

# Criminal Procedure Law

## PART I

### Introductory

#### Chapter 1 .PRELIMINARY PROVISIONS

##### §1.1 .Scope of this title.

The provisions of this title govern the procedure in criminal proceedings in all courts of the Republic of Liberia except where a different procedure is expressly provided by statute or rule of court.

Prior legislation: L. 1969-70, CrPL 2:1.

##### §1 .2.Purpose and construction.

The provisions of this title are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Prior legislation: L. 1969-70, CrPL 2:2.

##### §1 .3.Harmless error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Prior legislation: L. 1969-70, CrPL 2:3; 1956 Code 8:207.

##### §1 .4.Clerical mistakes.

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising

from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

Prior legislation: L. 1969-70, CrPL 2:4; 1956 Code 8:324.

## **§1 .5.Definitions.**

For the purposes of this title, the terms defined in this section have the following meanings unless the particular context clearly requires a different meaning:

(a)A prosecuting attorney means the Attorney General, Solicitor General, or an Assistant Attorney General or other attorney of the Department of Justice who assumes the duty of prosecuting a particular case, or the County, Territorial, or District Attorney in charge of a prosecution.

(b)Marshals, sheriffs, their assistants and deputies, constables, and policemen are peace officers.

(c)An offense may be a crime or an infraction.

(d)A capital offense is one which is punishable by death if the facts are proved as charged.

Prior legislation: L. 1969-70, CrPL 2:5.

## **§1 .6.Time.**

### **1 .Computation.**

In computing any period of time prescribed or allowed by this title, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than ten days, intermediate Sundays and holidays shall be excluded in the computation.

### **2.Enlargement.**

When in this title or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, except as otherwise provided by law, at any time in its discretion:

(a)Order the period enlarged if application is made before the expiration of the period originally prescribed or as extended by previous order, or

(b)Upon motion made after the expiration of the prescribed period permit the act to be done when the failure to act was the result of excusable neglect; but the court may not enlarge the period for moving for a new trial under section 22.1, moving in arrest of judgment under section 22.2, reduction of sentence by a judge under section 23.5, or fulfilling the requirements for completion of an appeal under section 24.7.

### **3.Additional time for service by mail.**

Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, five days shall be added to the prescribed period if the mail is sent to him within the Republic of Liberia, and ten days shall be added if mail is sent to him abroad.

### **4.Continuance.**

Except where otherwise prescribed by law, the court in which an action is pending may grant a continuance of proceedings in a proper case upon such terms as may be just.

Prior legislation: L. 1969-70, CrPL 2:6.

### **§ 1.7. Form of papers.**

The form prescribed for papers in a civil action by section 8.1 of the Civil Procedure Law is required for papers in a criminal action.

Prior legislation: L. 1969-70, CrPL 2:7.

### **§1 .8.Filing.**

All motions or other papers which are required to be served on the parties shall be filed with the court either before service or within a reasonable time thereafter by filing them clerk of the court, who shall note thereon the filing date.

Prior legislation: L. 1969-70, CrPL 2:8.

### **§1 .9.Service of papers.**

Written motions other than those which are heard ex parte, written notices, designations of record on appeal, and similar papers shall be served upon the adverse party. Papers which are not required by statute or order of the court to be served on a party personally shall be served in the manner provided by paragraphs 2, 3, and 4 of section 8.3 of the Civil Procedure Law. The provisions of paragraph 5 of that section shall be applicable to service by mail.

Prior legislation: L. 1969-70, CrPL 2:9.

### **§1.10. Motions.**

The provisions of chapter 10 of the Civil Procedure Law are hereby incorporated into this title in so far as they are applicable to criminal action.

Prior legislation: L. 1969-70, CrPL 2:10.

### **§1.11. Security to keep the peace.**

#### **1 .Complaint of threatened crime and examination of complaint.**

A complaint may be made to any magistrate or justice of the peace that a person has threatened to commit a crime against the person or property of another. On receiving such a complaint, the magistrate or justice of the peace shall examine on oath the complainant and any witnesses he may produce and shall reduce their examination to writing and cause them to be subscribed by the parties making them,.

#### **2.Arrest.**

If it appears from such examination that there is just reason to fear the commission of the crime threatened by the person against whom the complaint was entered, the magistrate or justice of the peace shall issue a warrant of arrest commanding the arrest of such person.

#### **3.Proceedings before the magistrate or justice of the peace.**

If the person against whom the complaint was entered controverts the charge when brought before the magistrate or justice of the peace, testimony shall be taken in relation thereto. If it appears that there is no just reason to fear the commission of the crime alleged to have been threatened, the person against whom the complaint was entered shall be discharged. If, however, there is just

reason to fear the commission of the crime, the person complained of may be required to enter into

a bond in accordance with the provisions of paragraph 4 of this section.

#### **4. Bond.**

If a bond is required under the provisions of paragraph 3 of this section, it shall be in such sum, not exceeding \$1,000, as the court may direct, guaranteed by sureties fulfilling the requirements of the Civil Procedure Law, section 13.2, and creating a lien as specified in that section. The bond shall be conditioned on keeping of the peace for six months by the person against whom the complaint was entered. It shall be deposited with the clerk of the Circuit Court of the county in which the complaint was made.

#### **5. Discharge or committal of person complained against.**

If the person against whom the complaint was entered furnishes the bond required by the court, he shall be discharged. If he does not furnish it within one day after notification by the court that a bond is required, he shall be committed to prison for a period not exceeding five days.

#### **6. Forfeiture of the bond.**

If the person complained of is convicted of any crime involving a breach of the peace during the time the bond is in effect, the prosecuting attorney in the county in which it was filed shall bring an action to collect on behalf of the Republic.

Prior legislation: L. 1969-70, CrPL 2:11.

#### **§1.12. Employment of interpreter.**

An interpreter shall be used in any criminal proceeding when the defendant is present and does not speak or understand English or when a witness is examined who does not speak or understand English. Before undertaking his duties, the interpreter shall swear or affirm that he will faithfully perform them.

Prior legislation: L. 1969-70, CrPL 2:12.

#### **§1.13. Application of this title to proceedings commenced before and after its effective date.**

This title shall govern all criminal proceedings commenced after its effective date and so far as just and practicable all proceedings then pending, except that trials commenced before the effective date of this title shall be conducted as if this title had not been enacted. Provisions of this title governing the treatment of prisoners and persons under a suspended sentence and provisions for good time allowances shall apply to persons under sentence for offenses committed prior to as well as after the effective date of this title, except that the minimum or maximum period of their detention shall in no case be increased.

Prior legislation: L. 1969-70, CrPL 2:13.

### **Chapter 2. RIGHTS OF DEFENDANT**

#### **§2.1. Defendant presumed innocent; reasonable doubt requires acquittal.**

A defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

Prior legislation: L. 1969-70, CrPL 2: 201; 1956 Code 8:268.

#### **§2.2. Adequate legal representation of accused persons.**

### **1 .Right to representation by legal counsel at every stage of proceedings.**

In all criminal prosecutions the accused shall enjoy the right to be represented by legal counsel at every stage of the proceedings from the time of arrest or, where no arrest has been made, from the initial appearance and submission of the accused to the jurisdiction of the court. This right continues through appeal and postconviction proceedings, if any.

### **2.Accused to be advised of rights.**

As soon as practicable after arrival at the first place of custody upon an arrest or, where no arrest has been made, upon the initial appearance and submission of the accused to the jurisdiction of the court and at the commencement of every new stage of the proceedings, when an accused appears without legal counsel, the accused shall be advised of his right to retain legal counsel of his own selection and in all cases where the crimes charged are triable only in the Circuit Court, of his right to have legal counsel to represent him if he is financially unable to retain legal counsel.

### **3.Facilities to obtain and consult with legal counsel of own selection to be furnished.**

At any time when an accused while in custody or on appearance before the court advises that he desires to obtain legal counsel of his own selection, upon his request he shall immediately be furnished, without cost to him, with available facilities to aid him in securing such counsel and shall be allowed reasonable time and opportunity to consult privately with such counsel before any further proceedings are had.

### **4.Appointment of Defense Counsel for those financially unable to retain legal counsel.**

In all cases where the crimes charged are triable only in the Circuit Court, at any time when an accused advises that he is financially unable to retain legal counsel and that he desires to have legal counsel assigned to represent him, as soon after his request as practicable, he shall be brought before the court then having jurisdiction over him to decide whether the county Defense Counsel shall be assigned to represent him. If the court is satisfied after appropriate inquiry that the accused is financially unable to retain legal counsel, it shall assign the county Defense Counsel to represent him, and the accused shall be allowed reasonable time and opportunity to consult privately with such counsel before any further proceedings are had.

Counsel so assigned shall serve without cost to the accused and he shall have free access to the accused, in private, at all reasonable hours while acting as legal counsel for him. The assignment of Defense Counsel shall not deprive the accused of the right to engage other legal counsel in substitution at any stage of the proceedings.

### **5.Right to proceed without legal counsel; exception.**

An accused has a right to proceed without legal counsel and to be heard in person. However, whenever an accused appears in court without legal counsel and has been advised of his right to have legal counsel represent him, unless the court determines that he has understandingly elected to proceed without such counsel, the court shall assign the county Defense Counsel to defend him.

### **6. Record to show compliance with notification requirements.**

Whenever an accused appears in court without legal counsel, the record shall show compliance with paragraphs 2 and 5 of this section. In all cases, the inquiries and remarks of the court and the responses thereto, if any, of the accused, made to determine whether the accused understands his right to be represented by legal counsel, the nature of the offense with which he is charged, and the penalty which may be imposed, shall be taken down and transcribed and shall become part of the record.

Prior legislation: L. 1969-70, CrPL 2:202; 1956 Code 8:4 (e), 70, 181, 430.

### **§2.3. Cautions to be given accused on interrogations.**

No peace officer or other employee of the Republic shall interrogate, interview, examine, or otherwise make inquiries of a person accused or suspected of an offense, or request any statement from him, including a confession of guilt, without first informing him of the following:

- (a) The nature of the offense of which he is accused or suspected;
- (b) That he has the right to have legal counsel present at all times while he is being questioned or is making any statement or admission;
- (c) That he does not have to make any statement or admission regarding the offense of which he is accused or suspected;
- (d) That any statement or admission made by him may be used as evidence against him in a criminal prosecution.

Prior legislation: L. 1969-70, CrPL 2:203.

### **§2.4. Presence of the defendant.**

#### **1 .Presence of defendant generally.**

Except as otherwise provided by this section, a defendant shall be present at his arraignment, when a plea of guilty is made, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence. The defendant shall have the right to be present at the taking of any depositions taken at the instance of the prosecution.

#### **2. Effect of brief voluntary absence of defendant on continuance of trial.**

In prosecutions for noncapital offenses, the defendant's brief voluntary absence after the trial has commenced in his presence and during any period up to and including the return of the verdict, when not prejudicial to the rights of the defendant, shall not prevent continuing the trial; nor shall it be grounds for a new trial or reversal on appeal if such absence was not brought to the attention of the trial court until after the return of the verdict.

#### **3. When presence of defendant not necessary.**

The defendant's presence is not required during the making, hearing of, or ruling upon any motion or application addressed to the court, or at a reduction of sentence adjudication, or at any proceedings in an appellate court, but the defendant has the right to be present during such proceedings if he so requests.

#### **4. Corporations.**

A corporation may appear by counsel for all purposes.

Prior legislation: L. 1969-70, CrPL 2:204; 1956 Code 8:261.

### **§2.5. Privileges and duties of accused persons.**

#### **1 .Accused's privilege not be a witness.**

Every person in any criminal action in which he is an accused has a privilege not to be called as a witness and not to testify. He may, however, subject to the limitations contained in this chapter, testify in his own behalf in accordance with the rules governing other witnesses.

## **2. Full disclosure required of accused if voluntary witness.**

Subject to section 21 .2, a defendant in a criminal action who voluntarily testifies in the action upon the merits before the trier of fact does not have the privilege to refuse to disclose any matter relevant to any issue in the action.

## **3. Nonprivileged acts which may be required of an accused.**

An accused person has no privilege to refuse to do the following:

(a) So long as the privacy of his mind is not invaded, an accused in a criminal proceeding has no privilege to refuse to submit to examination for the purpose of discovering or recording his corporal features and other identifying characteristics or his physical condition or to furnish or permit the taking of samples of his blood or urine specimens for scientific analysis, and at a trial or preliminary examination, when ordered by the judge, to refuse to do any other act in the presence of the judge or the trier of fact relevant to the determination of the issues, except to refuse to testify.

(b) A defendant in a criminal action has no privilege to refuse to submit to examination for the purpose of determining his mental condition if this condition becomes an issue in the proceeding. However, incriminating matters disclosed by him during the course of the examination are privileged and he has a privilege to refuse to further disclose any such matters if he is a witness and to keep anyone else from disclosing them. This privilege may be claimed by him in person or by his legal counsel, or if the defendant is incompetent, by his guardian.

Prior legislation: L. 1969-70, CrPL 2:205, 1956 Code 8:274; L. 1907-08,31, §3.

## **§2.6. Reference at trial to exercise of privileges.**

If a privilege is exercised not to testify or to keep another from testifying, either in the action or with respect to particular matters, or to refuse to disclose or to keep another from disclosing any matter, the judge and counsel may not comment thereon; no presumption shall arise with respect to the exercise of the privilege, and the trier of fact may not draw any adverse inference therefrom. In those jury cases wherein the right to exercise a privilege may be misunderstood and unfavorable inferences drawn by the trier of fact, or may be impaired in the particular case, the court, at the request of the party exercising the privilege, may instruct the jury in support of that party's right to assert such privilege.

Prior legislation: L. 1969-70, CrPL 2:206; 1956 Code 8:274 (last sent.).

## **Chapter 3. DOUBLE JEOPARDY**

### **§3.1 .Cases in which and time when jeopardy attaches.**

The doctrine of double jeopardy shall be applicable to all criminal prosecutions. Jeopardy attaches when a person has been placed on trial before a court of competent jurisdiction under a valid indictment or complaint upon which he has been arraigned and to which he has pleaded, and a proper jury has been impaneled and sworn to try the issue raised by the plea or, if the case is properly being tried by a court without a jury, after the court has begun to hear evidence thereon. Termination of the trial thereafter by the court because of manifest necessity, however, shall not bar another prosecution for the offenses set for the in the indictment or complaint.

Prior legislation: L. 1969-70, CrPL 2:301.

### **§3.2. Effect on further prosecutions of an acquittal or other discharge on the merits, and of a conviction.**

When a defendant is acquitted or otherwise discharged on the merits upon an indictment or other charge, or is convicted thereon for any offense, or during trial the prosecution thereof is improperly



terminated, he cannot thereafter be indicted or otherwise charged and tried in the following cases:

- (a) For the same offense or any degree thereof;
- (b) For an attempt to commit the offense so charged or any degree thereof;
- (c) For any offense based on any act set for the in the indictment or other charge, or arising from any practice, transaction, or episode set for the therein, including any act comprising a part thereof, or two or more such connected together or constituting parts of a common scheme or plan.

Prior legislation: L. 1969-70, CrPL 2:302; 1956 Code 27:32, 36; Crim. Code § §30,32.

### **§3.3. Limitations on convictions for multiple offenses charged in a single prosecution when same conduct constitutes more than one offense.**

When an act or a practice, transaction, or episode, including any act comprising a part thereof, or two or more such connected together or constituting parts of a common scheme or plan, may establish the commission of more than one offense, the defendant may be prosecuted for each such offense in a single prosecution but he may not, however, be convicted of more than one offense if:

- (a) One offense is included in another; or
- (b) One offense consists only of a conspiracy or other form of preparation to commit another offense; 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 Legislature has provided that specific periods of such conduct constitutes separate offenses.

Prior legislation: L. 1969-70, CrPL 2:303; 1956 Code 8:141, 27:32; Crim. Code §32.

## **Chapter 4. TIME LIMITATIONS**

### **§4.1 .Capital offenses.**

Prosecution for a capital offense may be commenced at any time after it is committed.

Prior legislation: L. 1969-70, CrPL 2:401.

### **§4.2. Noncapital offenses.**

Except as provided in section 4.3 and section 4.4 of this chapter, prosecution for any noncapital offenses shall be subject to the following periods of limitation:

- (a) A prosecution for a felony must be commenced within five years after it is committed;
- (b) A prosecution for a misdemeanor must be commenced within three years after it is committed;
- (c) A prosecution for any other offense, violation or infraction must be commenced within one year after it is committed unless the statute creating the offense, violation or infraction otherwise provides.

Prior legislation: L. 1969-70, CrPL 2:402.

### **§4.3. Fraud; breach of fiduciary obligation.**

Prosecution for an offense, a material element of which is either fraud or a breach of fiduciary obligation, may be commenced, even though the period provided in section 4.2 has expired, within two years after the discovery of the offense by the injured person or his legal representative; but in no case shall this provision extend the period of limitation otherwise applicable by more than five years.

Prior legislation: L. 1969-70, CrPL 2:403.

#### **§4.4. Misconduct by public official or employee.**

Prosecution for an offense based on misconduct in office by a public official or employed may be commenced, even though the period provided in section 4.2 has expired, at any time while 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 five years.

Prior legislation: L. 1969-70, CrPL 2:404.

#### **§4.5. Computation of period.**

The period specified in section 4.2, section 4.3, or section 4.4 shall commence on the day following that on which the offense was committed and shall end on the last day of the period unless that day is a Sunday or full legal holiday, when it shall end on the next day that is not a Sunday or full legal holiday.

Prior legislation: L. 1969-70, CrPL 2:405.

#### **§4.6. When offense is committed.**

For the purposes of this chapter an offense shall have been committed when the last act or event which is a necessary element of the offense has occurred; provided that, where it is the clear legislative intent to proscribe a continuing course of conduct, the offense shall have been committed when the last act of that course of conduct has occurred or when the defendant has terminated his complicity therein.

Prior legislation: L. 1969-70, CrPL 2:406.

#### **§4.7. When prosecution is commenced.**

For the purposes of this chapter, a prosecution shall be deemed to have commenced on the occurrence of any of the following, whichever first occurs:

- (a) The finding of an indictment against the defendant;
- (b) The issuance of a warrant of arrest, a summons, or notice to appear, provided that the warrant is executed, or the summons or notice to appear is served, within a reasonable period after issuance; or
- (c) If the defendant is a fugitive in a foreign state with which Liberia has a treaty of extradition, the issuance of a requisition to the appropriate official of that state for the surrender of the fugitive.

Prior legislation: L. 1969-70, CrPL 2:407.

#### **§4.8. When the period does not run.**

The period within which a prosecution must be commenced shall not run:

- (a) While the defendant is absent from the Republic of Liberia if he left the Republic or remains outside it with the intent to avoid detection, arrest, or prosecution and if he is within a jurisdiction from which he cannot be extradited; or

(b) While the defendant is within the Republic of Liberia but is not publicly resident there or remains under a false name; or

(c) While a prosecution against the defendant for an offense arising out of the same conduct is pending in the Republic of Liberia; provided that when such prosecution against the defendant is dismissed before judgment for any reason, and the applicable period of limitation would, except for the provision of this paragraph, have expired, a new prosecution in order to avoid the bar of this chapter must be commenced within sixty days after the date of the order dismissing the original prosecution.

