ACT 9 H. B. NO. 20

A Bill for an Act Relating to the Hawaii Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

Section 1. The Hawaii Revised Statutes is amended by adding the Hawaii Penal Code to be codified as Title 37, Hawaii Revised Statutes, and to read as follows:

TITLE 37. HAWAII PENAL CODE

CHAPTER I

PRELIMINARY PROVISIONS

Sec. 100—Title and effective date.

This Act shall be known as the Hawaii Penal Code. It shall become effective on January 1, 1973.

Sec. 101—Applicability to offenses committed before the effective date.

(1) Except as provided in subsections (2) and (3), this Code does not

apply to offenses committed before its effective date. Prosecutions for offenses committed before the effective date are governed by the prior law, which is continued in effect for that purpose, as if this Code were not in force. For purposes of this section, an offense is committed before the effective date if any of the elements of the offense occurred before that date.

(2) In any case pending on or commenced after the effective date of this Code, involving an offense committed before that date:

(a) Upon the request of the defendant a defense or mitigation under this Code, whether specifically provided for herein or based upon the failure of the Code to define an applicable offense, shall apply; and

(b) Upon the request of the defendant and the approval of the court:

(i) Procedural provisions of this Code shall apply insofar as they are justly applicable; and

(ii) The court may impose a sentence or suspend imposition of a sentence under the provisions of this Code applicable to the offense and the offender.

(3) Provisions of this Code governing the release or discharge of prisoners, probationers, and parolees shall apply to persons under sentence for offenses committed before the effective date of this Code, except that the minimum or maximum period of their detention or supervision shall in no case be increased, nor shall the provisions of this Code affect the substantive or procedural validity of any judgment of conviction entered before the effective date of this Code, regardless of the fact that appeal time has not run or that an appeal is pending.

Sec. 102—All offenses defined by statute; applicability to offenses committed after the effective date..

(1) No behavior constitutes an offense unless it is a crime or violation under this Code or another statute of this State.

(2) The provisions of this Code govern the construction of and punishment for any offense set forth herein committed after the effective date, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of chapters 1 through 6 of the Code are applicable to offenses defined by other statutes, unless the Code otherwise provides.

Sec. 103—Purposes of this Code.

The purposes of this Code are to codify the general principles of the penal law and to define and codify certain specific offenses which constitute harms to basic social interests which the Code seeks to protect.

Sec. 104—Principles of Construction.

The provisions of this Code cannot be extended by analogy so as to create crimes not provided for herein, however, in order to promote justice and effect the objects of the law, all of its provisions shall be given a genuine construction, according to the fair import of the words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.

Sec. 105—Effect of commentary.

The commentary accompanying the Judicial Council of Hawaii's proposed draft of the Hawaii Penal Code (1970), as revised, shall be published with this Code and may be used as an aid in understanding the provisions of this Code, but not as evidence of legislative intent.

Sec. 106—Territorial applicability.

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

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

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

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

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

(e) The offense consists of the omission, while within or outside this State to perform a legal duty imposed by the law of this State with respect to domicile, residence, or a relationship to a person, thing, or transaction in the State; or

(f) The offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows that his conduct is likely to affect that interest.

(2) Subsection (1) (a) does not apply when a specified result, or conduct creating a risk of such a result, is an element of an offense and the result occurs, or is intended or is likely to occur, only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare that the conduct constitutes an offense regardless of the place of the result.

(3) Subsection (1) (a) does not apply when a particular result is an element of an offense and the result is caused by conduct occurring outside the State which conduct would not constitute an offense if the result had occurred there, unless the actor intentionally or knowingly caused the result within the State.

(4) When the offense involves a homicide, either the death of the victim or the bodily impact causing death constitutes a "result", within the meaning of subsection (1) (a). If the body of a homicide victim is found within the State, it is prima facie evidence that the result occurred within the State.

(5) This State includes the land and water and the air space about the land and water with respect to which the State has legislative jurisdiction.

Sec. 107—Grades and classes of offenses.

(1) An offense defined by this Code or by any other statute of this State for which a sentence of imprisonment is authorized constitutes a crime. Crimes are of three grades: felonies, misdemeanors, and petty misdemeanors. Felonies are of three classes: class A, class B, and class C.

(2) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced to imprisonment for a term which is in excess of one year.

(3) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined in a statute other than this Code which provides for a term of imprisonment the maximum of which is one year.

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

(5) An offense defined by this Code or by any other statute of this State constitutes a violation if it is so designated in this Code 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 Code which 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 civil disability 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 Code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

Sec. 108—Time Limitations.

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

(2) Except as otherwise provided in this section and in section 740, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a class A felony must be commenced within six years after it is committed;

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

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

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

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

(a) Any offense an element of which is either fraud or a breach of fid-

uciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has a 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 years; and

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

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

Sec. 109—Method of prosecution when conduct establishes an element of more than one offense.

(1) When the same conduct of a defendant may establish an element of more than one offense, the defendant may be prosecuted for each offense of which such conduct is an element. He may not, however, be convicted of more than one offense if:

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

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

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

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

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

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

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

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

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

(b) It consists of an attempt 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 different state of mind indicating lesser degree of culpability suffices to establish its commission.

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

Sec. 110—When prosecution is barred by former prosecution for the same offense.

When a prosecution is for an offense under the same statutory provision and is based on the same facts as a former prosecution, it is barred by the former prosecution under any of the following circumstances:

(1) The former prosecution resulted in an acquittal which has not subsequently been set aside. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination by the court 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 on appeal by the defendant.

(2) 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.

(3) 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 or nolo contendere accepted by the court.

(4) 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:

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

(b) The trial court finds the termination is necessary because:
(i) It is physically impossible to proceed with the trial in conformity with law; or
(ii) There is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; or
(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the State; or
(iv) The jury is unable to agree on a verdict; or
(v) False statements of a juror on voir dire prevent a fair trial.

Sec. 111—When prosecution is barred by former prosecution for a different offense.

Although a prosecution is for a violation of a different statutory provision or is based on different facts, it is barred by a former prosecution under any of the following circumstances:

(1) The former prosecution resulted in an acquittal which has not subsequently been set aside or in a conviction as defined in section 110(3) and the subsequent prosecution is for:
(a) Any offense of which the defendant could have been convicted on the first prosecution, or
(b) Any offense for which the defendant should have been tried on the first prosecution under section 109 unless the court ordered a separate trial of the offense; or
(c) An offense based on the same conduct, unless:
(i) The offense for which the defendant is subsequently prosecuted requires proof of a fact not required by the former offense and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or
(ii) The second offense was not consummated when the former trial began.
(2) The former prosecution was terminated 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.
(3) The former prosecution was improperly terminated, as improper termination is defined in section 110(4), and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

Sec. 112—Former prosecution in another jurisdiction: when a bar.

When behavior 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 any of the following circumstances:

(1) The first prosecution resulted in an acquittal which has not subsequently been set aside or in a conviction as defined in section 110(3), and the subsequent prosecution is based on the same conduct, unless:
   (a) The offense for which the defendant is subsequently prosecuted requires proof of a fact not required by the former offense and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or
   (b) The second offense was not consummated when the former trial began.

(2) 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 for which the defendant is subsequently prosecuted.

(3) The former prosecution was improperly terminated, as improper termination is defined in section 110(4), and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

Sec. 113—Former prosecution before court lacking jurisdiction or when fraudulently procured by the defendant.

A prosecution is not a bar within the meaning of sections 110, 111, and 112 under any of the following circumstances:

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

(2) 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.

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

Sec. 114—Proof beyond a reasonable doubt.

(1) No person may be convicted of an offense unless the following are proved beyond a reasonable doubt:

(a) Each element of the offense;

(b) The state of mind required to establish each element of the offense;

(c) Facts establishing jurisdiction;

(d) Facts establishing venue; and

(e) Facts establishing that the offense was committed within the time period specified in section 108.

(2) In the absence of the proof required by subsection (1), the innocence of the defendant is presumed.

Sec. 115—Defenses.

(1) A defense is a fact or set of facts which negatives penal liability.

(2) No defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented. If such evidence is presented, then:

(a) If the defense is not an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in the light of any contrary prosecution evidence, raises a reasonable doubt as to the defendant's guilt; or

(b) If the defense is an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in light of a contrary prosecution evidence, proves by a preponderance of the evidence the specified fact or facts which negative penal liability.

(3) A defense is an affirmative defense if:

(a) It is specifically so designated by the Code or another statute; or

(b) If the Code or another statute plainly requires the defendant to prove the defense by a preponderance of the evidence.

Sec. 116—Proving applicability of the Code.

When the application of the Code depends on the finding of a fact which is not required to be found beyond a reasonable doubt:

(1) 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

(2) The fact must be proved by a preponderance of the evidence.

Sec. 117—Prima facie evidence.

Prima facie evidence of a fact is evidence which, if accepted in its entirety by the trier of fact, is sufficient to prove the fact, provided that no evidence negativing the fact, which raises a reasonable doubt in the mind of the trier of fact, is introduced.

Sec. 118—General definitions.

In this Code, unless a different meaning plainly is required:

(1) "Statute" includes the Constitution of the State and a local law or ordinance of a political subdivision of the State;

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

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

(4) "Conduct" means an act or omission, or, where relevant, a series of acts or a series of omissions, or a series of acts and omissions;

(5) "Actor" includes, a person who acts, or, where relevant, a person guilty of omission;

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

(7) "Person," "he," "him," "actor," and "defendant" include any natural person and, where relevant, a corporation or an unincorporated association;

(8) "Another" means any other person and includes, where relevant, the United States, this State and any of its political subdivisions, and any other state and any of its political subdivisions; and

(9) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Sec. 119—Procedure for forfeiture.

(1) Applicability of procedure. Whenever a forfeiture is provided for by this Code, or is otherwise provided for by the law relating to a particular offense or the enforcement of penal laws in general, the procedure for forfeiture shall be as set forth in this section, unless a different procedure is otherwise provided by law.

(2) When forfeiture is ordered. Subject to the requirements of subsection (4), when a forfeiture is authorized by law, it may be ordered by the court upon:

(a) Motion by the State for forfeiture following the conviction of a person for an offense based on his unlawful possession, use, or other acts with respect to the thing that is forfeited; or

(b) An action in rem for forfeiture brought by the State upon a complaint alleging that a person, known or unknown, unlawfully possessed, used, or otherwise acted with respect to the thing that is forfeited.

(3) Writs in aid of action in rem. Upon a showing of good cause, the court may, in an action in rem under subsection (2) (a), issue writs of attachment, sequestration, injunction and other appropriate writs in aid of the action.

(4) Notice to interested parties. Upon a motion for forfeiture specified in subsection (2) (a) or the institution of an action in rem specified in subsection (2), (b), the court shall order the thing which may be subject to forfeiture to be held for a period of 60 days, during which period adequate notice in the manner and form prescribed by the court, whether by personal service, publication, or otherwise, shall be given to all persons who might have an interest in the pending forfeiture.

(5) Intervention by claimants. During the 60-day period following the court's order under subsection (4), any person claiming a lawful interest in the thing with respect to which forfeiture is pending may make a claim in the court for the recovery of the thing. The court shall order the thing restored or transferred to the claimant, if any, who proves, by a preponderance of the evidence, that:

(a) He is the lawful owner thereof;

(b) His possession, use, or other acts with respect thereto is lawful; and

(c) The convicted person, if any, possessed, used, or otherwise acted with respect to the thing without the complicity of the claimant.

(6) Declaration of forfeiture and disposition. If no claimant makes the proof required by subsection (5), the court shall declare the thing forfeited to the State; however no forfeiture shall be ordered in an action in rem for forfeiture unless the State satisfies the court that the forfeiture is authorized in the instant case. If the thing declared forfeited is money, the court shall order it

deposited with the director of finance to the credit of the general fund of the State, otherwise the court shall order the thing forfeited transferred to or deposited with the appropriate State or county agency or department for such appropriate disposition as may be ordered by the agency or department.

CHAPTER 2
GENERAL PRINCIPLES OF PENAL LIABILITY

Sec. 200—Requirement of voluntary act or voluntary omission.

(1) In any prosecution it is a defense that the conduct alleged does not include a voluntary act or the voluntary omission to perform an act of which the defendant is physically capable.

(2) Where the defense provided in subsection (1) is based on a physical or mental disease, disorder, or defect which precludes or impairs a voluntary act or a voluntary omission, the defense shall be treated exclusively according to the provisions of chapter 4.

Sec. 201—"Voluntary act" defined.

"Voluntary act" means a bodily movement performed consciously or habitually as the result of the effort or determination of the defendant.

Sec. 202—Voluntary act includes possession.

Possession is a voluntary act if the defendant knowingly procured or received the thing possessed or if the defendant was aware of his control of it for a sufficient period to have been able to terminate his possession.

Sec. 203—Penal liability based on an ommission.

Penal liability may not be based on an omission unaccompanied by action unless:

(1) The omission is expressly made a sufficient basis for penal liability by the law defining the offense; or

(2) A duty to perform the omitted act is otherwise imposed by law.

Sec. 204—State of mind required.

Except as provided in section 212, a person is not guilty of an offense unless he acted intentionally, knowingly, recklessly, or negligently, as the law specifies, with respect to each element of the offense. When the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly.

Sec. 205—Elements of an offense.

The elements of an offense are such (1) conduct, (2) attendant circumstances, and (3) results of conduct, as:

(a) Are specified by the definition of the offense, and

(b) Negative a defense (other than a defense based on the statute of limitations, lack of venue, or lack of jurisdiction).

Sec. 206.—Definitions of states of mind.

(1) "Intentionally."

(a) A person acts intentionally with respect to his conduct when it is his conscious object to engage in such conduct.

(b) A person acts intentionally with respect to attendant circumstances when he is aware of the existence of such circumstances or believes or hopes that they exist.

(c) A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.

(2) "Knowingly."

(a) A person acts knowingly with respect to his conduct when he is aware that his conduct is of that nature.

(b) A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.

(c) A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

(3) "Recklessly."

(a) A person acts recklessly with respect to his conduct when he consciously disregards a substantial and unjustifiable risk that he engages in such conduct.

(b) A person acts recklessly with respect to attendant circumstances when he consciously disregards a substantial and unjustifiable risk that such circumstances exist.

(c) A person acts recklessly with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.

(d) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person's conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

(4) "Negligently."

(a) A person acts negligently with respect to his conduct when he should be aware of a substantial and unjustifiable risk that he engages in such conduct.

(b) A person acts negligently with respect to attendant circumstances when he should be aware of a substantial and unjustifiable risk that such circumstances exist.

(c) A person acts negligently with respect to result of his conduct when he should be aware of a substantial and unjustifiable risk that his conduct will cause such a result.

(d) A risk is substantial and unjustifiable within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a law-abiding person would observe in the same situation.

Sec. 207—Specified state of mind applies to all elements.

When the definition of an offense specifies the state of mind sufficient for the commission of that offense, without distinguishing among the elements thereof, the specified state of mind shall apply to all elements of the offense, unless a contrary purpose plainly appears.

Sec. 208—Substitutes for negligence, recklessness, and knowledge.

When the law provides that negligence is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly. When the law provides that recklessness is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally or knowingly. When the law provides that acting knowingly is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally.

Sec. 209—Conditional intent.

When a particular intent is necessary to establish an element of an offense, it is immaterial that such intent was conditional unless the condition negatives the harm or evil sought to be prevented by the law prohibiting the offense.

Sec. 210—Requirement of wilfulness satisfied by acting knowingly.

A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the elements of the offense, unless a purpose to impose further requirements appears.

Sec. 211—State of mind as determinant of grade or class of a particular offense.

When the grade or class of a particular offense depends on whether it is committed intentionally, knowingly, recklessly, or negligently, its grade or class shall be the lowest for which the determinative state of mind is established with respect to any element of the offense.

Sec. 212—When state of mind requirements are inapplicable to violations and to crimes defined by statutes other than this Code.

The state of mind requirements prescribed by sections 204 and 207 through 211 do not apply to:

(1) An offense which constitutes a violation, unless the state of mind requirement involved is included in the definition of the violation or a legislative purpose to impose such a requirement plainly appears; or

(2) A crime defined by statute other than this Code, insofar as a legislative purpose to impose absolute liability for such offense or with respect to any element thereof plainly appears.

Sec. 213—Effect of absolute liability in reducing grade of offense to violation.

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

(1) When absolute liability is imposed with respect to any element of an offense defined by a statute other than this Code and a conviction

is based upon such liability, the offense constitutes a violation except as provided in Sec. 212 (2); and

(2) Although absolute liability is imposed by law with respect to one or more of the elements of an offense defined by a statute other than this Code, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes a sufficient state of mind and the classification of the offense and the sentence that may be imposed therefor upon conviction are determined by section 107 and chapter 6 of this Code.

Sec. 214—Causal relationship between conduct and result.

Conduct is the cause of a result when it is an antecedent but for which the result in question would not have occurred.

Sec. 215—Intentional or knowing causation; different result from that intended or contemplated.

Intentionally or knowingly causing a particular result is not established if the actual result is not within the intention or contemplation of the defendant unless:

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

(2) The actual result involves the same kind of injury or harm as the intended or contemplated result and is not too remote or accidental in its occurrence or too dependent on another's volitional conduct to have a bearing on the defendant's liability or on the gravity of his offense.

Sec. 216—Reckless or negligent causation; different result from that within the risk.

Recklessly or negligently causing a particular result is not established if the actual result is not within the risk of which the defendant is, or, in the case of negligence, should be, aware unless:

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

(2) The actual result involves the same kind of injury or harm as the intended or contemplated result and is not too remote or accidental in its occurrence or too dependent on another's volitional conduct to have a bearing on the defendant's liability or on the gravity of his offense.

Sec. 217—Causation in offenses of absolute liability.

When causing a particular result is an element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the defendant's conduct.

Sec. 218—Ignorance or mistake as a defense.

In any prosecution for an offense, it is a defense that the accused engaged in the prohibited conduct under ignorance or mistake of fact if:

(1) The ignorance or mistake negatives the state of mind required to establish an element of the offense; or

(2) The law defining the offense or a law related thereto provides that the state of mind established by such ignorance or mistake constitutes a defense.

Sec. 219—Ignorance or mistake; reduction in grade and class of the offense.

Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and class of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

Sec. 220—Ignorance or mistake of law; belief that conduct not legally prohibited.

In any prosecution, it shall be an affirmative defense that the defendant engaged in the conduct or caused the result alleged under the belief that the conduct or result was not legally prohibited when:

(1) He acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:

(a) A statute or other enactment;

(b) A judicial decision, opinion, or judgment;

(c) An administrative order or administrative grant of permission; or

(d) An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense.

Sec. 221—Liability for conduct of another.

(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 state of mind 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 Code or by the law defining the offense; or

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

Sec. 222—Liability for conduct of another; complicity.

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

(1) With the intention of promoting or facilitating the commission of the offense, he:
    (a) Solicits the other person to commit it; or
    (b) Aids or agrees or attempts to aid the other person in planning or committing it; or
    (c) Having a legal duty to prevent the commission of the offense, fails to make reasonable effort so to do; or
(2) His conduct is expressly declared by law to establish his complicity.

Sec. 223—Liability for conduct of another; complicity with respect to the result.

When causing a particular result is an element of an offense, an accomplice in the conduct causing the result is an accomplice in the commission of that offense, if he acts, with respect to that result, with the state of mind that is sufficient for the commission of the offense.

Sec. 224—Liability for conduct of another; exemption from complicity.

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

(1) He is a victim of that offense; or
(2) The offense is so defined that his conduct is inevitably incident to its commission; or
(3) He terminates his complicity prior to the commission of the offense and:
    (a) Wholly deprives his complicity of effectiveness in the commission of the offense; or
    (b) Gives timely warning to the law enforcement authorities or otherwise makes reasonable effort to prevent the commission of the offense.

Sec. 225—Liability for conduct of another; incapacity of defendant; failure to prosecute or convict or immunity of other person.

In any prosecution for an offense in which the liability of the defendant is based on conduct of another person, it is no defense that:

(1) The offense charged, as defined, can be committed only by a particular class of persons, and the defendant, not belonging to such class, is for that reason legally incapable of committing the offense in an individual capacity, unless imposing liability on him is inconsistent with the purpose of the provision establishing his incapacity; or
(2) The other person has not been prosecuted for or convicted of any offense, or has been convicted of a different offense or degree of offense, based upon the conduct in question; or
(3) The other person has a legal immunity from prosecution based upon the conduct in question.

Sec. 226—Liability for conduct of another; multiple convictions; different degrees.

