
7864 inmate's master file. The Deputy Commissioner for Community  
7865 Corrections shall furnish this file to the State Parole Board when  
7866 the file is needed in the course of its official duties. He shall  
7867 possess either: (i) a master's degree in counseling, corrections  
7868 psychology, guidance, social work, criminal justice or some  
7869 related field and at least four (4) years' full-time experience in  
7870 such field, including at least one (1) year of supervisory  
7871 experience; or (ii) a bachelor's degree in a field described in  
7872 subparagraph (i) of this paragraph and at least six (6) years'  
7873 full-time work in corrections, one (1) year of which shall have  
7874 been at the supervisory level.

7875 (c) A Deputy Commissioner for Institutions, who shall  
7876 administer institutions, reception and diagnostic centers,  
7877 prerelease centers and other facilities and programs provided  
7878 therein, and shall serve as the Chief Executive Officer of the  
7879 Division of Institutions. He shall possess either: (i) a  
7880 master's degree in counseling, criminal justice, psychology,  
7881 guidance, social work, business or some related field, and at



7882 least four (4) years' full-time experience in corrections,  
7883 including at least one (1) year of correctional management  
7884 experience; or (ii) a bachelor's degree in a field described in  
7885 subparagraph (i) of this paragraph and at least six (6) years'  
7886 full-time work in corrections, four (4) years of which shall have  
7887 been at the correctional management level.

7888 (2) The commissioner shall employ an administrative  
7889 assistant for parole matters, who shall be an employee of the  
7890 department assigned to the State Parole Board and who shall work  
7891 under the guidance and supervision of the board.

7892 (3) The administrative assistant for parole matters shall  
7893 receive an annual salary to be established by the Legislature.  
7894 The salaries of department employees not established by the  
7895 Legislature shall receive an annual salary established by the  
7896 State Personnel Board.

7897 (4) The commissioner shall employ a superintendent for the  
7898 Parchman facility, Central Mississippi Correctional Facility and  
7899 South Mississippi Correctional Institution of the Department of  
7900 Corrections. The Superintendent of the Mississippi State  
7901 Penitentiary shall reside on the grounds of the Parchman facility.  
7902 Each superintendent shall appoint an officer in charge when he is  
7903 absent.

7904 Each superintendent shall develop and implement a plan for  
7905 the prevention and control of an inmate riot and shall file a  
7906 report with the Chairman of the Senate Corrections Committee and



7907 the Chairman of the House Penitentiary Committee on the first day  
7908 of each regular session of the Legislature regarding the status of  
7909 the plan.

7910 In order that the grievances and complaints of inmates,  
7911 employees and visitors at each facility may be heard in a timely  
7912 and orderly manner, each superintendent shall appoint or designate  
7913 an employee at the facility to hear grievances and complaints and  
7914 to report grievances and complaints to the superintendent. Each  
7915 superintendent shall institute procedures as are necessary to  
7916 provide confidentiality to those who file grievances and  
7917 complaints.

7918 **SECTION 332.** Section 47-5-35, Mississippi Code of 1972, is  
7919 brought forward as follows:

7920 47-5-35. The Joint Legislative Committee on Performance  
7921 Evaluation and Expenditure Review (PEER) shall appoint an auditor  
7922 to audit the correctional system, and provide sufficient office  
7923 facilities in the Jackson office, who shall be a certified public  
7924 accountant or an experienced accountant, whose duty shall be to  
7925 audit all accounts of the state correctional system for the  
7926 purpose of reporting to the Legislative Budget Office. He shall  
7927 report whether supplies and products bought and sold are handled  
7928 in accordance with law and when bought on samples and  
7929 specifications whether they measure up to such samples and  
7930 specifications when the goods are received. The auditor shall  
7931 report on the letting of bids and shall make a determination that



7932 all bids are advertised and let in accordance with law and shall  
7933 render a report on same. The auditor shall be responsible to make  
7934 a periodic inventory on all goods, machinery, livestock, farm  
7935 produce or any other property of the correctional system and make  
7936 a report thereon to the Legislative Budget Office on such terms  
7937 and conditions and as often as required by the committee. The  
7938 salaries and expenses of such auditor or his employees shall be  
7939 paid from funds appropriated for support of the Legislature or its  
7940 committees.

7941 Such auditor shall make, at least, a monthly report to the  
7942 Legislative Budget Office and the Chairman of the Corrections  
7943 Committee of the Senate and the Chairman of the Penitentiary  
7944 Committee in the House of Representatives.

7945 The auditor shall attend all the meetings of the board and  
7946 shall be notified by the board of all meetings or specially called  
7947 meetings. The Joint Legislative Committee on Performance  
7948 Evaluation and Expenditure Review shall provide the auditor with a  
7949 secretary and such personnel as it deems necessary.

7950 **SECTION 333.** Section 47-5-37, Mississippi Code of 1972, is  
7951 amended as follows:

7952 47-5-37. The commissioner shall employ a qualified fiscal  
7953 comptroller who shall be a certified public accountant and who  
7954 shall be charged with the responsibility of maintaining a modern  
7955 accounting system which shall accurately reflect all fiscal  
7956 transactions in such manner and in such form as shall be





7957 recommended by the \* \* \* Department of Finance and Administration.  
7958 The commissioner shall employ such qualified bookkeepers and other  
7959 clerical personnel as required to maintain the accounting system  
7960 who shall devote their full time to their duties as employees of  
7961 the correctional system. The fiscal comptroller shall make a  
7962 monthly report to the Governor and Chairmen of Corrections  
7963 Committee of the Senate and the \* \* \* Corrections Committee of the  
7964 House of Representatives. The fiscal comptroller shall  
7965 countersign all checks. The fiscal comptroller shall have sole  
7966 responsibility for all purchases and the signing of all purchase  
7967 orders issued by the correctional system. Such fiscal comptroller  
7968 shall execute a good and sufficient bond payable to the State of  
7969 Mississippi in the sum of Fifty Thousand Dollars (\$50,000.00),  
7970 conditioned for the satisfactory performance of the duties of his  
7971 office, and the accurate accounting of any \* \* \* monies and  
7972 properties coming into his hands.

7973 The commissioner or his designee shall sign all requisitions  
7974 for issuance of warrant authorizing any disbursement of any sum or  
7975 sums on account of the correctional system, and no money shall be  
7976 paid out on any account of the correctional system except on a  
7977 requisition for issuance of warrant signed by him or his designee.

7978 **SECTION 334.** Section 47-5-49, Mississippi Code of 1972, is  
7979 brought forward as follows:

7980 47-5-49. Neither the commissioner nor any other employee,  
7981 save physicians and chaplains not employed for all their time,



7982 shall have or engage in any other business during his normal hours  
7983 of employment that may require his personal attention or time.  
7984 The Governor, in the case of the commissioner, and the  
7985 commissioner in the case of any other employee shall receive prior  
7986 notification and approve outside employment and the respective  
7987 parties named herein shall punish a violation of this provision by  
7988 the dismissal of the employee if the offense justifies such  
7989 dismissal.

7990       **SECTION 335.** Section 47-5-54, Mississippi Code of 1972, is  
7991 amended as follows:

7992       47-5-54. Employees assigned to the canine unit of the  
7993 department may, upon request, assist law enforcement agencies by  
7994 using specially trained dogs in any matter relating to the  
7995 tracking, discovery or capture of any person in the enforcement of  
7996 criminal statutes pertaining to the possession, sale or use of  
7997 narcotics or other dangerous drugs, or in the pursuit of suspected  
7998 felons and, while so doing, shall have the status of peace  
7999 officers anywhere in the state and shall have the status of law  
8000 enforcement officers and peace officers as contemplated by  
8001 Sections 45-6-3, 97-3-7 and 97-3-19.

8002       Employees of the department, while performing their  
8003 officially assigned duties relating to the custody, control,  
8004 transportation, recapture or arrest of any offender within the  
8005 jurisdiction of the department or any offender of any jail,  
8006 penitentiary, public workhouse or overnight lockup of the state or



8007 any political subdivision thereof not within the jurisdiction of  
8008 the department, shall have the status of peace officers anywhere  
8009 in the state in any matter relating to the custody, control,  
8010 transportation or recapture of such offender, and shall have the  
8011 status of law enforcement officers and peace officers as  
8012 contemplated by Sections 45-6-3, 97-3-7 and 97-3-19.

8013         The commissioner may appoint investigators with the  
8014 Corrections Investigation Division who have been certified by the  
8015 Board on Law Enforcement Officer Standards and Training and who  
8016 shall be empowered to investigate and enforce all applicable  
8017 regulations of the department, which are related to the functions  
8018 and missions of the department, and all laws of the State of  
8019 Mississippi and who shall be empowered to investigate and enforce  
8020 all laws of the State of Mississippi in private correctional  
8021 facilities and regional county correctional facilities. These  
8022 employees shall have the status of law enforcement officers and  
8023 peace officers as contemplated by Sections 45-6-3, 97-3-7 and  
8024 97-3-19.

8025         These officers shall be under the supervision of the  
8026 commissioner. These officers may perform any service of process  
8027 required to be performed at any facility owned by the Department  
8028 of Corrections, at any private correctional facility or at any  
8029 regional county correctional facility.

8030         The commissioner may promulgate rules regulating the speed of  
8031 motor vehicles on roads within the grounds of any correctional



facility, and such restrictions may be enforced by employees of the department by citation or as otherwise prescribed by law.

**SECTION 336.** Section 47-5-99, Mississippi Code of 1972, is brought forward as follows:

47-5-99. There are hereby created classification hearing officers and disciplinary hearing officers of the correctional system to be appointed by the commissioner.