Prior legislation: L. 1969-70, CrPL 2:408.

#### **§4.9. Lesser offenses.**

When an indictment charges an offense not barred by the provisions of this chapter, the defendant may not be convicted of a lesser offense included therein which is so barred.

Prior legislation: L. 1969-70, CrPL 2:409.

### **Chapter 5. VENUE**

#### **§5.1 .Venue of criminal proceedings generally.**

Except as otherwise permitted by statute, the prosecution of an offense shall be had in any competent court in the county in which the offense was committed.

Prior legislation: L. 1969-70, CrPL 2:501; 1956 Code 8:220.

#### **§5.2. Offenses committed in one county where persons committing offenses or accessories were in another.**

Where a person in one county commits an offense in another county, or where a person in one county aids, abets, or procures the commission of an offense in another county, the offense shall be prosecuted in any competent court in either county.

Prior legislation: L. 1969-70, CrPL 2:502; 1956 Code 8:221.

#### **§5.3. Offenses committed partly in one and partly in another county.**

Where several acts are requisite to the commission of an offense and occurred in two or more counties, the offense shall be prosecuted in any competent court in any county in which any of such acts occurred.

Prior legislation: L. 1969-70, CrPL 2:503; 1956 Code 8:221.

#### **§5.4. Offenses committed on or near county boundaries.**

Where an offense is committed on or within five hundred yards of the common boundary of two or more counties, the offense shall be prosecuted in any competent court in any one of such counties.

Prior legislation: L. 1969-70, CrPL 2:504.

#### **§5.5. Offenses committed on vessels while in transit.**

When an offense is committed in the Republic on board a vessel in the course of its voyage in offshore territorial waters or inland on a river, bay, slough, lake, or canal, the offense shall be prosecuted in any competent court in any county along or through which the vessel passed in the course of its voyage or in any county where such voyage terminated, provided such termination

occurs in the Republic.

Prior legislation: L. 1969-70, CrPL 2:505.

### **§5.6. Offenses committed on railroad trains, omnibuses, or other common carriers, and on aircraft while in transit.**

When an offense is committed on a railroad train making a trip over any railway in the Republic, or on an omnibus or other common carrier while in the course of its trip on any highway in the Republic, or on any aircraft while in flight over the Republic, the offense shall be prosecuted in any competent court in any county through, on, or over which the railroad train, omnibus, or other common carrier, or aircraft passed in the course of its trip or flight, or in any county where such trip or flight terminated, provided such termination occurs in the Republic.

Prior legislation: L. 1969-70, CrPL 2:506.

### **§5.7. Change of place of prosecution.**

#### **1. Grounds of motion.**

On motion of the prosecuting attorney or the defendant, the court may order the proceedings in a criminal prosecution transferred to a competent court in another county in any of the following cases:

- (a) If the county in which the prosecution is pending is not one of the counties specified in sections 5.1-5.6;
- (b) If there is reason to believe that an impartial trial cannot be had in the county in which it is pending;
- (c) If all the parties agree and if the convenience of material witnesses and the ends of justice will be promoted thereby.

#### **2. Time of motion.**

A motion for the transfer of proceedings on the ground that the county in which the prosecution is pending is not one of the counties specified in sections 5.1-5.6 must be made at or before arraignment. A motion for the transfer of proceedings on any other ground must be made at any time before the jury is sworn, or, where trial by jury is not required or is waived, before any evidence is received.

#### **3. Proceedings on transfer.**

The following measures shall apply when a motion for a change of venue is granted:

- (a) Records. Then the transfer is ordered, the clerk of the court shall enter of record the order of transfer and shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding or certified copies thereof and any bail taken from the defendant or witnesses, and the prosecution shall continue in that court as if the proceeding had originated in such court.
- (b) Appropriate prosecuting attorney to continue prosecution. The appropriate prosecuting attorney of the county in which is located the court to which the proceeding is transferred shall continue the prosecution thereof.
- (c) Defendants. If the defendant is in custody, the order shall direct that he be forthwith delivered to the custody of the sheriff of the county in which is located the court to which the proceeding is transferred. If the defendant is not in custody, the order shall direct that he appear before the court to which the case is transferred at the time specified therein, and if he fails to so appear he shall be liable to forfeiture of his bail unless excused by such court; if the court finds that his failure to appear was willful, the case shall be sent back to the court from which it was transferred and no

further motion for change of venue shall be entertained.

(d)Witnesses. Witnesses who have posted bail to appear at the trial shall be given notice of the transfer of the proceeding and shall attend the court to which the proceeding is transferred at the time specified or provided for in the order of transfer. A failure so to attend shall work a forfeiture of the bail posted by any such witness.

Prior legislation: L. 1969-70, CrPL 2:507; 1956 Code 8:223, 224, 225, 226; L. 1944-45, ch XX, §§2-7; Rev. Stat. §786; L. 1908-09, 38, §4; L. 1902-03, §§1,2.

#### **§5.8. Transfer of proceedings to county of arrest upon request of defendant desiring to plead guilty.**

A defendant arrested in a county other than that in which the indictment or other charge is pending against him may state in writing, after receiving a copy of the charge and upon compliance with the provisions of paragraphs 2, 3, 4, and 5 of section 2.2 of this title, that he wishes to plead guilty, to waive trial in the county in which the indictment or other charge is pending, and to consent to disposition of the case by a competent court in the county in which he was arrested. Upon receipt of the defendant's statement, notice shall be given to the appropriate prosecuting attorney and to the court in which the indictment or other charge is pending. The clerk of the said court shall thereupon transmit the papers in the proceeding or certified copies thereof to the clerk of the court competent to dispose of the case in the county in which the defendant is held and the prosecution shall continue in that court.

Prior legislation: L. 1969-70, CrPL 2:508; 1956 Code 8:222.

### **Chapter 6. DETERMINATION OF DEFENDANT'S PRESENT MENTAL COMPETENCY**

#### **§6.1 .Mental disease or defect excluding fitness to proceed.**

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

Prior legislation: L. 1969-70, CrPL 2:601.

#### **§6.2. Psychiatric examination of defendant.**

If during a criminal prosecution there is reason to doubt the defendant's fitness to proceed, the court shall appoint at least one qualified physician to examine and report upon the 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 five days and may direct that a qualified physician retained by the defendant be permitted to witness and participate in the examination. The report of the examination shall include an opinion as to the defendant's capacity to understand the proceedings against him and, unless the examination is to determine whether the execution shall proceed, a statement whether the defendant is capable of assisting in his own defense. The report 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.

Prior legislation: L. 1969-70, CrPL 2:602.

#### **§6.3. Determination by court; resumption of proceedings.**

The determination of the defendant's fitness to proceed shall be made by the court. If neither the prosecuting attorney nor the defendant contests the finding of the report filed pursuant to section 6.2, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding shall have the right to summon and to cross-examine the

physician who made the report and to offer evidence upon the issue. If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended except as provided in section 6.4, and the court shall commit him to a mental institution for so long as such unfitness endures. When the court on its own initiative or upon the application of the prosecuting attorney or counsel for the defendant or the superintendent of the institution to which the defendant was committed determines, after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, as a result of the hearing, the court is of the opinion that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge and may order that the defendant be discharged or, if his mental condition warrants, that he remain in the mental institution to which he was committed. Any determination by the court under this section may be appealed by either party adversely affected.

Prior legislation: L. 1969-70, CrPL 2:603.

#### **§6.4. Determination of legal objection when defendant is unfit to proceed.**

The fact that the defendant is unfit to proceed does not preclude any legal objection to prosecution and its determination by the court if such objection is susceptible of fair determination prior to trial and without personal participation of the defendant.

Prior legislation: L. 1969-70, CrPL 2:604.

### **Chapter 7. INVESTIGATION OF SUSPICIOUS DEATHS**

#### **§7.1 . Report of certain deaths to coroner.**

It shall be the duty of the Registrar or Assistant Registrar of Births, Deaths, and Burials, the medical practitioner attendant at or after death, or any government official or other person who learns of a death to report it to the coroner for the county, territory, or district in which the body is found, if he has reason to believe that the deceased:

- (a) Died violently, that is, by homicide, suicide, or accident;
- (b) Died as the result of an abortion or attempted abortion;
- (c) Was formerly healthy and died suddenly;
- (d) Was discovered dead.

Prior legislation: L. 1969-70, CrPL 2:701.

#### **§7.2. Duties of coroner; formal inquest.**

Upon being notified of a death of the type described in the preceding section, the coroner shall go to the place where the body is, take charge of and examine it, record all material facts and circumstances surrounding the death, and take the names and addresses of all witnesses. He shall convene at that place a formal inquest with a jury of fifteen persons in the course of which inquest the coroner and jury may hear the testimony of witnesses. Any such testimony shall be reduced to writing by the coroner or a clerk appointed by him and shall be included in the report required by section 7.5.

Prior legislation: L. 1969-70, CrPL 2:702.

#### **§7.3. Authority to secure assistance of medical practitioner.**

If the coroner is not himself a medical practitioner, he shall have the authority to compel any medical practitioner resident within his jurisdiction or the medical practitioner most convenient to the place of investigation to assist him in examining the body of the deceased.

Prior legislation: L. 1969-70, CrPL 2:703.

#### **§7.4. Authority to perform autopsy; witnesses.**

The coroner may, if he is unable to ascertain the cause of death by preliminary examination, perform, if he is a competent medical practitioner, or authorize to be performed by a competent medical practitioner, an autopsy on the body of the deceased for the purpose of determining the cause and circumstances of death. Every such autopsy must be witnessed by two credible and discreet residents of the county, territory, or district in which it is performed, and the coroner shall have the power to compel their attendance by subpoena.

Prior legislation: L. 1969-70, CrPL 2:704.

#### **§7.5. Report to prosecuting attorney and magistrate or justice of the peace.**

The coroner shall file with the prosecuting attorney and with the magistrate or justice of the peace in whose jurisdiction the body was found a report stating the time and circumstances of the death as nearly as these have been ascertained, the conclusion of the coroner and the jury as to its cause, and any other pertinent information, including the name of any person who in the opinion of the coroner and the jury may have caused the death. The report of the coroner shall be accompanied by a copy of the report of the medical practitioner, if any, and a certified copy of all the testimony taken under section 7.2.

Prior legislation: L. 1969-70, CrPL 2:705.

#### **§7.6. Exhumation.**

If the coroner or the prosecuting attorney has reason to believe that a person within his jurisdiction died in a way described in section 7.1. but the body has already been buried without examination, he may apply to the Secretary of Health for an order permitting the exhumation of the body in order to determine the cause of death.

Prior legislation: L. 1969-70, CrPL 2:706.

#### **§7. 7. Property of the deceased.**

The coroner shall take possession of all property found on the person of the deceased and shall include in his report an inventory of any property so taken. He shall give to the prosecuting attorney any such property which he may request for use as evidence in a criminal prosecution. All other property shall be turned over to the legal representatives of the deceased or to the Curator of Intestate Estates if he has jurisdiction over the property under the Decedents Estates Law.

Prior legislation: L. 1969-70, CrPL 2:707.

### **Chapter 8. EXTRADITION**

#### **§8.1 .Definitions.**

As used in this chapter:

(a)The term "extradition arrangement" means any treaty, convention, or executive agreement providing for reciprocal rights to the surrender of fugitives apprehended in the territory of the parties thereto.

(b)The term "fugitive" means any person within the Republic of Liberia who is accused or has been convicted of an extraditable offense within the jurisdiction of a foreign state.

(c)The term "political offense" includes any offense for which there is substantial ground to believe that the person to be extradited will be punished as a political offender.

Prior legislation: L. 1969-70, CrPL 2:801; 1956 Code 8:900, Rev. Stat. §§1063, 1070; L. 1892-93, 12, §§20, 21.

## **§8.2. Applicability of chapter.**

### **1 .General application.**

This chapter shall apply to all requisitions by foreign states for the extradition of persons within the jurisdiction of the Republic of Liberia and proceedings incident thereto, provided that there is at the time of the receipt of the requisition or of the proceedings incident thereto an extradition arrangement in force with the requesting foreign state.

### **2. Construction subordinate to extradition arrangements.**

If any provision of this chapter is inconsistent with the terms of the applicable extradition arrangements, the latter shall prevail. This chapter shall be so construed as not to contravene the spirit of the extradition arrangement as contemplated by the parties at the time of its negotiation.

Prior legislation: L. 1969-70, CrPL 2:802; 1956 Code 8:901, 902; L. 1892-93, 12, §§2,3, 4, 9.

## **§8.3. Extraditable offenses, when recognized.**

A requisition for the surrender of a fugitive shall only be recognized if the offense charged is one which: (a) is included in the provisions of the applicable extradition agreement, and (b) is not a political offense.

Prior legislation: L. 1969-70, CrPL 2:803; 1956 Code 8:903, 906 (last sent.); L. 1892-93, 12, §10 (last sent.).

## **§8.4. Guilt or innocence of fugitive not an issue; exceptions.**

The guilt or innocence of the fugitive as to the extraditable offense with which he is charged may not be inquired into in any extradition proceeding except as it may be involved in identifying the person held as the person charged with the extraditable offense, or in connection with establishing a defense of political offense.

Prior legislation: L. 1969-70, CrPL 2:804.

## **§8.5. Requisition for surrender of fugitive.**

### **1. By and to whom requisition made; form.**

A requisition for the surrender of a fugitive shall be made to the Secretary of State by some person recognized by him as a diplomatic representative of the requesting foreign state. It shall be in writing and shall be accompanied by documents authenticated by the proper authority in the requesting state showing that the fugitive is substantially charged with having committed an extraditable offense. It shall appoint an agent to receive the fugitive in the event a warrant of surrender is issued by the Secretary of State.

### **2. Procedure upon receipt of requisition.**

The Secretary of State, upon receipt of such requisition, shall request the Attorney General to secure the arrest of the fugitive as provided in section 8.6, or, if he has already had an extradition hearing and has been committed to jail or released on bail thereunder, to secure his surrender for committal to jail as provided in subparagraph (c) of paragraph 2 of section 8.8 and to inform the Secretary of State of all action taken in this regard. If, however, the Attorney General determines that the requesting foreign state has failed to charge an offense which is extraditable within the meaning of section 8.3 he may refuse to effectuate such request and shall so advise the Secretary of



State and if the fugitive has been committed to jail or has been released on bail under the provisions of subparagraphs (a) (i), (a), (ii), and (a) (iii) of paragraph 2 of section 8.8, he shall forthwith order that the fugitive be discharged from custody.

Prior legislation: L. 1969-70, CrPL 2:805; 1956 Code 8:905, 906 L. 1892-93, 12, §10.

## **§8.6. Arrest of fugitive upon or prior to requisition.**

### **1 .Issuance of warrant by magistrate or justice of the peace.**

A warrant for the arrest of a named fugitive shall be issued by a magistrate or justice of the peace in the following circumstances:

(a) Upon requisition. Upon the request of the Department of Justice acting upon instructions of the Attorney General, stating that the Secretary of State has received a requisition from a foreign state for the surrender of the named fugitive.

(b) Prior to requisition. Upon presentation of a complaint charging that a person within the Republic of Liberia is wanted by a foreign state for an extraditable offense committed within the jurisdiction of that state if it appears from the contents of the complaint and the examination, under oath or affirmation, of the complainant or other witnesses, if any, that there is reasonable ground to believe that an extraditable offense has been committed and that the person against whom the complaint was made committed the offense.

### **2. Contents and manner of execution of warrant.**

The warrant shall command that the person to be arrested be brought, without unnecessary delay, before the nearest available magistrate or justice of the peace. The nature and substance of the extraditable charge upon which the warrant is issued shall be endorsed on the warrant. In all other respects the warrant shall be governed by the applicable provisions of chapter 10 of this title.

Prior legislation: L. 1969-70, CrPL 2:806; 1956 Code 8:904; L. 1892-93, 12, §10, 11.

## **§8.7. Preliminary extradition hearing.**

### **1 .Place and time of hearing; fugitive to be advised of rights.**

A fugitive arrested under the provisions of section 8.6 shall be brought before the magistrate or justice of the peace to whom the warrant of arrest was returned for a preliminary extradition hearing as soon after arrest as is practicable. The magistrate or justice of the peace presiding at the preliminary hearing shall inform the fugitive of the extraditable offense with which he is charged and of the demand made or which may be made for his surrender and its consequences. If the fugitive appears without legal counsel he shall be advised of his right to retain legal counsel of his own selection or to have legal counsel assigned to represent him if he is financially unable to retain legal counsel and he shall be provided with all the rights set forth in paragraphs 3.4, and 5 of section 2.2 of this title whenever applicable.

### **2. Hearing date to be fixed on assertion of defense; notice to Department of Justice.**

If at the preliminary extradition hearing the fugitive or his legal counsel denies that the fugitive is the person charged with having committed the extraditable offense or that the offense charged is an extraditable offense, or urges in defense that the offense charged against the fugitive is a political offense, the magistrate or justice of the peace presiding shall fix a reasonable time, not less than three days nor more than five days thereafter, within which an extradition hearing shall be had on the answer made by the fugitive. When the date of such hearing is fixed, notice thereof and of the time and place shall be given to the Department of Justice.

Prior legislation: L. 1969-70, CrPL 2:807; 1956 Code 8:907; L. 1892-93, 12, §13.

## **§8.8.Scope of extradition hearing; powers of court upon finding that fugitive is extraditable.**

### **1 .Scope.**

A magistrate or justice of the peace presiding at an extradition hearing shall discharge the fugitive unless it substantially appears that:

- (a)The person arrested is the fugitive charged with having committed the extraditable offense, and
- (b)The offense charged is an extraditable offense, and
- (c)The offense charged is not a political offense, if such defense has been urged by the fugitive.

### **2. Powers.**

If, as set forth in paragraph 1 hereof, it so appear, the presiding magistrate or justice of the peace has the following powers in the following cases:

(a)Where no requisition has been produced at the extradition hearing:

(i)Warrant of committal. He shall issue a warrant of committal reciting the charges found and commit the fugitive to a jail within his jurisdiction for such time not exceeding thirty days, and specified in the warrant, as will enable the foreign state involved to make a requisition to the Secretary of State in accordance with the provisions of section 8.5 of this chapter, unless the fugitive posts bail as provided in subparagraph (a) (ii) hereof, or until the fugitive shall be legally discharged.

(ii)Bail. Except when the offense with which the fugitive is charged is shown to be an offense punishable by death or life imprisonment under the laws of the foreign state in which it was committed, instead of committing the fugitive to jail under a warrant of committal, the presiding magistrate or justice of the peace may admit the fugitive to bail by bond with sufficient sureties and in such sum as he deems proper, conditioned upon the appearance of the fugitive before him at a time specified in such bond not to exceed thirty days after the date thereof and for his surrender to await the warrant of the Secretary of State as provided in sub-paragraph (c) hereof.