When, pursuant to any section from section 221 through section 223, two or more persons are liable for an offense which is divided into degrees, each person is guilty of the degree of the offense which is consistent with his own state of mind and with his own accountability for an aggravating fact or circumstance.

Sec. 227—Penal liability of corporations and unincorporated associations.

A corporation or unincorporated association is guilty of an offense when:

(1) It omits to discharge a specific duty of affirmative performance imposed on corporations or unincorporated associations by law and the omission is prohibited by penal law; or

(2) The conduct or result specified in the definition of the offense is engaged in, caused, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors of the corporation or by the executive board of the unincorporated association, or by a high managerial agent acting within the scope of his office or employment and in behalf of the corporation or the unincorporated association; or

(3) The conduct or result specified in the definition of the offense is engaged in or caused by an agent of the corporation or the unincorporated association while acting within the scope of his office or employment and in behalf of the corporation or the unincorporated association and:

(a) The offense is a misdemeanor, petty misdemeanor, or violation; or

(b) The offense is one defined by a statute which clearly indicates a legislative purpose to impose such criminal liability on a corporation or unincorporated association.

Sec. 228—Liability of persons acting, or under a duty to act, in behalf of corporations or unincorporated associations.

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

(2) Whenever a duty to act is imposed by law upon a corporation or an unincorporated association, any agent of the corporation or the unincorporated association having primary responsibility for the 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.

(3) When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or of 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 class involved.

Sec. 229—Definitions relating to corporations and unincorporated associations.

As used in sections 227 and 228:

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

(2) "Agent" means any director, officer, servant, employee or other person authorized to act in behalf of the corporation or association and, in the case of an unincorporated association, a member of such association.

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

Sec. 230—Intoxication.

(1) Evidence of the intoxication of the defendant shall be admissible to prove or negative the conduct alleged or the state of mind sufficient to establish an element of the offense.

(2) Intoxication does not, in itself, constitute a physical or mental disease, disorder, or defect within the meaning of section 400.

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

(4) In this section:

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

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

(c) "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the defendant does not know he is susceptible and which results from a physical abnormality of the defendant.

Sec. 231—Duress.

(1) It is a defense to a penal charge that the defendant engaged in the conduct or caused the result alleged because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

(2) The defense provided by this section is unavailable if the defendant recklessy placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was negligent in

placing himself in such a situation, whenever negligence suffices to establish the requisite state of mind for the offense charged.

(3) It is not a defense that a person acted on the command of his or her spouse, unless he or she acted under such coercion as would establish a defense under this section.

(4) When the conduct of the defendant would otherwise be justifiable under section 302, this section does not preclude the defense of justification.

Sec. 232—Military orders.

It is an affirmative defense to a penal charge that the defendant, in engaging in the conduct or causing the result alleged, which he did not know to be unlawful, did no more than execute an order of his superior in the armed services.

Sec. 233—Consent; general.

In any prosecution, the victim's consent to the conduct alleged, or to the result thereof, is a defense if the consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

Sec. 234—Consent to bodily injury.

In any prosecution involving conduct which causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:

(1) the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic event or competitive sport; or

(2) the consent establishes a justification for the conduct under chapter 3 of this Code.

Sec. 235—Ineffective consent.

Unless otherwise provided by this Code or by the law defining the offense, consent does not constitute a defense if:

(1) It is given by a person who is legally incompetent to authorize the conduct alleged; or

(2) It is given by a person who by reason of youth, mental disease, disorder, or defect, or intoxication is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct alleged; or

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

(4) It is induced by force, duress or deception.

Sec. 236—De minimis infractions.

(1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:

(a) Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the offense; or

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

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

(2) The court shall not dismiss a prosecution under subsection (1) (c) of this section without filing a written statement of its reasons.

Sec. 237—Entrapment.

(1) In any prosecution, it is an affirmative defense that the defendant engaged in the prohibited conduct or caused the prohibited result because he was induced or encouraged to do so by a law enforcement officer, or by a person acting in cooperation with a law enforcement officer, who, for the purpose of obtaining evidence of the commission of an offense, either:

(a) Knowingly made false representations designed to induce the belief that such conduct or result was not prohibited; or

(b) Employed methods of persuasion or inducement which created a substantial risk that the offense would be committed by persons other than those who are ready to commit it.

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

CHAPTER 3
GENERAL PRINCIPLES OF JUSTIFICATION

Sec. 300—Definitions relating to justification.

In this chapter, unless a different meaning is plainly required:

(1) "Believes" means reasonably believes.

(2) "Force" means any bodily impact, restraint, or confinement, or the threat thereof.

(3) "Unlawful force" means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily injury.

(4) "Deadly force" means force which the actor uses with the intent of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Intentionally firing a firearm in the direction of another person or in the direction which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.

(5) "Dwelling" means any building or structure, though movable or tem-

porary, or a portion thereof, which is for the time being a home or place of lodging.

Sec. 301—Justification a defense; civil remedies unaffected.

(1) In any prosecution for an offense, justification, as defined in sections 302 through 309 of this chapter, is a defense.

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

Sec. 302—Choice of evils.

(1) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to himself or to another is justifiable provided that:

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

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

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

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

Sec. 303—Execution of public duty.

(1) Except as provided in subsection (2), conduct is justifiable when it is required or authorized by:

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

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

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

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

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

(2) The other sections of this chapter apply to:

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

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

(3) The justification afforded by subsection (1) applies:

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

(b) When the actor believes his conduct to be required or authorized to

assist a public officer in the performance of his duties, notwithstanding that the officer exceeded his legal authority.

Sec. 304—Use of force in self-protection.

(1) Subject to the provisions of this section and of section 308, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person on the present occasion.

(2) The use of deadly force is justifiable under this section if the actor believes that deadly force is necessary to protect himself against death, serious bodily injury, kidnapping, rape, or forcible sodomy.

(3) Except as otherwise provided in subsections (4) and (5) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used without retreating, surrendering possession, doing any other act which he has no legal duty to do, or abstaining from any lawful action.

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

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

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

(i) The actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest; or

(ii) The actor believes that such force is necessary to protect himself against death or serious bodily injury.

(5) The use of deadly force is not justifiable under this section if:

(a) The actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or

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

(i) The actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be; and

(ii) A public officer justified in using force in the performance of his duties, or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an excape, is not obliged to desist from efforts to perform his duty, effect the arrest, or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.

(6) The justification afforded by this section extends to the use of con-

finement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

Sec. 305—Use of force for the protection of other persons.

(1) Subject to the provisions of this section and of section 310, the use of force upon or toward the person of another is justifiable to protect a third person when:

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

(b) The actor believes that his intervention is necessary for the protection of the other person.

(2) Notwithstanding subsection (1):

(a) When the actor would be obliged under section 304 to retreat, to surrender the possession of a thing, or to comply with a demand before using force in self-protection, he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person; and

(b) When the person whom the actor seeks to protect would be obliged under section 304 to retreat, to surrender the possession of a thing or to comply with a demand if he knew that he could obtain complete safety by so doing, the actor is obliged to try to cause him to do so before using force in his protection if the actor knows that he can obtain the other's complete safety in that way; and

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

Sec. 306—Use of force for the protection of property.

(1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

(a) To prevent the commission of criminal trespass or burglary in a building or upon real property in his possession or in the possession of another person for whose protection he acts; or

(b) To prevent unlawful entry upon real property in his possession or in the possession of another person for whose protection he acts; or

(c) To prevent theft, criminal mischief, or any trespassory taking of tangible, movable property in his possession or in the possession of another person for whose protection he acts.

(2) The actor may in the circumstances specified in subsection (1) use such force as he believes is necessary to protect the threatened property, provided that he first requests the person against whom force is used to desist from his interference with the property, unless the actor believes that:

(a) Such a request would be useless; or

(b) It would be dangerous to himself or another person to make the request; or

(c) Substantial harm would be done to the physical condition of the prop-

erty which is sought to be protected before the request could effectively be made.

(3) The use of deadly force for the protection of property is justifiable only if:

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

(b) The person against whom the deadly force is used is attempting to commit felonious property damage, burglary, robbery, or felonious theft and either:

(i) Has employed or threatened deadly force against or in the presence of the actor; or

(ii) The use of force other than deadly force to prevent the commission of the crime would expose the actor or another person in his presence to substantial danger of serious bodily injury.

(4) The justification afforded by this section extends to the use of a device for the purpose of protecting property only if:

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

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

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

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

Sec. 307—Use of force in law enforcement.

(1) Subject to the provisions of this section and of section 310, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

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

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

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

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

(a) The arrest is for a felony; and

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

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

(d) The actor believes that:

(i) The crimes for which the arrest is made involved conduct including the use or threatened use of deadly force; or

(ii) There is a substantial risk that the person to be arrested will cause death or serious bodily injury if his apprehension is delayed.

(4) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using force which he believes to be immediately necessary to prevent the escape from a detention facility.

(5) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful. A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that he believes the arrest is lawful, and the arrest would be lawful if the facts were as he believes them to be.

Sec. 308—Use of force to prevent suicide or the commission of a crime.

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

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

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

(i) The actor believes that there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily injury to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or

(ii) The actor believes that the use of such force is necessary to suppress a riot after the rioters have been ordered to dis-

perse and warned, in any particular manner that the law may require, that deadly force will be used if they do not obey.

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

Sec. 309—Use of force by persons with special responsibility for care, discipline, or safety of others.

The use of force upon or toward the person of another is justifiable under the following circumstances:

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

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

(b) The force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress, or gross degradation.

(2) The actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor, and:

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

(b) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under subsection (1) (b) of this section.

(3) The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:

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

(b) The force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme or unnecessary pain, mental distress, or humiliation.

(4) The actor is a doctor or other therapist or a person assisting him at his direction, and:

(a) The force is used for the purpose of administering a recognized form of treatment which the actor believes to be

adapted to promoting the physical or mental health of the patient; and

(b) The treatment is administered with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of his parent or guardian or other person legally competent to consent in his behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

(5) The actor is a warden or other authorized official of a correctional institution, and:

(a) He believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and

(b) The nature or degree of force used is not forbidden by other provisions of the law governing the conduct of correctional institutions; and

(c) If deadly force is used, its use is otherwise justifiable under this chapter.

(6) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at his direction, and:

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

(b) If deadly force is used, its use is otherwise justifiable under this chapter.

(7) 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:

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

(b) The force used is not designed to cause or known to create a substantial risk of causing death, bodily injury or extreme mental distress.

Sec. 310—Provisions generally applicable to justification.

(1) 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 303 to 309 but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of his use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(2) When the actor is justified under sections 303 to 309 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence toward innocent persons.

CHAPTER 4
PENAL RESPONSIBILITY AND FITNESS TO PROCEED

Sec. 400—Physical or mental disease, disorder, or defect excluding penal responsibility.

(1) A person is not responsible, under this Code, for conduct if at the time of the conduct as a result of physical or mental disease, disorder, or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(2) As used in this chapter, the terms "physical or mental disease, disorder, or defect" do not include an abnormality manifested only by repeated penal or otherwise anti-social conduct.

Sec. 401—Evidence of physical or mental disease, disorder, or defect admissible when relevant to state of mind.

Evidence that the defendant suffered from a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is required to establish an element of the offense.

Sec. 402—Physical or mental disease, disorder, or defect excluding responsibility is a defense; form of verdict and judgment when finding of irresponsibility is made.

(1) Physical or mental disease, disorder, or defect excluding responsibility is a defense.

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

Sec. 403—Physical or mental disease, disorder, or defect excluding fitness to proceed.

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

Sec. 404—Examination of defendant with respect to physical or mental disease, disorder, or defect.

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

or has become an issue in the case, the court shall immediately suspend all further proceedings in the prosecution. If a trial jury has been empanelled, it shall be discharged or retained at the discretion of the court. The dismissal of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution, the court shall appoint a State-employed physician designated by the director of health from within the department of health and two additional unbiased, qualified physicians to examine and report upon the physical and mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose, and may direct that one or more qualified physicians retained by the defendant be permitted to witness and participate in the examination.

(3) In such examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from physical or mental disease, disorder, or defect and the examiners may, upon approval of the court, secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination and diagnosis.

(4) The report of the examination shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis of the physical or mental condition of the defendant;

(c) An opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(d) An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the conduct alleged; and

(e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is required to establish an element of the offense charged.

(5) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.

(6) The report of the examination, including any supporting documents, shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(7) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify his diagnosis or opinion.

(8) There shall be made accessible to the examiners all existing medical, social, and other pertinent records in the custody of public agencies notwithstanding any other statutes.

(9) The compensation of persons making or assisting in the examination, other than those retained by the non-indigent defendant, who are not undertaking the examination upon designation by the director of health as part of

their normal duties as employees of the State or a county, shall be paid by the State.

Sec. 405—Determination of fitness to proceed.

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 404, 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. When 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 persons who joined in the report or assisted in the examination and to offer evidence upon the issue.

Sec. 406—Effect of finding of unfitness to proceed.

(1) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in section 407, and the court shall commit him to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment for so long as such unfitness shall endure. If the court is satisfied that the defendant may be released on condition without danger to himself or to the person or property of others, the court shall order his release, which shall continue at the discretion of the court, on such conditions as the court determines necessary. A copy of the report filed pursuant to section 404 shall be attached to the order of commitment or order of conditional release.

(2) When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the penal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the committment or conditional release of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the involuntary hospitalization or conditional release of persons suffering from physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment or order the defendant to be released on such conditions as the court determines necessary.

Sec. 407—Special post-commitment or post-conditional release hearing.

(1) At any time after commitment as provided in section 406, the defendant or his counsel or the director of health may apply for a special post-commitment hearing. If the application is made by or on behalf of a defendant not represented by counsel, he shall be afforded a reasonable opportunity to obtain counsel, and if he lacks funds to do so, counsel shall be assigned by the court. The application shall be granted only if the counsel for the defendant satisfies the court by affidavit or otherwise that as an attorney he has reasonable grounds for a good faith belief that his client has, on the facts or the law

or both, a defense to the charge other than physical or mental disease, disorder, or defect excluding responsibility.

(2) If the motion for a special post-commitment hearing is granted, the hearing shall be by the court without a jury. No evidence shall be offered at the hearing by either party on the issue of physical or mental disease, disorder, or defect as a defense to, or in mitigation of, the offense charged.

(3) After the hearing, the court may in an appropriate case quash the indictment or other charge, or find it to be defective or insufficient, or determine that it is not proved beyond a reasonable doubt by the evidence, or otherwise terminate the proceedings on the evidence or the law. In any such case, unless all defects in the proceedings are promptly cured, the court shall terminate the commitment or conditional release ordered under section 406 and order the defendant to be discharged or, subject to the law governing the involuntary hospitalization or conditional release of persons suffering from physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment or order the defendant to be released on such conditions as the court deems necessary.

Sec. 408—Determination of irresponsibility.

If the report of the examiners filed pursuant to section 404 states that the defendant at the time of the conduct alleged suffered from a physical or mental disease, disorder, or defect which substantially impaired his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law, and the court, after a hearing if a hearing is requested, 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 physical or mental disease, disorder, or defect excluding responsibility.

Sec. 409—Access to defendant by examiners of his choice.

When, notwithstanding the report filed pursuant to section 404, the defendant wishes to be examined by one or more qualified physicians or other experts of his own choice, such examiner or examiners shall be permitted to have reasonable access to the defendant for the purposes of such examination.

Sec. 410—Form of expert testimony regarding physical or mental disease, disorder, or defect.

(1) At the hearing pursuant to sections 405 or 408 or upon the trial, the examiners who reported pursuant to section 404 may be called as witnesses by the prosecution, the defendant, or the court. If the issue is being tried before a jury, the jury may be informed that the examiners or any of them were designated by the court or by the director of health at the request of the court, as the case may be. If called by the court, the witness shall be subject to cross-examination by the prosecution and the defendant. Both the prosecution and the defendant may summon any other qualified physician or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the physical or mental condition of the defendant, as distinguished from the validity of the procedure followed

by, or the general scientific propositions stated by, another witness.

(2) When an examiner testifies on the issue of the defendant's fitness to proceed, he shall be permitted to make a statement as to the nature of his examination, his diagnosis of the physical or mental condition of the defendant, and his opinion of the extent, if any, to which the capacity of the defendant to understand the proceedings against him or to assist in his own defense is impaired as a result of physical or mental disease, disorder, or defect.

(3) When an examiner testifies on the issue of the defendant's responsibility for conduct alleged or the issue of the defendant's capacity to have a particular state of mind which is necessary to establish an element of the offense charged, he shall be permitted to make a statement as to the nature of his examination, his diagnosis of the physical or mental condition of the defendant at the time of the conduct alleged, and his opinion of the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law or to have a particular state of mind which is necessary to establish an element of the offense charged was impaired as a result of physical or mental disease, disorder, or defect at that time.

(4) When an examiner testifies, he shall be permitted to make any explanation reasonably serving to clarify 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.

Sec. 411—Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing.

(1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court shall, on the basis of the report made pursuant to section 404, if uncontested, or the medical evidence given at the trial or at a separate hearing, make an order as follows:

(a) The court shall order him to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant presents a risk of danger to himself or the person or property of others and that he is not a proper subject for conditional release; or

(b) The court shall order the defendant to be released on such conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that he presents a danger to himself or the person or property of others, but that he can be controlled adequately and given proper care, supervision, and treatment if he is released on condition; or

(c) The court shall order him discharged from custody if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect, or, if so affected, that he no longer presents a danger to himself or the person or property of others and is not in need of care, supervision, or treatment.

(2) The court shall, upon its own motion or on the motion of the prosecuting attorney or the defendant, order a separate post-acquittal hearing for the

purpose of taking evidence on the issue of the risk of danger which the defendant presents to himself or to the person or property of others.

(3) When ordering such a hearing the court shall appoint a state-employed physician designated by the director of health from within the department of health plus two additional unbiased, qualified physicians, including, if possible, at least one or more of the examiners who participated in the examination and report made pursuant to section 404, to examine the defendant and to report within thirty days, or such longer period as the court determines to be necessary for the purpose, as to his physical and mental condition. To facilitate such examination and the proceedings thereon, the court may cause the defendant, if not then so confined, to be committed to a hospital or other suitable facility for the purpose of examination and may direct that qualified physicians retained by the defendant be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 404 (3), (4), (a) and (b), (6), (7), (8) and (9).

(4) Whether the court's order under subsection (1) is made on the basis of the medical evidence given at the trial or on the basis of the report made pursuant to section 404 or the medical evidence given at a separate hearing, the burden shall be upon the State to prove, by a preponderance of the evidence, that the defendant may not safely be discharged and that he should be either committed or conditionally released as provided in subsection (1).

Sec. 412—Committed person; application for conditional release or discharge; by the director of health; by the person.

(1) After the expiration of at least ninety days following the order of commitment pursuant to section 411, if the director of health is of the opinion that the person committed to his custody may be released on condition or discharged without danger to himself or to the person or property of others, he shall make application for the discharge or conditional release of such person in a report to the court by which such person was committed and shall transmit a copy of the application and report to the prosecuting attorney of the county from which the defendant was committed. The defendant shall be given notice of such application.

(2) After the expiration of ninety days from the date of the order of commitment pursuant to section 411, the person committed may apply to the court by which he was committed for an order of discharge or conditional release upon the ground that the same may be ordered without danger to himself or to the person or property of others. A copy of the application shall be transmitted to the prosecuting attorney of the county from which the defendant was committed. If the determination of the court is adverse to the application, such person shall not be permitted to file a further application until one year has elapsed from the date of any preceding hearing on an application for his discharge or conditional release.

Sec. 413—Conditional release; application for modification or discharge; termination of conditional release and commitment.

(1) Any person released on condition pursuant to section 411 may apply to the court ordering the conditional release for discharge from or modification

of the order granting conditional release on the ground that he may be discharged or the order modified without danger to himself or to the person or property of others. The applicant shall be accompanied by a supporting affidavit of a qualified physician. A copy of the application and affidavit shall be transmitted to the prosecuting attorney of the county in which the person is confined and to any persons supervising his release and the hearing on the application shall be held following notice to said persons. If the determination of the court is adverse to the application, such person shall not be permitted to file further application until one year has elapsed from the date of any preceding hearing on an application for modification of conditions of release or for discharge.

(2) If, within five years after the order pursuant to section 411 granting conditional release, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled or that for the safety of such person or for the safety of the person or property of others his conditional release should be revoked, the court may forthwith modify the conditions of release or order the person to be committed to the custody of the director of health, subject to discharge or release only in accordance with the procedure prescribed in section 412.