**SECTION 337.** Section 47-5-101, Mississippi Code of 1972, is brought forward as follows:

47-5-101. The classification and disciplinary hearing officers shall maintain a record of all actions and orders by minutes. The hearing officers shall meet on a regular basis.

**SECTION 338.** Section 47-5-103, Mississippi Code of 1972, is brought forward as follows:

47-5-103. (1) The classification hearing officer shall be 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



8057 that offender's juvenile criminal history, family background,  
8058 education, practical or employment experience, interests and  
8059 abilities as evidenced by mental and psychological examination and  
8060 knowledge obtained by the classification hearing officer in  
8061 personal interview with the offender. The classification hearing  
8062 officer shall use the above criteria to assign each offender a  
8063 classification which will serve and enhance the best interests and  
8064 general welfare of the offender. The designee or designees of the  
8065 commissioner shall approve or disapprove each classification. The  
8066 classification hearing officer shall provide the State Parole  
8067 Board with a copy of the classification assigned to each offender  
8068 in the custody of the department who is eligible for parole.

8069 (2) The classification board, consisting of the  
8070 commissioner, or his designee, deputy commissioner of institutions  
8071 and the director of offender services may change an action of the  
8072 classification or disciplinary hearing officer if the board makes  
8073 a determination that the action of the hearing officer was not  
8074 supported by sufficient factual information. The commissioner, in  
8075 emergency situations, may suspend the classification of an  
8076 offender or offenders for a period of not exceeding fifteen (15)  
8077 days to relieve the emergency situation. The classification of  
8078 each offender may be reviewed by a classification hearing officer  
8079 at least once each year. In no case shall an offender serve as a  
8080 servant in the home of any employee other than authorized by the  
8081 commissioner.



(3) The classification board shall establish substantive and procedural rules and regulations governing the assignment and alteration of inmate classifications, and shall make such rules and regulations available to any offender upon request.

**SECTION 339.** Section 47-5-104, Mississippi Code of 1972, is brought forward as follows:

47-5-104. The commissioner shall designate a disciplinary hearing officer to hear evidence and to make decisions in all cases when an offender has been issued a rule violation report and is subject to be demoted or having earned time taken from him. All proceedings of a disciplinary hearing officer shall be taped and retained for at least three (3) years. The commissioner shall not attend any hearings whereby an offender is subject to be demoted or having earned time taken away.

**SECTION 340.** Section 47-5-110, Mississippi Code of 1972, is brought forward as follows:

47-5-110. (1) Commitment to any institution or facility within the jurisdiction of the department shall be to the department, not to a particular institution or facility. The commissioner shall assign a newly committed offender to an appropriate facility consistent with public safety; provided, however, that any offender who, in the opinion of the sentencing judge, requires confinement in a maximum security unit shall be assigned, upon initial commitment, to the Parchman facility. The commissioner may extend the place of confinement of eligible



8107 offenders as provided under subsection (2) of this section. He  
8108 may transfer an offender from one (1) institution to another,  
8109 consistent with the commitment and in accordance with treatment,  
8110 training and security needs. The commissioner shall have the  
8111 authority to transfer inmates from the various correctional  
8112 facilities of the department to restitution centers if such  
8113 inmates meet the qualifications prescribed in Section 99-37-19.  
8114 The commissioner shall prepare appropriate standards of  
8115 eligibility for such transfers of offenders from one (1)  
8116 institution to another institution and transfers of offenders who  
8117 meet the qualifications for placement in restitution centers. The  
8118 commissioner shall have the authority to remove the offenders from  
8119 restitution centers and to transfer them to other facilities of  
8120 the department. The commissioner shall obtain the approval of the  
8121 sentencing court before transferring an offender committed to the  
8122 department to a restitution center. On the request of the chief  
8123 executive officer of the affected unit of local government, the  
8124 commissioner may transfer a person detained in a local facility to  
8125 a state facility. The commissioner shall determine the cost of  
8126 care for that person to be borne by the unit of local government.  
8127 The commissioner may assign to a community work center, any  
8128 offender who is convicted under the Mississippi Implied Consent  
8129 Law and who is sentenced to the custody of the Department of  
8130 Corrections, except that if a death or a serious maiming has  
8131 occurred during the commission of the violation of the Mississippi



8132 Implied Consent Law, then the offender so convicted may not be  
8133 assigned to a community work center.

8134 (2) The department may establish by rule or policy and  
8135 procedure a community prerelease program which shall be subject to  
8136 the following requirements:

8137 (a) The commissioner may extend the limits of  
8138 confinement of offenders serving sentences for violent or  
8139 nonviolent crimes who have six (6) months or less remaining before  
8140 release on parole, conditional release or discharge to participate  
8141 in the program. Parole violators may be allowed to participate in  
8142 the program.

8143 (b) Any offender who is referred to the program shall  
8144 remain an offender of the department and shall be subject to rules  
8145 and regulations of the department pertaining to offenders of the  
8146 department until discharged or released on parole or conditional  
8147 release by the State Parole Board.

8148 (c) The department shall require the offender to  
8149 participate in work or educational or vocational programs and  
8150 other activities that may be necessary for the supervision and  
8151 treatment of the offender.

8152 (d) An offender assigned to the program shall be  
8153 authorized to leave a community prerelease center only for the  
8154 purpose and time necessary to participate in the program and  
8155 activities authorized in paragraph (c) of this subsection.





(3) The commissioner shall have absolute immunity from liability for any injury resulting from a determination by the commissioner that an offender shall be allowed to participate in the community prerelease program.

(4) (a) The department may by rule or policy and procedure provide the regimented inmate discipline program and prerelease service for offenders at each of its major correctional facilities: Mississippi State Penitentiary, Central Mississippi Correctional Institution and South Mississippi Correctional Institution.

(b) The commissioner may establish regimented inmate discipline and prerelease programs at the South Mississippi Correctional Institution. Offenders assigned to this facility may receive the services provided by the regimented inmate discipline program. The prerelease program may be located on the grounds of this facility or another facility designated by the commissioner.

**SECTION 341.** Section 47-5-119, Mississippi Code of 1972, is brought forward as follows:

47-5-119. Offenders, when received into a facility of the correctional system, shall be carefully searched. If money be found on the person of the offender, or received by him at any time, it shall be taken in charge by the commissioner and placed to the offender's credit and expended for the offender's benefit on his written order and under such restrictions as may be prescribed by law or the rules. If an offender with money charged



8181 to his credit shall die from any cause while in a facility of the  
8182 correctional system or be discharged without claiming such money,  
8183 the commissioner shall make every effort to give notice of such  
8184 fact to the discharged offender or to the beneficiary or  
8185 nearest-known relative, if any, of the deceased or discharged  
8186 offender, and upon a valid claim presented shall pay out such  
8187 money to such discharged offender, beneficiary or nearest  
8188 relative. After two (2) years from the date of giving such  
8189 notice, or a valid attempt to give such notice, or two (2) years  
8190 after the death of such offender, if the beneficiary or nearest  
8191 relative is unknown, if such money has not been validly claimed,  
8192 the commissioner shall make an affidavit of such fact, which sums  
8193 shall escheat to the Correctional System Special Vocational  
8194 Training Program Fund to help in offender rehabilitation. Any  
8195 officer or employee having charge of the offenders' money who  
8196 misappropriates the same, or any part thereof, shall be deemed  
8197 guilty of a felony, and upon conviction thereof shall be confined  
8198 in the correctional system for a term of not more than five (5)  
8199 years. All sums credited to the account of an offender who shall  
8200 escape shall immediately, upon the offender's escape, escheat to  
8201 the Special Vocational Training Program Fund to help in offender  
8202 rehabilitation.

8203       **SECTION 342.** Section 47-5-120, Mississippi Code of 1972, is  
8204 brought forward as follows:



8205           47-5-120. (1) Except as otherwise provided by law, the  
8206 commissioner may transfer an offender for observation, diagnosis  
8207 and treatment to another appropriate state department or  
8208 institution, provided that he has given prior written notice to  
8209 the administrator of the agency.

8210           (2) The Department of Corrections shall create a Board of  
8211 Examiners, hereinafter referred to as the "board," who shall  
8212 examine and evaluate the condition of offenders who are apparently  
8213 suffering from psychosis, other mental illness, or dependency or  
8214 addiction to drugs. The commissioner shall refer such offenders  
8215 to the board which shall make a written report of its findings  
8216 pertaining to each such offender. If all members of the board  
8217 determine that an offender is in need of mental treatment or can  
8218 obtain benefit from the programs of treatment for drug dependency  
8219 or addiction at a facility of the Department of Mental Health,  
8220 then the board may authorize his transfer for observation,  
8221 diagnosis, treatment and rehabilitation after prior written notice  
8222 to the administrator of the facility of the Department of Mental  
8223 Health that is to receive the offender.

8224           (3) The board shall be composed of the following:

8225                   (a) A physician on the staff of the Mississippi State  
8226 Hospital at Whitfield, Mississippi, or the East Mississippi State  
8227 Hospital at Meridian, Mississippi;

8228                   (b) A physician on the staff of the Mississippi  
8229 Department of Corrections; and



8230 (c) A physician to be selected by the Commissioner of  
8231 Corrections who is not an employee of the Department of  
8232 Corrections or the Department of Mental Health.

8233 (4) The board shall meet once each month at the correctional  
8234 facility located at Parchman, Mississippi. All fees, compensation  
8235 and expenses of the board shall be paid from funds appropriated to  
8236 or otherwise available to the State Department of Corrections. The  
8237 board is authorized to establish such rules and regulations as may  
8238 be necessary to carry out the purposes of this section.