(iii)Extension of time of commitment or of bond appearance. If a requisition for the surrender of the fugitive has not been produced before the court which heard the extradition hearing before the expiration of the time specified in the warrant of committal or bail bond as provided for under the provisions of subparagraphs (a) (i) and (a) (ii) hereof, a magistrate or justice of the peace having jurisdiction may discharge the fugitive, or upon the request of the Department of Justice, for good cause shown, may recommit the fugitive for a further period not to exceed fifteen days, or he may again take bail for the appearance of the fugitive as provided in subparagraph (a) (ii) hereof, but within a period not to exceed fifteen days after the date of such new bond.

(b)Where a requisition has been produced at or prior to the extradition hearing:

(i)Certificate of committal. The presiding magistrate or justice of the peace shall order the fugitive committed to a jail within his jurisdiction to await the warrant of the Secretary of State for his surrender to the foreign state demanding it, and shall send a certificate of committal to the Secretary of the State and to the Department of Justice.

(c)Where the provision of subparagraphs (a) (i), (a) (ii), and (a) (iii) of this paragraph have become operative and subsequent to the extradition hearing a requisition is produced before the court which heard the extradition hearing within the time limitations set forth in the said subparagraphs:

(i)Certificate of committal on subsequent production of requisition. If the fugitive has been released on bail, the magistrate or justice of the peace having jurisdiction shall require his surrender and shall order him committed to a jail within his jurisdiction, or if the fugitive has already been committed to jail, the magistrate or justice of the peace having jurisdiction shall continue his commitment, to await the warrant of the Secretary of State for his surrender to the foreign state demanding it, and shall send a certificate of committal to the Secretary of State and to the Department of Justice.

Prior legislation: L. 1969-70, CrPL 2:808; 1956 Code 8:908 (1st par.), 910 (1st par.); L. 1892-93, 12, §§12, 13, 14.

### **§8.9. Writ of habeas corpus application to review committal; time limitation.**

Upon a committal a fugitive has a right to apply for a writ of habeas corpus at any time before the expiration of the period specified in the applicable extradition arrangement during which no surrender of the fugitive may be made to the agent of the foreign state. Notice of the time and place of hearing thereof shall be given to the Department of Justice.

Prior legislation: L. 1969-70, CrPL 2:809; 1956 Code 8:910 (2nd par.); L. 1892-93, 12, §15 (1st sent.).

### **§8.10. Surrender of fugitive.**

#### **1. Warrant of the Secretary of State.**

Upon receipt of a certificate of committal, the Secretary of State, after the expiration of the period during which, as provided in the applicable extradition arrangement, no surrender may take place or after the decision of the court on any application for a writ of habeas corpus brought thereon, whichever is later, may issue his warrant for the surrender of the fugitive to the person appointed by the requesting foreign state as its agent receive him.

#### **2. Rights of the receiving agents.**

The authorized agent of the requesting foreign state may employ the facilities of the Republic of Liberia in order to receive the surrendered fugitive, hold him in custody and convey him within the jurisdiction of the requesting foreign state. The said authorized agent shall be chargeable with the expenses thereof.

Prior legislation: L. 1969-70, CrPL 2:810; 1956 Code 8:911; L. 1892-93, 12, §15.

### **§8.11. Maximum period of detention under certificate of committal.**

If a fugitive, committed to a jail under subparagraphs (b) or (c) of paragraph 2 of section 8.8, is not surrendered and conveyed out of the Republic within one month after his committal or within one month after the decision of the court in any habeas corpus proceedings pending under the certificate of committal, if any, the judge of the Circuit Court of the county in which the fugitive was committed, and if such county is Montserrado County, the judge of the Circuit Court for the First Judicial Circuit, upon application made to him by or on behalf of the fugitive and upon proof that reasonable notice of the intention to make such application has been given to the Secretary of State, may order the fugitive discharged from custody unless sufficient cause is shown to the contrary.

Prior legislation: L. 1969-70, CrPL 2:811; 1956 Code 8:912; L. 1892-93, 12, §16.

### **§8.12. Waiver of extradition proceedings.**

Any fugitive arrested under this chapter may, if fully informed of his rights under this chapter, waive the formalities of the hearings provided for in this chapter by signing a written instrument to that effect duly acknowledged in open court at any time prior to his surrender to the requesting foreign state.

Prior legislation: L. 1969-70, CrPL 2:812.

## **PART II Procedure in Criminal Actions**

### **Chapter 10. ARREST, SUMMONS, AND NOTICE TO APPEAR**

### **§10.1. Definitions.**

The following terms as used in this title shall have these meanings:

(a) "Arrest" is the taking of a person into custody in order that he may be forthcoming to answer for the commission of an offense.

(b) A "notice to appear" is a written request issued by a peace officer that a person appear before a court at a stated time and place to answer for the commission of the offense set forth therein.

(c) A "summons" is a written order issued by a court which commands a person to appear before a court at a stated time and place to answer for the commission of the offense set forth therein.

(d) A "warrant of arrest" is a written order from a court directed to a peace officer commanding him to arrest a person.

Prior legislation: L. 1969-70, CrPL 2:1001.

### **§10.2. Authority of peace officers and other government officials to make arrests.**

#### **1. Peace officers.**

A peace officer may arrest a person when:

(a) He has a warrant commanding that such person be arrested; or

(b) He has been informed on good authority that a warrant for the person's arrest has been issued; or

(c) He has reasonable grounds to believe that the person is committing or has committed an offense.

#### **2. Other government officials.**

Within the limitations as to the powers of arrest conferred on them by statute, arrests by other officials of the government who are expressly authorized shall be made in accordance with the provisions set forth in subparagraphs (a), (b), and (c) of paragraph 1 and the other applicable provisions of this chapter.

Prior legislation: L. 1969-70, CrPL 2:1002; 1956 Code 8:57; L. 1922-23, Ch. V (1st), §5.

### **§10.3. Method of making arrest; force permissible in effecting it.**

#### **1. Method.**

An arrest is made by an actual restraint of the person to be arrested or by his submission to the custody of the person making the arrest.

#### **2. Permissible force.**

No unnecessary or unreasonable force shall be used in making an arrest, and the person arrested shall not be subjected to any greater restraint than is necessary for his detention.

#### **3. Entry into buildings.**

All necessary and reasonable force may be used to effect any entry into any building or property or part thereof to make an authorized arrest.

#### **4. Search for weapons.**

A peace officer or other authorized person making a lawful arrest may search for and take from the person arrested all weapons which he may have about his person and shall deliver them to the court before which he is taken.

Prior legislation: L. 1969-70, CrPL 2:1003.

#### **§10.4. Time when and territorial limits within which an arrest may be made.**

An arrest may be made anywhere within the jurisdiction of the Republic. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is any other offense, the arrest cannot be made at night, unless such a direction is indorsed upon a warrant of arrest, except when the offense is committed in the presence of the arresting officer.

Prior legislation: L. 1969-70, CrPL 2:1004; 1956 Code 8:55.

#### **§10.5. Assistance may be summoned by peace officer making arrest.**

A peace officer or other authorized person making a lawful arrest may orally summon as many persons as he deems necessary to aid him in making the arrest and every person when so summoned by an officer or other authorized person shall aid him in the making of such arrest. A person summoned to aid a peace officer shall have the same authority to arrest as that peace officer or other authorized person and shall not be civilly liable for any reasonable conduct in aid of the officer making the arrest.

Prior legislation: L. 1969-70, CrPL 2:1005.

#### **§10.6. Issuance of warrant of arrest upon complaint or indictment.**

A warrant for the arrest of a person accused of an offense may be issued by a court under the provisions of this chapter (a) upon the filing of an indictment, or (b) when a complaint is preferred before a magistrate or justice of the peace charging that an offense has been committed and it appears from the contents of the charge and the examination under oath or affirmation, of the complainant or other witnesses, if any, that there is reasonable ground to believe that an offense has been committed and that the person against whom the complaint was made has committed the offense.

Prior legislation: L. 1969-70, CrPL 2:1006; 1956 Code 8:52, 160, 163; J.P. Code §37; 1823 Code, Ord. No. XII, §5, 2 Hub. 1272, 1315.

#### **§10.7. Warrant; contents.**

The warrant of arrest shall be in writing. It shall be signed by the judicial officer empowered to issue it, together with the title of his office, and shall state the date when and the place where issued. It shall be directed to all peace officers in the Republic or other authorized persons and shall specify the name of the person to be arrested or, if his name is unknown, it shall designate such person by any name or description by which he can be identified with reasonable certainty, and shall set forth the nature and substance of the offense charged. If the offense charged is triable in the county in which the warrant issues, the warrant shall command that the person to be arrested be brought forth-with before the court issuing the warrant in accordance with section 10.11 of this chapter; if the offense charged is triable only in another county, the warrant shall require that the person to be arrested be brought forthwith before a designated court of the county in which the offense is triable in accordance with section 10.11 of this chapter. If the offense charged is bailable the warrant may specify the amount of bail.

Prior legislation: L. 1969-70, CrPL 2:1007; 1956 Code 8:54 161; 1828 Code, Ord. No XIX, Form of Warrant, 2 Hub. 1272, 1327.

#### **§10.8. Procedure on execution of warrant of arrest and return thereon.**

### **1 .Manner of making warrant arrest.**

The warrant of arrest shall be executed by the arrest of the person specified therein at any place within the jurisdiction of the republic by any peace officer or any other person authorized by law. When making an arrest by virtue of a warrant, the officer shall inform the person being arrested of his authority and of the nature of the offense charged against him and of the fact that a warrant has been issued, except when he flees or forcibly resists before the officer has opportunity so to inform him. After the arrest, if the person arrested so requires, the warrant shall be shown to him immediately upon requests. However, the officer need not have the warrant in his possession at the time of the arrest, but in that case, upon request after the arrest, he shall show the warrant to the person arrested thereunder as soon as practicable.

### **2.Return by officer.**

The officer executing a warrant of arrest shall make a return thereon to the court which issued it.

Prior legislation: L. 1969-70, CrPL 2:1008; 1956 Code 8:55, 56.

## **§ 10.9. Unexecuted warrants; disposition.**

### **1 .Cancellation.**

At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the court which issued it and it shall be cancelled.

### **2.Redelivery for purpose of execution.**

At the request of the prosecuting attorney made at any time while the complaint or indictment is pending, a warrant returned unexecuted and not cancelled, or a duplicate thereof, may be delivered by the clerk of the court to a peace officer or other authorized person for execution.

Prior legislation: L. 1969-70, CrPL 2:1009.

## **§10.10.Procedure on arrest by officer without warrant.**

When making an arrest where a warrant has not been issued, the officer shall inform the person being arrested of his authority and of the nature of the offense charged against him, unless the person to be arrested is then engaged in the commission of an offense or is pursued immediately after its commission or after an escape, or flees or forcibly resists before the officer has opportunity so to inform him.

Prior legislation: L. 1969-70, CrPL 2:101 0.

## **§10.11 .Appearance before court upon arrest with or without warrant.**

### **1 .Under warrant.**

An officer making an arrest under a warrant, without unnecessary delay, shall take the arrested person before the court designated in the warrant if the arrest is made within the territorial jurisdiction of the said court but in the event that the designated court, for any reason, is unable to act thereon, or it is impracticable to bring the arrested person there, or if the arrest is made outside of the territorial jurisdiction of the court designated in the warrant, the person arrested, without unnecessary delay, shall be taken before the nearest available magistrate or justice of the peace who shall without unreasonable delay have the person arrested appear before the court designated in the warrant.

### **2.Without warrant.**

An officer making an arrest where a warrant has not been issued, without unnecessary delay, shall take the arrested person before the nearest available magistrate or justice of the peace. The officer shall forthwith prefer a complaint under oath or affirmation setting forth the offense which the arrested person is charged with committing and cause a warrant of arrest to be issued thereon.

Prior legislation: L. 1969-70, CrPL 2:1011; 1956 Code 8:58.

## **§10.12. Issuance of summons in lieu of warrant of arrest; procedure on failure to appear.**

### **1 .Basis for issuance of summons.**

In any case in which a warrant of arrest may issue, a court instead may issue a summons if there is reason to believe that the person charged with an offense will appear in response thereto.

### **2. Effect of failure to appear.**

If a person who has been duly summoned under the provisions of paragraph 1 fails to appear, or if there is reasonable cause to believe that he will fail to appear, a warrant for his arrest may issue. A willful failure to appear in answer to a summons may be punished by a fine of not over one hundred dollars.

Prior legislation: L. 1969-70, CrPL 2:101 2.

## **§10.1 3. Summons; contents.**

The summons shall be in writing. It shall be signed by the judicial officer empowered to issue it together with the title of his office, and shall state the date when and the place where issued. It shall specify the name of the person summoned and his address, if known, and shall set forth the nature and substance of the offense. It shall command the person summoned to appear before a court at a certain time and place.

Prior legislation: L. 1969-70, CrPL 2:101 3.

## **§10.14. Summons; manner of service and return thereon.**

### **1 .Service of summons.**

The summons may be served at any place within the jurisdiction of the Republic by any peace officer or any other person authorized by law. It shall be served by delivering a copy personally to the person summoned.

### **2. Return by officer.**

The officer to whom a summons has been delivered for service, on or before the return date, shall make return thereon to the court which issued it.

### **3. Redelivery for purpose of service.**

At the request of the prosecuting attorney made at any time while the complaint or indictment is pending, a summons returned unserved, or a duplicate thereof, may be delivered by the clerk of the court to a peace officer or other authorized person for service.

Prior legislation: L. 1969-70, CrPL 2:1014.

## **§10.1 5. Issuance of service of notice to appear in lieu of an arrest; procedure on failure to appear.**

### **1 .Basis of issuance and service of notice.**

In any case in which a peace officer or other person is authorized to make an arrest without a warrant, he may instead issue a notice to appear. Unless otherwise provided by law the notice shall be served by delivering a copy personally to the person to whom it is issued.

## **2. Effect of failure to appear.**

If a person to whom a notice to appear has been duly issued fails to appear, a summons commanding his appearance or a warrant for his arrest may issue. A willful failure to appear in answer to such notice may be punished by a fine of not over one hundred dollars.

Prior legislation: L. 1969-70, CrPL 2:101 5.

## **§ 10.16. Notice to appear; contents.**

The notice to appear shall be in writing. It shall be signed by the peace officer or other authorized person issuing the notice giving the title of his office, and shall state the date when and the place where issued. It shall specify the name of the person requested to appear and his address, if known, and shall set for the nature of the offense. It shall request the person named therein to appear before a court at a certain time and place.

Prior legislation: L. 1969-70, CrPL 2:101 6.

## **§10.1 7. Officer's return on notice to appear and filing of complaint thereon.**

The officer who has issued a notice to appear, on or before the return day, shall make return thereon to the court before which the notice is returnable and shall file a complaint setting for the offense which the person requested to appear is charged with committing.

Prior legislation: L. 1969-70, CrPL 2:101 7.

## **§10.18. Process against corporations for offenses committed by them; procedure upon default.**

When a corporation is charged with the commission of an offense, the court shall issue a summons setting forth the nature and substance of the offense and commanding the corporation to appear before a court at a certain time and place. The summons may be served in the manner provided for service of summons upon a corporation in a civil action. If after being summoned the corporation does not appear, a plea of not guilty shall be entered by the court having jurisdiction to try the offense for which the summons was issued, and such court shall proceed to trial and judgment without further process.

Prior legislation: L. 1969-70, CrPL 2:101 8.

## **§10.19. Procedure upon neglect or refusal to issue warrant or summons.**

Upon the neglect or refusal of a justice of the peace or a magistrate to issue a warrant of arrest or summons, any judge of the Circuit Court of the county in which the justice of the peace or the magistrate exercises jurisdiction may in a summary manner examine the complaint upon which the application for the warrant or summons is based and may direct such justice or magistrate to issue such warrant or summons or may himself do so. All proceedings thereupon shall be as provided by this chapter in such cases where justices of the peace and magistrates are empowered to issue warrants of arrest and summonses.

Prior legislation: L. 1969-70, CrPL 2:1010; 1956 Code 8:53; Rev. Stat. §779.

## **Chapter 11 .SEARCH AND SEIZURE**

### **§11.1. Authority to issue warrant.**



A search warrant may be issued by a magistrate, justice of the peace, or any other judicial officer empowered to perform such function whose jurisdiction encompasses the area wherein the property sought is located.

Prior legislation: L. 1969-70, CrPL 2:1101; 1956 Code 8:480.

### **§11.2. Property subject to search and seizure.**

A warrant may be issued under the provisions of this chapter to search for and seize the following property:

- (a) Stolen or embezzled property;
- (b) Illicit, forfeited, or prohibited property;
- (c) Contraband;
- (d) Instruments or other articles designed or intended for use, or which are or have been used, as a means of committing a criminal offense.

Prior legislation: L. 1969-70, CrPL 2:1102; 1956 Code 8:481.

### **§11.3. Issuance and contents of warrant.**

A search warrant shall issue only on an affidavit or written complaint made upon oath establishing the grounds for the issuance of the warrant. If the magistrate, justice of the peace, or the judicial officer empowered to perform such function is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a peace officer of the Republic. It shall state the grounds for its issuance and the names of the persons whose affidavits and sworn statements have been taken in support thereof. It shall command the officer to search the person or the place named for the property specified without unnecessary delay. It shall further designate the court, the jurisdiction of which encompasses the area wherein the property sought is located, to which it shall be returned.

Prior legislation: L. 1969-70, CrPL 2:1103; 1956 Code 8:482.

### **§11.4. Procedure upon neglect or refusal to issue warrant.**

Upon the neglect or refusal of a justice of the peace or a magistrate to issue a search warrant, any judge of the Circuit Court of the county in which the justice of the peace or the magistrate exercises jurisdiction may in a summary manner examine the affidavit or the complaint upon which the application for the warrant is based and may direct such justice or magistrate to issue such warrant or may himself do so. All proceedings thereupon shall be as provided by this chapter in such cases where justices of the peace and magistrates are empowered to issue search warrants.

Prior legislation: L. 1969-70, CrPL 2:1104.

### **§11.5. When warrant may be executed and method of gaining entrance.**

#### **1 .Time when execution permitted.**

A search warrant may be executed at any reasonable time of the day or night. If practicable, however, it shall be executed in the daytime but no property validly seized under a search warrant shall be suppressed as evidence because the warrant was executed during the nighttime.

#### **2.Mode of procedure before entry.**

Before searching a person or entering upon premises to be searched by virtue of a search warrant,

the officer executing it shall inform the person to be searched or any person attending to the premises to be searched of his authority and purpose and of the fact that a search warrant has been issued. If the person to be searched, or any person attending to the premises to be searched so requires, the warrant shall be shown to him immediately upon request.

### **3. Entry on refusal of admittance.**

If after notice of his authority and purpose, a peace officer to whom a search warrant is directed is refused admittance, he may break open any outer or inner door or window of a private dwelling or other enclosed space, or any part of a private dwelling or other enclosed space, or anything therein to execute the warrant.

Prior legislation: L. 1969-70, CrPL 2:1105; 1956 Code 8:482 (6th sent.).