Sec. 414—Procedure upon application for discharge, conditional release, or modification of conditions of release.

Upon filing of an application pursuant to section 412 for discharge or conditional release, or upon the filing of an application pursuant to section 413 for discharge or for modification of conditions of release, the court shall appoint a State-employed physician designated by the director of health from within the department of health and two additional unbiased, qualified physicians, including, if possible, at least one or more of the examiners who participated in the examination and report made pursuant to section 404, to examine the committed or conditionally released person and to report within thirty days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his physical and mental condition. To facilitate such examination and the proceedings thereon, the court may cause such person, if not then so confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians retained by the person be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 404(3), (4) (a) and (b), (6), (7), (8), and (9).

Sec. 415—Disposition of application for discharge, conditional release, or modification of conditions of release.

If the court is satisfied by the report filed pursuant to section 414, and such testimony of the reporting examiners as the court deems necessary, that the discharge, conditional release, or modification of conditions of release applied for may be granted without danger to the committed or conditionally released person or to the person or property of others, the court shall grant the application and order the relief. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged

or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the State to prove that the person may not safely be released on the conditions applied for or discharged. According to the determination of the court upon the hearing, the person shall thereupon be discharged, or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the director of health, subject to discharge or release only in accordance with the procedure prescribed in section 412.

Sec. 416—Statements for purposes of examination or treatment inadmissible except on issue of physical or mental condition.

A statement made by a person subjected to examination or treatment pursuant to this chapter for the purposes of such examination or treatment shall not be admissible in evidence against him in any penal proceeding on any issue other than that of his physical or mental condition, but it shall be admissible upon that issue, whether or not it would otherwise be deemed a privileged communication, unless such statement constitutes an admission of guilt of the offense charged.

Sec. 417—Use of out-of-state institutions.

The term "appropriate institution" includes any institution within or without this State to which the defendant may be eligible for admission and treatment for physical or mental disease, disorder, or defect.

Sec. 418—Immaturity excluding penal conviction; transfer of proceedings to family court.

(1) A person shall not be tried for or convicted of an offense if:

(a) At the time of the conduct alleged he was less than 16 years of age, in which case the family court shall have exclusive original jurisdiction; or

(b) At the time of the conduct alleged he was 16 or 17 years of age, in which case the family court shall have exclusive original jurisdiction, unless the family court has entered an order waiving jurisdiction and consenting to the institution of penal proceedings against him.

(2) No court shall have jurisdiction to try or convict a person of an offense if penal proceedings against him are barred by subsection (1). When it appears that a person charged with the commission of an offense may be of such an age that penal proceedings may be barred under subsection (1), the court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the court that the penal proceeding is not barred upon such grounds. If the court determines that the proceeding is barred, custody of the person charged shall be surrendered to the family court, and the case, including all papers and processes relating thereto, shall be transferred.

CHAPTER 5
INCHOATE CRIMES
PART 1. CRIMINAL ATTEMPT

Sec. 500—Criminal attempt.

(1) A person is guilty of an attempt to commit a crime if he:

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

(b) Intentionally engages in conduct which, under the circumstances as he believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his commission of the crime.

(2) When causing a particular result is an element of the crime, a person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

Sec. 501—Criminal attempt; attempting to aid another.

(1) A person who engages in conduct intended to aid another to commit a crime is guilty of an attempt to commit the crime, although the crime is not committed or attempted by the other person, provided his conduct would establish his complicity under sections 222 through 226 if the crime were committed or attempted by the other person.

(2) It is not a defense to a prosecution under this section that under the circumstances it was impossible for the defendant to aid the other person in the commission of the offense, provided he could have done so had the circumstances been as he believed them to be.

Sec. 502—Grading of criminal attempt.

An attempt to commit a crime is an offense of the same class and grade as the most serious offense which is attempted.

PART II. CRIMINAL SOLICITATION

Sec. 510—Criminal solicitation.

(1) A person is guilty of criminal solicitation if, with the intent to promote or facilitate the commission of a crime, he commands, encourages, or requests another person to engage in conduct or cause the result specified by the definition of an offense or to engage in conduct which would be sufficient to establish complicity in the specified conduct or result.

(2) It is immaterial under subsection (1) that the defendant fails to communicate with the person he solicits if his conduct was designed to effect such communication.

Sec. 511—Immunity, irresponsibility, or incapacity of a party to criminal solicitation.

(1) A person shall not be liable under section 510 for criminal solicitation of another if under sections 224(1) and (2) and 225(1) he would not be legally accountable for the conduct of the other person.

(2) It is not a defense to a prosecution under section 510 that the person solicited could not be guilty of committing the crime because:

(a) He is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited;

(b) He is penally responsible or has an immunity to prosecution or conviction for the commission of the crime;

(c) He is unaware of the criminal nature of the conduct in question or of the defendant's criminal intent; or

(d) He does not have the state of mind sufficient for the commission of the offense in question.

(3) It is not a defense to a prosecution under section 510 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited.

Sec. 512—Grading of criminal solicitation.

Criminal solicitation is an offense one class or grade, as the case may be, less than the offense solicited.

PART III. CRIMINAL CONSPIRACY

Sec. 520—Criminal Conspiracy.

A person is guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a crime:

(1) He agrees with one or more persons that they or one or more of them will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and

(2) He or another person with whom he conspired commits an overt act in pursuance of the conspiracy.

Sec. 521—Scope of conspiratorial relationship.

If a person guilty of criminal conspiracy, as defined in section 520, 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 to commit the crime with such other person or persons, whether or not he knows their identity.

Sec. 522—Conspiracy with multiple criminal objectives.

If a person conspires to commit a number of crimes, he is guilty of only one conspiracy if the multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

Sec. 523—Immunity, irresponsibility, or incapacity of a party to criminal conspiracy.

(1) A person shall not be liable under section 520 for criminal conspiracy if under sections 224(1) and (2) and 225(1) he would not be legally accountable for the conduct of the other person.

(2) It is not a defense to a prosecution under section 520 that a person

with whom the defendant conspires could not be guilty of committing the crime because:

(a) He is, by definition of the offense, legally incapable in an individual capacity of committing the offense;

(b) He is penally irresponsible or has an immunity to prosecution or conviction for the commission of the crime;

(c) He is unaware of the criminal nature of the conduct in question or of the defendant's criminal intent; or

(d) He does not have the state of mind sufficient for the commission of the offense in question.

(3) It is not a defense to a prosecution under section 520 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense that is the object of the conspiracy.

Sec. 524—Venue in criminal conspiracy prosecutions.

For purposes of determining venue in a prosecution for criminal conspiracy, a criminal conspiracy is committed in any circuit in which the defendant enters into the conspiracy and in any circuit in which the defendant or person with whom he conspires does an overt act.

Sec. 525—Duration of conspiracy.

For purposes of section 108, the following apply:

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

(2) It is prima facie evidence that the agreement has been abandoned if neither the defendant nor anyone with whom he conspired did any overt act in pursuance of the conspiracy during the applicable period of limitation.

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

Sec. 526—Grading of criminal conspiracy.

(1) A conspiracy to commit a class A felony is a class B felony.

(2) Except as provided in subsection (1), conspiracy to commit a crime is an offense of the same class and grade as the most serious offense which is an object of the conspiracy.

PART IV. GENERAL PROVISIONS RELATING TO INCHOATE OFFENSES

Sec. 530—Renunciation of attempt, solicitation, or conspiracy; affirmative defense.

(1) In a prosecution for criminal attempt, it is an affirmative defense

that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the attempt.

(2) In a prosecution for criminal solicitation, it is an affirmative defense that the defendant, under circumstances manifesting a complete and voluntary renunciation of his criminal intent:

(a) First notified the person solicited of his renunciation, and

(b) Gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result solicited.

(3) In a prosecution for criminal conspiracy, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the conspiracy.

(4) A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by:

(a) A belief that circumstances exist which increase the probability of detection or apprehension of the accused or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(b) A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

(5) A warning to law-enforcement authorities is not "timely" within the meaning of this section unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the conduct or result. An effort is not "reasonable" within the meaning of this section unless the defendant, under reasonably foreseeable circumstances, would have prevented the conduct or result.

Sec. 531—Multiple convictions.

A person may not be convicted of more than one offense defined by this chapter for conduct designed to commit or culminate in the commission of the same substantive crime.

CHAPTER 6
DISPOSITION OF CONVICTED DEFENDANTS

PART I. PRE-SENTENCE INVESTIGATION AND REPORT, AUTHORIZED DISPOSITION, AND CLASSES OF FELONIES

Sec. 600—Sentence in accordance with this chapter.

No sentence shall be imposed or suspended otherwise than in accordance with this chapter.

Sec. 601—Pre-sentence diagnosis and report.

(1) The court shall order a pre-sentence correctional diagnosis of the

defendant and accord due consideration to a written report of the diagnosis before suspending or imposing sentence where:

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

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

(2) The court may order a pre-sentence diagnosis in any other case.

(3) With the consent of the court, the requirement of a pre-sentence diagnosis may be waived by agreement of both the defendant and the prosecuting attorney.

Sec. 602—Contents of pre-sentence diagnosis and report.

The pre-sentence diagnosis and report shall include an analysis of the circumstances attending the commission of the crime, the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included.

Sec. 603—Pre-sentence psychiatric and medical examination.

Before suspending or imposing sentence, the court may order a defendant who has been convicted of a felony or misdemeanor to submit to psychiatric and other medical observation and examination for a period not exceeding sixty days or such longer period, not to exceed the length of permissible imprisonment, as the court determines to be necessary for the purpose. The defendant may be remanded for this purpose to any available clinic or hospital and, in addition thereto or in the alternative, the court may appoint one or more qualified psychiatrists or other physicians to make the examination. The report of the examination shall be submitted to the court.

Sec. 604—Opportunity to be heard with respect to sentence; notice of pre-sentence report; opportunity to controvert or supplement; transmission of report to department of social services.

(1) Before suspending or imposing sentence, the court shall afford a fair opportunity to the defendant to be heard on the issue of his disposition.

(2) The court shall furnish to the defendant or his counsel and to the prosecuting attorney a copy of the report of any pre-sentence diagnosis or psychiatric or other medical examination and afford fair opportunity, if the defendant or the prosecuting attorney so requests, to controvert or supplement them.

(3) If the defendant is sentenced to imprisonment, a copy of the report of any pre-sentence diagnosis or psychiatric or other medical examination shall be transmitted forthwith to the department of social services and housing or, when the defendant is committed to the custody of a specific institution, to such institution.

Sec. 605—Authorized disposition of convicted defendants.

(1) Except as provided in section 606 and subject to the applicable provisions of this Code, the court may suspend the imposition of sentence on a person who has been convicted of a crime, may order him to be committed

in lieu of sentence in accordance with section 607, or may sentence him as follows:

(a) To be placed on probation as authorized by part II of this chapter; or

(b) To pay a fine authorized by part III of this chapter; or

(c) To be imprisoned for a term authorized by part IV of this chapter; or

(d) To pay a fine and to probation or to pay a fine and to imprisonment, but not to probation and imprisonment, except as authorized by part II of this chapter.

(2) The court may suspend the imposition of sentence on a person who has been convicted of a violation or may sentence him to pay a fine authorized by part III of this chapter.

(3) The court shall sentence a corporation or unincorporated association which has been convicted of an offense in accordance with section 608.

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

Sec. 606—Sentence for offense of murder.

The court shall sentence a person who has been convicted of murder to an indeterminate term of imprisonment. In such cases the court shall impose the maximum length of imprisonment as follows:

(a) Life imprisonment without possibility of parole in the murder of:

(i) A peace officer while in the performance of his duties, or

(ii) A person known by the defendant to be a witness in a murder prosecution, or

(iii) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this subsection, or

(iv) A person while the defendant was imprisoned.

As part of such sentence the court shall order the director of the department of social services and housing and the board of paroles and pardons to prepare an application for the governor to commute the sentence to life with parole at the end of twenty years of imprisonment.

(b) Life imprisonment with possibility of parole or twenty years as the court determines, in all other cases. The minimum length of imprisonment shall be determined by the board of paroles and pardons in accordance with section 669.

Sec. 607—Civil commitment in lieu of prosecution or of sentence.

(1) When a person prosecuted for a class C felony, misdemeanor, or petty misdemeanor is a chronic alcoholic, narcotic addict, or person suffering from mental abnormality and the person is subject by law to involuntary hospitalization for medical, psychiatric, or other rehabilitative treatment, the court may order such hospitalization and dismiss the prosecution. The order of involuntary hospitalization 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) 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.

Sec. 608—Penalties against corporations and unincorporated associations; forfeiture of corporate charter or revocation of certificate authorizing foreign corporation to do business in the State.

(1) The court may suspend the sentence of a corporation or an unincorporated association which has been convicted of an offense or may sentence it to pay a fine authorized by part III of this chapter.

(2) When a corporation is convicted of a crime or a high managerial agent of a corporation, as defined in section 230(3), is convicted of a crime committed in the conduct of the affairs of the corporation, the court, in sentencing the corporation or the agent, may order the charter of a corporation organized under the laws of this State forfeited or the certificate of a foreign corporation authorizing it to do business in this State revoked upon finding:

(a) that the board of directors or a high managerial agent acting in behalf of the corporation has, in conducting the corporation's affairs, intentionally engaged in a persistent course of criminal conduct, and

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

(3) The proceedings authorized by subsection (2) shall be conducted in accordance with the procedures authorized by law for the involuntary dissolution of a corporation or the revocation of the certificate authorizing a foreign corporation to conduct business in this State. Such proceedings shall be deemed additional to any other proceedings authorized by law for the purpose of forfeiting the charter of a corporation or revoking the certificate of a foreign corporation.

Sec. 609—Resentence for the same offense or for offense based on the same conduct not to be more severe than prior sentence.

When a conviction or sentence is set aside on direct or collateral attack, the court shall not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence.

Sec. 610—Classes of felonies.

(1) Felonies defined by this Code are classified, for the purpose of sentence, into three classes, as follows:

(a) Class A felonies;

(b) Class B felonies; and

(c) Class C felonies.

A felony is a class A, class B, or class C felony when it is so designated by this Code. A crime declared to be a felony, without specification of class, is a class C felony.

(2) Notwithstanding any other provision of law, a felony defined by any statute of this State other than this Code shall constitute for the purpose of sentence a class C felony.

PART II. SUSPENSION OF SENTENCE AND PROBATION

Sec. 620—Sentence of imprisonment withheld unless imprisonment is necessary.

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:

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

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

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

Sec. 621—Grounds favoring withholding sentence of imprisonment.

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

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

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

(3) The defendant acted under a strong provocation;

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

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

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

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

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

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

(10) The defendant is particularly likely to respond affirmatively to probationary treatment;

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

Sec. 622—Criteria for placing defendant on probation.

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

Sec. 623—Period of suspension of sentence or probation.

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 years upon conviction of a felony, one year upon conviction of a misdemeanor, or six months upon conviction of 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.

Sec. 624—Conditions of suspension of sentence or probation.

(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 an employment or occupation;

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

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

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

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

(g) To have in his possession no firearms or other dangerous instruments unless granted written permission by the court;

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

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

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

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

(l) To satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive 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 six months as an additional condition of its order. The court may order that the term of imprisonment be served intermittently. 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 the probation, the term of imprisonment served hereunder shall not be credited toward service of such subsequent sentence.

(4) The defendant shall be given a written copy of any requirements

imposed pursuant to this section, stated with sufficient specificity to enable him to guide himself accordingly.

Sec. 625 Modification of conditions.

During a period of probation or suspension of sentence, 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 624.

Sec. 626 Summons or arrest of defendant under suspended sentence or on probation; commitment without bail.

At any time before the discharge of the defendant or the termination of the period of probation or suspension of sentence:

(1) The court may, in connection with the suspension or probation, summon the defendant to appear before it or may issue a warrant for his arrest;

(2) 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, may arrest him without a warrant;

(3) 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.

Sec. 627—Notice and hearing on revocation of suspension of sentence or probation, or increasing the conditions thereof.

The court shall not revoke a probation or suspension of sentence 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.

Sec. 628—Revocation of probation or suspension of sentence; resentence.

(1) At any time before the discharge of the defendant or the termination of the period of probation or suspension of sentence, 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 subsection (2).

(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.

Sec. 629—Calculation of multiple dispositions involving suspension or probation and imprisonment, or multiple terms of suspension or probation.

(1) When the disposition of a defendant involves more than one crime

or a defendant, already under sentence or suspension of sentence, is convicted for another crime committed prior to the former disposition:

(a) The court shall not sentence to probation a defendant who is under sentence of imprisonment with more than six months to run, or impose a sentence of probation and a sentence of imprisonment except as authorized by section 624(3); and

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

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

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

(2) When a defendant is convicted of a crime committed which under suspension of sentence or on probation and such suspension or probation is not revoked:

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

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

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

Sec. 630—Discharge of defendant.

Upon the termination of the period of probation or suspension of sentence 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 the disposition of the court.

Sec. 631—Probation or suspension of sentence is a final judgment for other purposes.

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

PART III. FINES

Sec. 640—Authorized fines.

A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

(1) $10,000, when the conviction is of a class A felony or a class B felony;

(2) $5,000, when the conviction is of a class C felony;
(3) $1,000, when the conviction is of a misdemeanor;
(4) $500, when the conviction is of a petty misdemeanor or a violation;
(5) Any higher amount equal to double the pecuniary gain derived from the offense by the defendant;
(6) Any higher or lower amount specifically authorized by statute.

Sec. 641—Criteria for imposing fines.

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

(2) The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation unless:
(a) The defendant has derived a pecuniary gain from the crime; or
(b) The court is of the opinion that a fine is specially adapted to the deterrence of the crime involved or to the correction of the defendant.

(3) The court shall not sentence a defendant to pay a fine unless:
(a) The defendant is or will be able to pay the fine; and
(b) The fine will not prevent the defendant from making restitution or reparation to the victim of the offense.

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

Sec. 642—Time and method of payment.

(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.

Sec. 643—Disposition of funds.

(1) The defendant shall pay a fine or any installment thereof to the clerk of the sentencing court. In the event of default in payment, the clerk shall notify the prosecuting attorney.

(2) All fines and other final payments received by a clerk or other officer of a court shall be accounted for, with the names of persons making payment, and the amount and date thereof, being recorded. All such funds shall be deposited with the director of finance to the credit of the general fund of the State.

Sec. 644—Consequences of non-payment; imprisonment for contumacious non-payment; summary collection.

(1) When a defendant sentenced to pay a fine defaults in the payment thereof or of any installment, the court, upon the motion of the prosecuting attorney or upon its own motion, may require him to show cause why his default should not be treated as contumacious and may issue a summons or a warrant of arrest for his appearance. Unless the defendant shows that his de-

fault was not attributable to an intentional refusal to obey the order of the court, or to a failure on his part to make a good faith effort to obtain the funds required for the payment, the court shall find that his default was contumacious and may order him committed until the fine or a specified part thereof is paid.

(2) When a fine is imposed on a corporation or unincorporated association, it is the duty of the person or persons authorized to make disbursement from the assets of the corporation or association to pay it from those assets, and their failure so to do may be held contumacious unless they make the showing required in subsection (1).

(3) The term of imprisonment for non-payment of fine shall be specified in the order of commitment, and shall not exceed one day for each five dollars of the fine, thirty days if the fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for non-payment of a fine shall be given credit toward payment for each day of imprisonment, at the rate of five dollars per day.

(4) 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.

(5) Upon any contumacious 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 non-payment of the fine until the amount of the fine has actually been collected or accounted for under subsection (3).

Sec. 645—Revocation of fine.

(1) 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.

(2) 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.

PART IV. IMPRISONMENT

Sec. 660—Sentence of imprisonment for felony; ordinary terms.

A person who has been convicted of a felony may be sentenced to an indeterminate term of imprisonment. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:

(1) For a class A felony—20 years;

(2) For a class B felony—10 years; and
(3) For a class C felony—5 years.

The minimum length of imprisonment shall be determined by the board of paroles and pardons in accordance with section 669.

Sec. 661—Sentence of imprisonment for felony; extended terms.

In the cases designated in section 662, a person who has been convicted of a felony may be sentenced to an extended indeterminate term of imprisonment. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:

(1) For a class A felony—life;
(2) For a class B felony—20 years; and
(3) For a class C felony—10 years.

The minimum length of imprisonment shall be determined by the board of paroles and pardons in accordance with section 669.

Sec. 662—Criteria for sentence of extended term of imprisonment for felony.