8239 (5) While the offender is in another institution, his  
8240 sentence shall continue to run. When the director of the  
8241 institution to which an offender has been transferred determines  
8242 that the offender is not in need of treatment or has recovered  
8243 from the condition which occasioned the transfer or has received  
8244 the maximum benefit of treatment and rehabilitation, the  
8245 commissioner shall provide for his return to the department,  
8246 unless his sentence has expired, in which case he shall be issued  
8247 a discharge in accordance with law.

8248 **SECTION 343.** Section 47-5-121, Mississippi Code of 1972, is  
8249 brought forward as follows:

8250 47-5-121. All female offenders shall be kept separate and  
8251 apart from male offenders. Where practicable, the commissioner  
8252 shall keep the female offenders within a separate facility from  
8253 the male offenders, and shall provide reasonable rules and  
8254 regulations for the government of same.



8255           **SECTION 344.** Section 47-5-126, Mississippi Code of 1972, is  
8256 brought forward as follows:

8257           47-5-126. All inmates, unless physically unable, shall be  
8258 required to perform such work as may be set out in the  
8259 policymaking board of the institution.

8260           **SECTION 345.** Section 47-5-138, Mississippi Code of 1972, is  
8261 amended as follows:

8262           47-5-138. (1) The department may promulgate rules and  
8263 regulations to carry out an earned time allowance program based on  
8264 the good conduct and performance of an inmate. An inmate is  
8265 eligible to receive an earned time allowance of one-half (1/2) of  
8266 the period of confinement imposed by the court except those  
8267 inmates excluded by law. When an inmate is committed to the  
8268 custody of the department, the department shall determine a  
8269 conditional earned time release date by subtracting the earned  
8270 time allowance from an inmate's term of sentence. This subsection  
8271 does not apply to any sentence imposed after June 30, 1995.

8272           (2) An inmate may forfeit all or part of his earned time  
8273 allowance for a serious violation of rules. No forfeiture of the  
8274 earned time allowance shall be effective except upon approval of  
8275 the commissioner, or his designee, and forfeited earned time may  
8276 not be restored.

8277           (3) (a) For the purposes of this subsection, "final order"  
8278 means an order of a state or federal court that dismisses a  
8279 lawsuit brought by an inmate while the inmate was in the custody



8280 of the Department of Corrections as frivolous, malicious or for  
8281 failure to state a claim upon which relief could be granted.

8282 (b) On receipt of a final order, the department shall  
8283 forfeit:

8284 (i) Sixty (60) days of an inmate's accrued earned  
8285 time if the department has received one (1) final order as defined  
8286 herein;

8287 (ii) One hundred twenty (120) days of an inmate's  
8288 accrued earned time if the department has received two (2) final  
8289 orders as defined herein;

8290 (iii) One hundred eighty (180) days of an inmate's  
8291 accrued earned time if the department has received three (3) or  
8292 more final orders as defined herein.

8293 (c) The department may not restore earned time  
8294 forfeited under this subsection.

8295 (4) An inmate who meets the good conduct and performance  
8296 requirements of the earned time allowance program may be released  
8297 on his conditional earned time release date.

8298 (5) For any sentence imposed after June 30, 1995, an inmate  
8299 may receive an earned time allowance of four and one-half (4-1/2)  
8300 days for each thirty (30) days served if the department determines  
8301 that the inmate has complied with the good conduct and performance  
8302 requirements of the earned time allowance program. The earned  
8303 time allowance under this subsection shall not exceed fifteen  
8304 percent (15%) of an inmate's term of sentence; however, beginning



8305 July 1, 2006, no person under the age of twenty-one (21) who has  
8306 committed a nonviolent offense, and who is under the jurisdiction  
8307 of the Department of Corrections, shall be subject to the fifteen  
8308 percent (15%) limitation for earned time allowances as described  
8309 in this subsection (5).

8310 (6) Any inmate, who is released before the expiration of his  
8311 term of sentence under this section, shall be placed under  
8312 earned-release supervision until the expiration of the term of  
8313 sentence. The inmate shall retain inmate status and remain under  
8314 the jurisdiction of the department. The period of earned-release  
8315 supervision shall be conducted in the same manner as a period of  
8316 supervised parole. The department shall develop rules, terms and  
8317 conditions for the earned-release supervision program. The  
8318 commissioner shall designate the appropriate hearing officer  
8319 within the department to conduct revocation hearings for inmates  
8320 violating the conditions of earned-release supervision.

8321 (7) If the earned-release supervision is revoked, the inmate  
8322 shall serve the remainder of the sentence, but the time the inmate  
8323 served on earned-release supervision before revocation, shall be  
8324 applied to reduce his sentence.

8325 **SECTION 346.** Section 47-5-139, Mississippi Code of 1972, is  
8326 brought forward as follows:

8327 47-5-139. (1) An inmate shall not be eligible for the  
8328 earned time allowance if:



8329           (a) The inmate was sentenced to life imprisonment; but  
8330 an inmate, except an inmate sentenced to life imprisonment for  
8331 capital murder, who has reached the age of sixty-five (65) or  
8332 older and who has served at least fifteen (15) years may petition  
8333 the sentencing court for conditional release;

8334           (b) The inmate was convicted as a habitual offender  
8335 under Sections 99-19-81 through 99-19-87;

8336           (c) The inmate has forfeited his earned time allowance  
8337 by order of the commissioner;

8338           (d) The inmate was convicted of a sex crime; or

8339           (e) The inmate has not served the mandatory time  
8340 required for parole eligibility for a conviction of robbery or  
8341 attempted robbery with a deadly weapon.

8342           (2) An offender under two (2) or more consecutive sentences  
8343 shall be allowed commutation based upon the total term of the  
8344 sentences.

8345           (3) All earned time shall be forfeited by the inmate in the  
8346 event of escape and/or aiding and abetting an escape. The  
8347 commissioner may restore all or part of the earned time if the  
8348 escapee returns to the institution voluntarily, without expense to  
8349 the state, and without act of violence while a fugitive from the  
8350 facility.

8351           (4) Any officer or employee who shall willfully violate the  
8352 provisions of this section and be convicted therefor shall be  
8353 removed from office or employment.





8354           **SECTION 347.** Section 47-5-140, Mississippi Code of 1972, is  
8355 brought forward as follows:

8356           47-5-140. Each county attorney, district attorney, each  
8357 member of the Parole Board and circuit judge shall be provided a  
8358 copy of a handbook prepared by the commissioner which shall  
8359 include a copy of Section 47-5-138 and Section 47-5-139, and shall  
8360 clearly show how such sections would apply to an offender  
8361 sentenced to terms of various lengths. Each offender shall be  
8362 provided a copy of the handbook upon arrival at the correctional  
8363 system and have it explained to him as a part of his initial  
8364 orientation.

8365           **SECTION 348.** Section 47-5-142, Mississippi Code of 1972, is  
8366 brought forward as follows:

8367           47-5-142. (1) In order to provide incentive for offenders  
8368 to achieve positive and worthwhile accomplishments for their  
8369 personal benefit or the benefit of others, and in addition to any  
8370 other administrative reductions of the length of an offender's  
8371 sentence, any offender shall be eligible, subject to the  
8372 provisions of this section, to receive meritorious earned time as  
8373 distinguished from earned time for good conduct and performance.

8374           (2) Subject to approval by the commissioner of the terms and  
8375 conditions of the program or project, meritorious earned time may  
8376 be awarded for the following: (a) successful completion of  
8377 educational or instructional programs; (b) satisfactory



8378 participation in work projects; and (c) satisfactory participation  
8379 in any special incentive program.

8380 (3) The programs and activities through which meritorious  
8381 earned time may be received shall be published in writing and  
8382 posted in conspicuous places at all facilities of the department  
8383 and such publication shall be made available to all offenders in  
8384 the custody of the department.

8385 (4) The commissioner shall make a determination of the  
8386 number of days of reduction of sentence which may be awarded an  
8387 offender as meritorious earned time for participation in approved  
8388 programs or projects; the number of days shall be determined by  
8389 the commissioner on the basis of each particular program or  
8390 project.

8391 (5) No offender shall be awarded any meritorious earned time  
8392 while assigned to the maximum security facilities for disciplinary  
8393 purposes.

8394 (6) All meritorious earned time shall be forfeited by the  
8395 offender in the event of escape and/or aiding and abetting an  
8396 escape.

8397 (7) Any officer or employee of the department who shall  
8398 willfully violate the provisions of this section and be convicted  
8399 therefor shall be removed from office or employment.

8400 (8) An offender may forfeit all or any part of his  
8401 meritorious earned time allowance for just cause upon the written  
8402 order of the commissioner or his designee. Any meritorious earned



8403 time allowance forfeited under this section shall not be restored  
8404 nor shall it be re-earned by the offender.

8405       **SECTION 349.** Section 47-5-173, Mississippi Code of 1972, is  
8406 brought forward as follows:

8407       47-5-173. The commissioner, or his designees, may grant  
8408 leave to an offender and may take into consideration sickness or  
8409 death in the offender's family or the seeking of employment by the  
8410 offender in connection with application for parole, for a period  
8411 of time not to exceed ten (10) days. At least fifteen (15) days  
8412 prior to the release of an offender on leave, the director of  
8413 records of the department shall give the written notice required  
8414 pursuant to Section 47-5-177. However, if an offender is granted  
8415 leave because of sickness or death in the offender's family,  
8416 written notice shall not be required but the inmate shall be  
8417 accompanied by a correctional officer or a law enforcement  
8418 officer. In all other cases the commissioner, or his designees,  
8419 shall provide required security when deemed necessary. The  
8420 commissioner, or his designees, in granting leave, shall take into  
8421 consideration the conduct and work performance of the offender.