### **§11.6. Execution and return of warrant with inventory.**

Unless otherwise provided in the warrant, the warrant may be executed and returned only within twenty days after its date of issuance. The officer taking property under the warrant shall give to person from whom or from whose premises the property is taken a copy of the warrant and the receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property is taken, or, if they are not present, in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property is taken, and shall be verified by the officer. The magistrate, justice of the peace, or judicial officer empowered to perform such function, to whom the return is made, shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property is taken and to the applicant for the warrant.

Prior legislation: L. 1969-70, CrPL 2:1106; 1956 Code 8:483.

### **§11.7. Filing of papers upon which warrants issue and returns thereon.**

When a warrant designates that it shall be returned to a judicial officer of a court of record, the judicial officer issuing it shall file or cause to be filed with the clerk of said court the papers upon which the warrant was issued and upon receipt of the return thereon, the designated judicial officer shall attach to the warrant the inventory and all other papers in connection therewith and shall file or cause them to be filed with the said clerk of court. When the designated judicial officer to whom a warrant is to be returned is attached to a court not of record the papers upon which the warrant was issued shall be delivered to him and these papers together with the return thereon, the inventory, and all other papers in connection therewith shall be preserved in the same manner as all other documents are usually kept and preserved in such court.

Prior legislation: L. 1969-70, CrPL 2:1107; 1956 Code 8:485.

### **§11.8. Secrecy attending issuance of warrants.**

A search warrant shall be issued with all practicable secrecy and the complaint, affidavits, or testimony upon which it is based shall not be made public in any way until the warrant is executed. Whoever discloses prior to its execution that a warrant has been applied for or has been issued, except so far as may be necessary to its execution, may be punished as for a criminal contempt of court.

Prior legislation: L. 1969-70, CrPL 2:1108.

### **§11.9. Disposition of property lawfully seized.**

Property lawfully seized under a search warrant or lawfully seized upon an arrest shall be safely

kept by the officer executing the search or by the appropriate prosecuting official with whom the said officer may leave it upon obtaining a receipt therefor. It shall be safely kept so long as necessary for the purpose of being produced as evidence at any trial in which it is involved. As soon as may be thereafter, all property so seized shall be restored to the person entitled thereto by the magistrate, justice of the peace, or judge before whom it has been last produced or used in evidence at the trial unless the possession thereof is prohibited by law, in which case, except as otherwise provided, it shall be confiscated or destroyed under the direction of the magistrate, justice of the peace, or judge.

Prior legislation: L. 1969-70, CrPL 2:1109.

### **§11.1 0.Motion for return of property and to suppress evidence.**

#### **1 .Grounds.**

A person aggrieved by an unlawful search and seizure may make a motion for the return of the property and to suppress for use as evidence anything so obtained on the grounds that:

- (a)The warrant is insufficient on its face; or
- (b)The property seized is not that described in the warrant; or
- (c)The purported grounds set forth in the application for the warrant do not exist; or
- (d)There was not probable cause for believing the existence of the grounds on which the warrant was issued; or
- (e)The warrant was illegally executed; or
- (f)The property, if seized upon an arrest, was illegally seized;
- (g)The property was seized without a search warrant having been issue therefor except when the property was lawfully seized in connection with a lawful arrest.

#### **2.Courts having jurisdiction of motion.**

The motion may be made in the court, the jurisdiction of which encompasses the area in which the property involved is seized, or in the court where the trial is to be held.

#### **3.Time limitations on making of motion.**

The motion shall be made before the trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial.

#### **4. Issues of fact triable by court.**

The court may receive evidence on any issue of fact necessary to the decision of the motion.

#### **5.Relief on granting of motion.**

If the motion is granted, the property shall be restored to the person entitled thereto unless otherwise subject to lawful detention.

Prior legislation: L. 1969-70, CrPL 2:1110; 1956 Code 8:484.

### **Chapter 12.PRELIMINARY EXAMINATION**

### **§12.1. First appearance before a magistrate or justice of the peace.**

When a defendant who has not been indicted is brought before a magistrate or justice of the peace upon arrest, either with or without a warrant as required by section 10.11, on a charge of having committed an offense over which a superior court has original jurisdiction, or when a defendant who has been summoned to answer for such an offense or who has been served with a notice to appear because of such an offense appears in response to the summons or notice to appear, the magistrate or justice of the peace shall immediately inform him (a) of the charge against him and provide him with a copy of the complaint if it has been filed in that court; (b) of his right to have a preliminary examination; (c) of his right not to make a statement and that any statement made by him may be used against him; and (d) of his right to counsel at any preliminary examination to follow. If the defendant desires aid of counsel, the magistrate or justice of the peace shall allow him a reasonable time and opportunity to procure one and require a peace officer to take a message to any counsel whom the defendant may name in the judicial circuit in which the court is situated if other means of communication are impracticable. The peace officer shall perform that duty without fee and without delay. If the defendant is indigent, the court shall appoint Defense Counsel to represent him, unless he understandingly elects to proceed without counsel. If the defendant is charged with an offense that is bailable, the court shall admit him to bail in accordance with the provisions of chapter 13 of this title. If the magistrate or justice of the peace before whom the defendant appears on arrest or summons or notice to appear is not in the judicial circuit where the offense is triable, the defendant, if he is not admitted to bail and after the court has advised him of his rights as required by this section, shall be escorted under custody to a court of a magistrate or justice of the peace in the judicial circuit having jurisdiction to try the offense, and any preliminary hearing shall be held in that court.

Prior legislation: L. 1969-70, CrPL 2:1201; 1956 Code 8:70.

### **§12.2. Preliminary examination given on request only.**

A preliminary examination shall be given a defendant after his first appearance before the magistrate or justice of the peace only if he requests it. If he makes no such request, the magistrate or justice of the peace, after complying with the provision of section 12.1 of this title, shall hold him to answer.

Prior legislation: L. 1969-70, CrPL 2:1202; 1956 Code 8:71.

### **§12.3. Examination of the evidence.**

If the defendant requests a preliminary examination, the magistrate or justice of the peace shall hear the evidence within a reasonable time. The defendant shall not be called upon to plead. If the defendant was not furnished with a copy of the complaint on his first appearance before the magistrate or justice of the peace, he shall be furnished with such a copy a reasonable time before the hearing. The magistrate or justice of the peace shall issue such process as may be necessary for the summoning of witnesses for the Republic. All witnesses shall be examined in the presence of the defendant and may be cross-examined. During the examination of any witness, the magistrate or justice of the peace may, and on the request of the defendant shall, exclude all other witnesses. He may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined. The testimony of witnesses shall either be reduced to writing by the magistrate or justice of the peace, or under his direction, or be taken in shorthand by a stenographer and transcribed. If from the evidence it appears to the court that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the court shall forthwith hold him to answer in the Circuit Court; otherwise the court shall discharge him.

Prior legislation: L. 1969-70, CrPL 2:1203; 1956 Code 8:71.

### **§12.4. Transmission of papers to the Circuit Court.**

After concluding the preliminary examination, if the defendant has been held to answer, the

magistrate or justice of the peace shall transmit forthwith to the clerk of the Circuit Court having jurisdiction of the offense all papers in the proceeding and any bail which has been taken. The record of the testimony of the witnesses taken at the examination shall be signed and certified by him.

Prior legislation: L. 1969-70, CrPL 2:1204; 1956 Code 8:71.

## **Chapter 13. BAIL**

### **§13.1. Right to bail.**

#### **1. Capital offenses.**

A person in custody for the commission of a capital offense shall, before conviction, be entitled as of right to be admitted to bail unless the proof is evident or the presumption great that he is guilty of the offense. On the hearing of an application for admission to bail made before indictment by a person in custody for the commission of a capital offense, the burden of showing that the proof is evident or the presumption great that he is guilty of the offense is on the Republic. After indictment for such an offense, the burden is on the defendant to show that the proof is not evident or the presumption not great. After conviction for a capital offense, no person shall be continued at large on bail or be admitted to bail except in accordance with the provisions of paragraph 3 of this section.

#### **2. Offenses less than capital.**

Any person charged with the commission of an offense not capital shall be entitled as of right to be admitted to bail, whether before conviction or pending appeal, and any person charged with commission of capital offense who has been convicted of a lesser offense shall be entitled as of right to be admitted to bail pending an appeal.

#### **3. Illness of defendant.**

When the court where an offense is triable is satisfied on investigation that a person in custody for the commission of an offense is in such physical condition that the continued confinement of such person in the place where he is confined would result in his death or permanent serious injury to his health, the court may at any time before sentence is commenced order the removal of such person to some other place of confinement where his health may be better preserved or may admit him to bail when satisfied that any confinement will endanger his life.

Prior legislation: L. 1969-70, CrPL 2:1301; 1956 Code 8:81-84.

### **§13.2. Amount of bail.**

The amount of bail in any criminal action in which restitution is required shall be equal to the amount of the maximum fine which may be imposed upon conviction of the offense charged. If the offense charged is punishable by imprisonment, the maximum number of months of imprisonment which may be imposed shall be multiplied by twenty-five dollars to determine the amount of bail. If the offense charged is punishable by both fine and imprisonment, the amount of bail shall be equal to the total of such amounts.

Prior legislation: L. 1971-72, An act to amend the Criminal Procedure Law with reference to the amount of bail required in cases of restitution; L. 1969-70, CrPL 2:1302; 1956 Code 8:89.

### **§13.3. Form of bail; deposit of property.**

A person allowed by order of the court to be released on bail shall execute a bond for his appearance. Such bond shall be secured by one of the means provided by section 63.1 of the Civil Procedure Law for security of bonds given under that title and any sureties on the bond shall be

qualified as required by section 63.2(1) of the Civil Procedure Law. Any cash or other personal property received by the court as security for the bond shall be deposited in the government depository or a reliable bank and a receipt shall be issued showing the purpose and amount of the deposit, and stating that the deposit will be re-leased only upon the written order of the judge or magistrate or justice of the peace authorized to receive bail.

Prior legislation: L. 1969-70, CrPL 2:1303; 1956 Code 8:87, 88.

#### **§13.4. Approval of bond; justification of sureties.**

##### **1 .Requirements in connection with approval.**

The court shall approve a bail bond and release the defendant if a prima facie showing is made that the sureties are qualified or that the security offered on the bond is adequate and genuine and as represented by the defendant. If the bond is secured by sureties who are natural persons, the court, on granting its approval, shall require the sureties to present by the following day: (a) a certificate from the clerk of the Circuit Court in the county where the real property securing the bond is located, that the bond has been recorded in the docket for surety bond liens as provided in section 63.2(2) of the Civil Procedure Law; (b) an affidavit of the sureties complying with the provisions of section 63.2(3) of the Civil Procedure Law; and (c) a certificate by a duly qualified officer of the Department of the Treasury that the property is owned by the surety or sureties claiming title to it in the affidavit and that it is of the assessed value therein stated.

##### **2. Procedure for justification.**

The prosecuting attorney may except to the sufficiency of a surety by filing a written notice of exceptions with the clerk of court and serving it upon the defendant and the surety within three days after approval of the bond. On the day after service of such notice, the surety thus served shall appear before the court, where he may be examined under oath concerning his sufficiency. If the court finds the surety sufficient, it shall make an appropriate endorsement on the bond. If the surety fails to appear within the required time or if the court finds the surety insufficient, it shall require another surety in his place. Any surety who has not justified shall remain liable until another surety signs the bond and the bond is approved.

Prior legislation: L. 1969-70, CrPL 2:1304; 1956 Code 8:87, 90, 91.

#### **§13.5. Release of defendant without bail.**

When from all the circumstances the court is of the opinion that the defendant will appear as required either before or after conviction without giving bail, he may be released without security upon such conditions as may be prescribed to insure his appearance. These conditions may include parole to the custody of a member of the family or other person exercising moral influence over the defendant, or the requirement that the defendant report periodically to a probation officer of the judicial circuit.

Prior legislation: L. 1969-70, CrPL 2:1305.

#### **§13.6. Conditions and effect of bail bond; bail in case of increased charge on indictment.**

If a person accused or convicted of a crime is admitted to bail, the conditions of the bail bond shall be that he will appear before the court at such times as the court may direct; that he will submit himself to the orders and processes of the court; and that he will not depart from the Republic without leave. Subject to an order to increase bail under the provisions of section 13.7, a bail bond or property deposited as bail permits a defendant charged with a non-capital offense or charged with a capital offense and convicted of a lesser offense to go at large, with the exception of the times when he is required by law or direction of the court to appear before the court, until an adverse decision on appeal, or if no appeal is taken, until judgment of conviction is rendered. A defendant entitled to bail should not be required to furnish a new bail bond because he has been indicted by a grand jury unless the indictment charges an offense subject to a more serious penalty

that the offense previously charged. In such case, the defendant shall be allowed twenty-four hours to furnish a new bond before being imprisoned.

Prior legislation: L. 1969-70, CrPL 2:1306; 1956 Code 8:85, 86.

### **§13.7. Increase or reduction of bail.**

Upon application by the prosecuting attorney or the defendant, the court before which the proceeding is pending may for good cause increase or reduce the amount of bail or order that additional security be furnished. Reasonable notice of such application by either party shall be given to the other party.

Prior legislation: L. 1969-70, CrPL 2:1307.

### **§13.8. Arrest of principal by surety.**

For the purpose of surrendering the defendant before the forfeiture of the bond, the surety may arrest him and take him before the court or may by written authority empower any adult person of suitable age and discretion to do so.

Prior legislation: L. 1969-70, CrPL 2:1308.

### **§13.9. Summons or arrest by court.**

The court in which the case is pending or a judge thereof may be order direct the arrest and commitment of a defendant who is at large on bail or on his own recognizance when there has been a breach of condition of the bond. The court may summon the defendant to appear before it, and on failure of the defendant to appear in response to the summons, direct his arrest when

(a)It appears that his sureties or any of them are dead or cannot be found or are insufficient or have ceased to be residents of the Republic; or

(b)The court or judge is satisfied that the bail should be increased or new or additional security required.

An arrest under this section shall be made pursuant to the order of the court upon service of a certified copy thereof, in the same manner as upon a warrant of arrest.

Prior legislation: L. 1969-70, CrPL 2:1310.

### **§13.10. Forfeiture.**

#### **1 .Adjudication and enforcement.**

If there is a breach of a condition of a bail bond secured by sureties, the court shall by service of summons direct the sureties to appear before it at a specified time to show cause why the bond should not be forfeited. If the defendant has been arrested under the provisions of section 13.9 or if he can be produced by the sureties, he shall also be present at the specified time. If the sureties at the hearing are unable to show cause why they should be exonerated, the court may declare the bond forfeited and require another bond as a condition for the release of the defendant, or, if the defendant is not present at the hearing, the court may condition the forfeiture on failure of the sureties to produce the defendant before the court as soon thereafter as is reasonably possible. On final order of forfeiture of the bond, the prosecuting attorney shall file a certified copy of such order in the office of the clerk of the court where the cause is pending, and thereupon such order shall be docketed as a judgment against the surety and shall be enforceable against the surety in the same manner as a judgment in a civil action.

#### **2. Remission.**

After entry of such judgment, the court may remit the amount forfeited in whole or in part if it appears that justice does not require enforcement of the forfeiture.

Prior legislation: L. 1969-70, CrPL 2:1310; 1956 Code 8:92.

### **§13.11 .Satisfaction of the bond; return of deposit.**

When the conditions of the bond on which sureties have appeared are satisfied or the sureties have been duly exonerated from fulfilling its conditions, the court shall order the bond cancelled and notice of the cancellation duly posted to effect the termination of the lien on the real property of the sureties. If the bail bond has been secured by a deposit of money or property, the deposit shall be returned to the defendant on his surrender to the officer to whose custody he was committed at the time giving bail.

Prior legislation: L. 1969-70, CrPL 2:1311; 1956 Code 8:93.

### **§13.12.Bail for witnesses.**

If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure his presence by subpoena, the court may require him to give bail for his appearance as a witness, in an amount fixed by the court. If the person fails to give bail, the court may commit him to prison pending final disposition of the proceeding in which the testimony is needed or until the witness appears and testifies in the matter; may order his release if he has been detained for an unreasonably long time without the matter being heard; and may modify at any time the requirement of bail. If the person whose testimony is material in a criminal proceeding is unable to provide bail in an amount considered by the court sufficient to guarantee his appearance to testify, the court may direct that his deposition be taken in accordance with the provisions of section 17.1 of this title and that he be discharged.

Prior legislation: L. 1969-70, CrPL 2:1312; 1956 Code 8:94.

### **§13.1 3Supervision of persons detained pending criminal proceedings.**

For the purpose of eliminating all unnecessary detention, the Circuit Court of each judicial district shall exercise continuous supervision over the detention of defendants and witnesses within the circuit pending the prosecution of criminal proceedings. The prosecuting attorney shall make a weekly report to the court listing each defendant and witness who has been held in custody for a period in excess of ten days. As to each witness so listed, the prosecuting attorney shall make a statement of the reasons, if any, why such witness should not be released with or without the taking of his deposition pursuant to section 13.12 and 17.1 of this title. As to each defendant so listed, the prosecuting attorney shall make a statement of the reasons, if any, why the defendant is still held in custody and state the amount of bail fixed for his release.

Prior legislation: L. 1969-70, CrPL 2:1313.

## **Chapter 14.HCARGING AN OFFENSE**

### **§14.1. Methods of prosecution.**

A crime may be prosecuted in conformity with the provisions of this chapter by a complaint or an indictment.

Prior legislation: L. 1969-70, CrPL 2:1401.

### **§14.2. Use of complaint and indictment.**

Petit larceny and all petty offenses shall be prosecuted by complaint. All other crimes shall be prosecuted by indictment.



Prior legislation: L. 1969-70, CrPL 2:1402; 1956 Code 8:110; L. 1924-25, ch. XVI, §2.

### **§14.3. Form of indictment.**

#### **1 .Requirement of writing; content; sufficiency. An indictment shall be in writing and shall:**

(a)Specify the name of the court in which the action is triable and the names of the parties;

(b)Contain in each count a statement that the defendant has committed a crime therein specified by the number of the title and section of the statute alleged to have been violated, and described by name or by stating so much of the definition of the crime in terms of the statutory definition as is sufficient to give the defendant and the court notice of the violation charged;

(c)Contain in each count a plain, concise and definite statement of the facts essential to give the defendant fair notice of the offense charged in that count, including a statement, if possible, of the time and place of the commission of the offense, and of the person, if any, against whom, and the thing, if any, in respect to which, the offense was committed.

An indictment shall not be held insufficient because it contains any defect or imperfection of form which does not prejudice a substantial right of the defendant upon the merits.

#### **2.Signing.**

An indictment shall be signed by the foreman of the grand jury and by the prosecuting attorney. No objection to an indictment on the ground that it was not signed as herein required may be made after a motion to dismiss or a plea to the merits has been filed.

#### **3.Method of designating the defendant.**

The defendant shall be designated by his true name, if known, and if not, he may be designated by any name by which he can be identified with reasonable certainty. If in the course of the proceedings the true name of the defendant designated otherwise than by his true name becomes known to the court, the court shall cause it to be inserted in the indictment and in the record, if any, and the proceedings shall be continued against him in his true name.