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

(1) Persistent offender. The defendant is a persistent offender whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant is 22 years of age or older and has previously been convicted of two felonies committed at different times when he was 18 years of age or older.

(2) Professional criminal. The defendant is a professional criminal whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant is 22 years of age or older and:

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

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

(3) Dangerous person. The defendant is a dangerous person whose commitment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant has been subjected to a psychiatric examination resulting in the conclusion that his criminal conduct has been characterized by compulsive, aggressive behavior with heedless indifference to consequences, and that such condition makes him a serious danger to others.

(4) Multiple offender. The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an ex-

tended term is warranted. The court shall not make such a finding unless:

(a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or

(b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively would equal or exceed in length the maximum of the extended term imposed, or would equal or exceed 40 years if the extended term imposed is for a class A felony.

Sec. 663—Sentence of imprisonment for misdemeanor and petty misdemeanor.

A person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed one year in the case of a misdemeanor or 30 days in the case of a petty misdemeanor.

Sec. 664—Procedure on imposing sentence of imprisonment for an extended term.

The court shall not impose a sentence of imprisonment for an extended term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to him of the ground proposed. Subject to the provisions of section 604, the defendant shall have the right to hear and controvert the evidence against him and to offer evidence upon the issue.

Sec. 665—Former conviction in another jurisdiction.

For the purposes of subsection (1) of section 662, a conviction of the commission of a crime in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been of a felony if sentence of death or of imprisonment in excess of one year was authorized under the law of such other jurisdiction.

Sec. 666—Definition and proof of conviction.

(1) An adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for purposes of sections 662 and 665, although sentence or the execution thereof was suspended, provided that the time to appeal has expired and that the defendant was not pardoned on the ground of innocence.

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

Sec. 667—Young adult defendants.

(1) Defined. A young adult defendant is a person convicted of a crime who, at the time of sentencing, is 16 years of age or older but less than 22 years of age.

(2) Specialized correctional treatment. A young adult defendant who is sentenced to a term of imprisonment which may exceed 30 days may be committed by the court to the custody of the department of social services and

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

(3) Special term. A young adult defendant convicted of a felony may, in lieu of any other sentence of imprisonment authorized by this chapter, be sentenced to a special indeterminate term of imprisonment if the court is of the opinion that such special term is adequate for his correction and rehabilitation and will not jeopardize the protection of the public. When ordering a special indeterminate term of imprisonment, the court shall impose the maximum length of imprisonment which shall be four years, regardless of the degree of the felony involved. The minimum length of imprisonment shall be set by the board of paroles and pardons in accordance with section 669.

Sec. 668—Concurrent and consecutive terms of imprisonment.

(1) Except as provided in subsection (2), when multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall be served concurrently.

(2) If a person who is imprisoned in a correctional institution is convicted of a crime committed while he is imprisoned or during an escape from imprisonment, the maximum term of imprisonment authorized for the crime committed during imprisonment or during an escape from imprisonment may be added to the portion of the term which remained unserved at the time of the commission of the crime. For purposes of this section, escape is a crime committed during imprisonment.

Sec. 669—Procedure for determining minimum term of imprisonment.

(1) When a person has been sentenced to an indeterminate or an extended term of imprisonment, the board of paroles and pardons shall, as soon as practicable but no later than six months after commitment to the custody of director of the department of social services and housing hold a hearing, and on the basis of the hearing make an order fixing the minimum term of imprisonment to be served before the prisoner shall become eligible for parole.

(2) Before holding the hearing, the board shall obtain a complete report regarding the prisoner's life before entering the institution and a full report of his progress in the institution. The report shall be a complete personality evaluation for the purpose of determining his degree of propensity toward criminal activity.

(3) The prisoner shall be given reasonable notice of the hearing under subsection (1) and shall be permitted to be heard by the board on the issue of the minimum term to be served before he becomes eligible for parole. In addition, he shall:

(a) Be permitted to consult with any persons he reasonably desires, including his own legal counsel, in preparing for the hearing;

(b) Be permitted to be represented and assisted by counsel at the hearing;

(c) Have counsel appointed to represent and assist him if he so requests and cannot afford to retain counsel; and

(d) Be informed of his rights under (a), (b), and (c).

(4) The board in its discretion may, in any particular case and at any time, impose a special condition that the prisoner will not be considered for parole unless and until he has a record of continuous exemplary behavior.

(5) The board in its discretion may reduce the minimum term fixed by its order pursuant to subsection (1).

(6) A verbatim stenographic or mechanical record of the hearing shall be made and preserved in transcribed or untranscribed form.

Sec. 670—Parole procedure; release on parole; terms of parole, recommitment, and reparole; final unconditional release.

(1) Parole hearing. A person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the expiration of the minimum term of imprisonment determined by the board of paroles and pardons pursuant to section 669. If parole is not granted at that time, additional hearings shall be held at 12-month intervals or less until parole is granted or the maximum period of imprisonment expires.

(2) Prisoner's plan and participation. Each prisoner shall be given reasonable notice of his parole hearing and shall prepare a parole plan, setting forth the manner of life he intends to lead if released on parole, including specific information as to where and with whom he will reside and what occupation or employment he will follow. The institutional parole staff shall render reasonable aid to the prisoner in the preparation of his plan and in securing information for submission to the parole board. In addition, he shall:

(a) Be permitted to consult with any persons whose assistance he reasonably desires, including his own legal counsel, in preparing for a hearing before the parole board;

(b) Be permitted to be represented and assisted by counsel at the hearing;

(c) Have counsel appointed to represent and assist him if he so requests and cannot afford to retain counsel; and

(d) Be informed of his rights under (a), (b), and (c).

(3) Board's decision. The board of paroles and pardons shall render its decision regarding a prisoner's release on parole within a reasonable time after the parole hearing. If the board denies parole after the hearing, it shall state its reasons in writing. A verbatim stenographic or mechanical record of the parole hearing shall be made and preserved in transcribed or untranscribed form. The board may in its discretion order a reconsideration or rehearing of the case at any time.

(4) Release upon expiration of maximum term. If the board of paroles and pardons fixes no earlier release date, a prisoner's release shall become mandatory at the expiration of his maximum term of imprisonment.

(5) Sentence of imprisonment includes separate parole term; length of parole term. A sentence to an indeterminate term of imprisonment under this chapter includes as a separate portion of the sentence a term of parole or of recommitment for violation of the conditions of parole which governs the duration of parole or recommitment after the prisoner's first conditional release on parole. The maximum of such term shall be ten years. The minimum length

of the term of parole or recommitment shall be determined by the board of paroles and pardons.

(6) Revocation hearing. When a parolee has been recommitted, the board of paroles and pardons shall hold a hearing within 60 days after his return to determine whether his parole should be revoked. The parolee shall have reasonable notice of the grounds alleged for revocation of his parole. The institutional parole staff shall render reasonable aid to the parolee in preparation for the hearing. In addition, the parolee shall have, with respect to the revocation hearing, those rights set forth in subsection (2) (a), (2) (b), (2) (c), and (2) (d). A record of the hearing shall be made and preserved as provided in subsection (3).

(7) Length of recommitment and reparole after revocation of parole. If a parolee's parole is revoked, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the board of paroles and pardons but shall not exceed in aggregate length the unserved balance of the maximum parole term provided by subsection (5).

(8) Final unconditional release. When his maximum parole term has expired or he has been sooner discharged from parole, a prisoner shall be deemed to have served his sentence and shall be released unconditionally.

Sec. 671—Credit for time of detention prior to sentence; credit for imprisonment under earlier sentence for same crime.

(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 sentence is imposed, such period of detention following his arrest shall be deducted from the minimum and maximum terms 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 or a sentence 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 minimum and maximum terms 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.

Sec. 672—Place of imprisonment.

(1) When a person is sentenced to imprisonment for an indeterminate term, the court shall commit him to the custody of the department of social services and housing for the term of his sentence and until released in accordance with law. The court shall determine the initial place of confinement and the director shall determine the proper program of redirection and any subsequent place of confinement best suited to meet the individual needs of the committed person.

(2) When a person is sentenced to imprisonment for a 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 the law.

CHAPTER 7
OFFENSES AGAINST THE PERSON
PART I. GENERAL PROVISIONS RELATING TO OFFENSES AGAINST THE PERSON

Sec. 700—Definitions of terms in this chapter.

In this chapter, unless a different meaning plainly is required:

(1) "Person" means a human being who has been born and is alive;

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

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

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

(5) "Restrain" means to restrict a person's movement in such a manner as to interfere substantially with his liberty:

(a) By means of force, threat, or deception; or

(b) If the person is under the age of 18 or incompetent, without the consent of the relative, person, or institution having lawful custody of him;

(6) "Relative" means parent, ancestor, brother, sister, uncle, aunt, or legal guardian;

(7) "Sexual intercourse" means any act of coitus between male and female, but does not include deviate sexual intercourse; it occurs upon any penetration however slight and emission is not required;

(8) "Deviate sexual intercourse" means any act of sexual gratification:

(a) Between persons not married to each other involving the sex organs of one and the mouth or anus of the other; or

(b) Between a person and an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other.

(9) "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor, done with the intent of gratifying the sexual desire of either party;

(10) "Female" means any female person to whom the actor is not married;

(11) "Married" includes persons legally married, but does not include spouses living apart under a judicial decree;

(12) "Forcible compulsion" means physical force that overcomes earnest resistance; or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person, or in fear that he or another person will immediately be kidnapped;

(13) "Mentally defective" means a person suffering from a disease, disorder, or defect which renders him incapable of appraising the nature of his conduct;

(14) "Mentally incapacitated" means a person rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a substance administered to him without his consent;

(15) "Physically helpless" means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act.

PART II. CRIMINAL HOMICIDE

Sec. 701—Murder.

(1) Except as provided in section 702, a person commits the offense of murder if he intentionally or knowingly causes the death of another person.

(2) Murder is a class A felony for which the defendant shall be sentenced to imprisonment as provided in section 606.

Sec. 702—Manslaughter.

(1) A person commits the offense of manslaughter if:

(a) he recklessly causes the death of another person; or

(b) he intentionally causes another person to commit suicide.

(2) In a prosecution for murder it is a defense, which reduces the offense to manslaughter, that the defendant was, at the time he caused the death of the other person, under the influence of extreme mental or emotional disturbances for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believed them to be.

(3) Manslaughter is a class B felony.

Sec. 703—Negligent homicide in the first degree.

(1) A person is guilty of the offense of negligent homicide in the first degree if he causes the death of another person by the operation of a vehicle in a negligent manner.

(2) Negligent homicide in the first degree is a class C felony.

Sec. 704—Negligent homicide in the second degree.

(1) A person is guilty of the offense of negligent homicide in the second degree if he causes the death of another person by the operation of a vehicle in a manner which is simple negligence.

(2) "Simple negligence" as used in this section:

(a) A person acts with simple negligence with respect to his conduct when he should be aware of a risk that he engages in such conduct.

(b) A person acts with simple negligence with respect to attendant circumstances when he should be aware of a risk that such circumstances exist.
(c) A person acts with simple negligence with respect to a result of his conduct when he should be aware of a risk that his conduct will cause such a result.
(d) A risk is within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a deviation from the standard of care that a law-abiding person would observe in the same situation.
(3) Negligent homicide in the second degree is a misdemeanor.

PART III. CRIMINAL ASSAULTS AND RELATED OFFENSES

Sec. 710—Assault in the first degree.

(1) A person commits the offense of assault in the first degree if he intentionally or knowingly causes serious bodily injury to another person.
(2) Assault in the first degree is a class B felony.

Sec. 711—Assault in the second degree.

(1) A person commits the offense of assault in the second degree if:
(a) He intentionally or knowingly causes bodily injury to another person with a dangerous instrument; or
(b) He recklessly causes serious bodily injury to another person with a dangerous instrument.
(2) Assault in the second degree is a class C felony.

Sec. 712—Assault in the third degree.

(1) A person commits the offense of assault in the third degree if he:
(a) Intentionally, knowingly, or recklessly causes bodily injury to another person; or
(b) Negligently causes bodily injury to another person with a dangerous instrument.
(2) Assault in the third degree is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

Sec. 713—Reckless endangering in the first degree.

(1) A person commits the offense of reckless endangering in the first degree if he employs widely dangerous means in a manner which recklessly places another person in danger of death or serious bodily injury.
(2) Reckless endangering in the first degree is a class C felony.

Sec. 714—Reckless endangering in the second degree.

(1) A person commits the offense of reckless endangering in the second degree if he engages in conduct which recklessly places another person in danger of death or serious bodily injury.
(2) Reckless endangering in the second degree is a misdemeanor.

Sec. 715—Terroristic threatening.

(1) A person commits the offense of terroristic threatening if he threatens, by word or conduct, to cause bodily injury to another person or serious damage to property of another:

(a) With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or

(b) with intent to cause, or in reckless disregard of the risk of causing evacuation of a building, place of assembly, or facility of public transportation.

(2) Terroristic threatening is a misdemeanor.

PART IV. KIDNAPPING AND RELATED OFFENSES; CRIMINAL COERCION

Sec. 720—Kidnapping.

(1) A person commits the offense of kidnapping if he intentionally restrains another person with intent to:

(a) Hold him for ransom or reward; or

(b) Use him as a shield or hostage; or

(c) Facilitate the commission of a felony or flight thereafter; or

(d) Inflict bodily injury upon him or subject him to a sexual offense; or

(e) Terrorize him or a third person; or

(f) Interfere with the performance of any governmental or political function.

(2) Except as provided in subsection (3), kidnapping is a class A felony.

(3) In a prosecution for kidnapping, it is a defense which reduces the offense to a class B felony that the defendant voluntarily released the victim, alive and not suffering from serious bodily injury, in a safe place prior to trial.

Sec. 721—Unlawful imprisonment in the first degree.

(1) A person commits the offense of unlawful imprisonment in the first degree if he knowingly restrains another person:

(a) Under circumstances which expose the person to the risk of serious bodily injury; or

(b) In a condition of involuntary servitude.

(2) Unlawful imprisonment in the first degree is a class C felony.

Sec. 722—Unlawful imprisonment in the second degree.

(1) A person commits the offense of unlawful imprisonment in the second degree if he knowingly restrains another person.

(2) In any prosecution under this section it is an affirmative defense, that (a) the person restrained was less than 18 years old, (b) the defendant was a relative of the victim, and (c) his sole purpose was to assume custody over the victim. In that case, the liability of the defendant, if any, is governed by section 723 and he may be convicted under section 723 although charged under this section.

(3) In any prosecution under this section it is an affirmative defense,

that the person restrained (a) was on or in the immediate vicinity of the premises of a retail mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise; (b) was restrained in a reasonable manner and for not more than a reasonable time; (c) was restrained to permit such investigation or questioning by police officer or by the owner of the retail mercantile establishment, his authorized employee or agent; and (d) that such police officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft of merchandise on the premises.

(4) Unlawful imprisonment in the second degree is a misdemeanor.

Sec. 723—Custodial interference.

(1) A person commits the offense of custodial interference if:

(a) Not being a relative of the person, he knowingly takes or entices a person less than 18 years old from his lawful custodian, knowing that he has no right to do so; or

(b) He knowingly takes or entices from lawful custody any incompetent person, or other person entrusted by authority of law to the custody of another person or an institution.

(2) Custodial interference is a misdemeanor.

Sec. 724—Criminal coercion.

(1) A person commits the offense of criminal coercion if he intentionally compels or induces another person to engage in conduct from which he has a legal right to abstain or to abstain from conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the defendant or a third person will:

(a) Cause bodily injury to any person; or

(b) Cause damage to property; or

(c) Commit a penal offense; or

(d) Accuse any person of an offense or cause a penal charge to be instituted against any person; or

(e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or

(f) Reveal any information sought to be concealed by the other person; or

(g) Testify or provide information or withhold testimony or information with respect to any person's legal claim or defense; or

(h) Take or withhold action as a public servant or cause a public servant to take or withhold such action; or

(i) Bring about or continue a strike, boycott, or other similar collective action, to obtain an act or omission which is not demanded for the benefit of the group which the defendant purports to represent.

(2) Criminal coercion is a class C felony.

Sec. 725—Defense to criminal coercion.

In a prosecution for criminal coercion based on paragraphs (d), (e), (f), or (h) of section 724(1), it is a defense that the defendant believed the threatened

accusation, penal charge, or exposure to be true, or the proposed action of a public servant justified, and that his sole intention was to compel or induce the victim to take reasonable action to prevent or remedy the wrong which was the subject of the threatened accusation, charge, exposure, or action of a public servant.

PART V. SEXUAL OFFENSES

Sec. 730—Rape in the first degree.

(1) A male commits the offense of rape in the first degree if:

(a) He intentionally engages in sexual intercourse, by forcible compulsion, with a female and:

(i) The female is not, upon the occasion, his voluntary social companion who had within the previous 12 months permitted him sexual contact; or

(ii) He recklessly inflicts serious bodily injury upon the female; or

(b) He intentionally engages in sexual intercourse with a female who is less than 14 years old and he recklessly inflicts serious bodily injury upon the female.

(2) Rape in the first degree is a class A felony.

Sec. 731—Rape in the second degree.

(1) A male commits the offense of rape in the second degree if:

(a) He intentionally engages in sexual intercourse by forcible compulsion with a female; or

(b) He intentionally engages in sexual intercourse with a female who is less than 14 years old.

(2) Rape in the second degree is a class B felony.

Sec. 732—Rape in the third degree.

(1) A male commits the offense of rape in the third degree if he intentionally engages in sexual intercourse with a female who is mentally defective, mentally incapacitated, or physically helpless.

(2) Rape in the third degree is a class C felony.

Sec. 733—Sodomy in the first degree.

(1) A person commits the offense of sodomy in the first degree if:

(a) He intentionally, by forcible compulsion, engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse, and:

(i) The other person was not, upon the occasion, his voluntary social companion who had within the previous 12 months permitted him sexual contact of the kind involved; or

(ii) He recklessly inflicts serious bodily injury upon the other person; or

(b) He intentionally engages in deviate sexual intercourse with another person who is less than 14 years old, or causes such person to engage

in deviate sexual intercourse, and he recklessly inflicts serious bodily injury upon the person.

(2) Sodomy in the first degree is a class A felony.

Sec. 734—Sodomy in the second degree.

(1) A person commits the offense of sodomy in the second degree if:

(a) He intentionally, by forcible compulsion, engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse; or

(b) He intentionally engages in deviate sexual intercourse with another person who is less than 14 years old.

(2) Sodomy in the second degree is a class B felony.

Sec. 735—Sodomy in the third degree.

(1) A person commits the offense of sodomy in the third degree if he intentionally engages in deviate sexual intercourse with another person, or causes another person to engage in deviate sexual intercourse, and the other person is mentally defective, mentally incapacitated, or physically helpless.

(2) Sodomy in the third degree is a class C felony.

Sec. 736—Sexual abuse in the first degree.

(1) A person commits the offense of sexual abuse in the first degree if:

(a) He intentionally, by forcible compulsion, has sexual contact with another or causes another to have sexual contact with him; or

(b) He intentionally has sexual contact with another person who is less than 14 years old or causes such a person to have sexual contact with him.

(2) Sexual abuse in the first degree is a class C felony.

Sec. 737—Sexual abuse in the second degree.

(1) A person commits the offense of sexual abuse in the second degree if:

(a) He intentionally has sexual contact with another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with him; or

(b) He intentionally has sexual contact with another person who is under 16 years old and at least 4 years younger than him or causes such a person to have sexual contact with him.

(2) Sexual abuse in the second degree is a misdemeanor.

(3) It is an affirmative defense to a prosecution under subsection (1) (b) that the other person had, prior to the time of the offense charged, engaged promiscuously in sexual relations with others.

Sec. 738—Indecent exposure.

(1) A person commits the offense of indecent exposure if, with intent to arouse or gratify sexual desire of himself or of any person, he exposes his genitals to a person to whom he is not married under circumstances in which his conduct is likely to cause affront or alarm.

(2) Indecent exposure is a petty misdemeanor.

Sec. 739—Knowledge of incapacity to consent; prima facie evidence.

(1) In any prosecution for an offense defined in this part, a victim is deemed incapable of giving effective consent if:

(a) He or she is less than the age specified in the definition of the offense, or is mentally defective, mentally incapacitated, or physically helpless; and

(b) The age or condition of the victim is an element of the offense.

Sec. 740—Prompt complaint.

No prosecution may be instituted or maintained under this part unless the alleged offense was brought to the notice of public authority within one month of its occurrence or, where the alleged victim was less than 16 years old or otherwise incompetent to make a complaint, within one month after a parent, guardian, or other competent person specially interested in the victim learns of the offense.