8422       **SECTION 350.** Section 47-5-177, Mississippi Code of 1972, is  
8423 brought forward as follows:

8424       47-5-177. At least fifteen (15) days prior to the release of  
8425 an offender from the custody of the department because of  
8426 discharge, parole, pardon, temporary personal leave or pass, or  
8427 otherwise, except for sickness or death in the offender's family,



8428 the director of records of the department shall give written or  
8429 electronic notice of such release to the sheriff of the county and  
8430 to the chief of police of the municipality where the offender was  
8431 convicted. If the offender is paroled to a county other than the  
8432 county of conviction, the director of records shall give written  
8433 or electronic notice of the release to the sheriff, district  
8434 attorney and circuit judge of the county and to the chief of  
8435 police of the municipality where the offender is paroled and to  
8436 the sheriff of the county and to the chief of police of the  
8437 municipality where the offender was convicted. The department  
8438 shall notify the parole officer of the county where the offender  
8439 is paroled or discharged to probation of any chronic mental  
8440 disorder incurred by the offender, of any type of infectious  
8441 disease for which the offender has been examined and treated, and  
8442 of any medications provided to the offender for such conditions.

8443 The commissioner shall require the director of records to  
8444 clearly identify the notice of release of an offender who has been  
8445 convicted of arson at any time. The fact that the offender to be  
8446 released had been convicted of arson at any time shall appear  
8447 prominently on the notice of release and the sheriff shall notify  
8448 all officials who are responsible for investigation of arson  
8449 within the county of such offender's release and the chief of  
8450 police shall notify all such officials within the municipality of  
8451 such offender's release.



8452           **SECTION 351.** Section 47-5-901, Mississippi Code of 1972, is  
8453 brought forward as follows:

8454           47-5-901. (1) Any person committed, sentenced or otherwise  
8455 placed under the custody of the Department of Corrections, on  
8456 order of the sentencing court and subject to the other conditions  
8457 of this subsection, may serve all or any part of his sentence in  
8458 the county jail of the county wherein such person was convicted if  
8459 the Commissioner of Corrections determines that physical space is  
8460 not available for confinement of such person in the state  
8461 correctional institutions. Such determination shall be promptly  
8462 made by the Department of Corrections upon receipt of notice of  
8463 the conviction of such person. The commissioner shall certify in  
8464 writing that space is not available to the sheriff or other  
8465 officer having custody of the person. Any person serving his  
8466 sentence in a county jail shall be classified in accordance with  
8467 Section 47-5-905.

8468           (2) If state prisoners are housed in county jails due to a  
8469 lack of capacity at state correctional institutions, the  
8470 Department of Corrections shall determine the cost for food and  
8471 medical attention for such prisoners. The cost of feeding and  
8472 housing offenders confined in such county jails shall be based on  
8473 actual costs or contract price per prisoner. In order to maximize  
8474 the potential use of county jail space, the Department of  
8475 Corrections is encouraged to negotiate a reasonable per day cost



8476 per prisoner, which in no event may exceed Twenty Dollars (\$20.00)  
8477 per day per offender.

8478 (3) (a) Upon vouchers submitted by the board of supervisors  
8479 of any county housing persons due to lack of space at state  
8480 institutions, the Department of Corrections shall pay to such  
8481 county, out of any available funds, the actual cost of food, or  
8482 contract price per prisoner, not to exceed Twenty Dollars (\$20.00)  
8483 per day per offender, as determined under subsection (2) of this  
8484 section for each day an offender is so confined beginning the day  
8485 that the Department of Corrections receives a certified copy of  
8486 the sentencing order and will terminate on the date on which the  
8487 offender is released or otherwise removed from the custody of the  
8488 county jail. The department, or its contracted medical provider,  
8489 will pay to a provider of a medical service for any and all  
8490 incarcerated persons from a correctional or detention facility an  
8491 amount based upon negotiated fees as agreed to by the medical care  
8492 service providers and the department and/or its contracted medical  
8493 provider. In the absence of negotiated discounted fee schedule,  
8494 medical care service providers will be paid by the department, or  
8495 its contracted medical service provider, an amount no greater than  
8496 the reimbursement rate applicable based on the Mississippi  
8497 Medicaid reimbursement rate. The board of supervisors of any  
8498 county shall not be liable for any cost associated with medical  
8499 attention for prisoners who are pretrial detainees or for  
8500 prisoners who have been convicted that exceeds the Mississippi



8501 Medicaid reimbursement rate or the reimbursement provided by the  
8502 Department of Corrections, whichever is greater. This limitation  
8503 applies to all medical care services, durable and nondurable  
8504 goods, prescription drugs and medications. Such payment shall be  
8505 placed in the county general fund and shall be expended only for  
8506 food and medical attention for such persons.

8507 (b) Upon vouchers submitted by the board of supervisors  
8508 of any county housing offenders in county jails pending a  
8509 probation or parole revocation hearing, the department shall pay  
8510 the reimbursement costs provided in paragraph (a).

8511 (c) If the probation or parole of an offender is  
8512 revoked, the additional cost of housing the offender pending the  
8513 revocation hearing shall be assessed as part of the offender's  
8514 court cost and shall be remitted to the department.

8515 (4) A person, on order of the sentencing court, may serve  
8516 not more than twenty-four (24) months of his sentence in a county  
8517 jail if the person is classified in accordance with Section  
8518 47-5-905 and the county jail is an approved county jail for  
8519 housing state inmates under federal court order. The sheriff of  
8520 the county shall have the right to petition the Commissioner of  
8521 Corrections to remove the inmate from the county jail. The county  
8522 shall be reimbursed in accordance with subsection (2) of this  
8523 section.

8524 (5) The Attorney General of the State of Mississippi shall  
8525 defend the employees of the Department of Corrections and



officials and employees of political subdivisions against any action brought by any person who was committed to a county jail under the provisions of this section.

(6) This section does not create in the Department of Corrections, or its employees or agents, any new liability, express or implied, nor shall it create in the Department of Corrections any administrative authority or responsibility for the construction, funding, administration or operation of county or other local jails or other places of confinement which are not staffed and operated on a full-time basis by the Department of Corrections. The correctional system under the jurisdiction of the Department of Corrections shall include only those facilities fully staffed by the Department of Corrections and operated by it on a full-time basis.

(7) An offender returned to a county for post-conviction proceedings shall be subject to the provisions of Section 99-19-42 and the county shall not receive the per-day allotment for such offender after the time prescribed for returning the offender to the Department of Corrections as provided in Section 99-19-42.

**SECTION 352.** Section 47-7-1, Mississippi Code of 1972, is brought forward as follows:

47-7-1. This chapter shall be known as the "Probation and Parole Law."

**SECTION 353.** Section 47-7-5, Mississippi Code of 1972, is brought forward as follows:





8551           47-7-5. (1) The State Parole Board, created under former  
8552 Section 47-7-5, is hereby created, continued and reconstituted and  
8553 shall be composed of five (5) members. The Governor shall appoint  
8554 the members with the advice and consent of the Senate. All terms  
8555 shall be at the will and pleasure of the Governor. Any vacancy  
8556 shall be filled by the Governor, with the advice and consent of  
8557 the Senate. The Governor shall appoint a chairman of the board.

8558           (2) Any person who is appointed to serve on the board shall  
8559 possess at least a bachelor's degree or a high school diploma and  
8560 four (4) years' work experience. Each member shall devote his  
8561 full time to the duties of his office and shall not engage in any  
8562 other business or profession or hold any other public office. A  
8563 member shall not receive compensation or per diem in addition to  
8564 his salary as prohibited under Section 25-3-38. Each member shall  
8565 keep such hours and workdays as required of full-time state  
8566 employees under Section 25-1-98. Individuals shall be appointed  
8567 to serve on the board without reference to their political  
8568 affiliations. Each board member, including the chairman, may be  
8569 reimbursed for actual and necessary expenses as authorized by  
8570 Section 25-3-41. Each member of the board shall complete annual  
8571 training developed based on guidance from the National Institute  
8572 of Corrections, the Association of Paroling Authorities  
8573 International, or the American Probation and Parole Association.  
8574 Each first-time appointee of the board shall, within sixty (60)  
8575 days of appointment, or as soon as practical, complete training



8576 for first-time Parole Board members developed in consideration of  
8577 information from the National Institute of Corrections, the  
8578 Association of Paroling Authorities International, or the American  
8579 Probation and Parole Association.

8580 (3) The board shall have exclusive responsibility for the  
8581 granting of parole as provided by Sections 47-7-3 and 47-7-17 and  
8582 shall have exclusive authority for revocation of the same. The  
8583 board shall have exclusive responsibility for investigating  
8584 clemency recommendations upon request of the Governor.

8585 (4) The board, its members and staff, shall be immune from  
8586 civil liability for any official acts taken in good faith and in  
8587 exercise of the board's legitimate governmental authority.

8588 (5) The budget of the board shall be funded through a  
8589 separate line item within the general appropriation bill for the  
8590 support and maintenance of the department. Employees of the  
8591 department which are employed by or assigned to the board shall  
8592 work under the guidance and supervision of the board. There shall  
8593 be an executive secretary to the board who shall be responsible  
8594 for all administrative and general accounting duties related to  
8595 the board. The executive secretary shall keep and preserve all  
8596 records and papers pertaining to the board.