#### **4.Incorporation by reference.**

Allegations made in one count may be incorporated by reference in another count.

#### **5.Allegations in the alternative.**

Facts which are not essential to give the accused fair notice of the offense charged may be alleged in the alternative.

#### **6.Surplusage.**

Unnecessary allegations may be disregarded as surplusage. On motion of either party such allegations may be stricken from the indictment.

Prior legislation: L. 1969-70, CrPL 2:1403; 1956 Code 8: 140.

### **§14.4. Form of complaint.**

A complaint made orally to a magistrate or justice of the peace shall be reduced to writing on the face of the writ by the clerk of the court, or, if there is no clerk, by the magistrate or justice. The written complaint shall specify the nature of the offense charged and shall contain a concise statement of the acts of the defendant alleged to constitute such offense, and of the time and place

of commission of the offense and of the person, if any, against whom, and the thing, if any, in respect to which, the offense was committed. The complaint shall be sworn to by the complainant.

Prior legislation: L. 1969-70, CrPL 2:1404.

#### **§14.5. Bill of particulars.**

The court for cause may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within ten days after arraignment or at such other time after arraignment as may be ordered by the court. Such a motion shall specify the particulars sought by the defendant. A bill of particulars may be amended at any time subject to such conditions as justice requires.

Prior legislation: L. 1969-70, CrPL 2: 1405; 1956 Code 8:144.

#### **§14.6. Joinder.**

##### **1.Of offenses.**

Two or more offenses may be charged in the same indictment or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

##### **2.Of defendants.**

Two or more defendants may be charged in the same indictment or complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Prior legislation: L. 1969-70, CrPL 2: 1406; 1956 Code 8:141, 142.

#### **§14.7. Amendments.**

##### **1 .Formal defects.**

The court shall permit an indictment or complaint to be amended at any stage of the proceedings to correct a formal defect.

##### **2.Complaints triable in inferior courts.**

The court may permit a complaint charging an offense triable before a magistrate or justice of the peace to be amended up to the time of commencement of trial to correct any defect or insufficiency if (a) substantial rights of the defendant are not prejudiced thereby; and if (b) the amendment does not cause the complaint to charge an offense of a different character or arising out of a different transaction than the offense charged in the original complaint.

##### **3.Amendments to conform to evidence.**

When upon the trial of an indictment or complaint, there appears a variance between an allegation therein and the evidence offered in proof in respect to any fact, name, or description not material to the charging of the offense, the court may, if the defendant will not be prejudiced thereby, direct that the indictment or complaint be amended to conform to the proof on such terms as the court deems fair and reasonable; but an indictment or complaint shall not under any circumstances be amended under this paragraph to charge an offense different from or additional to the offense originally charged.

Prior legislation: L. 1969-70, CrPL 2: 1407.

**§14.8. Names of witnesses on indictment.**

When an indictment is filed, the names of the witnesses or deponents on whose evidence the indictment was based shall be indorsed thereon before it is presented to the court. A failure to make such indorsement shall not affect the validity or sufficiency of the indictment, but the court in which the indictment was filed shall, on application of the defendant, direct the names of such witnesses to be indorsed.

Prior legislation: L. 1969-70, CrPL 2:1408.

**Chapter 15. GRAND JURY****§15.1. Formation of grand jury; concurrence required for indictment.**

A grand jury shall consist of fifteen persons selected in the manner prescribed by the Civil Procedure Law. An indictment cannot be found without the concurrence of at least twelve grand jurors.

Prior legislation: L. 1969-70, CrPL 2: 1501; 1956 Code 8:120, 122, 130; Rev. Stat. §§780, 784.

**§15.2. Duties of grand jury.**

The grand jury shall inquire into all indictable offenses triable within the county which are presented to it by the prosecuting attorney or otherwise come to its knowledge; and, if there is probable cause to believe a particular person guilty of such an offense, shall charge him therewith by indictment.

Prior legislation: L. 1969-70, CrPL 2: 1502; 1956 Code 8: 122; Rev. Stat. §784.

**§15.3. Qualifications of grand jurors.**

Grand jurors shall be possessed of the qualifications required by the Judiciary Law of persons who are to serve as trial jurors.

Prior legislation: L. 1969-70, CrPL 2: 1503; 1956 Code 8:121.

**§15.4. Session.**

A grand jury shall be discharged not later than twenty-one days after the first day of the session of court, except that the judge of the court, by written order filed with the clerk, may continue the session to such further time as he deems necessary. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

Prior legislation: L. 1969-70, CrPL 2: 1504; 1956 Code 8:124; L. 1924-1925, ch. VI; L. 1914, 50 (1st), §3.

**§15.5. Special grand jury.**

Upon application by the prosecuting attorney showing that public interest requires it, a judge of the Circuit Court may order fifteen persons to be summoned to serve as a special grand jury. The grand jurors composing it shall be selected and summoned in the same manner as grand jurors for a regular session. A special grand jury shall exercise the same powers and functions as a grand jury summoned for a regular session. A special grand jury shall remain in session as long as the public interest requires.

Prior legislation: L. 1969-70, CrPL 2: 1505; 1956 Code 8:123; L. 1935-36, ch. XVIII, §1.

**§15.6. Objections to grand jury.**

An objection to the panel or to the lack of legal qualifications of an individual grand juror may be raised by motion to dismiss. The provisions of section 16.7(3), (4), and (5) shall be applicable to such motion. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to section 15.8 that twelve or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

Prior legislation: L. 1969-70, CrPL 2: 1506; 1956 Code 8:184 (3rd par.).

**§15.7. Oath and charge; appointment of foreman.**

The clerk of court shall administer the oath to the members of the grand jury and the court shall charge them concerning the nature of their duties and concerning any accusations of crimes returned to the court or likely to come before the grand jury. The court may charge them respecting violations of a particular statute and shall do so when requested by the prosecuting attorney. The court shall appoint one of the jurors as foreman.

Prior legislation: L. 1969-70, CrPL 2: 1507; 1956 Code 8:125; Rev. Stat. §781; 1828 Code, Ord. No. XIX, 2 Hub. 1271, 1329.

**§15.8. Procedure after charge.**

After the charge by the court and appointment of a foreman, the grand jurors shall retire to a private room. The grand jurors shall appoint one of their number as clerk. It shall be the duty of the clerk to take minutes of the proceedings of the jury and a synopsis of the evidence given before it and a record of the number of jurors concurring in the finding of every indictment. The minutes shall be delivered to the clerk of court upon discharge of the jury. The clerk of court in open court shall administer an oath or affirmation to every witness before he testifies before the grand jury.

Prior legislation: L. 1969-70, CrPL 2: 1508; 1956 Code 8:126-128; Rev. Stat. §§782-784.

**§15.9. Who may be present during session of grand jury.**

No person may be present at the sessions of the grand jury except the prosecuting attorney, the witness under examination, the bailiffs of the grand jury, an interpreter when needed, and a stenographer for taking the evidence, but no person other than the jurors may be present while the grand jury is deliberating and voting.

Prior legislation: L. 1969-70, CrPL 2: 1509; 1956 Code 8:128; Rev. Stat. §784.

**§15.10. Duty of prosecuting attorney.**

The prosecuting attorney shall be present at the session of the grand jury when requested by it for the purpose of giving the grand jurors legal advice regarding any matter cognizable by them. He shall also draft indictments and issue process for the attendance of witnesses.

Prior legislation: L. 1969-70, CrPL 2: 1510.

**§15.11 .Sufficiency of evidence.**

The grand jurors shall find an indictment charging the defendant with the commission of an offense when from all the evidence taken together they are convinced there is probable cause to believe him guilty of such offense.

Prior legislation: L. 1969-70, CrPL 2: 1511.

**§15.12. Return of indictment or report to court.**

Every indictment found shall be endorsed as a "true bill" and signed by the foreman and returned to the judge in open court. Several indictments may be returned at the same time. They shall be filed with the clerk of the court and remain in his office as a public record. If the defendant has been held to answer, but no indictment is found against him, the foreman shall indorse "Ignoramus" on the draft of the indictment and shall return it to the judge in open court. If for any reason the investigation of a case where the defendant has been held to answer is not completed, this fact shall be reported to the court by the foreman.

Prior legislation: L. 1969-70, CrPL 2: 1512; 1956 Code 8:130; Rev. Stat. §785.

**§15.1 3. Effect of "not true" bill.**

A charge may be submitted to or inquired into by a grand jury only once after an indictment containing the same charge has been returned to court indorsed "Ignoramus."

Prior legislation: L. 1969-70, CrPL 2: 1513.

**§15.14. Secrecy of proceedings.****1 .Deliberations and voting.**

A grand juror shall not disclose, and shall not be required to testify concerning, how he or another grand juror has voted, or any statement or utterance by himself or another grand juror in a session of the grand jury relative to a matter pending before it. A violation of this provision shall be punishable as contempt of court.

**2. Disclosure concerning indictment before arrest.**

Except to the extent necessary for the issuance and execution of a warrant of arrest or summons, no person shall disclose the finding of an indictment until the person charged therein is in custody or has given bail. A violation of this provision shall be punishable as contempt of court.

**3. Transcript of testimony.**

A transcript of testimony taken before a grand jury shall be available to the prosecuting attorney and to a defendant who is indicted.

**4. Other disclosures permitted by court.**

A person present at the proceedings before a grand jury may disclose matters occurring before it only when directed by a court preliminary to or in connection with a judicial proceeding; provided that the provision of this paragraph shall not prevent a prosecuting attorney from disclosures in line of duty to his superior officer in the Department of Justice.

**5. Limitation on obligation of secrecy.**

No obligation of secrecy may be imposed on any person except in accordance with the provisions of this section.

Prior legislation: L. 1969-70, CrPL 2: 1514; 1956 Code 8:129, 131; 27:199; Rev. Stat. §785; Crim. Code §98.

**Chapter 1 6. ARRAIGNMENT, PLEAS, AND PRETRIAL MOTIONS**

**§16.1. Furnishing copy of indictment to person charged.**

A copy of an indictment together with the indorsement thereon required by section 14.8 shall be served on the person therein charged at the time of his arrest, or if he had been arrested or had appeared in court previous to the finding of the indictment, and the charge against him has not been dismissed, such copy shall be served on him as soon as possible after the finding. A defendant shall not be required to plead to an indictment if it has not been seasonably furnished to him. A failure to furnish such copy shall not affect the validity of any subsequent proceedings against the defendant if he pleads to the indictment.

Prior legislation: L. 1969-70, CrPL 2: 1601; L. 1959-60, ch. LI, §1; 1956 Code 8:180.

**§16.2. Arraignment.**

Before any person is tried for the commission of an offense, he shall be called into open court, and the clerk shall read the formal charge to him and call upon him to plead thereto. An entry of the arraignment shall be made of record.

Prior legislation: L. 1969-70, CrPL 2: 1602; L. 1959-60, ch. LI, §1; 1956 Code 8:180.

**§16.3. Irregularity of arraignment.**

No irregularity in the arraignment shall affect the validity of any proceeding in the case if the defendant pleads to the indictment or complaint or proceeds to trial without objecting to such irregularity.

Prior legislation: L. 1969-70, CrPL 2: 1603.

**§16.4. Pleas.**

A defendant may plead guilty or not guilty, except that in a capital case only a plea of not guilty may be accepted. The court may refuse to accept a plea of guilty in any other case and shall not accept such plea without first (a) making such inquiry as may satisfy it that the defendant in fact committed the crime charged and (b) addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

Prior legislation: L. 1969-70, CrPL 2: 1604; 1956 Code 8: 182.

**§16.5. Arraignment, judgment, and sentence after plea of guilty.**

If a defendant after indictment desires to enter a plea of guilty, he shall be arraigned immediately in open court even though the court is not then in session. If this plea is accepted, sentence shall be imposed without delay, or immediately on the receipt of a presentence report if such a report is required by law or requested by the judge. No trial is necessary following a plea of guilty. A sentence imposed in chambers after a plea of guilty shall have the same force and effect as though in open court. The clerk shall record the judgment and enter sentence in the manner provided for judgments and sentences pronounced in open court.

Prior legislation: L. 1969-70, CrPL 2: 1605; L. 1959-60, ch. LI, §1.

**§16.6. Demurrers, pleas in abatement, and motion to quash abolished.**

Relief formerly secured by demurrers, pleas in abatement, and motions to quash shall henceforth be raised only by motion to dismiss the indictment.

Prior legislation: L. 1969-70, CrPL 2: 1606.

## **§16.7. Motion to dismiss raising defenses and objections before trial.**

### **1 .Defenses and objections which may be raised.**

Any defense or objection which is capable of determination without trial of the general issue may be raised before trial by motion to dismiss the indictment.

### **2. Defenses and objections which must be raised.**

Defenses and objections based on defects in the institution of the prosecution or in the indictment other than that it fails to shown jurisdiction in the court over the subject matter or to charge an offense, may be raised only by motion before trial to dismiss. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction to try the offense or the failure of the indictment or information to charge an offense shall be noticed by the court at any stage of the proceeding.

### **3.Time of making motion.**

The motion to dismiss shall be made before plea is entered, but the court may permit it to be made within a reasonable time thereafter.

### **4.Hearing of motion.**

A motion to dismiss made before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trail of the general issue. An issue of fact shall be tried by a jury if a jury trial is required by the Constitution or by statute. All other issues of fact shall be determined at a hearing before the court with or without a jury or on affidavits.

### **5.Effect of determination.**

If a motion is determined adversely to the defendant, he shall be permitted to plead if he has not previously pleaded. A plea previously entered shall stand. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, it may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new indictment. Nothing in this section shall be deemed to affect the provisions of any statute relating to periods of limitations.

Prior legislation: L. 1969-70, CrPL 2: 1607; 1956 Code 8:183-186.

## **§16.8. Procedure by defendant on arraignment.**

Upon being arraigned, the defendant shall immediately, unless the court grants him further time, either move to dismiss the indictment or plead thereto. If he moves to dismiss without also pleading, and the motion is withdrawn or overruled, he shall plead as soon as practicable thereafter.

Prior legislation: L. 1969-70, CrPL 2: 1608.

## **§16.9. Trial together of indictments.**

The court may order two or more indictments to be tried together if the offenses and the defendants could have been joined in a single indictment. The procedure shall be the same as if the prosecution were under a single indictment.

Prior legislation: L. 1969-70, CrPL 2: 1609.



### **§16.10. Relief from prejudicial joinder.**

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or by a joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires.

Prior legislation: L. 1969-70, CrPL 2: 1610.

## **Chapter 17. OTHER PROCEDURES PRELIMINARY TO TRIAL**

### **§17.1. Depositions.**

#### **1 .When may be taken.**

If it appears that a prospective witness may be unable to attend or may be prevented from attending a trial or hearing, that his testimony is material, and that it is necessary to take his deposition in order to prevent a failure of justice, the court, at any time after the filing of a complaint or an indictment, upon motion made upon notice to the other parties, may order that his testimony be taken by deposition and that any designated books, papers, documents, or portable things, not privileged, be produced at the same time and place.

#### **2.How taken.**

Depositions shall be taken upon such notice as in the manner provided in the Civil Procedure Law for the taking of depositions in pending actions. However, where a deposition is taken at the instance of the Republic, unless the defendant shall otherwise request as herein provided, the examination shall be conducted only by oral questions, and the defendant shall have the right to be present at the taking thereof and, if in custody, shall be produced at the examination and kept in the presence of the witness during the examination by the officer having the defendant in custody; the Republic shall pay the reasonable expenses of travel and subsistence of the defendant and his attorney in attending such examination. At the request of a defendant, the court may direct that the examination on a deposition may be taken on written interrogatories in accordance with the procedure provided in the Civil Procedure Law for the taking of depositions outside Liberia.

#### **3.Joint defendants.**

When persons are jointly indicted, all defendants must be given notice of the time and place of the taking of a deposition and an opportunity to be present thereat.

#### **4.Use.**

At the trial or upon any hearing any part or all of a deposition, so far as admissible under the rules of evidence, may be used provided the court finds: (a) that the witness is dead; or (b) that the witness is out of the Republic of Liberia, unless it appears that the absence of the witness was procured by the party offering the deposition; or (c) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment under sentence; or (d) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may be used by any party for the purpose of impeaching the testimony of the deponent as a witness. If only a part of a deposition is read in evidence by a party, an adverse party may require him to read all of it which is competent and relevant to the part read and any party may read other parts.

#### **5.Objections to admissibility.**

Objections to receiving in evidence a deposition or part thereof may be made as provided in the Civil Procedure Law.

## **6. Indigent defendants; payment of expenses of counsel.**

If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expenses of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the Republic. In that event the proper authority of the Government shall be notified and cause the payment to be made accordingly.

Prior legislation: L. 1969-70, CrPL 2: 1701; 1956 Code 8:187-193.

## **§17.2. Pretrial examination of books and records.**

The court, on motion, may direct that books, papers, documents, or other things designated in a subpoena duces tecum be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence any may upon their production permit such books, papers, documents, or other things or portions or parts thereof to be examined and copies thereof to be made by the parties and their attorneys.

Prior legislation: L. 1969-70, CrPL 2: 1702; 1956 Code 8:196.

## **§17.3. Subpoenas.**

### **1. Issuance and service.**

At the request of either the prosecuting attorney or the defendant, a subpoena commanding each person to whom it is directed to attend and give testimony at a specified time and place or to produce books, documents, or other things designated therein or both, shall issue and may be served as provided in the Civil Procedure Law.

### **2. Disobedience of subpoena.**

Failure by a person without adequate excuse to comply with a subpoena served upon him shall be punishable as contempt of court.

### **3. Payment of fees and traveling expenses.**

No fees shall be charged for the issuance and service of a subpoena in a criminal action and the Republic shall furnish transportation to the witness subpoenaed or pay his authorized traveling expenses.

Prior legislation: L. 1969-70, CrPL 2: 1703; 1956 Code 8: 195, 197, 198, 199, 200.

## **§17.4. Names and addresses of prosecution witnesses to be furnished; exceptions.**

### **1 .Original and amended lists; time of filing and serving.**

Within five days after an arraignment upon an indictment, the prosecuting attorney shall file with the clerk of the court a list of the witnesses he intends to have testify at the trial together with their last known addresses and shall serve a copy of the list upon the defendant. The prosecuting attorney may amend the list by adding additional names of witnesses thereto together with their last known addresses at any time before trial as the court may be order permit. The order shall provide that a copy of the amended list shall be served on the defendant within a reasonable time before trial, to be fixed by the court.

### **2. When testimony of unnamed witnesses permitted.**

The trial court may permit witnesses not named in an original or amended list to testify when the names of the additional witnesses were not known and could not have been obtained by the

prosecuting attorney by the exercise of due diligence prior to trial.

### **3. Nonapplication to rebuttal witnesses.**

The requirements of paragraph 1 of this section shall not apply to rebuttal witnesses.

Prior legislation: L. 1969-70, CrPL 2: 1704.