Sec. 741—Incest.

(1) A person commits the offense of incest if he commits an act of sexual intercourse with another who is within the degrees of consanguinity or affinity within which marriage is prohibited.

(2) Incest is a class C felony.

CHAPTER 8

OFFENSES AGAINST PROPERTY RIGHTS

PART I. GENERAL PROVISIONS RELATING TO OFFENSES AGAINST PROPERTY RIGHTS

Sec. 800—Definitions of terms in this chapter.

In this chapter, unless a different meaning plainly is required, the following definitions apply.

(1) "Building" includes any structure, vehicle, railway car, aircraft, or watercraft; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(2) "Control over the property" means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property;

(3) "Dealer" means a person in the business of buying and selling goods;

(4) "Deception" occurs when a person knowingly:

(a) creates or confirms another's impression which is false and which the defendant does not believe to be true; or

(b) fails to correct a false impression which he previously has created or confirmed; or

(c) prevents another from acquiring information pertinent to the disposition of the property involved; or

(d) sells or otherwise transfers or encumbers property, failing to dis-

close a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) promises performance which he does not intend to perform or knows will not be performed, but a person's intention not to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.

The term "deception" 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. "Puffing" means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

(5) "Deprive" means:

(a) To withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to him; or

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

(c) To retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(d) To sell, give, pledge, or otherwise transfer any interest in the property; or

(e) To subject the property to the claim of a person other than the owner.

(6) "Dwelling" means a building which is used or usually used by a person for lodging.

(7) "Enter or remain unlawfully." A person "enters or remains unlawfully" in or upon premises when he is not licensed, invited, or otherwise privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

(8) "Extortion" means to obtain, or exert control over, property of another, or to obtain service, by threatening to:

(a) Cause bodily injury in the future to the person threatened or to any other person; or

(b) Cause damage to property; or

(c) Subject the person threatened or any other person to physical confinement or restraint; or

(d) Commit a penal offense; or
(e) Accuse some person of an offense or cause a penal charge to be instituted against some person; or
(f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair his credit or business repute; or
(g) Reveal any information sought to be concealed by the person threatened or any other person; or
(h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
(i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action; or
(j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property which is not demanded or received for the benefit of the group which the defendant purports to represent; or
(k) Do any other act which would not in itself substantially benefit the defendant but which is calculated to harm substantially some person with respect to his health, safety, business, calling, career, financial condition, reputation, or personal relationships.

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

(10) "Government" means the United States, or any state, county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition "state" includes any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(11) "Intent to defraud" means:
(a) An intent to use deception to injure another's interest which has value; or
(b) Knowledge by the defendant that he is facilitating an injury to another's interest which has value.

(12) "Obtain" means:
(a) When used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another; and
(b) When used in relation to services, to secure the performance of services.

(13) "Owner" means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

(14) "Premises" includes any building and any real property.

(15) "Property" means any money, personal property, real property,

thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

(16) "Property of another" means property which any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful; however, a security interest is not an interest in property, even if title is in the secured party pursuant to the security agreement.

(17) "Receiving" includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

(18) "Services" includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

(19) "Stolen" means obtained by theft or robbery.

(20) "Unauthorized control over property" means control over property of another which is not authorized by the owner.

(21) "Widely dangerous means" includes explosion, fire, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.

Sec. 801—Valuation of property.

Whenever the value of property or services is determinative of the class or grade of an offense, or otherwise relevant to a prosecution, the following shall apply:

(1) Except as otherwise specified in this section, value means the market value of the property or services at the time and place of the offense.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertained market value, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, such as a check, traveler's check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(b) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(3) When property has value but that value cannot be ascertained pursuant to the standards set forth above, the value shall be deemed to be an amount not exceeding $50.

(4) When acting intentionally or knowingly with respect to the value of property or services is required to establish an element of an offense, the value of property or services shall be prima facie evidence that the defendant believed or knew the property or services to be of that value. When acting recklessly with respect to the value of property or services is sufficient to establish an element of an offense, the value of the property or services shall be prima facie evidence that the defendant acted in reckless disregard of the value.

(5) When acting intentionally or knowingly with respect to the value of property or services is required to establish an element of an offense, it is a defense, which reduces the class or grade of the offense to a class or grade of offense consistent with the defendant's state of mind, that the defendant believed the valuation of the property or services to be less. When acting recklessly with respect to the value of property or services is required to establish an element of an offense, it is a defense that the defendant did not recklessly disregard a risk that the property was of the specified value.

(6) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the class or grade of the offense. Amounts involved in offenses of criminal property damage committed pursuant to one scheme or course of conduct, whether the property damaged be of one person or several persons, may be aggregated in determining the class or grade of the offense.

PART II. BURGLARY AND OTHER OFFENSES OF INTRUSION

Sec. 810—Burglary in the first degree.

(1) A person commits the offense of burglary in the first degree if he intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

(a) He is armed with a dangerous instrument in the course of committing the offense; or

(b) He intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense; or

(c) He recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

(2) An act occurs "in the course of committing the offense" if it occurs in effecting entry or while in the building or in immediate flight therefrom.

(3) Burglary in the first degree is a class B felony.

Sec. 811—Burglary in the second degree.

(1) A person commits the offense of burglary in the second degree if he intentionally enters or remains unlawfully in a building with intent to commit therein a crime against a person or against property rights.

(2) Burglary in the second degree is a class C felony.

Sec. 812—Possession of burglar's tools.

(1) A person commits the offense of possession of burglar's tools if:

(a) He knowingly possesses any explosive, tool, instrument, or other article adapted, designed, or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking; and

(b) He intends to use the explosive, tool, instrument, or article, or knows some person intends ultimately to use it, in the commission of an offense of the nature described in subparagraph (a).

(2) Possession of burglar's tools is a misdemeanor.

Sec. 813—Criminal trespass in the first degree.

(1) A person commits the offense of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a dwelling.

(2) Criminal trespass in the first degree is a misdemeanor.

Sec. 814—Criminal trespass in the second degree.

(1) A person commits the offense of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises which are enclosed in a manner designed to exclude intruders or are fenced.

(2) Criminal trespass in the second degree is a petty misdemeanor.

Sec. 815—Simple trespass.

(1) A person commits the offense of simple trespass if he knowingly enters or remains unlawfully in or upon premises.

(2) Simple trespass is a violation.

Sec. 816—Defense to trespass.

(1) It is a defense to prosecution for trespass as a violation of Sections 814 and 815 that the defendant entered upon and passed along or over established and well-defined roadways, pathways, or trails leading to public beaches over government lands, whether or not under lease to private persons.

PART III. CRIMINAL DAMAGE TO PROPERTY

Sec. 820—Criminal property damage in the first degree.

(1) A person commits the offense of criminal property damage in the first degree if he intentionally damages property and thereby recklessly places another person in danger of death or bodily injury.

(2) Criminal property damage in the first degree is a class B felony.

Sec. 821—Criminal property damage in the second degree.

(1) A person commits the offense of criminal property damage in the second degree if:

(a) He intentionally damages property of another, without his consent, by the use of widely dangerous means; or

(b) He intentionally damages the property of another, without his consent, the value of which exceeds $500.

(2) Criminal property damage in the second degree is a class C felony.

Sec. 822—Criminal property damage in the third degree.

(1) A person commits the offense of criminal property damage in the third degree if:

(a) He recklessly damages property of another, without his consent, by the use of widely dangerous means; or

(b) He intentionally damages the property of another, without his consent, the value of which exceeds $50.

(2) Criminal property damage in the third degree is a misdemeanor.

Sec. 823—Criminal property damage in the fourth degree.

(1) A person commits the offense of criminal property damage in the fourth degree if he intentionally damages the property of another without his consent.

(2) Criminal property damage in the fourth degree is a petty misdemeanor.

Sec. 824—Failure to control widely dangerous means.

(1) A person commits the offense of failure to control widely dangerous means if, knowing that widely dangerous means are endangering life or property, he negligently fails to take measures to prevent or mitigate the danger and:

(a) He knows that he is under an official, contractual, or other legal duty to take measures to prevent, control, or mitigate the danger; or

(b) The means were employed by him or with his assent, or on premises in his custody or control.

(2) Failure to control widely dangerous means is a misdemeanor.

Sec. 825—Criminal tampering; definitions of terms.

In sections 826 and 827:

(1) To "tamper with" means to interfere improperly with something, meddle with it, or make unwarranted alterations in its existing condition;

(2) "Utility" means an enterprise which provides gas, electric, steam, water or communications services, and any common carrier; it may be either publicly or privately owned or operated.

Sec. 826—Criminal tampering in the first degree.

(1) A person commits the offense of criminal tampering in the first degree if, and with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, he damages or tampers with, without the consent of the utility or institution, its property or facilities and thereby causes substantial interruption or impairment of service.

(2) Criminal tampering in the first degree is a misdemeanor.

Sec. 827—Criminal tampering in the second degree.

(1) A person commits the offense of criminal tampering in the second degree if he intentionally:

(a) Tampers with property of another person, without his consent, with intent to cause substantial inconvenience to that person or to another; or

(b) Tampers or makes connection with property of a utility without its consent.

(2) Criminal tampering in the second degree is a petty misdemeanor.

Sec. 828—Criminal use of a noxious substance.

(1) A person commits the offense of criminal use of a noxious substance if he knowingly deposits on the premises or in the vehicle of another, without his consent, any stink bomb or device, irritant, or offensive-smelling substance, with the intent to interfere with another's use of the premises or vehicle.

(2) Criminal use of a noxious substance is a petty misdemeanor.

Sec. 829—Criminal littering.

(1) A person commits the offense of criminal littering if he knowingly places, throws, or drops litter on any public or private property or in any public or private waters without the consent of the owner whose interest is affected thereby.

(2) "Litter" means rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, or debris of whatever kind or description, and whether or not it is of value.

(3) Criminal littering is a petty misdemeanor.

PART IV. THEFT AND RELATED OFFENSES

Sec. 830—Theft.

A person commits theft if he does any of the following:

(1) Obtains or exerts unauthorized control over property. He obtains, or exerts control over, the property of another with intent to deprive him of the property.

(2) Property obtained or control exerted through deception. He obtains, or exerts control over, the property of another by deception with intent to deprive him of the property.

(3) Extortion. He obtains, or exerts control over, the property of another by extortion with intent to deprive him of the property.

(4) Appropriation of property. He obtains, or exerts control over, the property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and, with the intent to deprive the owner of the property, he fails to take reasonable measures to discover and notify him.

(5) Obtaining services by deception or extortion. He intentionally obtains services, known by him to be available only for compensation, by deception, extortion, false token, or other means to avoid payment for the services. Where compensation for services is ordinarily paid immediately upon the rendering of them, absconding without payment or offer to pay is prima facie evidence that the services were obtained by deception.

(6) Diversion of services. Having control over the disposition of services of another to which he is not entitled, he intentionally diverts those services to his own benefit or to the benefit of a person not entitled thereto.

(7) Failure to make required disposition of funds.

(a) He intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from his own property reserved in equivalent amount, and deals with the property as his own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition. A person's status as an officer or employee of the government or a financial institution is prima facie evidence that he knows his legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon lawful demand, or if an audit reveals a falsification of accounts, it shall be prima facie evidence that he has intentionally dealt with the property as his own.

(b) He obtains personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposition of funds to a third person on account of the employment, and he intentionally fails to make the payment or disposition at the proper time.

(8) Receiving stolen property. He intentionally receives, retains, or disposes of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property. It is prima facie evidence that a person knows the property to have been stolen if, being a dealer in property of the sort received, he acquires the property for a consideration which he knows is far below its reasonable value.

Sec. 831—Theft in the first degree.

(1) A person commits the offense of theft in the first degree if he commits theft:

(a) By obtaining property from the person of another; or

(b) Of property or services the value of which exceeds $200; or

(c) Of a firearm.

(2) Theft in the first degree is a class C felony.

Sec. 832—Theft in the second degree.

(1) A person commits the offense of theft in the second degree if he commits theft of property or services the value of which exceeds $50.

(2) Theft in the second degree is a misdemeanor.

Sec. 833—Theft in the third degree.

(1) A person commits the offense of theft in the third degree if he commits theft of property or services.

(2) Theft in the third degree is a petty misdemeanor.

Sec. 834—Defenses: unawareness of ownership; claim of right; household belongings; claim of restitution, indemnification, or compensation; co-interest not a defense.

(1) It is a defense to a prosecution for theft that the defendant:

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

(b) Believed that he was entitled to the property or services under a claim of right or that he was authorized, by the owner or by law, to obtain or exert control as he did.

(2) If the owner of the property is the defendant's spouse, it is a defense to a prosecution for theft of property that:

(a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and

(b) The defendant and his spouse were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles, money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(4) It is an affirmative defense to a prosecution for theft by extortion, as defined by paragraphs (e), (f), (g), and (i) of section 800(8), that the property or services obtained by threat of accusation, penal charge, exposure, lawsuit, or other invocation of action by a public servant was believed by the defendant to be due him as restitution or indemnification for harm done, or as compensation for property obtained or lawful services performed, in circumstances to which the threat relates.

(5) In a prosecution for theft, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled.

Sec. 835—Proof of theft offense.

A charge of an offense of theft in any degree may be proved by evidence that it was committed in any manner that would be theft under section 830, notwithstanding the specification of a different manner in the indictment, information, or other charge, subject only to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

Sec. 836—Unauthorized operation of propelled vehicle.

(1) A person commits the offense of unauthorized operation of a propelled vehicle if he intentionally exerts unauthorized control over another's propelled vehicle by operating the same without the owner's consent.

(2) "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(3) It is an affirmative defense to a prosecution under this section that the defendant reasonably believed that the owner would have authorized the use had he known of it.

(4) Unauthorized use of a propelled vehicle is a misdemeanor.

PART V. ROBBERY

Sec. 840—Robbery in the first degree.

(1) A person commits the offense of robbery in the first degree if, in the course of committing theft:

(a) He attempts to kill another, or intentionally inflicts or attempts to inflict serious bodily injury upon another; or

(b) He is armed with a dangerous instrument and:

(i) He uses force against the person of the owner or any person present with intent to overcome the owner's physical resistance or physical power of resistance; or

(ii) He threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property.

(2) As used in this section, "dangerous instrument" means any firearm, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or threatened to be used is capable of producing death or serious bodily injury.

(3) Robbery in the first degree is a class A felony.

Sec. 841—Robbery in the second degree.

(1) A person commits the offense of robbery in the second degree if, in the course of committing theft:

(a) He uses force against the person of the owner or any person present with the intent to overcome the owner's physical resistance or physical power of resistance; or

(b) He threatens the imminent use of force against the person of any one who is present with intent to compel acquiescence to the taking of or escaping with the property; or

(c) He recklessly inflicts serious bodily injury upon another.

(2) Robbery in the second degree is a class B felony.

Sec. 842—Robbery; "in the course of committing a theft."

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

PART VI. FORGERY AND RELATED OFFENSES

Sec. 850—Definitions of terms in this part.

In this part, unless a different meaning plainly is required:

(1) "Written instrument" means:

(a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or

(b) Any token, coin, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification;

(2) "Complete written instrument" means a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof;
(3) "Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
(4) "Falsely make," in relation to a written instrument, means to make or draw a complete written instrument, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;
(5) "Falsely complete," in relation to a written instrument, means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one, without the authority of the ostensible maker or drawer, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;
(6) "Falsely alter," in relation to a written instrument, means to change, without the authority of the ostensible maker or drawer, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;
(7) "Forged instrument" means a written instrument which has been falsely made, completed, or altered;
(8) "Utter," in relation to a forged instrument, means to offer, whether accepted or not, a forged instrument with representation by acts or words, oral or in writing, that the instrument is genuine.

Sec. 851—Forgery in the first degree.

(1) A person commits the offense of forgery in the first degree if, with intent to defraud, he falsely makes, completes, or alters a written instrument, or utters a forged instrument, which is or purports to be, or which is calculated to become or to represent if completed:
(a) Part of an issue of stamps, securities, or other valuable instruments issued by a government or governmental agency; or
(b) Part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporate or other organization or its property.
(2) Forgery in the first degree is a class B felony.

Sec. 852—Forgery in the second degree.

(1) A person commits the offense of forgery in the second degree if, with intent to defraud, he falsely makes, completes, or alters a written instrument, or utters a forged instrument, which is or purports to be, or which is calculated to become or to represent if completed, a deed, will, codicil, contract,

assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.

(2) Forgery in the second degree is a class C felony.

Sec. 853—Forgery in the third degree.

(1) A person commits the offense of forgery in the third degree if, with intent to defraud, he falsely makes, completes, or alters a written instrument, or utters a forged instrument.

(2) Forgery in the third degree is a misdemeanor.

Sec. 854—Criminal possession of a forgery device.

(1) A person commits the offense of criminal possession of a forgery device if:

(a) He makes or possesses with knowledge of its character any plate, die, or other device, apparatus equipment, or article specifically designed or adapted for use in forging written instruments; or

(b) He makes or possesses any device, apparatus, equipment, or article capable of or adaptable to use in forging written instruments with intent to use it himself, or to aid or permit another to use it, for purposes of forgery.

(2) Criminal possession of a forgery device is a class C felony.

Sec. 855—Criminal simulation.

(1) A person commits the offense of criminal simulation if, with intent to defraud, he makes, alters, or utters any object, so that it appears to have an antiquity, rarity, source, or authorship that it does not in fact possess.

(2) In subsection (1), "utter" means to offer, whether accepted or not, an object with representation by acts or words, oral or in writing, relating to its antiquity, rarity, source, or authorship.

(3) Criminal simulation is a misdemeanor.

Sec. 856—Obtaining signature by deception.

(1) A person commits the offense of obtaining a signature by deception if, with intent to defraud, he:

(a) Causes another, by deception, to sign or execute a written instrument; or

(b) Utters the written instrument specified in subparagraph (a).

(2) Obtaining a signature by deception is a misdemeanor.

Sec. 857—Negotiating a worthless negotiable instrument.

(1) A person commits the offense of negotiating a worthless negotiable instrument if he intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee.

(2) For the purpose of this section, as well as in any prosecution for theft committed by means of a worthless negotiable instrument, either of the following shall be prima facie evidence that the drawer knew that the negotiable instrument would not be honored upon presentation:

(a) The drawer had no account with the drawee at the time the negotiable instrument was negotiated; or

(b) Payment was refused by the drawee for lack of funds upon presenta-

tion within a reasonable time after negotiation or delivery, as determined according to section 490:3-503 of the Hawaii Revised Statutes, and the drawer failed to make good within ten days after actual receipt of a notice of dishonor, as defined in section 490:3-508 of the Hawaii Revised Statutes.

(3) The definitions of the following terms shall apply to this section:

(a) "Issue" as defined in section 490:3-101 of the Hawaii Revised Statutes;

(b) "Negotiable instrument" as defined in section 490:3-104 of the Hawaii Revised Statutes;

(c) "Negotiation" as defined in section 490:3-202 of the Hawaii Revised Statutes.

(4) Negotiating a worthless negotiable instrument is a misdemeanor.

Sec. 858—Suppressing a testamentary or recordable instrument.

(1) A person commits the offense of suppressing a testamentary instrument if, with intent to defraud, he destroys, removes, or conceals any will, codicil, or other testamentary instrument.

(2) A person commits the offense of suppressing a recordable instrument if, with intent to defraud, he destroys, removes, or conceals any deed, mortgage, security instrument, or other written instrument for which the law provides public recording.

(3) Each offense defined in this section is a class C felony.

PART VII. BUSINESS AND COMMERCIAL FRAUDS

Sec. 870—Deceptive business practices.

(1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he knowingly or recklessly:

(a) Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(b) Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(c) Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or

(d) Sells or offers for sale adulterated commodities; or

(e) Sells or offers or exposes for sale mislabeled commodities.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) Varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage; or

(b) Represented as being another person's product, though otherwise

labeled accurately as to quality and quantity.

(4) Deceptive business practices is a misdemeanor.

(5) This section does not apply to deceptive business practices, as defined in subsection (1), for which a specific penalty is provided by a statute other than this Code.

Sec. 871—False advertising.

(1) A person commits the offense of false advertising if, in connection with the promotion of the sale of property or services, he knowingly or recklessly makes or causes to be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.

(2) "Misleading statement" includes an offer to sell property or services if the offeror does not intend to sell or provide the advertised property or services:

(a) At the price equal to or lower than the price offered; or

(b) In a quantity sufficient to meet the reasonably-expected public demand, unless quantity is specifically stated in the advertisement; or

(c) At all.