8597 (6) The board shall have no authority or responsibility for  
8598 supervision of offenders granted a release for any reason,  
8599 including, but not limited to, probation, parole or executive  
8600 clemency or other offenders requiring the same through interstate



8601 compact agreements. The supervision shall be provided exclusively  
8602 by the staff of the Division of Community Corrections of the  
8603 department.

8604 (7) (a) The Parole Board is authorized to select and place  
8605 offenders in an electronic monitoring program under the conditions  
8606 and criteria imposed by the Parole Board. The conditions,  
8607 restrictions and requirements of Section 47-7-17 and Sections  
8608 47-5-1001 through 47-5-1015 shall apply to the Parole Board and  
8609 any offender placed in an electronic monitoring program by the  
8610 Parole Board.

8611 (b) Any offender placed in an electronic monitoring  
8612 program under this subsection shall pay the program fee provided  
8613 in Section 47-5-1013. The program fees shall be deposited in the  
8614 special fund created in Section 47-5-1007.

8615 (c) The department shall have absolute immunity from  
8616 liability for any injury resulting from a determination by the  
8617 Parole Board that an offender be placed in an electronic  
8618 monitoring program.

8619 (8) (a) The Parole Board shall maintain a central registry  
8620 of paroled inmates. The Parole Board shall place the following  
8621 information on the registry: name, address, photograph, crime for  
8622 which paroled, the date of the end of parole or flat-time date and  
8623 other information deemed necessary. The Parole Board shall  
8624 immediately remove information on a parolee at the end of his  
8625 parole or flat-time date.



8626           (b) When a person is placed on parole, the Parole Board  
8627 shall inform the parolee of the duty to report to the parole  
8628 officer any change in address ten (10) days before changing  
8629 address.

8630           (c) The Parole Board shall utilize an Internet website  
8631 or other electronic means to release or publish the information.

8632           (d) Records maintained on the registry shall be open to  
8633 law enforcement agencies and the public and shall be available no  
8634 later than July 1, 2003.

8635           (9) An affirmative vote of at least four (4) members of the  
8636 Parole Board shall be required to grant parole to an inmate  
8637 convicted of capital murder or a sex crime.

8638           (10) This section shall stand repealed on July 1, 2018.

8639           **SECTION 354.** Section 47-7-9, Mississippi Code of 1972, is  
8640 brought forward as follows:

8641           47-7-9. (1) The circuit judges and county judges in the  
8642 districts to which Division of Community Corrections personnel  
8643 have been assigned shall have the power to request of the  
8644 department transfer or removal of the division personnel from  
8645 their court.

8646           (2) (a) Division personnel shall investigate all cases  
8647 referred to them for investigation by the board, the division or  
8648 by any court in which they are authorized to serve. They shall  
8649 furnish to each person released under their supervision a written  
8650 statement of the conditions of probation, parole, earned-release



8651 supervision, post-release supervision or suspension and shall  
8652 instruct the person regarding the same. They shall administer a  
8653 risk and needs assessment on each person under their supervision  
8654 to measure criminal risk factors and individual needs. They shall  
8655 use the results of the risk and needs assessment to guide  
8656 supervision responses consistent with evidence-based practices as  
8657 to the level of supervision and the practices used to reduce  
8658 recidivism. They shall develop a supervision plan for each person  
8659 assessed as moderate to high risk to reoffend. They shall keep  
8660 informed concerning the conduct and conditions of persons under  
8661 their supervision and use all suitable methods that are consistent  
8662 with evidence-based practices to aid and encourage them and to  
8663 bring about improvements in their conduct and condition and to  
8664 reduce the risk of recidivism. They shall keep detailed records  
8665 of their work and shall make such reports in writing as the court  
8666 or the board may require.

8667           (b) Division personnel shall complete annual training  
8668 on evidence-based practices and criminal risk factors, as well as  
8669 instructions on how to target these factors to reduce recidivism.

8670           (c) The division personnel duly assigned to court  
8671 districts are hereby vested with all the powers of police officers  
8672 or sheriffs to make arrests or perform any other duties required  
8673 of policemen or sheriffs which may be incident to the division  
8674 personnel responsibilities. All probation and parole officers  
8675 hired on or after July 1, 1994, will be placed in the Law



Enforcement Officers Training Program and will be required to meet the standards outlined by that program.

(d) It is the intention of the Legislature that insofar as practicable the case load of each division personnel supervising offenders in the community (hereinafter field supervisor) shall not exceed the number of cases that may be adequately handled.

(3) (a) Division personnel shall be provided to perform investigation for the court as provided in this subsection. Division personnel shall conduct presentence investigations on all persons convicted of a felony in any circuit court of the state, prior to sentencing and at the request of the circuit court judge of the court of conviction. The presentence evaluation report shall consist of a complete record of the offender's criminal history, educational level, employment history, psychological condition and such other information as the department or judge may deem necessary. Division personnel shall also prepare written victim impact statements at the request of the sentencing judge as provided in Section 99-19-157.

(b) In order that offenders in the custody of the department on July 1, 1976, may benefit from the kind of evaluations authorized in this section, an evaluation report to consist of the information required hereinabove, supplemented by an examination of an offender's record while in custody, shall be compiled by the division upon all offenders in the custody of the



8701 department on July 1, 1976. After a study of such reports by the  
8702 State Parole Board those cases which the board believes would  
8703 merit some type of executive clemency shall be submitted by the  
8704 board to the Governor with its recommendation for the appropriate  
8705 executive action.

8706 (c) The department is authorized to accept gifts,  
8707 grants and subsidies to conduct this activity.

8708 **SECTION 355.** Section 47-7-17, Mississippi Code of 1972, is  
8709 amended as follows:

8710 47-7-17. Within one (1) year after his admission and at such  
8711 intervals thereafter as it may determine, the board shall secure  
8712 and consider all pertinent information regarding each offender,  
8713 except any under sentence of death or otherwise ineligible for  
8714 parole, including the circumstances of his offense, his previous  
8715 social history, his previous criminal record, including any  
8716 records of law enforcement agencies or of a youth court regarding  
8717 that offender's juvenile criminal history, his conduct, employment  
8718 and attitude while in the custody of the department, the case plan  
8719 created to prepare the offender for parole, and the reports of  
8720 such physical and mental examinations as have been made. The  
8721 board shall furnish at least three (3) months' written notice to  
8722 each such offender of the date on which he is eligible for parole.

8723 Before ruling on the application for parole of any offender,  
8724 the board may require a parole-eligible offender to have a hearing  
8725 as required in this chapter before the board and to be



8726 interviewed. The hearing shall be held no later than thirty (30)  
8727 days prior to the month of eligibility. No application for parole  
8728 of a person convicted of a capital offense shall be considered by  
8729 the board unless and until notice of the filing of such  
8730 application shall have been published at least once a week for two  
8731 (2) weeks in a newspaper published in or having general  
8732 circulation in the county in which the crime was committed. The  
8733 board shall, within thirty (30) days prior to the scheduled  
8734 hearing, also give notice of the filing of the application for  
8735 parole to the victim of the offense for which the prisoner is  
8736 incarcerated and being considered for parole or, in case the  
8737 offense be homicide, a designee of the immediate family of the  
8738 victim, provided the victim or designated family member has  
8739 furnished in writing a current address to the board for such  
8740 purpose. Parole release shall, at the hearing, be ordered only  
8741 for the best interest of society, not as an award of clemency; it  
8742 shall not be considered to be a reduction of sentence or pardon.  
8743 An offender shall be placed on parole only when arrangements have  
8744 been made for his proper employment or for his maintenance and  
8745 care, and when the board believes that he is able and willing to  
8746 fulfill the obligations of a law-abiding citizen. When the board  
8747 determines that the offender will need transitional housing upon  
8748 release in order to improve the likelihood of \* \* \* he or \* \* \*  
8749 she becoming a law-abiding citizen, the board may parole the  
8750 offender with the condition that the inmate spends no more than





8751 six (6) months in a transitional reentry center. At least fifteen  
8752 (15) days prior to the release of an offender on parole, the  
8753 director of records of the department shall give the written  
8754 notice which is required pursuant to Section 47-5-177. Every  
8755 offender while on parole shall remain in the legal custody of the  
8756 department from which he was released and shall be amenable to the  
8757 orders of the board. Upon determination by the board that an  
8758 offender is eligible for release by parole, notice shall also be  
8759 given within at least fifteen (15) days before release, by the  
8760 board to the victim of the offense or the victim's family member,  
8761 as indicated above, regarding the date when the offender's release  
8762 shall occur, provided a current address of the victim or the  
8763 victim's family member has been furnished in writing to the board  
8764 for such purpose.

8765 Failure to provide notice to the victim or the victim's  
8766 family member of the filing of the application for parole or of  
8767 any decision made by the board regarding parole shall not  
8768 constitute grounds for vacating an otherwise lawful parole  
8769 determination nor shall it create any right or liability, civilly  
8770 or criminally, against the board or any member thereof.

8771 A letter of protest against granting an offender parole shall  
8772 not be treated as the conclusive and only reason for not granting  
8773 parole.

8774 The board may adopt such other rules not inconsistent with  
8775 law as it may deem proper or necessary with respect to the



8776 eligibility of offenders for parole, the conduct of parole  
8777 hearings, or conditions to be imposed upon parolees, including a  
8778 condition that the parolee submit, as provided in Section 47-5-601  
8779 to any type of breath, saliva or urine chemical analysis test, the  
8780 purpose of which is to detect the possible presence of alcohol or  
8781 a substance prohibited or controlled by any law of the State of  
8782 Mississippi or the United States. The board shall have the  
8783 authority to adopt rules related to the placement of certain  
8784 offenders on unsupervised parole and for the operation of  
8785 transitional reentry centers. However, in no case shall an  
8786 offender be placed on unsupervised parole before he has served a  
8787 minimum of fifty percent (50%) of the period of supervised parole.