## **Chapter 18. DISMISSAL OF PROSECUTION**

### **§18.1. Dismissal by prosecuting attorney.**

The prosecuting attorney may by leave of court file a dismissal of an indictment or complaint or of a count contained therein as to either all or some of the defendants. The prosecution shall thereupon terminate to the extent indicated in the dismissal.

Prior legislation: L. 1969-70, CrPL 2: 19801; 1956 Code 8:202.

### **§18.2. Dismissal by court for failure to proceed with prosecution.**

Unless good cause is shown, a court shall dismiss a complaint against a defendant who is not indicted by the end of the next succeeding term after his arrest for an indictable offense or his appearance in court in response to a summons or notice to appear charging him with such an offense. Unless good cause is shown, a court shall dismiss an indictment if the defendant is not tried during the next succeeding term after the finding of the indictment. A court shall dismiss a complaint charging a defendant with an offense triable by a magistrate or justice of the peace if trial is not commenced within fifteen days after the arrest of the defendant or his appearance in court in response to a summons or notice to appear.

Prior legislation: L. 1969-70, CrPL 2: 1802; L. 1956 Code 8:203; Rev. Stat. §790.

### **§18.3. Effect of dismissal.**

Dismissal of an indictment or complaint under section 18.1 or 18.2 at any time before the jury is impaneled and sworn or, if the case is to be tried by the court, before the court has begun to hear evidence, shall not constitute a bar under the provisions of section 3.1 to a subsequent prosecution.

Prior legislation: L. 1969-70, CrPL 2: 1803.

## **Chapter 19. THE TRIAL JURY**

### **§19.1. Number of jurors; qualifications; alternates.**

A jury for the trial of a criminal action shall be composed of twelve persons with the qualifications specified in the Judiciary Law and entitled to the exemptions provided in that title. In addition to the regular panel, there jurors shall be called and impaneled to sit as alternate jurors. The provisions of section 22.2 of the Civil Procedure Law shall be applicable to the alternate jurors.

Prior legislation: L. 1969-70, CrPL 2: 1901; 1956 Code 8:250.

### **§19.2. Selection and summoning of jurors; voir dire.**

The jurors shall be selected, summoned, and examined in the same manner as jurors in a civil action as provided in the Civil Procedure Law.

Prior legislation: L. 1969-70, CrPL 2: 1902; 1956 Code 8:250.

### **§19.3. Challenges.**

#### **1.Right to challenge.**

The Republic or the defendant may challenge the panel or an individual juror.

#### **2.Challenge to the panel.**

A challenge to the panel may be made on the ground that the jurors were not selected or drawn according to law.

#### **3.Challenge for cause.**

A party may challenge a juror on the ground that he is disqualified under the Judiciary Law or by reason of any interest or bias. Such a challenge may be made only before the juror is sworn, except that the court may for good cause permit it to be made after the juror is sworn but before any evidence is presented.

#### **4.Waiver of objection.**

Failure by a party to challenge the panel or to challenge a juror under paragraph 3 of this section shall be deemed a waiver of the right to object and shall foreclose the right to move for a new trial on such grounds or to raise the objection at any subsequent time; provided that a party may be entitled to raise the objection at a later time if he shows that a juror made a false answer to a material question concerning his qualifications.

#### **5.Rulings upon challenges.**

A challenge to a panel or to an individual juror shall be heard and determined by the court. Upon the trial of a challenge, witnesses produced by the parties and, if the challenge is to an individual juror for cause, the juror himself, shall be examined on oath by the court and may be so examined by either party with the permission of the court. If the challenge to an individual juror is sustained, he shall be discharged from the trial of the cause.

#### **6. Peremptory challenges.**

The Republic and the defendant shall each be allowed three peremptory challenges, except that if the defendant is being tried for a capital offense, he shall be entitled to twelve peremptory challenges and the Republic to six. On the trial of joint defendants for a noncapital offense, each defendant shall be entitled to three peremptory challenges, and the Republic to three.

Prior legislation: L. 1969-70, CrPL 2: 1903; 1956 Code 8:251, 252; L. 1912-13, 13; L. 1900-01, 21 (2nd).

### **§19.4. Oath of jurors.**

Trial jurors in criminal cases shall be sworn in the manner provided by section 22.7 of the Civil Procedure Law as applicable to civil actions.

Prior legislation: L. 1969-70, CrPL 2: 1904; 1956 Code 8:250.

### **§19.5. Conduct and maintenance of the jury during trial.**

The provisions of section 22.8 of the Civil Procedure Law shall apply to the conduct and maintenance of a jury in a criminal action.

Prior legislation: L. 1969-70, CrPL 2: 1905;1956 Code 8:276.

## **Chapter 20.CONDUCT OF THE TRIAL**

### **§20.1. Right to trial by jury.**

#### **1 .Actions in which applicable.**

The defendant is entitled to trial by jury in a criminal action in which he is charged with any crime other than petty larceny or a petty offense.

#### **2. Issues to which applicable.**

In actions specified in paragraph 1 of this section, all issues of fact which under the Constitution the defendant is entitled to have tried by jury shall be so tried unless the defendant waives trial by jury as provided in section 20.2 of this title. Other issues of fact and all issues of law shall be determined by the court. The jury shall apply to the facts the law as stated to them by the court.

Prior legislation: L. 1969-70, CrPL 2:2001; 1956 Code 8:260.

### **§20.2. Waiver of trial by jury.**

In all cases except where a sentence of death may be imposed, trial by a jury may be waived by a defendant who has the advice of counsel or who is himself an attorney. Such waiver shall be made in open court and entered of record.

Prior legislation: L. 1969-70, CrPL 2:2002.

### **§20.3. Determination of issues of fact when jury is waived.**

Issues of fact shall be determined by the court in cases in which trial by the jury has been waived. In a case tried without a jury the court shall make a general finding.

Prior legislation: L. 1969-70, CrPL 2:2003.

### **§20.4. Order of trial.**

After the jury is selected and sworn and before any witnesses are called, the prosecution shall be entitled to make an opening statement to the jury, followed by introduction of evidence for the Republic. The defendant may then make an opening statement and present his evidence, including his rebutting testimony. The prosecution is then entitled to introduce its rebutting testimony. At the close of all the evidence, the prosecution may make an opening argument, after which the defendant may offer his argument in reply. The prosecution may then have an opportunity to present the closing argument for the republic.

Prior legislation: L. 1969-70, CrPL 2:2004; 1956 Code 8:263-265.

### **§20.5. Official stenographic reporter.**

An official stenographic reporter shall attend the court in all criminal cases tried in the Circuit Courts. The reporter shall make a stenographic report of all oral testimony before the court, and also any other occurrence or matter in connection with the trial when directed by the court or requested by either party.

Prior legislation: L. 1969-70, CrPL 2:2005.

### **§20.6. Exceptions.**

An exception shall be noted by a party at the time the court makes any order, decisions, ruling, or comment to which he objects. Failure to note an exception to any such action shall prevent assigning it as error on review by the appellate court. The party who excepts in entitled to have his exception noted in the minutes of the court.

Prior legislation: L. 1969-70, CrPL 2:2006; 1956 Code 8:272.

### **§20.7. Summary of evidence by the judge.**

At the time of instructing the jury, the judge may sum up the evidence and instruct the jury that they are to determine the weight of the evidence and the credit to be given to the witnesses.

Prior legislation: L. 1969-70, CrPL 2:2007.

### **§20.8. Instructions to the jury.**

#### **1. Prior to retirement of the jury.**

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court shall instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. The court shall instruct the jury on every issue of law arising out of the facts even though no requests to charge thereon have been submitted by counsel. The court shall instruct the jury in writing if requested and may give its instructions in writing on its own motion. No party may assign as error all or any portion of the charge or any omission therefrom unless he excepts thereto before the jury retires to consider its verdict.

#### **2. After retirement of the jury.**

The jury may at any time during deliberations ask the court for instructions on any point, and the court shall, if the request is proper, give the jury such instructions.

Prior legislation: L. 1969-70, CrPL 2:2008; 1956 Code 8:267.

### **§20.9. Disability of the judge.**

If by reason of absence from the judicial circuit, death, sickness, or other disability, the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilty, any other judge regularly sitting in or assigned to the circuit may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for some other reason, he may in his discretion grant a new trial.

Prior legislation: L. 1969-70, CrPL 2:2009; 1956 Code 8:322.

### **§20.10. Motion for judgment of acquittal.**

The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the Republic is not granted, the defendant may offer evidence without having reserved the right.

Prior legislation: L. 1969-70, CrPL 2:2010; 1956 Code 8:266.

### **§20.11 .Verdicts.**

### **1.Procedure on retirement of jury.**

After hearing the instructions of the court, the jurors shall retire from the courtroom to consider their verdict. The court shall appoint one of the jurors foreman or instruct the jurors to select one of their number as foreman.

### **2. Form of verdict.**

The verdict shall be unanimous and shall be guilty or not guilty. If different offenses are charged in the indictment, the jurors shall, if they convict the defendant, make it appear by their verdict on which counts, if the indictment is divided into counts, or of what offenses, they find him guilty.

### **3.Return of verdict.**

The verdict shall be returned to the judge in open court.

### **4.Several defendants.**

If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried by another jury.

### **5.Conviction of lesser offense.**

The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

### **6. Disposition of defendant on verdict of guilty.**

If a verdict of guilty is rendered, the defendant shall, if in custody, be remanded. If he is at large on bail, he may continue at large under the terms of the bail bond to await sentence or pending appeal unless bail is altered or unless he was convicted of a capital offense. If he is at large without bail, and the offense of which he was convicted is not a capital offense, the court may allow him to continue at large without bail, or cause him to be arrested and demand bail as a condition of his release.

### **7.Poll of jury.**

When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury shall be discharged and a new trial awarded.

### **8.Discharge of jury.**

After the jurors have retired to consider their verdict, the court shall discharge them when:

- (a) Their verdict has been recorded;
- (b) A necessity exists for their discharge; or
- (c) Upon the expiration of such time as the court deems proper, there is no reasonable probability that the jurors can agree upon a verdict.

Prior legislation: L. 1969-70, CrPL 2:2011; 1956 Code 8:277-280; Rev. Stat. §394.

## **Chapter 21 .EVIDENCE**

### **§21.1. Rules of evidence applicable in criminal proceedings.**

The admissibility of evidence and the competency and privileges of witnesses in all criminal proceedings, except as otherwise provided by statute, shall be governed by:

- (a) The rules of evidence set forth in the Criminal Procedure Law in so far as the same are applicable;
- (b) The applicable rules of evidence in civil actions as set forth in the Civil Procedure Law when the rules set forth in the Criminal Procedure Law are not applicable; and
- (c) The principles of the common law of evidence as they may be interpreted by the courts of the Republic of Liberia in the light of reason and judicial experience if there are no applicable provisions in either the Criminal Procedure Law or the Civil Procedure Law.

Prior legislation: L. 1969-70, CrPL 2:2101; 1956 Code 8:270.

### **§21.2. Limitations on evidence of conviction of crime as affecting credibility.**

#### **1. Inadmissible evidence to impair credibility of witness.**

Evidence of the conviction of a witness for an offense not involving dishonesty or false statement shall be inadmissible for the purpose of impairing his credibility.

#### **2. Additional restriction when defendant is witness.**

If the witness is the defendant in a criminal proceeding, no evidence of his conviction of an offense involving dishonesty or false statement shall be admissible for the sole purpose of impairing his credibility unless he has first introduced evidence admissible solely for the purpose of supporting his credibility.

Prior legislation: L. 1969-70, CrPL 2:2102.

### **§21.3. Self-incrimination; privilege and exceptions.**

Every natural person has a privilege to refuse to disclose in any action or proceeding, civil, criminal, quasi-criminal or administrative, or to a public official of the Republic or any governmental agency or division thereof, any matter that may incriminate him, subject to the following:

- (a) A public official or any person who engages in any activity, occupation, profession, or calling does not have the privilege to refuse to disclose any matter which the statutes or regulations governing the office, activity, occupation, profession, or calling require him to record or report or disclose concerning it;
- (b) A person who is an officer, agent, or employee of a corporation or other association, does not have the privilege to refuse to disclose any matter which the statutes or regulations governing the corporation or association or the conduct of its business require him to record or report or disclose.

Prior legislation: L. 1969-70, CrPL 2:2103; 1956 Code 8:274.

### **§21.4. Admissions, statements, and confessions made by defendant to government officers; prerequisites for admission in evidence.**

Any admission or statement, including a confession of guilt, made by a defendant during an interrogation, interview, examination, or other inquiry by a peace officer or other employee or representative of the Republic shall not be admissible in evidence in a criminal prosecution against him until it is established by the prosecution that it was made voluntarily, and that the rights to be



accorded an accused set forth in paragraphs 2, 3, 4, and 5 of section 2.2, in section 2.3 and in section 10.11 of this title have been complied with and that either legal counsel was made available to the defendant if such right was requested by him or that such right was understandingly waived by him.

Prior legislation: L. 1969-70, CrPL 2:2014.

## **Chapter 22. POST-TRIAL MOTIONS**

### **§22.1. Motion for new trial.**

#### **1 .Power to grant.**

When a verdict has been rendered against the defendant, the court on motion of the defendant may grant a new trial on any of the grounds specified in paragraph 2 of this section. When the defendant has been found guilty by the court, a motion for new trial may be granted only on the ground of newly discovered evidence.

#### **2.Grounds.**

The following constitute grounds for granting a new trial:

- (a)That the jurors decided the verdict by lot or by any other means than a fair expression of opinion on the part of all the jurors;
- (b)That the jury received evidence out of court other than that resulting from a view of the premises;
- (c)That a juror has been guilty of misconduct;
- (d)That the prosecuting attorney has been guilty of misconduct;
- (e)That the verdict is contrary to the weight of the evidence;
- (f)That the court erred in the decision of any matter of law arising during the course of the trial;
- (g)That the court misdirected the jury on a matter of law or refused to give a proper instruction which was requested by the defendant;
- (h)That new and material evidence has been discovered which if introduced at the trial would probably have changed the verdict or finding of the court and which the defendant could not with reasonable diligence have discovered and produced upon the trial;
- (i)That for any cause not due to his own fault the defendant has not received a fair and impartial trial.

#### **3.Time limit.**

A motion for a new trial on the ground of newly discovered evidence may be made at any time after a verdict or finding of guilty. If an appeal is pending, the motion shall be made before the appellate court. A motion for a new trial on any other ground shall be made within four days after verdict.

#### **4. Procedure on the new trial.**

If a new trial is granted, it shall proceed in all respects as if no former trial had been had. A defendant who has been convicted of a lesser degree of an offense than that charged in the indictment, may on retrial be convicted of the offense that was charged; but a defendant against whom several offenses have been expressly charged in the same indictment may not on retrial be convicted of an offense charged in the indictment of which he was acquitted on the first trial. The former verdict or finding shall not be used or referred to in evidence or argument on the new trial.

Prior legislation: L. 1969-70, CrPL 2:2201; 1956 Code 8:330, 301.

### **§22.2. Motion in arrest of judgment.**

The court on motion of a defendant shall arrest judgment if the indictment does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within five days after verdict or finding of guilty, or after plea of not guilty. The motion shall be heard before judgment is rendered. If judgment is arrested, the court shall discharge the defendant from custody, and if he has been released on bail, he and his sureties are exonerated and if money has been deposited as bail, it shall be refunded.

Prior legislation: L. 1969-70, CrPL 2:2202; 1956 Code 8:310.

### **§22.3. Motion to withdraw plea of guilty.**

A motion to withdraw a plea of guilty may be made at any time before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

Prior legislation: L. 1969-70, CrPL 2:2203.

## **Chapter 23. JUDGMENTS**

### **§23.1. Definition of judgment and sentence.**

The term judgment as used in this chapter means adjudication by the court that the defendant is guilty or not guilty. The term sentence as used in this chapter means the adjudication by the court of the method of treatment of a defendant found to be guilty.

Prior legislation: L. 1969-70, CrPL 2:2301.

### **§23.2. Time of judgment and sentencing.**

If the defendant is acquitted, judgment shall be rendered immediately. If the defendant is convicted, judgment shall be rendered and sentence pronounced without unreasonable delay, and after the receipt of a presentence report if such report is requested by the court. In no case, unless the defendant expressly waives his right to move in arrest of judgment or for a new trial, shall judgment be rendered or sentence pronounced before the expiration of five days after a verdict or finding of guilty, and after the overruling of any motion in arrest of judgment or for a new trial.

Prior legislation: L. 1969-70, CrPL 2:2302; 1956 Code 8:321.

### **§23.3. Procedure on Judgment and sentencing.**

Judgment shall be rendered and sentence pronounced in open court. The court shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The defendant may be heard personally or by counsel.

Prior legislation: L. 1969-70, CrPL 2:2303; 1956 Code 8:321.

### **§23.4. Form of judgment; filing.**

A judgment of conviction shall set forth the plea, the verdict, or finding, and the adjudication and sentence. If sentence is imposed on several counts, the court shall state separately the sentence which it is imposing on each count. The judgment shall be signed by the judge and entered by the clerk.

Prior legislation: L. 1969-70, CrPL 2:2304; 1956 Code 8:320.

### **§23.5. Power of court to modify sentence.**

The court may correct an illegal sentence at any time. The judge who imposed a sentence may reduce it during term time.

Prior legislation: L. 1969-70, CrPL 2:2305; 1956 Code 8:323.

### **§23.6. Motion to vacate or correct illegal sentence.**

#### **1 .Grounds for motion.**

A person who has been convicted in a criminal action in the Circuit Court who claims that sentence was imposed on him in violation of the Constitution or laws of Liberia or that the court was without jurisdiction to impose such a sentence, or that the sentence was in excess of the maximum authorized by law, or that it is otherwise subject to collateral attack, may move the court in which the sentence was imposed to vacate, set aside, or correct the sentence.

#### **2.Time for motion.**

A motion for such relief may be made at any time subject to the limitations of paragraph 1 of this section.

#### **3.Procedure.**

Unless the motion and the files and records of the case conclusively show that the moving party is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting attorney, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. If the court finds that the sentence was imposed without jurisdiction, or that it was not authorized by law or was otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the moving party as to render the judgment vulnerable to collateral attack, the court shall vacate and set aside the judgment and shall discharge the moving party if he is imprisoned, or resentence him, or grant a new trial, or correct the sentence, as may appear appropriate.

#### **4.Presence of the moving party.**

The court may entertain and determine such motion without requiring the presence of the moving party at the hearing.

#### **5.Waiver of claims.**

All grounds for relief claimed by a convicted person under this sentence must be raised in one motion, and any grounds not so raised are waived unless the court on hearing a subsequent motion finds grounds for relief asserted therein which could not reasonably have been raised in the original motion.

#### **6.Appeal.**

An appeal may be taken to the appellate court from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

Prior legislation: L. 1969-70, CrPL 2:2306.

## **Chapter 24.APPEALS FROM THE CIRCUIT COURTS**

### **§24.1. Provisions applicable to review of criminal cases tried in Circuit Courts.**

The provisions of this chapter shall be applicable to appeals in criminal cases from the Circuit Courts. The provisions of chapter 16 of the Civil Procedure Law relating to writs of error and writs of certiorari shall be applicable to review of criminal cases as well as to civil cases, except that the petitioner seeking review of a judgment or order in a criminal case is not required to furnish a bond to the respondent pending decision on the petition.