(3) False advertising is a misdemeanor.

Sec. 872—Falsifying business records.

(1) A person commits the offense of falsifying business records if, with intent to defraud, he:

(a) Makes or causes a false entry in the business records of an enterprise; or

(b) Alters, erases, obliterates, deletes, removes, or destroys a true entry in the business records of an enterprise; or

(c) Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law, other than for the information of the government, or by the nature of his position; or

(d) Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

(2) "Enterprise" means any entity of one or more persons, corporate or otherwise, engaged in business, commercial, professional, industrial, eleemosynary, or social activity.

(3) "Business record" means any writing or article kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity.

(4) Falsifying business records is a misdemeanor.

Sec. 873—Defrauding secured creditors.

(1) A person commits the offense of defrauding secured creditors if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to hinder enforcement of that interest.

(2) Defrauding secured creditors is a misdemeanor.

Sec. 874—Misapplication of entrusted property.

(1) A person commits the offense of misapplication of entrusted property

if, with knowledge that he is misapplying property and that the misapplication involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted, he misapplies or disposes of property that has been entrusted to him as a fiduciary or that is property of the government or a financial institution.

(2) "Fiduciary" includes a trustee, guardian, executor, administrator, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(3) To "misapply property" means to deal with the property contrary to law or governmental regulation relating to the custody or disposition of that property; "governmental regulation" includes administrative and judicial rules and orders as well as statutes and ordinances.

(4) Misapplication of property is a misdemeanor.

PART VIII. OFFENSES AFFECTING OCCUPATIONS

Sec. 880—Commercial bribery.

(1) A person commits the offense of commercial bribery if:

(a) he confers or offers or agrees to confer, direct or indirectly, any benefit upon:

(i) An agent with intent to influence the agent to act contrary to a duty to which, as an agent, he is subject; or

(ii) An appraiser with intent to influence the appraiser in his selection, appraisal, or criticism; or

(b) being an agent, an appraiser, or agent in charge of employment, he solicits, accepts, or agrees to accept, directly or indirectly, any benefit from another person with intent:

(i) In the case of an agent, that he will thereby be influenced to act contrary to a duty to which, as an agent, he is subject; or

(ii) In the case of an appraiser, that he will thereby be influenced in his selection, appraisal, or criticism; or

(iii) In the case of an agent in charge of employment, that he will thereby be influenced in the exercise of his discretion or power with respect to hiring someone, or retaining someone in employment, or discharging or suspending someone from employment.

(2) In this section:

(a) "Agent" means:

(i) An agent or employee of another;

(ii) A trustee, guardian, or other fiduciary;

(iii) A lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(iv) An officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(v) An arbitrator or other purportedly disinterested adjudicator or referee;

(b) "Appraiser" means a person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services;

(c) "Agent in charge of employment" does not include any person conducting a private employment agency licensed and operating in accordance with law.

(3) Commercial bribery is a misdemeanor.

Sec. 881—Tampering with a publicity-exhibited contest.

(1) A person commits the offense of tampering with a publicly-exhibited contest if:

(a) He confers, or offers or agrees to confer, directly or indirectly, any benefit upon:

(i) A contest participant with intent to influence him not to give his best efforts in a publicly-exhibited contest; or

(ii) A contest official with intent to influence him to perform improperly his duties in connection with a publicly-exhibited contest; or

(b) Being a contest participant or contest official, he intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit from another person with intent that he will thereby be influenced:

(i) In the case of a contest participant, not to give his best efforts in a publicly-exhibited contest; or

(ii) In the case of a contest official, to perform improperly his duties in connection with a publicly-exhibited contest; or

(c) With intent to influence the outcome of a publicly-exhibited contest he:

(i) Tampers with any contest participant, contest official, animal, equipment, or other thing involved in the conduct or operation of the contest, in a manner contrary to the rules and usages purporting to govern the contest in question; or

(ii) Substitutes a contest participant, animal, equipment, or other thing involved in the conduct or operation of the contest, for the genuine person, animal, or thing.

(2) In this section:

(a) "Publicly-exhibited contest" means any professional or amateur sport, athletic game or contest, or race or contest involving machines, persons, or animals, viewed by the public, but does not include an exhibition which does not purport to be and which is not represented as being such a sport, game, contest, or race;

(b) "Contest participant" means any person who participates or expects to participate in a publicly-exhibited contest as a player, contestant, or member of a team, or as a coach, manager, trainer, or other person directly associated with a player, contestant, or team;

(c) "Contest official" means any person who acts or expects to act in

a publicly-exhibited contest as an umpire, referee, or judge, or otherwise to officiate at a publicly-exhibited contest.

(3) Tampering with a publicly-exhibited contest is a misdemeanor.

CHAPTER 9
OFFENSES AGAINST THE FAMILY AND AGAINST INCOMPETENTS

Sec. 900—Illegally marrying.

(1) A person commits the offense of illegally marrying if he intentionally marries or purports to marry, knowing that he is legally ineligible to do so.

(2) Illegally marrying is a petty misdemeanor.

Sec. 901—Concealing the corpse of an infant.

(1) A person commits the offense of concealing the corpse of an infant if he conceals the corpse of a new-born child with intent to conceal the fact of its birth or to prevent a determination of whether it was born dead or alive.

(2) Concealing the corpse of an infant is a misdemeanor.

Sec. 902—Abandonment of a child.

(1) A person commits the offense of abandonment of a child if, being a parent, guardian, or other person legally charged with the care or custody of a child less than 14 years old, he deserts the child in any place with intent to abandon it.

(2) Abandonment of a child is a misdemeanor.

Sec. 903—Persistent nonsupport.

(1) A person commits the offense of persistent nonsupport if he knowingly and 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.

(2) "Support" includes but is not limited to food, shelter, clothing, education, and other necessary care as determined by law.

(3) Persistent nonsupport is a misdemeanor.

Sec. 904—Endangering the welfare of a minor.

(1) A person commits the offense of endangering the welfare of a minor under 18 years of age if, being a parent, guardian, or other person charged with the care or custody of such a minor, he knowingly endangers the minor's physical or mental welfare by violating a legal duty of care or protection.

(2) Endangering the welfare of a minor is a misdemeanor.

Sec. 905—Endangering the welfare of an incompetent person.

(1) A person commits the offense of endangering the welfare of an incompetent person if he knowingly acts in a manner likely to be injurious to the physical or mental welfare of a person who is unable to care for himself because of physical or mental disease, disorder, or defect.

(2) Endangering the welfare of an incompetent person is a misdemeanor.

CHAPTER 10
OFFENSES AGAINST PUBLIC ADMINISTRATION
PART I. GENERAL PROVISIONS RELATING TO OFFENSES AGAINST PUBLIC ADMINISTRATION

Sec. 1000—Definition of terms in this chapter.

In this chapter, unless a different meaning plainly is required:

(1) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals;

(2) "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;

(3) "Custody" means restraint by a public servant pursuant to arrest, detention, or order of a court;

(4) "Detention facility" means any place used for the confinement of a person:

(a) Arrested for, charged with, or convicted of a criminal offense; or

(b) Confined pursuant to chapter 571 of the Hawaii Revised Statutes; or

(c) Held for extradition; or

(d) Otherwise confined pursuant to an order of a court;

(5) "Government" includes any branch, subdivision, or agency of the government of this State or any locality within it;

(6) "Governmental function" includes any activity which a public servant is legally authorized to undertake on behalf of the government;

(7) "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;

(8) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this State or by any public servant authorized by law to impanel a jury, and also includes any person who has been drawn or summoned to attend as a prospective juror;

(9) "Materially false statement" means any false statement, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a falsification is material in a given factual situation is a question of law;

(10) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated, and, for the purposes of this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to a form bearing

notice, authorized by law, to the effect that false statements made therein are punishable; or

(b) The statement recites that it was made under oath or affirmation, the declarant was aware of such recitation at the time he made the statement and intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto;

(11) "Oath required or authorized by law" means an oath the use of which is specifically provided for by statute or appropriate regulatory provision;

(12) "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 examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding;

(13) "Peace officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to a specific class of offenses;

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

(15) "Public servant" means any officer or employee of any branch of government, whether elected, appointed, or otherwise employed, and any person participating as advisor, consultant, or otherwise, in performing a governmental function, but the term does not include jurors or witnesses;

(16) "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;

(17) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

Sec. 1001—Forfeiture of property used as benefit or pecuniary benefit in the commission of an offense defined in this chapter.

Any property offered, conferred, agreed to be conferred, or accepted as a benefit, pecuniary benefit, or compensation in the commission of an offense defined in this chapter is forfeited, subject to the requirements of section 119, to the State.

PART II. OBSTRUCTION OF PUBLIC ADMINISTRATION

Sec. 1010—Obstructing government operations.

(1) A person commits the offense of obstructing government operations if, by using or threatening to use violence, force, or physical interference or obstacle, he intentionally obstructs, impairs, or hinders:

(a) The performance of a governmental function by a public servant acting under color of his official authority; or

(b) The enforcement of the penal law or the preservation of the peace by a peace officer acting under color of his official authority.

(2) This section does not apply to:

(a) The obstruction, impairment, or hindrance of the making of an arrest; or

(b) The obstruction, impairment, or hindrance of any governmental function, as provided by law, in connection with a labor dispute with the government.

(3) Obstruction of government operations is a misdemeanor.

Sec. 1011—Refusing to aid a peace officer.

(1) A person commits the offense of refusing to aid a peace officer when, upon a reasonable command by a person known to him to be a peace officer, he intentionally refuses or fails to aid such peace officer, in:

(a) Effectuating or securing an arrest; or

(b) Preventing the commission by another of any offense.

(2) Refusing to aid a peace officer is a petty misdemeanor.

(3) A person who complies with this section by aiding a peace officer shall not be held liable to any person for damages resulting therefrom, provided he acted reasonably under the circumstances known to him at the time.

Sec. 1012—Refusing to assist in fire control.

(1) A person commits the offense of refusing to assist in fire control when:

(a) Upon a reasonable command by a person known to him to be a fireman, he intentionally refuses to aid in extinguishing a fire or in protecting property at the scene of a fire; or

(b) Upon command by a person known to him to be a fireman or peace officer, he intentionally disobeys an order or regulation relating to the conduct of persons in the vicinity of a fire.

(2) "Fireman" means any officer of a fire department or any other person vested by law with the duty to extinguish fires.

(3) Refusing to assist in fire control is a petty misdemeanor.

(4) A person who complies with this section by assisting in fire control shall not be held liable to any person for damages resulting therefrom, provided he acted reasonably under the circumstances known to him at the time.

Sec. 1013—Compounding.

(1) A person commits the offense of compounding if he intentionally accepts or agrees to accept any pecuniary benefit as consideration for:

(a) Refraining from seeking prosecution of an offense; or

(b) Refraining from reporting to law-enforcement authorities the commission or suspected commission of any offense or information relating to the offense.

(2) It is an affirmative defense to a prosecution under subsection (1) that the pecuniary benefit did not exceed an amount which the defendant believed to be due as restitution or indemnification for harm caused by the offense.

(3) Compounding is a misdemeanor.

Sec. 1014—Rendering a false alarm.

(1) A person commits the offense of rendering a false alarm if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, any other government agency, or any public utility that deals with emergencies involving danger to life or property.

(2) Rendering a false alarm is a misdemeanor.

Sec. 1015—False reporting to law-enforcement authorities.

(1) A person commits the offense of false reporting to law-enforcement authorities if he intentionally makes a report or causes the transmission of a report to law-enforcement authorities relating to a crime or other incident within their concern when he knows that the information contained in the report is false.

(2) False reporting to law-enforcement authorities is a misdemeanor.

Sec. 1016—Impersonating a public servant.

(1) A person commits the offense of impersonating a public servant if he pretends to be a public servant and engages in any conduct in that capacity with intent to deceive anyone.

(2) It is no defense to a prosecution under this section that the office the person pretended to hold did not in fact exist.

(3) Impersonating a public servant is a misdemeanor.

Sec. 1017—Tampering with a public record.

(1) A person commits the offense of tampering with a public record if:

(a) He knowingly and falsely makes, completes, or alters, or knowingly makes a false entry in, a written instrument which is or purports to be a public record or a true copy thereof; or

(b) He knowingly presents or uses a written instrument which is or purports to be a public record or a true copy thereof, knowing that it has been falsely made, completed, or altered, or that a false entry has been made therein, with intent that it be taken as genuine; or

(c) He knowingly records, registers, or files, or offers for recordation, registration, or filing, in a governmental office or agency, a written statement which has been falsely made, completed, or altered, or in which a false entry has been made, or which contains a false statement or false information; or

(d) Knowing he lacks the authority to do so:

(i) He intentionally destroys, mutilates, conceals, removes, or otherwise impairs the availability of any public records; or

(ii) He refuses to deliver up a public record in his possession upon proper request of a public servant entitled to receive such record for examination or other purposes.

(2) For the purpose of this section, "public record" includes all official books, papers, written instruments, or records created, issued, received, or kept by any governmental office or agency or required by law to be kept by others for the information of the government.

(3) Tampering with public records is a misdemeanor.

Sec. 1018—Securing the proceeds of an offense.

(1) A person commits the offense of securing the proceeds of an offense if, with intent to assist another in profiting or benefiting from the commission of a crime, he aids the person in securing the proceeds of the crime.

(2) Securing the proceeds of an offense is a class C felony if the person assisted committed a class A or B felony; otherwise it is a misdemeanor.

PART III. ESCAPE AND OTHER OFFENSES RELATED TO CUSTODY

Sec. 1020—Escape in the first degree.

(1) A person commits the offense of escape in the first degree if he intentionally employs physical force, the threat of physical force, or a dangerous instrument against the person of another in escaping from a correctional or detention facility or from custody.

(2) Escape in the first degree is a class B felony.

Sec. 1021—Escape in the second degree.

(1) A person commits the offense of escape in the second degree if he intentionally escapes from a correctional or detention facility or from custody.

(2) Escape in the second degree is a class C felony.

Sec. 1022—Promoting prison contraband in the first degree.

(1) A person commits the offense of promoting prison contraband in the first degree if:

(a) He intentionally conveys an unapproved dangerous instrument or unapproved drug to any person confined in a correctional or detention facility; or

(b) Being a person confined in a correctional or detention facility, he intentionally makes, obtains, or possesses an unapproved dangerous instrument or an unapproved drug.

(2) An "unapproved dangerous instrument" is any dangerous instrument which the supervisor of the correctional or detention facility has not approved for subsequent conveyance to or possession by the confined person. An "unapproved drug" is any quantity of any drug which the supervisor of the correctional or detention facility has not approved for subsequent conveyance to or possession by the confined person.

(3) Promoting prison contraband in the first degree is a class B felony.

Sec. 1023—Promoting prison contraband in the second degree.

(1) A person commits the offense of promoting prison contraband in the second degree if:

(a) He intentionally conveys known contraband to any person confined in a correctional or detention facility; or

(b) Being a person confined in a correctional or detention facility, he intentionally makes, obtains, or possesses known contraband.

(2) "Contraband" means any article or thing which a person confined in a correctional or detention facility is prohibited from obtaining or possessing by statute, rule, regulation, or order.

(3) Promoting prison contraband in the second degree is a class C felony.

Sec. 1024—Bail jumping in the first degree.

(1) A person commits the offense of bail jumping in the first degree if, having been released from custody by court order with or without bail, upon condition that he will subsequently appear as ordered in connection with a charge of having committed a class A, B or C felony, he intentionally fails to appear as ordered.

(2) Bail jumping in the first degree is a class C felony.

Sec. 1025—Bail jumping in the second degree.

(1) A person commits the offense of bail jumping in the second degree if, having been released from custody by court order with or without bail, upon condition that he will subsequently appear as ordered in connection with a charge of having committed a misdemeanor or a petty misdemeanor, he intentionally fails to appear as ordered.

(2) Bail jumping in the second degree is a misdemeanor.

Sec. 1026—Resisting arrest.

(1) A person commits the offense of resisting arrest if he intentionally prevents a peace officer acting under color of his official authority from effecting an arrest by:

(a) Using or threatening to use physical force against the peace officer or another; or

(b) Using any other means creating a substantial risk of causing bodily injury to the peace officer or another.

(2) Resisting arrest is a misdemeanor.

Sec. 1027—Resisting an order to stop a motor vehicle.

(1) A person commits the offense of resisting an order to stop a motor vehicle if he intentionally fails to obey a direction of a peace officer, acting under color of his official authority, to stop his vehicle.

(2) Resisting an order to stop a motor vehicle is a misdemeanor.

Sec. 1028—Hindering prosecution; definition of rendering assistance.

For the purposes of sections 1029, 1030, and 1031, a person renders assistance to another if he:

(1) Harbors or conceals such person;

(2) Warns such person of impending discovery, apprehension, prosecution, or conviction, except this does not apply to a warning given in

connection with an effort to bring another into compliance with the law;

(3) Provides such person with money, transportation, weapon, disguise, or other means of avoiding discovery, apprehension, prosecution, or conviction;

(4) Prevents or obstructs, by means of force, deception, or intimidation, anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of such person; or

(5) Supresses by an act of concealment, alteration, or destruction any physical evidence that might aid in the discovery, apprehension, prosecution, or conviction of such person.

Sec. 1029—Hindering prosecution in the first degree.

(1) A person commits the offense of hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for a class A, B or C felony, he renders assistance to such person.

(2) Hindering prosecution in the first degree is a class C felony.

Sec. 1030—Hindering prosecution in the second degree.

(1) A person commits the offense of hindering prosecution in the second degree if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for a crime, he renders assistance to such person.

(2) Hindering prosecution in the second degree is a misdemeanor.

PART IV. BRIBERY

Sec. 1040—Bribery

(1) A person commits the offense of bribery if:

(a) He confers, or offers or agrees to confer, directly or indirectly, any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity; or

(b) While a public servant, he solicits, accepts, or agrees to accept, directly or indirectly, any pecuniary benefit with the intent that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced;

(2) It is a defense to a prosecution under subsection (1) that the accused conferred or agreed to confer the pecuniary benefit as a result of extortion or coercion.

(3) For purposes of this section, "public servant" includes in addition to persons who occupy the position of public servant as defined in section 1000(15), persons who have been elected, appointed, or designated to become a public servant although not yet occupying that position.

(4) Bribery is a class C felony.

PART V. PERJURY AND RELATED OFFENSES

Sec. 1060—Perjury.

(1) A person commits the offense of perjury if in any official proceeding he makes, under an oath required or authorized by law, a false statement which he does not believe to be true.

(2) No person shall be convicted under this section unless the court rules that the false statement is a "materially false statement" as defined by section 1000(9). It is not a defense that the declarant mistakenly believed the false statement to be immaterial.

(3) Perjury is a class C felony.

Sec. 1061—False swearing in official matters.

(1) A person commits the offense of false swearing in official matters if he makes, under an oath required or authorized by law, a false statement which he does not believe to be true, and:

(a) The statement is made in an official proceeding; or

(b) The statement is intended to mislead a public servant in the performance of his official duty.

(2) False swearing in official matters is a misdemeanor.

Sec. 1062—False swearing.

(1) A person commits the offense of false swearing if he makes, under oath required or authorized by law, a false statement which he does not believe to be true.

(2) False swearing is a petty misdemeanor.

Sec. 1063—Unsworn falsification to authorities.

(1) A person commits the offense of unsworn falsification to authorities if, with an intent to mislead a public servant in the performance of his duty, he:

(a) Makes any written statement, which he does not believe to be true, in an application for any pecuniary or other benefit or in a record or report required by law to be submitted to any governmental agency;

(b) Submits or invites reliance on any writing which he knows to be falsely made, completed, or altered; or

(c) Submits or invites reliance on any sample, specimen, map, boundary-mark, or other object he knows to be false.

(2) Unsworn falsification to authorities is a misdemeanor.

Sec. 1064—Retraction.

(1) It is a defense to a prosecution under this part that the defendant retracted his falsification:

(a) If the falsification was made in an official proceeding, in the course of the same proceeding before discovery of the falsification became known to him; or

(b) If the falsification was not made in an official proceeding, before reliance upon the falsification by the person or body for whom it was intended.

(2) "In the course of the same proceeding" includes separate hearings at

separate stages of the same official or administrative proceeding but does not include any stage of the proceeding after the close of the evidence.

Sec. 1065—Inconsistent statements.

(1) Where a person has made inconsistent statements, each of which if made with the requisite state of mind and under the requisite circumstances would constitute an offense specified in this part, and both statements have been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false; it shall only be necessary for the prosecution to prove:

(a) That one or the other was false and not believed by the defendant to be true; and

(b) The attendant circumstances and states of mind necessary to constitute each statement, if false, as an offense.