8788       **SECTION 356.** Section 47-7-23, Mississippi Code of 1972, is  
8789 brought forward as follows:

8790       47-7-23. Except as otherwise provided by law, the Department  
8791 of Corrections shall have the power and duty to make rules for the  
8792 conduct of persons heretofore or hereafter placed on parole under  
8793 the supervision of the Department of Corrections and for the  
8794 investigation and supervision of such persons, which supervision  
8795 may include a condition that such persons submit, as provided in  
8796 Section 47-5-601, to any type of breath, saliva or urine chemical  
8797 analysis test, the purpose of which is to detect the possible  
8798 presence of alcohol or a substance prohibited or controlled by any  
8799 law of the State of Mississippi or the United States. The  
8800 department shall not make any rules which shall be inconsistent



8801 with the rules imposed by the State Parole Board pursuant to  
8802 Section 47-7-17 on offenders who are placed on unsupervised  
8803 parole.

8804       **SECTION 357.** Section 47-7-25, Mississippi Code of 1972, is  
8805 brought forward as follows:

8806       47-7-25. When an offender is placed on parole he shall  
8807 receive, if needed, from the state, civilian clothing and  
8808 transportation to the place in which he is to reside. At the  
8809 discretion of the board the offender may be advanced such sum for  
8810 his temporary maintenance as the board may allow. The aforesaid  
8811 gratuities are to be furnished by the Commissioner of Corrections  
8812 who is authorized to charge the actual cost of same in his account  
8813 as Commissioner of Corrections.

8814       **SECTION 358.** Section 47-7-27, Mississippi Code of 1972, is  
8815 brought forward as follows:

8816       47-7-27. (1) The board may, at any time and upon a showing  
8817 of probable violation of parole, issue a warrant for the return of  
8818 any paroled offender to the custody of the department. The  
8819 warrant shall authorize all persons named therein to return the  
8820 paroled offender to actual custody of the department from which he  
8821 was paroled.

8822       (2) Any field supervisor may arrest an offender without a  
8823 warrant or may deputize any other person with power of arrest by  
8824 giving him a written statement setting forth that the offender  
8825 has, in the judgment of that field supervisor, violated the



8826 conditions of his parole or earned-release supervision. The  
8827 written statement delivered with the offender by the arresting  
8828 officer to the official in charge of the department facility from  
8829 which the offender was released or other place of detention  
8830 designated by the department shall be sufficient warrant for the  
8831 detention of the offender.

8832 (3) The field supervisor, after making an arrest, shall  
8833 present to the detaining authorities a similar statement of the  
8834 circumstances of violation. The field supervisor shall at once  
8835 notify the board or department of the arrest and detention of the  
8836 offender and shall submit a written report showing in what manner  
8837 the offender has violated the conditions of parole or  
8838 earned-release supervision. An offender for whose return a  
8839 warrant has been issued by the board shall, after the issuance of  
8840 the warrant, be deemed a fugitive from justice.

8841 (4) Whenever an offender is arrested on a warrant for an  
8842 alleged violation of parole as herein provided, the board shall  
8843 hold an informal preliminary hearing within seventy-two (72) hours  
8844 to determine whether there is reasonable cause to believe the  
8845 person has violated a condition of parole. A preliminary hearing  
8846 shall not be required when the offender is not under arrest on a  
8847 warrant or the offender signed a waiver of a preliminary hearing.  
8848 The preliminary hearing may be conducted electronically.

8849 (5) The right of the State of Mississippi to extradite  
8850 persons and return fugitives from justice, from other states to



8851 this state, shall not be impaired by this chapter and shall remain  
8852 in full force and effect. An offender convicted of a felony  
8853 committed while on parole, whether in the State of Mississippi or  
8854 another state, shall immediately have his parole revoked upon  
8855 presentment of a certified copy of the commitment order to the  
8856 board. If an offender is on parole and the offender is convicted  
8857 of a felony for a crime committed prior to the offender being  
8858 placed on parole, whether in the State of Mississippi or another  
8859 state, the offender may have his parole revoked upon presentment  
8860 of a certified copy of the commitment order to the board.

8861 (6) (a) The board shall hold a hearing for any parolee who  
8862 is detained as a result of a warrant or a violation report within  
8863 twenty-one (21) days of the parolee's admission to detention. The  
8864 board may, in its discretion, terminate the parole or modify the  
8865 terms and conditions thereof. If the board revokes parole for a  
8866 technical violation the board shall impose a period of  
8867 imprisonment to be served in a technical violation center operated  
8868 by the department not to exceed ninety (90) days for the first  
8869 technical violation and not to exceed one hundred twenty (120)  
8870 days for the second technical violation. For the third technical  
8871 violation, the board may impose a period of imprisonment to be  
8872 served in a technical violation center for up to one hundred and  
8873 eighty (180) days or the board may impose the remainder of the  
8874 suspended portion of the sentence. For the fourth and any  
8875 subsequent technical violation, the board may impose up to the



8876 remainder of the suspended portion of the sentence. The period of  
8877 imprisonment in a technical violation center imposed under this  
8878 section shall not be reduced in any manner.

8879           (b) If the board does not hold a hearing or does not  
8880 take action on the violation within the twenty-one-day time frame  
8881 in paragraph (a) of this subsection, the parolee shall be released  
8882 from detention and shall return to parole status. The board may  
8883 subsequently hold a hearing and may revoke parole or may continue  
8884 parole and modify the terms and conditions of parole. If the  
8885 board revokes parole for a technical violation the board shall  
8886 impose a period of imprisonment to be served in a technical  
8887 violation center operated by the department not to exceed ninety  
8888 (90) days for the first technical violation and not to exceed one  
8889 hundred twenty (120) days for the second technical violation. For  
8890 the third technical violation, the board may impose a period of  
8891 imprisonment to be served in a technical violation center for up  
8892 to one hundred eighty (180) days or the board may impose the  
8893 remainder of the suspended portion of the sentence. For the  
8894 fourth and any subsequent technical violation, the board may  
8895 impose up to the remainder of the suspended portion of the  
8896 sentence. The period of imprisonment in a technical violation  
8897 center imposed under this section shall not be reduced in any  
8898 manner.

8899           (c) For a parolee charged with a technical violation  
8900 who has not been detained awaiting the revocation hearing, the



8901 board may hold a hearing within a reasonable time. The board may  
8902 revoke parole or may continue parole and modify the terms and  
8903 conditions of parole. If the board revokes parole for a technical  
8904 violation the board shall impose a period of imprisonment to be  
8905 served in a technical violation center operated by the department  
8906 not to exceed ninety (90) days for the first technical violation  
8907 and not to exceed one hundred twenty (120) days for the second  
8908 technical violation. For the third technical violation, the board  
8909 may impose a period of imprisonment to be served in a technical  
8910 violation center for up to one hundred eighty (180) days or the  
8911 board may impose the remainder of the suspended portion of the  
8912 sentence. For the fourth and any subsequent technical violation,  
8913 the board may impose up to the remainder of the suspended portion  
8914 of the sentence. The period of imprisonment in a technical  
8915 violation center imposed under this section shall not be reduced  
8916 in any manner.

8917 (7) Unless good cause for the delay is established in the  
8918 record of the proceeding, the parole revocation charge shall be  
8919 dismissed if the revocation hearing is not held within the thirty  
8920 (30) days of the issuance of the warrant.

8921 (8) The chairman and each member of the board and the  
8922 designated parole revocation hearing officer may, in the discharge  
8923 of their duties, administer oaths, summon and examine witnesses,  
8924 and take other steps as may be necessary to ascertain the truth of  
8925 any matter about which they have the right to inquire.



8926           (9) The board shall provide semiannually to the Oversight  
8927 Task Force the number of warrants issued for an alleged violation  
8928 of parole, the average time between detention on a warrant and  
8929 preliminary hearing, the average time between detention on a  
8930 warrant and revocation hearing, the number of ninety-day sentences  
8931 in a technical violation center issued by the board, the number of  
8932 one-hundred-twenty-day sentences in a technical violation center  
8933 issued by the board, the number of one-hundred-eighty-day  
8934 sentences issued by the board, and the number and average length  
8935 of the suspended sentences imposed by the board in response to a  
8936 violation.

8937           **SECTION 359.** Section 47-7-29, Mississippi Code of 1972, is  
8938 brought forward as follows:

8939           47-7-29. Any prisoner who commits a felony while at large  
8940 upon parole or earned-release supervision and who is convicted and  
8941 sentenced therefor shall be required to serve such sentence after  
8942 the original sentence has been completed.

8943           **SECTION 360.** Section 47-7-31, Mississippi Code of 1972, is  
8944 brought forward as follows:

8945           47-7-31. Upon request of the Governor the Department of  
8946 Corrections shall investigate and report to him with respect to  
8947 any case of pardon, commutation of sentence, reprieve, furlough or  
8948 remission of fine or forfeiture.

8949           Any attorney of record in the State of Mississippi  
8950 representing any person whose record is before the department





8951 shall have the right to inspect such records on file with the  
8952 department.