Prior legislation: L. 1969-70, CrPL 2:2401.

#### **§24.2. Right of appeal by defendant.**

An appeal may be taken by the defendant as of right from:

- (a) A final judgment of conviction; or
- (b) A sentence on the ground that it is illegal or excessive.

Prior legislation: L. 1969-70, CrPL 2:2402; 1956 Code 8:354; Rev. Stat. §§423, 791.

#### **§24.3. Right of appeal by the Republic.**

An appeal may be taken as of right by the Republic from:

- (a) An order granting a motion by the defendant to dismiss the indictment; or
- (b) An order granting a motion for judgment of acquittal.

Prior legislation: L. 1969-70, CrPL 2:2403; 1956 Code 8:355; L. 1950-51, ch. XII, §3; L. 1938, ch. XXIV, §5.

#### **§24.4. Designation of parties; title of case.**

The party appealing shall be called the appellant, and the adverse party shall be called the appellee, but the title of the case shall not be changed because an appeal is taken.

Prior legislation: L. 1969-70, CrPL 2:2404; 1956 Code 8:351; Rev. Stat. §423.

#### **§24.5. Joint or several appeals.**

When several defendants are tried jointly, any one or more of them may appeal separately or any two or more of them may join in an appeal.

Prior legislation: L. 1969-70, CrPL 2:2405; 1956 Code 8:352.

#### **§24.6. Stay of enforcement of judgment.**

The taking of an appeal shall stay the enforcement of the judgment, sentence or order from which the appeal is taken and arrest all further proceedings pending decision on the appeal.

Prior legislation: L. 1969-70, CrPL 2:2406; 1956 Code 8:370.

#### **§24.7. Requirements for completion of appeal.**

##### **1 .Necessary steps.**

The following shall be necessary for the completion of an appeal:

- (a) Announcement of the taking of the appeal;
- (b) Filing of the bill of exceptions;

(c) Service and filing of notice of completion of the appeal.

Failure to comply with any of the requirements stated in this paragraph within the time allowed by statute shall be ground for dismissal of the appeal.

## **2. Appeal bond and motion for new trial unnecessary.**

No appeal bond need be furnished on appeal in a criminal case. Neither is a motion for a new trial a prerequisite for the completion of an appeal in any such case.

Prior legislation: L. 1969-70, CrPL 2:2407; 1956 Code 8:373; Rev. Stat. §§424, 425.

### **§24.8. Time and manner of taking appeal.**

An appeal from a judgment, sentence or order shall be taken by oral announcement in open court at the time of rendition of the judgment, or imposition of sentence, or granting of the order from which the appeal is taken. When a court renders judgment against or imposes sentence on a defendant not represented by counsel, the defendant shall be advised of his right to appeal from such judgment or sentence and asked whether he desires to appeal.

Prior legislation: L. 1969-70, CrPL 2:2408; 1956 Code 8:373(b).

### **§24.9. Filing of bill of exceptions; notice of completion of appeal.**

A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, sentence, or other matter excepted to and relied upon for the appeal, together with a statement of the basis of the exceptions. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment, imposition of the sentence, or granting of the order appealed from. Within ten days after presentation of the bill of exceptions, the judge shall sign it, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed by the appellant with the clerk of the trial court within sixty days after the rendition of the judgment, imposition of the sentence, or granting of the order appealed from. On application of the appellant, the clerk shall thereupon issue a notice of the completion of the appeal, one copy of which shall be served by the appellant on the appellee, and another copy of which shall be filed with the clerk of the Supreme Court. The original of such notice shall be filed in the office of the clerk of the trial court.

Prior legislation: L. 1969-70, CrPL 2:2409; 1956 Code 8:356, 373-375; Rev. Stat. §§424, 425.

### **§24.10. Tolling of time for acts required to complete appeal.**

If, after an appeal is announced, the counsel for the appellant dies or becomes physically or mentally incapacitated or is disbarred or suspended before the expiration of the time for filing of a bill of exceptions, the time for the doing of such act shall commence to run anew from the date of the death, incapacitation, disbarment, or suspension of such counsel. A bill of exceptions shall not be filed by a new attorney of record within the extended time allowed by this section until he has given notice of change of counsel by filing a statement to that effect in the office of the clerk of court.

Prior legislation: L. 1969-70, CrPL 2:2410.

### **§24.11 . Record on appeal.**

The clerk of the trial court shall make up the record on appeal which shall consist of certified copies of all papers in the proceeding filed in the lower court, including the indictment, all entries of record made by the clerk, all writs and returns thereon which have been filed, notices, motions, orders, instructions to the jury insofar as they were reduced to writing, the verdict or finding, the judgment and sentence, the bill of exceptions, and the transcript of the testimony in its entirety.

On appeal by the defendant from a sentence on the ground that it is excessive, the record on appeal shall include a copy of any presentence report that was prepared and of any statement filed by the sentencing judge concerning his reasons for the sentence. The clerk of the trial court shall transmit at least six copies of the record on appeal to the appellate court within ninety days after rendition of the judgment, or imposition of the sentence, or granting of the order from which the appeal is taken. A copy shall be served on the appellee within the same time limit. The clerk of the appellate court shall docket the case forthwith and forward a receipt for the record to the clerk who transmitted it. No fees are payable to the clerk of any court for preparation or transmission of the record on appeal or for filing or docketing the appeal.

Prior legislation: L. 1969-70, CrPL 2:2411; 1956 Code 8:375, 376, 379; Rev. Stat. §428.

#### **§24.1 2. Correction or modification of record.**

If any material matter is, by error, accident, or design, omitted from the record on appeal or misstated therein, the party affected thereby or the parties by stipulation may apply to the appellate court to have the error or misstatement corrected; or the appellate court may act on its own initiative. When necessary, the appellate court shall issue a mandate to the trial court requiring the judge thereof to have the record completed and to return it forthwith or to transmit to the appellate court a certified supplementary record.

Prior legislation: L. 1969-70, CrPL 2:241 2.

#### **§24.1 3. Order to inspect papers and exhibits.**

Whenever the appellate court is of the opinion that it should inspect the original papers or exhibits instead of copies, it shall make an appropriate order therefor and for the safekeeping, transportation, and return of such originals in such manner as it deems proper.

Prior legislation: L. 1969-70, CrPL 2:241 3.

#### **§24.14. Scheduling appeal for argument.**

When an appeal is docketed, the case shall be scheduled for argument. All appeals in criminal cases shall have precedence over other appeals and shall be placed first upon the calendar for argument. Appeals in cases where a sentence of death has been imposed shall have precedence over all other appeals.

Prior legislation: L. 1969-70, CrPL 2:2414.

#### **§24.1 5. Briefs.**

Immediately upon the scheduling of a case for argument, six copies of briefs on both sides shall be filed in the office of the clerk of the Supreme Court. One copy shall be kept there with a record of the case and the others shall be distributed among the Justices. Counsel for each party shall serve a copy of his brief on counsel for opposing parties at the call of the case or before. The briefs shall contain a statement of the issue and the points to be argued with supporting legal authorities. Sufficient quotations from the latter shall be included to give the Court a clear understanding of the purport of the authority cited. References to testimony shall include a statement of the folio or page where it appears in the record.

Prior legislation: L. 1969-70, CrPL 2:241 5.

#### **§24.1 6. Supervision of appeal in appellate court.**

The supervision and control of the proceedings on appeal shall be in the appellate court from the time the notice of completion of the appeal is filed.

Prior legislation: L. 1969-70, CrPL 2:2416; 1956 Code 8:377.

### **§24.1 7. Dismissal of appeal for failure to proceed.**

An appeal may be dismissed by the trial court on motion for failure of the appellant to complete the appeal and file notice of its completion as required by this chapter, and by the appellate court for failure of the appellant to appear on the hearing of the appeal.

Prior legislation: L. 1969-70, CrPL 2:2417; 1956 Code 8:380.

### **§24.1 8. Extent of review.**

#### **1. Points of law first raised in appellate court.**

The appellate court shall not consider points of law not raised in the court below and argued in the briefs, except that it may in any case, in the interests of justice, base its decision on a plain error apparent in the record.

#### **2. Determination of sufficiency of evidence to support judgment.**

Upon an appeal by the defendant from the judgment, the appellate court shall review the evidence to determine if it is sufficient to support the judgment where this is a ground of appeal and may review the evidence whether its insufficiency is a ground of appeal or not. Upon an appeal from the judgment by a defendant who has been sentenced to death, the appellate court shall review the evidence to determine if the interests of justice require a new trial whether the insufficiency of the evidence is a ground of appeal or not.

Prior legislation: L. 1969-70, CrPL 2:2418; 1956 Code 8:390.

### **§24.1 9. Judgment of the appellate court.**

#### **1. On appeal from judgment of conviction.**

On appeal from a judgment of conviction, the appellate court may reverse, affirm, or modify the judgment. When the judgment is reversed, the appellate court shall either order that the defendant be discharged or, if it thinks proper, grant a new trial.

#### **2. On appeal by defendant when sentence is illegal.**

On appeal by the defendant either from a judgment of conviction or from sentence, if an illegal sentence has been imposed upon a lawful verdict or finding of guilty by the trial court, the appellate court shall correct the sentence to correspond to the verdict or finding and to the requirements of the statute. The sentence as corrected shall be enforced by the court from which the appeal is taken.

#### **3. On appeal by defendant when sentence is excessive.**

On appeal from a sentence on the ground that it is excessive, the court shall have the power to reduce the extent or duration of the sentence imposed, if, in its opinion, the conviction is proper but the sentence imposed is too severe. In such a case, the appellate court shall impose any legal sentence, not more severe than that originally imposed, which in its opinion is proper. Such sentence shall be enforced by the court from which the appeal was taken.

#### **4. On appeal by the Republic from an order.**

On an appeal by the Republic from any order, the appellate court may affirm, or reverse, or modify such order. If an order dismissing an indictment or any count thereof is reversed, the appellate court shall direct that the defendant be tried on the indictment. If an order arresting judgment is

reversed, the appellate court shall direct that the judgment of conviction be entered against the defendant.

Prior legislation: L. 1969-70, CrPL 2:2419; 1956 Code 8:390.

#### **§24.20. Entry of order; remittitur.**

##### **1 .Entry of order in appellate court.**

An order of a court to which an appeal is taken shall be entered in the office of the clerk of the court.

##### **2.Remittitur and further proceedings.**

A copy of the order of the appellate court, to be known as the mandate, shall be remitted to the clerk of the lower court. The entry of such order shall be authority for any further proceedings in the trial court and it shall be the duty of the trial court to carry out the mandate of the appellate court. Any judgment directed by the mandate of the appellate court shall be entered by the clerk of the trial court.

Prior legislation: L. 1969-70, CrPL 2:2420.

### **Chapter 25. PARDONS, REPRIEVES, AND COMMUTATIONS**

#### **§25.1. Power of President; recommendations by Board of Parole.**

The President has the sole power to grant or deny applications for pardons, reprieves, and commutations to persons convicted of public offenses. To assist him in his determinations on such applications, the President may request the Board of Parole to investigate the merits of the applications and make recommendations thereon in accordance with the procedure prescribed in this chapter.

Prior legislation: L. 1969-70, CrPL 2:2501; 1956 Code 420, 421; Rev. Stat. §§729, 793.

#### **§25.2. Form of applications.**

All applications for pardons, reprieves, and commutations shall be made in writing addressed to the President, and signed by the person convicted or another person in his behalf, and shall contain a statement of the crime of which the applicant was convicted, the sentence, the time served if the sentence was one of imprisonment, or the amount paid if a fine was imposed, and the reasons for which the pardon, reprieve, or commutation should be granted. A copy of the application shall be served on the Attorney General.

Prior legislation: L. 1969-70, CrPL 2:2502; 1956 Code 420; Rev. Stat. §792.

#### **§25.3. Referral to Board of Parole; hearings.**

The President may refer any application addressed to him under this chapter to the Board of Parole for investigation and for its recommendations regarding its granting or denial. The Board of Parole shall meet periodically at such intervals as it may establish, but in no case less than twice yearly, to hear the applications referred to it by the President. In addition, the Board may be called in extraordinary session at any time at the summons of the President or of the Chairman of the Board. The Board shall inform the Attorney General, the prosecuting attorney of the county, territory, or district where the applicant was convicted, and the applicant a reasonable time before the hearing of any application. The Attorney General and prosecuting attorney may appear in person and the convicted person may appear by counsel at the hearing before the Board, to present evidence and arguments for or against the granting of the application.

Prior legislation: L. 1969-70, CrPL 2:2503.



#### **§25.4. Recommendations of the Board of Parole.**

As soon as possible after the hearing on an application, and on the basis of the evidence and arguments there presented and of any other information which the Board may have secured from other sources concerning the merits of the application, the Board shall make its recommendation to the President concerning the disposition of the application. The recommendation shall be accompanied by a statement of reasons and shall include a statement of the opinion of the Attorney General. Any member of the Board may make a dissenting recommendation. A full record of recommendation shall be kept in the office of the Board.

Prior legislation: L. 1969-70, CrPL 2:2504.

#### **§25.5. Conditional pardons.**

Pardons granted by the President may contain such conditions as he sees fit to impose. A warrant of arrest for the violation of a condition of pardon may be issued by the Board of Parole. Such a warrant shall be served personally upon the grantee of the pardon and shall authorize his incarceration in any detention facility designated by the Board. A hearing shall be held by the Board as soon as practicable to determine whether a violation of a condition of the pardon has occurred. At the hearing, the grantee of the pardon may admit, deny, or explain the violation charged, and may present proof in support of his contention. If the Board finds upon substantial evidence that the grantee of the pardon has violated a condition upon which it was granted, he shall be recommitted to prison to serve the remainder of his sentence.

Prior legislation: L. 1969-70, CrPL 2:2505; 1956 Code 8:422: Rev. Stat. §794.

#### **§25.6. Effect of pardon.**

##### **1 .Restitution of civil rights.**

Any person who is granted an unconditional pardon or a pardon to take effect on the performance of a condition precedent and who performs that condition shall be restored to his civil rights without further proceedings. Any person granted a pardon containing a condition the violation of which will operate to revoke the pardon shall not be so restored unless the terms of the pardon so provide.

##### **2. Provisions as to repeated offenders.**

In imposing a sentence which by law is increased because the defendant is a repeated offender, a crime for which a pardon has been granted, unless expressly granted on the grounds that the grantee is innocent of the crime charged, shall be considered a former offense.

Prior legislation: L. 1969-70, CrPL 2:2506; 1956 Code 8:424; L. 1869-70, 15 (1st).

#### **§25.7. Interim provisions.**

Until sections 25.1-25.5 of this chapter become effective, the procedure for obtaining a pardon, reprieve, or commutation shall be as follows: An application for a pardon, reprieve, or commutation shall be made to the President. Prior to the making of such application, written notice thereof shall be served on the Attorney General stating the day and hour when, and the grounds upon which such application will be made. Proof of such service shall be furnished the President, but the President may in his discretion act without such notice. The President may require the Attorney General and the prosecuting attorney of the county, territory, or district where the applicant was tried to furnish any information that may be desired with reference to the case and the background of the applicant.

Prior legislation: L. 1969-70, CrPL 2:2507; 1956 Code 8:420, 421; Rev. Stat. §792, 793.

## **Chapter 26.PROCEDURE IN INFERIOR COURTS**

### **§26.1. Application of provisions of other chapters.**

The procedure in criminal proceedings in courts of magistrates or justices of the peace shall be governed by the provisions of other chapters of this title except: (a) where the context clearly indicates that it should not apply; and (b) where the provisions of this chapter prescribe a different rule.

Prior legislation: L. 1969-70, CrPL 2:2601.

### **§26.2. Furnishing copy of complaint.**

A person before being tried by a magistrate or justice of the peace shall be furnished with a copy of the complaint a reasonable time before the trial if he requests a copy.

Prior legislation: L. 1969-70, CrPL 2:2602; 1956 Code 8:430

### **§26.3 Record of plea and issues of law.**

When the defendant is arraigned, the magistrate or justice of the peace shall record on the back of the writ the defendant's plea and any issue of law which he may raise. The latter may be raised orally.

Prior legislation: L. 1969-70, CrPL 2:2603; 1956 Code 8:431; J. P. Code §41.

### **§26.4. Trial of issue of mental disease or defect.**

If during a criminal prosecution triable before a magistrate or justice of the peace, the issue arises of the defendant's mental fitness to proceed or of the defendant's mental competence at the time of commission of the alleged offense, the case shall be certified to the Circuit Court for trial of such issue.

Prior legislation: L. 1969-70, CrPL 2:2604.

### **§26.5. Charge of higher crime in course of trial.**

If in the course of a trial before a magistrate or justice of the peace, it appears that the act forming the basis of the charge against the defendant constitutes a felony or a misdemeanor which the magistrate or justice of the peace lacks jurisdiction to try, the court shall suspend the trial and amend the complaint to state the more serious charge in lieu of or in addition to the offense for which the defendant was being tried. The court shall then proceed to hold a preliminary examination, and, if the evidence warrants, hold the defendant to answer for the offense charged in the amended complaint.

Prior legislation: L. 1969-70, CrPL 2:2605.

### **§26.6. Appeals from courts of magistrates or justices of the peace.**

#### **1 .Transmission of papers to appellate court.**

The magistrate or justice of the peace from whose judgment an appeal is taken shall within fifteen days after the appeal is taken transmit to the appellate court and file with the clerk thereof the complete file of papers in the case, including the copy of the warrant of arrest, summons, or notice to appear and the return thereon, the complaint, the record of the plea, any documents introduced in evidence on the trial, any motion papers, and the judgment and sentence.

#### **2. Trial de novo.**

On appeal from a judgment of conviction in a court of a magistrate or justice of the peace, the case shall be tried de novo.

Prior legislation: L. 1969-70, CrPL 2:2606; 1956 Code 8:391.

## **PART III Disposition of Offenders**

### **Chapter 31 .SENTENCING**

#### **§31.1. Authorized dispositions of natural persons.**

##### **1 .Limitations on forms of sentence.**

No person convicted of a crime, infraction, or petty offense as those terms are defined in the Penal Law shall be sentenced otherwise than in accordance with the provisions of this section.

##### **2.Capital offense.**

The court shall sentence a person who has been convicted of a capital offense to death by hanging.

##### **3.Forms of sentence for crimes generally.**

Except as provided in paragraph 2 of this section and subject to the applicable statutory provisions, the court may suspend the imposition of the sentence on a person who has been convicted of a crime or may sentence him as follows:

- (a)To pay a fine authorized by law;
- (b)To be placed on probation;
- (c)To imprisonment for a term authorized by law;
- (d)To fine and probation or fine and imprisonment,

Until chapters 33 and 43 and the coordinate provisions of chapter 41 become effective, no sentence of probation shall be imposed; and until that time a suspended sentence may be imposed only for a noncapital offense

- (a)When the defendant is under the age of sixteen years; or
- (b)When the defendant has never before been convicted of a crime.