(2) The most serious offense of which a person may be convicted in such an instance shall be determined by hypothetically assuming each statement to be false. If offenses of different classes or grades would be established by the making of the two statements, the person may only be convicted of the lesser class or grade.

Sec. 1066—No prosecution based on previous denial of guilt.

No prosecution shall be brought:

(1) Under this part, if the substance of the defendant's false statement is his denial of guilt of an offense for which he has previously been put in jeopardy; or

(2) For a substantive offense, the denial of which was the basis of a former prosecution under this part.

Sec. 1067—Corroboration.

In any prosecution under this part, except a prosecution based upon inconsistent statements pursuant to section 1065, falsity of a statement may not be established solely through contradiction by the testimony of a single witness.

Sec. 1068—Irregularities no defense.

It is not a defense to a prosecution under this part:

(1) That the defendant was not competent, for reasons other than lack of penal responsibility, to make the false statement alleged; or

(2) That the statement was inadmissible under the law of evidence; or

(3) That the oath was administered or taken in an irregular manner; or

(4) That the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law.

PART VI. OFFENSES RELATED TO JUDICIAL AND OTHER PROCEEDINGS

Sec. 1070—Bribery of or by a witness.

(1) A person commits the offense of bribing a witness if he confers, or

offers or agrees to confer, directly or indirectly, any benefit upon a witness or a person he believes is about to be called as a witness in any official proceeding with intent to:

(a) Influence the testimony of that person;

(b) Induce that person to avoid legal process summoning him to testify; or

(c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.

(2) A witness or a person believing he is about to be called as a witness in any official proceeding commits the offense of bribe receiving by a witness if he intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit as consideration:

(a) Which will influence his testimony;

(b) For avoiding or attempting to avoid legal process summoning him to testify; or

(c) For absenting or attempting to absent himself from an official proceeding, to which he has been legally summoned.

(3) The offenses defined in this section are class C felonies.

Sec. 1071—Intimidating a witness.

(1) A person commits the offense of intimidating a witness if he uses force upon or a threat directed to a witness or a person he believes is about to be called as a witness in any official proceeding, with intent to:

(a) Influence the testimony of that person;

(b) Induce that person to avoid legal process summoning him to testify; or

(c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.

(2) "Threat" as used in this section means any threat proscribed by section 724.

(3) Intimidating a witness is a class C felony.

Sec. 1072—Tampering with a witness.

(1) A person commits the offense of tampering with a witness if he intentionally engages in conduct to induce a witness or a person he believes is about to be called as a witness in any official proceeding to:

(a) Testify falsely or withhold any testimony which he is not privileged to withhold; or

(b) Absent himself from any official proceeding to which he has been legally summoned.

(2) Tampering with a witness is a misdemeanor.

Sec. 1073—Bribery of or by a juror.

(1) A person commits the offense of bribing a juror if he confers, or offers or agrees to confer, directly or indirectly, any benefit upon a juror with intent to influence the juror's vote, opinion, decision, or other action as a juror.

(2) A person is guilty of the offense of bribe receiving by a juror if he intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit as consideration which will influence his vote, opinion, decision, or other action as a juror.

(3) The offenses defined in this section are class C felonies.

Sec. 1074—Intimidating a juror.

(1) A person commits the offense of intimidating a juror if he uses force or a threat with intent to influence a juror's vote, opinion, decision, or other action as a juror.

(2) "Threat" as used in this section means any threat proscribed by section 724.

(3) Intimidating a juror is a class B felony.

Sec. 1075—Jury tampering.

(1) A person commits the offense of jury tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he attempts directly or indirectly to communicate with a juror other than as part of the proceedings in the trial of the case.

(2) Jury tampering is a class C felony.

Sec. 1076—Tampering with physical evidence.

(1) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted, he:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its verity in the pending or prospective official proceeding;

(b) Makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(2) "Physical evidence," as used in this section includes any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a misdemeanor.

Sec. 1077—Criminal contempt of court.

(1) A person commits the offense of criminal contempt of court if:

(a) He recklessly engages in disorderly or contemptuous behavior, committed during the sitting of a court in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority; or

(b) He creates a breach of peace or a disturbance with intent to interrupt a court's proceedings; or

(c) As an attorney, clerk, or other officer of the court, he knowingly fails to perform or violates a duty of his office, or knowingly disobeys a lawful directive or order of a court; or

(d) He knowingly publishes a false report of a court's proceedings; or

(e) Knowing that he is not authorized to practice law, he represents himself to be an attorney and acts as such in a court proceeding; or

(f) He intentionally records or attempts to record the deliberation of a jury; or

(g) He intentionally disobeys or resists the process, injunction, or other mandate of a court; or

(h) He intentionally refuses to be qualified as a witness in any court or, after being qualified, to answer any proper interrogatory without a privilege to refuse to answer; or

(i) Being a juror, he intentionally, without permission of the court, fails

to attend a trial or official proceeding to which he has been summoned or at which he has been chosen to serve.

(2) Except as provided in subsection (3), criminal contempt of court is a misdemeanor.

(3) The court may treat the commission of an offense under subsection (1) as a petty misdemeanor, in which case:

(a) If the offense was committed in the immediate view and presence of the court, or under such circumstances that the court has knowledge of all of the facts constituting the offense, the court may order summary conviction and disposition; and

(b) If the offense was not committed in the immediate view and presence of the court, nor under such circumstances that the court has knowledge of all of the facts constituting the offense, the court shall order the defendant to appear before it to answer a charge of criminal contempt of court; the trial, if any, upon the charge shall be by the court without a jury; and proof of guilt beyond a reasonable doubt shall be required for conviction.

(4) When the contempt under subsection (1) also constitutes another offense, the contemnor may be charged with and convicted of the other offense notwithstanding the fact that he has been charged with or convicted of the contempt.

(5) Whenever any person is convicted of criminal contempt of court or sentenced therefor, the particular circumstances of the offense shall be fully set forth in the judgment and in the order or warrant of commitment. In any proceeding for review of the judgment, sentence, or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment, pronounce the sentence, or order the commitment. A conviction under subsection (3) (a) shall not be subject to review by direct appeal.

(6) Nothing in this section shall be construed to alter the court's power to punish civil contempt. When the contempt consists of the refusal to perform an act which the contemnor has the power to perform, he may be imprisoned until he has performed it. In such a case the act shall be specified in the warrant of commitment. In any proceeding for review of the judgment or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment or order the commitment.

CHAPTER 11
OFFENSES AGAINST PUBLIC ORDER

Sec. 1100—Definitions of terms in this chapter.

In this chapter, unless a different meaning plainly is required:

(1) "Public" means affecting or likely to affect a substantial number of persons;

(2) "Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and

hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

(3) "Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access;

(4) "Obstructs" means renders impassable without unreasonable inconvenience or hazard;

(5) "Animal" includes every living creature;

(6) "Cruelty", "torture" or "torment" includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.

Sec. 1101—Disorderly conduct.

(1) A person commits the offense of disorderly conduct if, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he:

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

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

(c) Creates a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.

(2) Disorderly conduct is a petty misdemeanor if it is the defendant's intention to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

Sec. 1102—Failure to disperse.

(1) When six 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 may order the participants and others in the immediate vicinity to disperse.

(2) A person commits the offense of failure to disperse if he knowingly fails to comply with an order made pursuant to subsection (1).

(3) Failure to disperse is a misdemeanor.

Sec. 1103—Riot.

(1) A person commits the offense of riot if he participates with five or more other persons in a course of disorderly conduct:

(a) With intent to commit or facilitate the commission of a felony; or

(b) When he or any other participant to his knowledge uses or intends to use a firearm or other dangerous instrument in the course of the disorderly conduct.

(2) Riot is a class C felony.

Sec. 1104—Unlawful assembly.

(1) A person commits the offense of unlawful assembly if:

(a) He assembles with five or more other persons with intent to engage in conduct constituting a riot; or

(b) Being present at an assembly that either has or develops a purpose

to engage in conduct constituting a riot, he remains there with intent to advance that purpose.

(2) Unlawful assembly is a misdemeanor.

Sec. 1105—Obstructing.

(1) A person commits the offense of obstructing if, having no legal privilege to do so, he knowingly or recklessly obstructs any highway or public passage, whether alone or with others.

(2) A person in a gathering commits the offense of obstructing if he refuses to obey a reasonable request or order by a peace officer 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 public hazard.

(3) An order to move under subsection (2) (a), addressed to a person whose speech or other lawful behavior attracts an obstructing audience, is not reasonable if the obstruction can be readily remedied by police control.

(4) A person is not guilty of violating subsection (1) solely because persons gather to hear him speak or because he is a member of such a gathering.

(5) Obstructing is a petty misdemeanor if the person persists in the conduct specified in subsection (1) after a warning by a peace officer; otherwise it is a violation.

Sec. 1106—Harassment.

(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm another person, he:

(a) Strikes, shoves, kicks, or otherwise touches a person in an offensive manner or subjects him to offensive physical contact; or

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

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

(d) Makes repeated communications anonymously, or at extremely inconvenient hours, or in offensively coarse language; or

(e) Engages in any other course of harmful or seriously distressing conduct serving no legitimate purpose of the defendant.

(2) Harassment is a petty misdemeanor.

Sec. 1107—Desecration.

(1) A person commits the offense of desecration if he intentionally desecrates:

(a) Any public monument or structure; or

(b) A place of worship or burial; or

(c) In a public place the national flag or any other object of veneration by a substantial segment of the public.

(2) "Desecrate" means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover his action.

(3) Desecration is a misdemeanor.

Sec. 1108—Abuse of a corpse.

(1) A person commits the offense of abuse of a corpse if, except as authorized by law, he treats a human corpse in a way that he knows would outrage ordinary family sensibilities.

(2) Abuse of a corpse is a misdemeanor.

Sec. 1109—Cruelty to animals.

(1) A person commits the offense of cruelty to animals if he knowingly or recklessly:

(a) Overdrives, overloads, tortures, torments, deprives of necessary sustenance, or cruelly beats or needlessly mutilates or kills, or causes or procures to be overdriven, overloaded, tortured, tormented or deprived of necessary sustenance, or to be cruelly beaten, or needlessly mutilated or killed, any living creature;

(b) Keeps or uses; or in any way is connected with or interested in the management of, or receives money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, dog, cock or other creature, and every person who encourages, aids or assists therein, or who permits or suffers any place to be so kept or used;

(c) Carries or causes to be carried, in or upon any vehicle or other conveyance, any creature, in a cruel or inhumane manner;

(d) Sets on foot, or instigates in or does any act towards the furtherance of any act of cruelty to animals.

(2) Subsections (1) (a), (c), (d) and the following subsection (3) are not applicable to accepted veterinary practices and to activities carried on for scientific research governed by standards of accepted educational or medical practices.

(3) Whenever any domestic animal is so severely injured that there is no reasonable probability that its life or usefulness can be saved, the animal may be immediately destroyed.

(4) Cruelty to animals is a misdemeanor.

Sec. 1110—Relating to agent of society.

The agent of any society which is formed or incorporated for the prevention of cruelty to animals, upon being appointed thereto by the president of such society in any district in the State, may within such district make arrests and bring before any district judge thereof offenders found violating the provisions of section 1109 to be dealt with according to law.

Sec. 1111—Violation of privacy.

(1) A person commits the offense of violation of privacy if, except in the execution of a public duty or as authorized by law, he intentionally:

(a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place; or

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

(c) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein; or

(d) Intercepts, without the consent of the sender or receiver, a message by telephone, telegraph, letter, or other means of communicating privately; but this subsection does not apply to:

(i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or

(ii) Interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use; or

(e) Divulges without the consent of the sender or the receiver the existence or contents of any message by telephone, telegraph, letter, or other means of communicating privately, if the accused knows that the message was unlawfully intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

(2) Violation of privacy is a misdemeanor.

CHAPTER 12

OFFENSES AGAINST PUBLIC HEALTH AND MORALS

PART I. PROSTITUTION AND PROMOTING PROSTITUTION

Sec. 1200—Prostitution.

(1) A person commits the offense of prostitution if he engages in, or agrees or offers to engage in, sexual conduct with another person in return for a fee.

(2) As used in subsection (1), "sexual conduct" means "sexual intercourse," "deviate sexual intercourse," or "sexual contact," as those terms are defined in section 700.

(3) Prostitution is a petty misdemeanor.

Sec. 1201—Promoting prostitution; definition of terms.

In sections 1202, 1203 and 1204:

(1) A person "advances prostitution" if, acting other than as a prostitute or a patron of a prostitute, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons for prostitution purposes, permits premises to be regularly used for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(2) A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally-rendered prostitution

services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.

Sec. 1202—Promoting prostitution in the first degree.

(1) A person commits the offense of promoting prostitution in the first degree if he knowingly:

(a) Advances prostitution by compelling a person by criminal coercion to engage in prostitution, or profits from such coercive conduct by another; or

(b) Advances or profits from prostitution of a person less than 14 years old.

(2) Promoting prostitution in the first degree is a class B felony.

Sec. 1203—Promoting prostitution in the second degree.

(1) A person commits the offense of promoting prostitution in the second degree if he knowingly:

(a) Advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes; or

(b) Advances or profits from prostitution of a person less than 18 years old.

(2) Promoting prostitution in the second degree is a class C felony.

Sec. 1204— Promoting prostitution in the third degree.

(1) A person commits the offense of promoting prostitution in the third degree if he knowingly advances or profits from prostitution.

(2) Promoting prostitution in the third degree is a misdemeanor.

Sec. 1205—Promoting prostitution; corroboration.

A person shall not be convicted of promoting prostitution, in any degree, or of attempt to commit any such offense, solely upon the uncorroborated testimony of a person whose prostitution activity he is alleged to have advanced or attempted to advance, or from whose prostitution activity he is alleged to have profited or attempted to profit.

PART II. OFFENSES RELATED TO OBSCENITY

Sec. 1210—Definitions of terms in this part.

In this part, unless a different meaning is required:

(1) "Disseminate" means to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present material or to offer or agree to do the same.

(2) "Material" means any printed matter, visual representation, or sound recording, and includes but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, drawings, sculptures, and tape or wire recordings.

(3) "Minor" means any person less than 16 years old.

(4) "Performance" means any play, motion picture film, dance, or other exhibition performed before an audience.

(5) "Pornographic." Any material or performance is "pornographic" if all of the following coalesce:

(a) Considered as a whole, its predominant appeal is to prurient interest in sexual matters. In determining predominant appeal, the material or performance shall be judged with reference to ordinary adults, unless it appears from the character of the material or performance and the circumstances of its dissemination that it is designed for a particular, clearly defined audience. In that case, it shall be judged with reference to the specific audience for which it was designed.

(b) It goes substantially beyond customary limits of candor in describing or representing sexual matters. In determining whether material or a performance goes substantially beyond the customary limits of candor in describing or representing sexual matters, it shall be judged with reference to the contemporary standards of candor of ordinary adults relating to the description or representation of such matters.

(c) It is utterly without redeeming social value.

(6) "Pornographic for minors." Any material or performance is "pornographic for minors" if:

(a) It is primarily devoted to explicit and detailed narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse; and:

(i) It is presented in such a manner as to predominantly appeal to a minor's prurient interest; and

(ii) It is utterly without redeeming social value for minors; or

(b) It contains any photograph, drawing, or similar visual representation of any such person of the age of puberty or older revealing such person with less than a fully opaque covering of his or her genitals and pubic area, or depicting such person in a state of sexual excitement or engaged in acts of sexual conduct or sadomasochistic abuse; and:

(i) It is presented in such a manner as to predominanly appeal to a minor's prurient interest; and

(ii) It is utterly without redeeming social value for minors.

(7) "Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.

(8) "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

(9) "Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

Sec. 1211—Displaying indecent matter.

(1) A person commits the offense of displaying indecent matter if he knowingly or recklessly displays on any sign, billboard, or other object visible from any street, highway, or public sidewalk a photograph, drawing, sculpture, or similar visual representation of any person of the age of puberty or older:

(a) Which reveals the person with less than a fully opaque covering over his or her genitals, pubic area, or buttocks, or depicting the person in a state of sexual excitement or engaged in an act of sexual conduct or sadomasochistic abuse; and

(b) Which is presented in such a manner as to exploit lust; and

(c) Which is utterly without redeeming social value.

(2) Displaying indecent material is a petty misdemeanor.

Sec. 1212—Displaying indecent words.

(1) A person commits the offense of displaying indecent words if he knowingly or recklessly displays on any sign, billboard, or other object visible from any street, highway, or public sidewalk a word connoting sexual excitement, an act of sexual conduct, defecation, or the genital or pubic area of the male or female anatomy.

(2) Displaying indecent words is a petty misdemeanor.

Sec. 1213—Displaying indecent material or words: prima facie evidence.

The fact that a person engaged in the conduct specified by sections 1211 or 1212 is prima facie evidence that he engaged in that conduct with knowledge of or in reckless disregard of the character, content, or connotation of the material or word which is displayed.

Sec. 1214—Promoting pornography.

(1) A person commits the offense of promoting pornography if, knowing its content and character, he:

(a) Disseminates for monetary consideration any pornographic material; or

(b) Produces, presents, or directs pornographic performances for monetary consideration; or

(c) Participates for monetary consideration in that portion of a performance which makes it pornographic.

(2) Promoting pornography is a misdemeanor.

Sec. 1215—Promoting pornography for minors.

(1) A person commits the offense of promoting pornography for minors if:

(a) Knowing its character and content, he disseminates to a minor material which is pornographic for minors; or

(b) Knowing the character and content of a motion picture film or other performance which, in whole or in part, is pornographic for minors, he:

(i) Exhibits such motion picture film or other performance to a minor; or

(ii) Sells to a minor an admission ticket or pass to premises

where there is exhibited or to be exhibited such motion picture film or other performance; or

(iii) Admits a minor to premises where there is exhibited or to be exhibited such motion picture film or other performance.

(2) Subsection (1) does not apply to a parent, guardian, or other person in loco parentis to the minor, or to a sibling of the minor.

(3) Promoting pornography for minors is a misdemeanor.

Sec. 1216—Promoting pornography: prima facie evidence.

(1) The fact that a person engaged in the conduct specified by sections 1214 or 1215 is prima facie evidence that he engaged in that conduct with knowledge of the character and content of the material disseminated or the performance produced, presented, directed, participated in, exhibited, or to be exhibited.

(2) In a prosecution under section 1215, the fact that the person:

(a) To whom material pornographic for minors was disseminated, or

(b) To whom a performance pornographic for minors was exhibited, or

(c) To whom an admission ticket or pass was sold to premises where there was or was to have been exhibited such performance, or

(d) Who was admitted to premises where there was or was to have been such performance, was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

Sec. 1217—Open lewdness.

(1) A person commits the offense of open lewdness if in a public place he does any lewd act which is likely to be observed by others who would be affronted or alarmed.

(2) Open lewdness is a petty misdemeanor.

PART III. GAMBLING OFFENSES

Sec. 1220—Definitions of terms in this part.

In this part unless a different meaning plainly is required, the following definitions apply.

(1) "Advance gambling activity." A person "advances gambling activity" if, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device, or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits

that activity to occur or continue or makes no effort to prevent its occurrence or continuation.

(2) "Bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

(3) "Contest of chance" means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(4) "Gambling." A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health, or accident insurance.

(5) "Gambling device" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

(6) "Lottery" means an unlawful gambling scheme in which:

(a) The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and

(b) The winning chances are to be determined by a drawing or by some other method based on an element of chance; and

(c) The holders of the winning chances are to receive something of value.

(7) "Mutuel" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

(8) "Player" means a person over the age of majority who engages in social gambling solely as a contestant or bettor on equal terms with the other participants therein without receiving or becoming entitled to receive something of value or any profit therefrom other than his personal gambling winnings. "Social gambling" is gambling, or a contest of chance, in which the only participants are players and from which no person, corporation, or other business entity receives or becomes entitled to receive something of value or any profit whatsoever, directly or indirectly, other than as a player, from any

source, fee, remuneration connected with said gambling, or such activity as arrangement or facilitation of the game, or permitting the use of premises, or selling or supplying for profit refreshments, food, drink service, or entertainment to participants, players, or spectators. A person who engages in "bookmaking" as defined in paragraph (2) is not a "player."

(9) "Profit from gambling activity." A person "profits from gambling activity" if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

(10) "Something of value" means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.

Sec. 1221—Promoting gambling in the first degree.