8953         **SECTION 361.** Section 47-7-33, Mississippi Code of 1972, is  
8954 brought forward as follows:

8955         47-7-33. (1) When it appears to the satisfaction of any  
8956 circuit court or county court in the State of Mississippi having  
8957 original jurisdiction over criminal actions, or to the judge  
8958 thereof, that the ends of justice and the best interest of the  
8959 public, as well as the defendant, will be served thereby, such  
8960 court, in termtime or in vacation, shall have the power, after  
8961 conviction or a plea of guilty, except in a case where a death  
8962 sentence or life imprisonment is the maximum penalty which may be  
8963 imposed, to suspend the imposition or execution of sentence, and  
8964 place the defendant on probation as herein provided, except that  
8965 the court shall not suspend the execution of a sentence of  
8966 imprisonment after the defendant shall have begun to serve such  
8967 sentence. In placing any defendant on probation, the court, or  
8968 judge, shall direct that such defendant be under the supervision  
8969 of the Department of Corrections.

8970         (2) When any circuit or county court places an offender on  
8971 probation, the court shall give notice to the Mississippi  
8972 Department of Corrections within fifteen (15) days of the court's  
8973 decision to place the offender on probation. Notice shall be  
8974 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 probation.

(3) When any circuit court or county court places a person on probation in accordance with the provisions of this section and that person is ordered to make any payments to his family, if any member of his family whom he is ordered to support is receiving public assistance through the State Department of Human Services, the court shall order him to make such payments to the county welfare officer of the county rendering public assistance to his family, for the sole use and benefit of said family.

**SECTION 362.** Section 47-7-35, Mississippi Code of 1972, is brought forward as follows:

47-7-35. (1) The courts referred to in Section 47-7-33 or 47-7-34 shall determine the terms and conditions of probation or post-release supervision and may alter or modify, at any time during the period of probation or post-release supervision, the conditions and may include among them the following or any other:

That the offender shall:

(a) Commit no offense against the laws of this or any other state of the United States, or of any federal, territorial or tribal jurisdiction of the United States;

(b) Avoid injurious or vicious habits;

(c) Avoid persons or places of disreputable or harmful character;



8999                   (d) Report to the probation and parole officer as  
9000 directed;  
9001                   (e) Permit the probation and parole officer to visit  
9002 him at home or elsewhere;  
9003                   (f) Work faithfully at suitable employment so far as  
9004 possible;  
9005                   (g) Remain within a specified area;  
9006                   (h) Pay his fine in one (1) or several sums;  
9007                   (i) Support his dependents;  
9008                   (j) Submit, as provided in Section 47-5-601, to any  
9009 type of breath, saliva or urine chemical analysis test, the  
9010 purpose of which is to detect the possible presence of alcohol or  
9011 a substance prohibited or controlled by any law of the State of  
9012 Mississippi or the United States;  
9013                   (k) Register as a sex offender if so required under  
9014 Title 45, Chapter 33.  
9015           (2) When any court places a defendant on misdemeanor  
9016 probation, the court must cause to be conducted a search of the  
9017 probationer's name or other identifying information against the  
9018 registration information regarding sex offenders maintained under  
9019 Title 45, Chapter 33. The search may be conducted using the  
9020 Internet site maintained by the Department of Public Safety Sex  
9021 Offender Registry.  
9022           **SECTION 363.** Section 47-7-37, Mississippi Code of 1972, is  
9023 amended as follows:



47-7-37. (1) The period of probation shall be fixed by the court, and may at any time be extended or terminated by the court, or judge in vacation. Such period with any extension thereof shall not exceed five (5) years, except that in cases of desertion 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. The time served on probation or post-release supervision may be reduced pursuant to Section \* \* \* 47-7-40.

(2) 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.

(3) Whenever an offender is arrested on a warrant for an alleged violation of probation as herein provided, the department shall hold an informal preliminary hearing within seventy-two (72) hours of the arrest to determine whether there is reasonable cause



9049 to believe the person has violated a condition of probation. A  
9050 preliminary hearing shall not be required when the offender is not  
9051 under arrest on a warrant or the offender signed a waiver of a  
9052 preliminary hearing. The preliminary hearing may be conducted  
9053 electronically. If reasonable cause is found, the offender may be  
9054 confined no more than twenty-one (21) days from the admission to  
9055 detention until a revocation hearing is held. If the revocation  
9056 hearing is not held within twenty-one (21) days, the probationer  
9057 shall be released from custody and returned to probation status.

9058 (4) If a probationer or offender is subject to registration  
9059 as a sex offender, the court must make a finding that the  
9060 probationer or offender is not a danger to the public prior to  
9061 release with or without bail. In determining the danger posed by  
9062 the release of the offender or probationer, the court may consider  
9063 the nature and circumstances of the violation and any new offenses  
9064 charged; the offender or probationer's past and present conduct,  
9065 including convictions of crimes and any record of arrests without  
9066 conviction for crimes involving violence or sex crimes; any other  
9067 evidence of allegations of unlawful sexual conduct or the use of  
9068 violence by the offender or probationer; the offender or  
9069 probationer's family ties, length of residence in the community,  
9070 employment history and mental condition; the offender or  
9071 probationer's history and conduct during the probation or other  
9072 supervised release and any other previous supervisions, including  
9073 disciplinary records of previous incarcerations; the likelihood



that the offender or probationer will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; and any other facts the court considers relevant.

(5) (a) The probation and parole officer after making an arrest shall present to the detaining authorities a similar statement of the circumstances of violation. The probation and parole officer shall at once notify the court of the arrest and detention of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation. Within twenty-one (21) days of arrest and detention by warrant as herein provided, the court shall cause the probationer to be brought before it and may continue or revoke all or any part of the probation or the suspension of sentence. If the court revokes probation for a technical violation, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the court may impose up to the remainder of the suspended portion of the sentence. The period of



9099 imprisonment in a technical violation center imposed under this  
9100 section shall not be reduced in any manner.

9101           (b) If the offender is not detained as a result of the  
9102 warrant, the court shall cause the probationer to be brought  
9103 before it within a reasonable time and may continue or revoke all  
9104 or any part of the probation or the suspension of sentence, and  
9105 may cause the sentence imposed to be executed or may impose any  
9106 part of the sentence which might have been imposed at the time of  
9107 conviction. If the court revokes probation for a technical  
9108 violation, the court shall impose a period of imprisonment to be  
9109 served in either a technical violation center or a restitution  
9110 center not to exceed ninety (90) days for the first technical  
9111 violation and not to exceed one hundred twenty (120) days for the  
9112 second technical violation. For the third technical violation,  
9113 the court may impose a period of imprisonment to be served in  
9114 either a technical violation center or a restitution center for up  
9115 to one hundred eighty (180) days or the court may impose the  
9116 remainder of the suspended portion of the sentence. For the  
9117 fourth and any subsequent technical violation, the court may  
9118 impose up to the remainder of the suspended portion of the  
9119 sentence. The period of imprisonment in a technical violation  
9120 center imposed under this section shall not be reduced in any  
9121 manner.

9122           (c) If the court does not hold a hearing or does not  
9123 take action on the violation within the twenty-one-day period, the



9124 offender shall be released from detention and shall return to  
9125 probation status. The court may subsequently hold a hearing and  
9126 may revoke probation or may continue probation and modify the  
9127 terms and conditions of probation. If the court revokes probation  
9128 for a technical violation, the court shall impose a period of  
9129 imprisonment to be served in either a technical violation center  
9130 operated by the department or a restitution center not to exceed  
9131 ninety (90) days for the first technical violation and not to  
9132 exceed one hundred twenty (120) days for the second technical  
9133 violation. For the third technical violation, the court may  
9134 impose a period of imprisonment to be served in either a technical  
9135 violation center or a restitution center for up to one  
9136 hundred \* \* \* eighty (180) days or the court may impose the  
9137 remainder of the suspended portion of the sentence. For the  
9138 fourth and any subsequent technical violation, the court may  
9139 impose up to the remainder of the suspended portion of the  
9140 sentence. The period of imprisonment in a technical violation  
9141 center imposed under this section shall not be reduced in any  
9142 manner.

9143           (d) For an offender charged with a technical violation  
9144 who has not been detained awaiting the revocation hearing, the  
9145 court may hold a hearing within a reasonable time. The court may  
9146 revoke probation or may continue probation and modify the terms  
9147 and conditions of probation. If the court revokes probation for a  
9148 technical violation the court shall impose a period of





9149 imprisonment to be served in either a technical violation center  
9150 operated by the department or a restitution center not to exceed  
9151 ninety (90) days for the first technical violation and not to  
9152 exceed one hundred twenty (120) days for the second technical  
9153 violation. For the third technical violation, the court may  
9154 impose a period of imprisonment to be served in either a technical  
9155 violation center or a restitution center for up to one hundred  
9156 eighty (180) days or the court may impose the remainder of the  
9157 suspended portion of the sentence. For the fourth and any  
9158 subsequent technical violation, the court may impose up to the  
9159 remainder of the suspended portion of the sentence. The period of  
9160 imprisonment in a technical violation center imposed under this  
9161 section shall not be reduced in any manner.

9162       (6) If the probationer is arrested in a circuit court  
9163 district in the State of Mississippi other than that in which he  
9164 was convicted, the probation and parole officer, upon the written  
9165 request of the sentencing judge, shall furnish to the circuit  
9166 court or the county court of the county in which the arrest is  
9167 made, or to the judge of such court, a report concerning the  
9168 probationer, and such court or the judge in vacation shall have  
9169 authority, after a hearing, to continue or revoke all or any part  
9170 of probation or all or any part of the suspension of sentence, and  
9171 may in case of revocation proceed to deal with the case as if  
9172 there had been no probation. In such case, the clerk of the court  
9173 in which the order of revocation is issued shall forward a



9174 transcript of such order to the clerk of the court of original  
9175 jurisdiction, and the clerk of that court shall proceed as if the  
9176 order of revocation had been issued by the court of original  
9177 jurisdiction. Upon the revocation of probation or suspension of  
9178 sentence of any offender, such offender shall be placed in the  
9179 legal custody of the State Department of Corrections and shall be  
9180 subject to the requirements thereof.

9181 (7) Any probationer who removes himself from the State of  
9182 Mississippi without permission of the court placing him on  
9183 probation, or the court to which jurisdiction has been  
9184 transferred, shall be deemed and considered a fugitive from  
9185 justice and shall be subject to extradition as now provided by  
9186 law. No part of the time that one is on probation shall be  
9187 considered as any part of the time that he shall be sentenced to  
9188 serve.

9189 (8) The arresting officer, except when a probation and  
9190 parole officer, shall be allowed the same fees as now provided by  
9191 law for arrest on warrant, and such fees shall be taxed against  
9192 the probationer and paid as now provided by law.

9193 (9) The arrest, revocation and recommitment procedures of  
9194 this section also apply to persons who are serving a period of  
9195 post-release supervision imposed by the court.

9196 (10) Unless good cause for the delay is established in the  
9197 record of the proceeding, the probation revocation charge shall be



9198 dismissed if the revocation hearing is not held within thirty (30)  
9199 days of the warrant being issued.

9200 (11) The Department of Corrections shall provide  
9201 semiannually to the Oversight Task Force the number of warrants  
9202 issued for an alleged violation of probation or post-release  
9203 supervision, the average time between detention on a warrant and  
9204 preliminary hearing, the average time between detention on a  
9205 warrant and revocation hearing, the number of ninety-day sentences  
9206 in a technical violation center issued by the court, the number of  
9207 one-hundred-twenty-day sentences in a technical violation center  
9208 issued by the court, the number of one-hundred-eighty-day  
9209 sentences issued by the court, and the number and average length  
9210 of the suspended sentences imposed by the court in response to a  
9211 violation.

9212 **SECTION 364.** Section 47-7-41, Mississippi Code of 1972, is  
9213 brought forward as follows:

9214 47-7-41. When a probationer shall be discharged from  
9215 probation by the court of original jurisdiction, the field  
9216 supervisor, upon receiving a written request from the probationer,  
9217 shall forward a written report of the record of the probationer to  
9218 the Division of Community Corrections of the department, which  
9219 shall present a copy of this report to the Governor. The Governor  
9220 may, in his discretion, at any time thereafter by appropriate  
9221 executive order restore any civil rights lost by the probationer



9222 by virtue of his conviction or plea of guilty in the court of  
9223 original jurisdiction.

9224       **SECTION 365.** Section 47-7-47, Mississippi Code of 1972, is  
9225 brought forward as follows:

9226       47-7-47. (1) The judge of any circuit court may place an  
9227 offender on a program of earned probation after a period of  
9228 confinement as set out herein and the judge may seek the advice of  
9229 the commissioner and shall direct that the defendant be under the  
9230 supervision of the department.

9231       (2) (a) Any circuit court or county court may, upon its own  
9232 motion, acting upon the advice and consent of the commissioner not  
9233 earlier than thirty (30) days nor later than one (1) year after  
9234 the defendant has been delivered to the custody of the department,  
9235 to which he has been sentenced, suspend the further execution of  
9236 the sentence and place the defendant on earned probation, except  
9237 when a death sentence or life imprisonment is the maximum penalty  
9238 which may be imposed or if the defendant has been confined two (2)  
9239 or more times for the conviction of a felony on a previous  
9240 occasion in any court or courts of the United States and of any  
9241 state or territories thereof or has been convicted of a felony  
9242 involving the use of a deadly weapon.

9243       (b) The authority granted in this subsection shall be  
9244 exercised by the judge who imposed sentence on the defendant, or  
9245 his successor.



9246 (c) The time limit imposed by paragraph (a) of this  
9247 subsection is not applicable to those defendants sentenced to the  
9248 custody of the department prior to April 14, 1977. Persons who  
9249 are convicted of crimes that carry mandatory sentences shall not  
9250 be eligible for earned probation.

9251 (3) When any circuit or county court places an offender on  
9252 earned probation, the court shall give notice to the Mississippi  
9253 Department of Corrections within fifteen (15) days of the court's  
9254 decision to place the offender on earned probation. Notice shall  
9255 be delivered to the central office of the Mississippi Department  
9256 of Corrections and to the regional office of the department which  
9257 will be providing supervision to the offender on earned probation.

9258 (4) If the court places any person on probation or earned  
9259 probation, the court may order the person, as a condition of  
9260 probation, to a period of confinement and treatment at a private  
9261 or public agency or institution, either within or without the  
9262 state, which treats emotional, mental or drug-related problems.  
9263 Any person who, as a condition of probation, is confined for  
9264 treatment at an out-of-state facility shall be supervised pursuant  
9265 to Section 47-7-71, and any person confined at a private agency  
9266 shall not be confined at public expense. Time served in any such  
9267 agency or institution may be counted as time required to meet the  
9268 criteria of subsection (2)(a).

9269 (5) If the court places any person on probation or earned  
9270 probation, the court may order the person to make appropriate



9271 restitution to any victim of his crime or to society through the  
9272 performance of reasonable work for the benefit of the community.

9273 (6) If the court places any person on probation or earned  
9274 probation, the court may order the person, as a condition of  
9275 probation, to submit, as provided in Section 47-5-601, to any type  
9276 of breath, saliva or urine chemical analysis test, the purpose of  
9277 which is to detect the possible presence of alcohol or a substance  
9278 prohibited or controlled by any law of the State of Mississippi or  
9279 the United States.

9280 **SECTION 366.** Section 47-7-49, Mississippi Code of 1972, is  
9281 brought forward as follows:

9282 47-7-49. (1) Any offender on probation, parole,  
9283 earned-release supervision, post-release supervision, earned  
9284 probation or any other offender under the field supervision of the  
9285 Community Services Division of the department shall pay to the  
9286 department the sum of Fifty-five Dollars (\$55.00) per month by  
9287 certified check or money order unless a hardship waiver is  
9288 granted. An offender shall make the initial payment within thirty  
9289 (30) days after being released from imprisonment unless a hardship  
9290 waiver is granted. A hardship waiver may be granted by the  
9291 sentencing court or the Department of Corrections. A hardship  
9292 waiver may not be granted for a period of time exceeding ninety  
9293 (90) days. The commissioner or his designee shall deposit Fifty  
9294 Dollars (\$50.00) of each payment received into a special fund in  
9295 the State Treasury, which is hereby created, to be known as the



9296 Community Service Revolving Fund. Expenditures from this fund  
9297 shall be made for: (a) the establishment of restitution and  
9298 satellite centers; and (b) the establishment, administration and  
9299 operation of the department's Drug Identification Program and the  
9300 intensive and field supervision program. The Fifty Dollars  
9301 (\$50.00) may be used for salaries and to purchase equipment,  
9302 supplies and vehicles to be used by the Community Services  
9303 Division in the performance of its duties. Expenditures for the  
9304 purposes established in this section may be made from the fund  
9305 upon requisition by the commissioner, or his designee.

9306       Of the remaining amount, Three Dollars (\$3.00) of each  
9307 payment shall be deposited into the Crime Victims' Compensation  
9308 Fund created in Section 99-41-29, and Two Dollars (\$2.00) shall be  
9309 deposited into the Training Revolving Fund created pursuant to  
9310 Section 47-7-51. When a person is convicted of a felony in this  
9311 state, in addition to any other sentence it may impose, the court  
9312 may, in its discretion, order the offender to pay a state  
9313 assessment not to exceed the greater of One Thousand Dollars  
9314 (\$1,000.00) or the maximum fine that may be imposed for the  
9315 offense, into the Crime Victims' Compensation Fund created  
9316 pursuant to Section 99-41-29.

9317       Any federal funds made available to the department for  
9318 training or for training facilities, equipment or services shall  
9319 be deposited into the Correctional Training Revolving Fund created  
9320 in Section 47-7-51. The funds deposited in this account shall be



9321 used to support an expansion of the department's training program  
9322 to include the renovation of facilities for training purposes,  
9323 purchase of equipment and contracting of training services with  
9324 community colleges in the state.

9325 No offender shall be required to make this payment for a  
9326 period of time longer than ten (10) years.

9327 (2) The offender may be imprisoned until the payments are  
9328 made if the offender is financially able to make the payments and  
9329 the court in the county where the offender resides so finds,  
9330 subject to the limitations hereinafter set out. The offender  
9331 shall not be imprisoned if the offender is financially unable to  
9332 make the payments and so states to the court in writing, under  
9333 oath, and the court so finds.

9334 (3) This section shall stand repealed from and after June  
9335 30, 2015.

9336 **SECTION 367.** Section 47-7-53, Mississippi Code of 1972, is  
9337 brought forward as follows:

9338 47-7-53. If the Parole Board is abolished, the Department of  
9339 Corrections shall assume and exercise all the duties, powers and  
9340 responsibilities of the State Parole Board. The Commissioner of  
9341 Corrections may assign to the appropriate officers and divisions  
9342 any powers and duties deemed appropriate to carry out the duties  
9343 and powers of the Parole Board. Wherever the terms "State Parole  
9344 Board" or "Parole Board" appear in any state law, they shall mean  
9345 the Department of Corrections.





9346           **SECTION 368.**   This act shall take effect and be in force from  
9347   and after July 1, 2015.