(1) A person commits the offense of promoting gambling in the first degree if he knowingly advances or profits from unlawful gambling activity by:

(a) Engaging in bookmaking to the extent that he receives or accepts in any one day more than five bets totaling more than $500; or

(b) Receiving in connection with a lottery, or mutuel scheme or enterprise money or written records from a person other than a player whose chances or plays are represented by such money or records; or

(c) Receiving in connection with a lottery, mutuel, or other gambling scheme or enterprise more than $500 in any one day of money played in the scheme or enterprise.

(2) Promoting gambling in the first degree is a class C felony.

Sec. 1222—Promoting gambling in the second degree.

(1) A person commits the offense of promoting gambling in the second degree if he knowingly advances or profits from gambling activity.

(2) Promoting gambling in the second degree is a misdemeanor.

Sec. 1223—Possession of gambling records in the first degree.

(1) A person commits the offense of possession of gambling records in the first degree if, other than as a player, he knowingly possesses any writing, paper, instrument, or article, which constitutes, reflects, or represents more than five bets totaling more than $500, and which is:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery, or mutuel scheme or enterprise.

(2) Possession of gambling records in the first degree is a class C felony.

Sec. 1224—Possession of gambling records in the second degree.

(1) A person commits the offense of possession of gambling records in the second degree if, other than as a player, he knowingly possesses any writing, paper, instrument, or article, which is:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise.

(2) Possession of gambling records in the second degree is a misdemeanor.

Sec. 1225—Possession of a gambling device.

(1) A person commits the offense of possession of a gambling device if he manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing it is to be used in the advancement of unlawful gambling activity.

(2) Possession of a gambling device is a misdemeanor.

Sec. 1226—Possession of gambling records; defense.

In any prosecution under sections 1223 or 1224, it is a defense that the writing, paper, instrument, or article possessed by the defendant was neither used nor intended to be used in the advancement of unlawful gambling activity.

Sec. 1227—Gambling offenses; prima facie evidence.

(1) Proof of possession of any gambling record specified in sections 1223 and 1224 or of any gambling device is prima facie evidence of possession thereof with knowledge of its contents and character.

(2) In any prosecution under this part in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation, shall be admissible in evidence and shall constitute prima facie evidence of the occurrence of the event.

Sec. 1228—Lottery offenses; no defense.

It is no defense to a prosecution under any section of this part relating to a lottery that the lottery itself is drawn or conducted outside this State and is not in violation of the laws of the jurisdiction in which it is drawn or conducted.

Sec. 1229—Forfeiture of gambling devices, records, and proceeds.

Any gambling device or gambling record possessed in violation of a section in this part, or any money used as a bet or stake in gambling activity in violation of a section in this part, is forfeited, subject to the requirements of section 119, to the State.

Sec. 1230—Status as player; affirmative defense.

In any prosecution for an offense defined in this part, when the defendant's status as a player constitutes an excusing condition, the fact that the defendant was a player shall constitute an affirmative defense.

PART IV. OFFENSES RELATED TO DRUGS AND INTOXICATING COMPOUNDS

Sec. 1240—Definitions of terms in this part.

In this part, unless a different meaning plainly is required:

(1) "Dangerous drugs" means any substance or immediate precursor

defined or specified as a "Schedule I substance" or a "Schedule II substance" by Chapter 329 of the Hawaii Revised Statutes, except marijuana or marijuana concentrate;

(2) "Harmful drug" means any substance or immediate precursor defined or specified as a "Schedule III substance" or a "Schedule IV substance" by Chapter 329 of the Hawaii Revised Statutes, or any marijuana concentrate except marijuana;

(3) "Detrimental drug" means any substance or immediate precursor defined or specified as a "Schedule V substance" by Chapter 329 of the Hawaii Revised Statutes, or any marijuana;

(4) "Immediate precursor" means a substance which the Department of Health, State of Hawaii, has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture;

(5) "Intoxicating compounds" means any compound, liquid or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes. For the purposes of this section, any such condition so induced shall be deemed to be an intoxicated condition;

(6) "Marijuana" means any part of the plant cannabis sativa, whether growing or not, including the seeds and the resin, and every alkaloid, salt, derivative, preparation, compound, or mixture of the plant, its seeds or resin, except that, as used herein, "marijuana" does not include hashish, tetrahydrocannabinol, and any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol;

(7) "Marijuana concentrate" means hashish, tetrahydrocannabinol, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol;

(8) "Minor" means a person who has not reached the age of majority;

(9) "Ounce" means an avoirdupois ounce as applied to solids and semi-solids, and a fluid ounce as applied to liquids;

(10) "Practitioner" means

(a) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct

research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

(11) "To distribute" means to sell, transfer, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same;

(12) "To sell" means to transfer to another for consideration; and

(13) "Unlawfully" means:

(a) To possess or distribute a Schedule I, II, III, IV or V substance, a marijuana concentrate, marijuana, or intoxicating compound, when not authorized by law to do so by an apothecary, physician, dentist, podiatrist, practitioner, or veterinarian; or

(b) To receive and possess a Schedule I, II, III, IV or V substance, a marijuana concentrate, marijuana, or intoxicating compound, from sources unauthorized by the law to distribute such substances.

Sec. 1241—Promoting a dangerous drug in the first degree.

(1) A person commits the offense of promoting a dangerous drug in the first degree if he knowingly and unlawfully:

(a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:

(i) One ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or

(ii) Two ounces or more, containing one or more of any of the other dangerous drugs; or

(b) Distributes:

(i) 50 or more capsules, tablets, ampules, or syrettes containing one or more dangerous drugs; or

(ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of

(A) ⅛ ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or

(B) ½ ounce or more, containing any other dangerous drug; or

(c) Distributes any dangerous drug in any amount to a minor who is at least three years his junior.

(2) Promoting a dangerous drug in the first degree is a class A felony.

Sec. 1242—Promoting a dangerous drug in the second degree.

(1) A person commits the offense of promoting a dangerous drug in the second degree if he knowingly and unlawfully:

(a) Possesses 50 or more capsules, tablets, ampules, or syrettes, containing one or more dangerous drugs; or

(b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:

(i) ⅛ ounce or more, containing any of the respective alkaloids or salts of heroin, morphine, or cocaine; or

(ii) ½ ounce or more, containing any dangerous drug; or

(c) Distributes any dangerous drug in any amount.

(2) Promoting a dangerous drug in the second degree is a class B felony.

Sec. 1243—Promoting a dangerous drug in the third degree.

(1) A person commits the offense of promoting a dangerous drug in the third degree if he knowingly and unlawfully possesses any dangerous drug in any amount.

(2) Promoting a dangerous drug in the third degree is a class C felony.

Sec. 1244—Promoting a harmful drug in the first degree.

(1) A person commits the offense of promoting a harmful drug in the first degree if he knowingly and unlawfully:

(a) Possesses 400 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combinations thereof; or

(c) Distributes 50 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(d) Distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ⅛ ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(e) Distributes any harmful drug or any marijuana concentrate in any amount to a minor who is at least three years his junior.

(2) Promoting a harmful drug in the first degree is a class B felony.

Sec. 1245—Promoting a harmful drug in the second degree.

(1) A person commits the offense of promoting a harmful drug in the second degree if he knowingly and unlawfully:

(a) Possesses 50 or more capsules or tablets containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ⅛ ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(c) Distributes any harmful drug or any marijuana concentrate in any amount.

(2) Promoting a harmful drug in the second degree is a class C felony.

Sec. 1246—Promoting a harmful drug in the third degree.

(1) A person commits the offense of promoting a harmful drug in the third degree if he knowingly and unlawfully possesses any harmful drug in any amount.

(2) Promoting a harmful drug in the third degree is a misdemeanor.

Sec. 1247—Promoting a detrimental drug in the first degree.

(1) A person commits the offense of promoting a detrimental drug in the first degree if he knowingly and unlawfully:

(a) Possesses 400 or more capsules or tablets containing one or more of the Schedule V substances; or

(b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more containing one or more of the Schedule V substances; or

(c) Distributes 50 or more capsules or tablets containing one or more of the Schedule V substances; or

(d) Distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ⅛ ounce or more, containing one or more of the Schedule V substances; or

(e) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of 2.2 pounds or more, containing any marijuana; or

(f) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of 2 ounces or more, containing any marijuana; or

(g) Distributes any marijuana or any Schedule V substance in any amount to a minor who is at least three years his junior.

(2) Promoting a detrimental drug in the first degree is a class C felony.

Sec. 1248—Promoting a detrimental drug in the second degree.

(1) A person commits the offense of promoting a detrimental drug in the second degree if he knowingly and unlawfully:

(a) Possesses 50 or more capsules or tablets containing one or more of the Schedule V substances; or

(b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ⅛ ounce or more, containing one or more of the Schedule V substances; or

(c) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of 1 ounce or more, containing any marijuana; or

(d) Sells any marijuana or distributes any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the second degree is a misdemeanor.

Sec. 1249—Promoting a detrimental drug in the third degree.

(1) A person commits the offense of promoting a detrimental drug in the third degree if he knowingly and unlawfully possesses any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the third degree is a petty misdemeanor.

Sec. 1250—Promoting intoxicating compounds.

(1) A person commits the offense of promoting intoxicating compounds if he knowingly and unlawfully:

(a) Breathes, inhales, or drinks any compound, liquid, or chemical

containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes.

(b) Sells or offers for sale, delivers or gives to any person under 18 years of age, unless upon written order of such person's parent or guardian, any compound liquid or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethel ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance which will induce an intoxicated condition, as defined herein, when the seller, offeror or deliveror knows or has reason to know that such compound is intended for use to induce such condition.

(2) Promoting intoxicating compounds is a misdemeanor.

(3) This section shall not apply to any person who commits any act described herein pursuant to the direction or prescription of a practitioner, as defined in the "Hawaii Food, Drug and Cosmetic Act" (HRS, section 328-16).

Sec. 1251—Possession in a motor vehicle; prima facie evidence.

(1) Except as provided in subsection (2), the presence of a dangerous drug, harmful drug, or detrimental drug in a motor vehicle, other than a public omnibus, is prima facie evidence of knowing possession thereof by each and every person in the vehicle at the time the drug was found.

(2) Subsection (1) does not apply to:

(a) Other occupants of the motor vehicle if the substance is found upon the person of one of the occupants therein; or

(b) All occupants, except the driver or owner of the motor vehicle, if the substance is found in some portion of the vehicle normally accessible only to the driver or owner; or

(c) The driver of a motor vehicle who is at the time operating it for hire in the pursuit of his trade, if the substance is found in a part of the vehicle used or occupied by passengers.

Sec. 1252—Knowledge of character, nature, or quantity of substance, or age of transferee; prima facie evidence.

(1) The fact that a person engaged in the conduct specified by any section in this part is prima facie evidence that he engaged in that conduct with knowledge of the character, nature, and quantity of the dangerous drug, harmful drug, detrimental drug, or intoxicating compounds possessed, distributed, or sold.

(2) The fact that the defendant distributed or sold a dangerous drug, harmful drug, detrimental drug, or intoxicating compound, to a minor is prima facie evidence that the defendant knew the transferee to be a minor.

Sec. 1253—Penalties under other laws.

Any penalty imposed for violation of this Part or HRS, Chapter 329 is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

Sec. 1254—Bar to prosecution.

If a violation of this Part or HRS Chapter 329 is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this State.

Sec. 1255—Conditional discharge.

(1) Whenever any person who has not previously been convicted of any offense under this Part or HRS Chapter 329 or under any statute of the United States or of any state relating to a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound, pleads guilty to or is found guilty of promoting a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound under sections 1243, 1245, 1246, 1248, 1249, or 1250, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(2) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him.

(3) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(4) There may be only one discharge and dismissal under this section with respect to any person.

(5) After conviction, for any offense under this Part or Chapter 329, but prior to sentencing, the court shall be advised by the prosecutor whether the conviction is defendant's first or a subsequent offense. If it is not a first offense, the prosecutor shall file an information setting forth the prior convictions. The defendant shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit the trial, before a jury if the defendant has a right to trial by jury and demands a jury, on the sole issue of the defendant's identity with the person previously convicted.

Sec. 1256—Expunging of court records.

(1) Upon the dismissal of such person and discharge of the proceeding against him under section 1255 of this chapter, this person, if he was not over 20 years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, trial, finding of guilt, and dismissal and discharge pursuant to this section.

(2) If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 20 years of age at the time of the offense, it shall enter such order.

(3) The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information.

(4) No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or indictment or information, or trial in response to any inquiry made of him for any purpose.

CHAPTER 13
REPEAL AND RECODIFICATION PROVISIONS

Sec. 1300—Repeal and recodification.

(1) As of its effective date, the Hawaii Penal Code shall be codified as Title 37 of Hawaii Revised Statutes.

(2) Title 37 of the Hawaii Revised Statutes, as it shall exist immediately prior to the effective date of the Hawaii Penal Code, shall be, and is hereby, as of the effective date, repealed or recodified as follows:

(a) The following chapters and sections shall be, and are hereby, repealed as of the effective date:

(i) chapter 701 (sections 701 through 701-7);
(ii) chapter 702 (sections 702-1 through 702-14);
(iii) chapter 703 (sections 703-1 through 703-5);
(iv) chapter 704 (sections 704-1 through 704-5);
(v) sections 705-1 through 705-3, and 705-5.5;
(vi) chapter 706 (sections 706-1 through 706-5);
(vii) chapter 707 (sections 707-1 and 707-2);
(viii) sections 710-12 through 710-14;
(ix) sections 711-65, 711-66, 711-71 through 711-73, 711-76, 711-77, 711-80 through 711-83, 711-85, 711-91 through 711-94; and
(x) chapter 712 (sections 712-1 through 712-11).

(b) The following chapters and sections shall be assigned appropriate chapter and section numbers and shall be recodified, as of the effective date, by the revisor of statutes as Title 38 of the Hawaii Revised Statutes:

(i) sections 705-4, 705-5, and 705-6 through 705-8, chapter 705C (sections 705C-1 through 705C-12);
(ii) chapter 708 (sections 708-1 through 708-38);
(iii) sections 709-1 through 709-19, 709-31 through 709-41, and 709-51;
(iv) sections 710-1 through 710-11, and 710-15;
(v) sections 711-1 through 711-64, 711-67, 711-68, 711-78, 711-79, 711-84, and 711-96;
(vi) chapter 713 (sections 713-1 through 713-27), chapter 713C (sections 713C-1 through 713C-6);

(vii) chapter 714 (sections 714-1 through 714-6);
(viii) chapter 715 (sections 715-1 through 715-19);
(ix) chapter 716 (sections 716-1 through 716-7);
(x) chapter 718 (sections 718-1 through 718-8); and
(xi) chapter 719 (sections 719-1 through 719-6).

(3) Title 38 of the Hawaii Revised Statutes, as it shall exist immediately prior to the effective date of the Hawaii Penal Code, shall be, and is hereby, as of the effective date, repealed or recodified as follows:

(a) The following chapters and sections shall be, and are hereby, repealed as of the effective date:
(i) chapter 721 (sections 721-1 through 721-5);
(ii) chapter 722 (sections 722-1 through 722-12);
(iii) chapter 723 (sections 723-1 through 723-11);
(iv) chapter 724 (sections 724-1 through 724-9);
(v) chapter 725 (sections 725-1 through 725-11);
(vi) chapter 726 (sections 726-1 through 726-4);
(vii) sections 727-1 through 727-24;
(viii) sections 728-1 through 728-7, 728-9 and 728-10;
(ix) chapter 729 (sections 729-1 through 729-5);
(x) chapter 731 (section 731-1);
(xi) chapter 733 (sections 733-1 through 733-8);
(xii) section 734-3;
(xiii) chapter 735 (sections 735-1 through 735-4);
(xiv) chapter 736 (section 736-1);
(xv) chapter 737 (section 737-1);
(xvi) chapter 738 (sections 738-1 through 738-4);
(xvii) chapter 739 (sections 739-1 through 739-7);
(xviii) chapter 740 (sections 740-1 through 740-12);
(xix) chapter 741 (sections 741-1 through 741-8);
(xx) chapter 742 (sections 742-1 through 742-7);
(xxi) chapter 743 (sections 743-1 through 743-21);
(xxii) chapter 744 (sections 744-1 through 744-4);
(xxiii) chapter 745 (sections 745-1 through 745-7);
(xxiv) chapter 746 (sections 746-1 through 746-19);
(xxv) sections 747-1 through 747-16, 747-18 through 747-25;
(xxvi) chapter 748 (sections 748-1 through 748-12);
(xxvii) chapter 749 (sections 749-1 through 749-6);
(xxviii) chapter 750 (sections 750-1 through 750-22);
(xxix) chapter 751 (sections 751-1 through 751-14);
(xxx) chapter 752 (sections 752-1);
(xxxi) chapter 753 (sections 753-1 through 753-17);
(xxxii) chapter 755 (section 755-1);
(xxxiii) chapter 756 (sections 756-1 through 756-5);
(xxxiv) chapter 758 (section 758-1);
(xxxv) chapter 759 (sections 759-1 and 759-2);
(xxxvi) chapter 761 (sections 761-1 through 761-10);
(xxxvii) chapter 762 (section 762-1);

(xxxviii) chapter 763 (sections 763-1 and 763-2);
(xxxix) chapter 764 (sections 764-1 through 764-3);
(xl) chapter 765 (sections 765-1 through 765-11);
(xli) chapter 766 (section 766-1);
(xlii) chapter 767 (sections 767-1 through 767-12);
(xliii) chapter 768 (sections 768-1 through 768-77);
(xliv) chapter 770 (section 770-1);
(xlv) chapter 771 (sections 771-1 and 771-2); and
(xlvi) chapter 772 (sections 772-1 through 772-7).

(b) The following chapters and sections shall be assigned appropriate chapter and section numbers and shall be recodified, as of the effective date, by the revisor of statutes as hereafter provided:
(i) section 727-25 shall be recodified as part of chapter 134, which shall be retitled "Firearms, Ammunition, and Dangerous Weapons";
(ii) section 728-8 shall be recodified as part of Title 38;
(iii) chapter 730 (sections 730-1 through 730-12) shall be recodified as part of Title 38;
(iv) chapter 732-1 (section 732-1) shall be recodified as part of Title 12;
(v) sections 734-1 and 734-2 shall be recodified as part of Title 19;
(vi) section 747-17 shall be recodified as part of Title 34 and the revisor of statutes shall change the references in the section so that the same shall refer to section 871 of the Hawaii Penal Code;
(vii) chapter 754 (sections 754-1 and 754-2) shall be recodified as part of Title 38;
(viii) chapter 757 (sections 757-1 and 757-2) shall be recodified as part of Title 21;
(ix) chapter 760 (sections 760-1 through 760-3) shall be recodified as part of Title 19;
(x) chapter 769 (section 769-1) shall be recodified as part of chapter 134, which shall be retitled "Firearms, Ammunition, and Dangerous Weapons";
(xi) chapter 773 (sections 773-1 through 773-3) shall be recodified as part of Title 19; and
(xii) chapter 774 (section 774-1) shall be recodified as part of Title 26.

(4) The following sections of the Hawaii Revised Statutes, as they shall exist immediately prior to the effective date of the Hawaii Penal Code, shall be, and are hereby, as of the effective date, repealed or amended as hereafter provided:
(a) section 65-50 is repealed;
(b) section 66-48 is repealed;
(c) section 185-8 is repealed;
(d) sections 275-1 through 275-5, and section 275-8 are repealed;

(e) section 353-49 is repealed;

(f) section 328-84 is amended as follows:

(i) paragraph (a) of said section is amended to read:

"(a) Any person violating any provision of this chapter, unless some other grade of offense or penalty is provided for such conduct by this chapter or by chapter 6 and part IV of chapter 12 of the Hawaii Penal Code, is guilty of a class C felony";

(ii) paragraph (b) is repealed;

(iii) paragraph (c) is renumbered as paragraph (b);

(g) section 329-3 is amended by deleting therefrom the second and third paragraphs thereof;

(h) sections 329-4 and 329-5 are repealed;

(i) section 329-29 is amended to read as follows:

"Any person violating any section of this chapter, unless some other grade of offense or penalty is provided for such conduct by this chapter or by chapter 6 and part IV of chapter 12 of the Hawaii Penal Code, is guilty of a misdemeanor";

(j) section 329-31 is repealed;

(k) section 575-1 is repealed; and

(l) sections 577-8 and 577-12 are repealed."

Section 2. Severability. If any provision of the Code adopted by this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of the Code are severable.

Section 3. This Act shall take effect on January 1, 1973.

(Approved April 7, 1972.)