##### **4. Restitution.**

The court may include in the sentence an order of restitution of the property or its value in favor of the person wrongfully deprived thereof. No sentence of imprisonment shall be imposed upon failure or inability of any person to comply with such an order, but it shall be enforced in the same manner as a civil judgment or, after the provisions of this title relating to probation become effective, in the manner provided by section 33.2 (2) (i).

##### **5.Further powers of the court.**

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.

Prior legislation: L. 1969-70, CrPL 2:3101.

#### **§31.2. Authorized dispositions of corporations and unincorporated associations.**

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 law.

Prior legislation: L. 1969-70, CrPL 2:3102.

### **§31.3. Indefinite sentences for certain felonies.**

A sentence to a penal institution for a felony punishable by more than one year's imprisonment shall be for an indefinite period. The court in fixing such a sentence shall not prescribe a maximum term of imprisonment, but the maximum term provided by statute for the offense for which the offender was convicted and sentenced shall apply in each case. If no minimum term is prescribed by statute, the court shall fix a minimum term which shall in no case exceed one-third of the maximum term provided by law for the offense for which the defendant was convicted, or five years, whichever is less. The minimum term for a sentence to life imprisonment shall be ten years, if not otherwise specified by statute.

Prior legislation: L 1969-70, CrPL 2:3103.

### **§31.4. Institution to which defendant committed.**

#### **1 .Commitment to institution suited to individual needs.**

A person sentenced to imprisonment or treatment in a correctional institution, whether for a definite or indefinite period, shall be committed by the sentencing judge to an institution appropriate to his individual needs as disclosed by the presentence report and by other information in the possession of the judge. The person sentenced shall be in the custody of the Division of Correction from the time of commencement of his sentence.

#### **2.Interim provision; commitment to county prison.**

Until such time as paragraph 1 of this section becomes effective, a defendant sentenced to prison shall be imprisoned in the central prison of the country in which he was convicted.

Prior legislation: L. 1969-70, CrPL 2:3104; 1957-58 Supp. 8:732, 732-A; L. 1955 (E. S. June), ch. XIV; 1956 Code 8:732; L. 1925-26, ch. VI.

### **§31.5. Presentence investigation and report.**

#### **1 .When mandatory.**

The court shall not impose sentence without first ordering the probation service of the court to make a presentence investigation of the defendant and according due consideration to a written report of such investigation where:

- (a)The defendant has been convicted of a crime punishable by more than one year's imprisonment;  
or
- (b)The defendant is less than twenty-one years of age and has been convicted of a crime; or
- (c)The defendant may be sentenced as a repeated offender under the Penal Law or as a multiple offender under section 31.6 of this title.

#### **2.When permitted.**

The court may order a presentence investigation in any other case.

#### **3.Data to be included.**

The presentence investigation shall include an analysis of the circumstances attending the commission of the crime, the defendant's history of delinquency or criminality, physical and mental conditions, 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 included.

#### **4. Order for psychiatric examination.**

Before imposing sentence, the court may order the defendant to submit to psychiatric observation and examination for a period of not exceeding ten days. The defendant may be remanded for this purpose to any available clinic or hospital, or the court may appoint a qualified psychiatrist or other physician to make the examination. The report of the examination shall be submitted to the court.

#### **5. Notice and opportunity to controvert.**

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

#### **6. Copies of reports.**

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

Prior legislation: L. 1969-70, CrPL 2: 3105.

#### **§31.6. Multiple sentence.**

When multiple sentences to probation or imprisonment or for a period of suspension are imposed on a defendant for more than one crime, including a crime for which a previous suspended sentence of probation has been revoked, or when a defendant who has previously been sentenced to probation or imprisonment or to a suspended sentence is subsequently sentenced to probation or imprisonment or to a suspended sentence for a crime committed either before or after the imposition of the former sentence, the terms for both sentences shall run concurrently.

Prior legislation: L. 1969-70, CrPL 2:3106; 1956 Code 27:40: Crim. Code §36.

### **Chapter 32. FINES**

#### **§32.1. Imprisonment in default of payment of fine.**

A person sentenced to pay a fine who does not immediately comply shall be sentenced to such a term of imprisonment as is necessary to liquidate the fine at the rate of fifty dollars per month.

Prior legislation: L. 1969-70, CrPL 2:3201; 1956 Code 27:42; L. 1949, ch. XXIX; Crim, Code §§37, 38; 1841 Digest, Act defining certain crimes, 2 Hub. 1469; Com. L. (Jan. 5, 1837), 2 Hub. 1344, 1354 (5th).

### **Chapter 33. SUSPENSION OF SENTENCE; PROBATION**

#### **§33.1. Criteria for withholding sentence of imprisonment and for placing the defendant on probation.**

##### **1. When imprisonment should be withheld.**

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

protection of the public because:

- (a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or
- (b) The defendant is in need of correctional treatment that can be provided most effectively by his imprisonment; or
- (c) Imprisonment will tend to deter commission of the same type of crime by others; or
- (d) A lesser sentence will depreciate the seriousness of the defendant's crime.

## **2. Considerations favoring withholding sentence of imprisonment.**

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

- (a) The defendant's criminal conduct neither caused nor threatened serious harm;
- (b) The defendant did not contemplate that his criminal conduct would cause or threaten serious harm;
- (c) The defendant acted under strong provocation;
- (d) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;
- (e) The victim of the defendant's criminal conduct induced or facilitated its commission;
- (f) The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained;
- (g) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for substantial period of time before the commission of the present crime;
- (h) The defendant's criminal conduct was the result of circumstances unlikely to recur;
- (i) The character and attitudes of the defendant indicate that he is unlikely to commit another crime;
- (j) The defendant is particularly likely to respond affirmatively to probationary treatment;
- (k) The imprisonment of the defendant would entail excessive hardship to himself or his dependent.

## **3. When probation should be granted.**

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 guidance and assistance that is provided by probation and if the probation service is able to provide such guidance and assistance.

Prior legislation: L. 1969-70, CrPL 2:3301; 1956 Code 8: 330, 331; L. 1949, ch. X, §§1-7; Crim. Code §33.

### **§33.2. Conditions of suspension or probation.**

#### **1 .Duty of court to attach conditions.**

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 as will be likely to assist him to do so.

## **2. Conditions that may be attached.**

The Court, as a condition of its order, may require the defendant:

- (a) To meet his family responsibilities;
- (b) To devote himself to a specific employment or occupation;
- (c) To undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose;
- (d) To pursue a prescribed secular course of study or vocational training;
- (c) 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 firearm or other dangerous weapon unless granted written permission;
- (h) To pay a fine in one sum or in several installments;
- (i) To make restitution of the fruits of his crime or to make reparation in an amount he can afford to pay, for the loss or damage caused thereby;
- (j) 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;
- (k) To report as directed to the court or the probation officer and to permit the officer to visit his home;
- (l) To post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations;
- (m) To satisfy and 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. Notice of conditions to defendant.**

The defendant shall be given written notice of any requirements imposed pursuant to this section, stated with sufficient specificity to enable him to guide himself accordingly.

## **4. Modification of conditions.**

During the period of the suspension or probation, the court, on application of the 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 this section. The court shall eliminate any requirement that imposes an unreasonable burden on the defendant. The court shall not increase the requirements imposed on the defendant except after a hearing upon written notice to the defendant of the grounds on which such action is proposed. The provisions of section 33.4 (3) shall be applicable to such hearing.

Prior legislation: L. 1969-70, CrPL 2:3302; 1956 Code 8:332; L. 1949, ch. X, §8.

### **§33.3. Period of suspension or probation; discharge.**

#### **1 .Duration of period; earlier discharge.**

When the court has suspended sentence or has sentenced the defendant to be placed on probation, the period of the suspension or probation shall be five years upon conviction of a felony or two years upon conviction of a misdemeanor or a petty offense, 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.

## **2. Effect of termination of period or discharge.**

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

Prior legislation; L. 1969-70, CrPL 2:3303.

## **§33.4. Procedure on revocation of suspension or probation.**

### **1 .Arrest.**

At any time during probation or suspension of sentence the court may issue a warrant for arrest of the defendant for violation of any of the conditions of release or a summons to answer to a charge of violation. Such summons shall be personally served on the defendant. If a probation officer has reasonable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order of probation or suspension or that he is about to do so and that an emergency situation exists so that awaiting action by the court would create an undue risk to the public or to the defendant, such probation officer may arrest the defendant without a warrant or may deputize any peace officer to do so. Upon such arrest, the probation officer shall immediately notify the court and shall submit in writing a report stating the grounds for the arrest.

### **2. Bail.**

Release of a defendant who has been arrested or has appeared in answer to a notice issued under paragraph 1 of this section shall be in the discretion of 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, the court having jurisdiction over his probation may commit him without bail, pending a determination of the charge by the court having jurisdiction thereof.

### **3. Hearing.**

The court shall not revoke a suspension or probation 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. The hearing of a person committed without bail shall be held without unnecessary delay.

### **4. Disposition.**

The court, if satisfied that the defendant has failed to comply with a condition imposed with the order of suspension or probation, or if he has been convicted of another crime, may revoke the suspension or probation and may sentence or resentence the defendant as provided in paragraph 5.

### **5.Sentence or resentence.**

When the court revokes a suspension or probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which he was convicted, except that the defendant shall not be sentenced to imprisonment unless:

(a)He has been convicted of another crime; or



(b)His conduct indicates that his continued liberty involves undue risk that he will commit another crime; or

(c)Such disposition is essential to vindicate the authority of the court.

## 6. Defendant who flees from justice.

If it appears that a defendant has violated the conditions of his release on suspension of sentence or on probation and a warrant has been issued for his arrest, which can not be served, the court shall determine whether the time from the issuing of the warrant to the date of his arrest or any part of it shall be counted as time served on the suspended sentence or probation.

Prior legislation: L. 1969-70, CrPL 2:3304.

### §33.5. Removal of disqualification or disability based on conviction.

When the court has suspended sentence or has sentenced the defendant to be placed on probation and the defendant has fully complied with the requirements imposed as a condition of such order and has satisfied the sentence, the court may order that so long as the defendant is not convicted of another crime, the judgment shall not constitute a conviction for the purpose of any disqualification or disability imposed by law upon conviction of a crime. Proof of a conviction as relevant evidence upon the trial or determination of any issue for the purpose of impeaching the defendant as a witness is not a disqualification or disability within the meaning of this section.

Prior legislation: L. 1969-70, CrPL 2: 3305.

### §33.6. Sentence of suspension or probation as final judgment.

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.

Prior legislation: L. 1969-70, CrPL 2:3306.

### §33.7. Effect of suspended sentence or sentence to probation for purpose of sentencing to subsequent crime.

Au adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for the purpose of imposing a sentence which by law is increased because the defendant is a repeated offender, although sentence was suspended or the defendant was sentenced to probation, provided that the time to appeal has expired and that the defendant was not pardoned on the ground of innocence.

Prior legislation: L. 1969-70, CrPL 2: 3307.

## Chapter 34. IMPRISONMENT

### §34.1. Types of institutions to be maintained.

The Department of Justice shall, insofar as appropriations allotted by the Legislature permit, establish and maintain types of institutions or separate parts of institutions to be used for the following purposes and of a number and size sufficient to accommodate the number of persons likely to be committed to them:

(a)Maximum-security prisons for aggressive or dangerous offenders who present a serious escape risk;

(b)Medium-security prisons for offenders of less aggressive or dangerous tendencies who offer less serious escape risks;

- (c) Minimum-security institutions, to include work camps and farms, for offenders who are not aggressive or dangerous and who offer little or no risk of escape;
- (d) Reformatories or vocational training schools or camps for young offenders;
- (e) Hospitals for chronically ill prisoners;
- (f) Institutions for the treatment of psychopaths, mental defectives, narcotic addicts, alcoholics, and other persons requiring psychiatric treatment;
- (g) Jails for detention of persons charged with crime and committed for hearing or for trial, with separate quarters for detention of persons under twenty-one;
- (h) Jails for detention of persons committed to secure their attendance as witnesses, and for other detentions authorized by law.

Prior legislation: L. 1969-70, CrPL 2:3401.

#### **§34.2. Segregation of persons committed to correctional institutions.**

In institutions or parts of institutions supervised by the Department of Justice, the following groups shall be segregated from each other:

- (a) Female prisoners from male prisoners;
- (b) Prisoners under the age of twenty-one from older prisoners;
- (c) Persons detained for hearing or trial from prisoners under sentence of imprisonment;
- (d) Persons detained for hearing or trial or under sentence, from material witnesses and other persons detained under civil commitment.

Prior legislation: L. 1969-70, CrPL 2: 3402.

#### **§34.3. Transfer of persons committed to correctional institutions.**

##### **1 .Transfer for physical or mental treatment.**

When a physician in a correctional institution finds that a prisoner suffers from a physical disease or defect, or when a physician or psychologist finds that a prisoner suffers from a mental disease or defect, the warden or other administrative head may order such prisoner to be segregated from other prisoners, and if the physician or psychologist, as the case may be, is of the opinion that he cannot be given proper treatment at that institution, the warden or other administrative head shall transfer him to another correctional institution where proper treatment is available or to a general hospital or mental institution which has adequate facilities, including detention facilities when necessary, to receive and treat the prisoner. A prisoner transferred under the provisions of this section shall remain subject to the jurisdiction and custody of the institution to which he was committed, and shall be returned thereto when, prior to the expiration of his sentence, treatment in the institution to which he was transferred is no longer necessary.

##### **2.Transfer on application by warden to court.**

The warden or other administrative head of a correctional institution, on his own motion, may apply to the court for an order to transfer a prisoner to another institution which is more suitable for his treatment or custody.

Prior legislation: L. 1969-70, CrPL 2:3403; 1956 Code 8: 737; L. 1938, ch. XXV, §11.

#### **§34.4. Time of commencement of sentence; credit for prior imprisonment.**

### **1 .Time of commencement.**

A sentence of imprisonment shall commence to run from the date on which the sentence imposed is final.

### **2.Credit for time of detention prior to sentence.**

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

### **3.Credit for imprisonment under earlier sentence for the same crime.**

When a judgment of conviction is vacated or when on a new trial granted for newly discovered evidence the conviction is affirmed and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the maximum term, and from the minimum, if any, of the new sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

Prior legislation: L. 1969-70, CrPL 2:3404.

## **§34.5. Records of prisoners.**

### **1. Identification.**

Every prisoner incarcerated in or committed to any prison for longer than thirty days shall be identified by taking his photograph and Bertillon measurements; these shall be preserved in his individual file, and duplicates thereof shall be filed in the central office of the Department of Justice.

### **2.Individual files.**

The warden or other administrative head of a correctional institution shall establish and maintain a central file in the institution containing an individual file for each prisoner. Each prisoner's file shall include: (a) his photograph and Bertillon measurements; (b) his presentence investigation report; (c) the official records of his conviction and commitment as well as earlier criminal records, if any; (d) progress reports from the treatment and custodial staff; (e) reports of his disciplinary infractions and of their disposition; (f) if he will be eligible for parole, his parole plan; (g) the day and hour of his admission and release and the authority for his release if such authority is contained in an order of the President or of the Board of Parole or of a court; and (h) other pertinent data concerning his background, conduct, associations, and family relationships. Each prisoner's file shall be carefully reviewed before any decision concerning his transfer to another institution. After the provisions of this title relating to parole have become effective, a prisoner's file shall be reviewed also before his parole, and before termination of parole if it occurs before the expiration of his parole term. The content of the prisoner's files shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to prisoners in the institution.

### **3.Death of prisoner.**

Upon the death of a prisoner, a certificate shall be issued by the medical officer certifying the cause

of death, a duplicate shall be filed in the office of the Attorney General, and a notation shall immediately be made on the register of the prison.

Prior legislation: L. 1969-70, CrPL 2: 3405; 1956 Code 8:718, 731; L. 1938, ch. XXV, §§ 38(3), 48.

#### **§34.6. Program of rehabilitation.**

The Department of Justice shall establish an appropriate program for each institution, designed as far as practicable to prepare and assist each prisoner to assume his normal responsibilities on release and to conform to the requirements of law. In developing such programs, the Attorney General shall seek to make available to each prisoner capable of benefiting therefrom academic or vocational training, participation in productive work, religious and recreational activities, and such therapeutic measures as are practicable. No prisoner shall be compelled, however, to participate in religious activities.

Prior legislation: L. 1969-70, CrPL 2: 3406.

#### **§34.7. Care of prisoner's property.**

All money, valuables, clothing, and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain in his possession during his term shall on his admission be placed in safe custody. An inventory thereof shall be signed by the prisoner. The property shall be kept in good condition pending his release. On the release of the prisoner, all such articles and money shall be returned to him except insofar as he has been authorized to spend money or send any of the property out of the institution or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him. In case of the death of a prisoner, his property which is held in custody at the prison, if unclaimed by his personal representatives after six months, shall be sold publicly in such manner as the warden may deem expedient. The proceeds of such sale shall be paid into the public treasury.

Prior legislation: L. 1969-70, CrPL 2: 3407; 1956 Code 8:722; L. 1938, ch. XXV, §32.

#### **§34.8. Medical and dental care.**

Upon admission to a correctional institution, each prisoner shall be given a physical examination. A prisoner suspected of having an infectious or contagious condition shall be segregated from other prisoners for a period of quarantine until he is known to be free of communicable disease. Each prisoner shall have regular medical and dental care.

Prior legislation: L. 1969-70, CrPL 2:3408.

#### **§34.9. Clothing.**

Every prisoner who is not allowed to wear his own clothing shall be provided with clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating. All clothing shall be kept clean and in proper condition.

Prior legislation: L. 1969-70, CrPL 2:3409.

#### **§34.10. Food.**

Each prisoner shall be provided with good and wholesome food, properly prepared under sanitary conditions, and in sufficient quantity and reasonable variety.

Prior legislation: L. 1969-70, CrPL 2: 3410.

#### **§34.11 .Accommodations.**

Where sleeping accommodation is in individual cello or rooms, each prisoner shall occupy by night a cell or room by himself. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another under those conditions. There shall be regular supervision at night. All accommodation provided for the use of prisoners shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, both natural and artificial, heating, and ventilation.

Prior legislation: L. 1969-70, CrPL 2:3411.

### **§34.12. Exercise.**

Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

Prior legislation: L. 1969-70, CrPL 2: 3412.

### **§34.1 3.Visitors; communication with prisoners.**

#### **1.Extent to which visiting is allowed.**

The warden or other administrative head of a correctional institution shall, subject to the approval of the Attorney General, prescribe days and hours each week when the prisoners are permitted to receive visitors and shall issue written permits for members of the family and reputable friends to visit each prisoner within the limits fixed by the prison rules. An attorney shall be freely permitted to visit privately with a prisoner who is his client.

#### **2.Searching of visitors.**

The warden or other administrative head of a correctional institution may in his discretion require a visitor to the prison to be searched before entering. Such searches shall be made in private and only with the consent of the visitor. Refusal by a visitor to be searched is ground for denying him admission.

#### **3.Penalties.**

A person who enters a prison or any correctional institution without permission or authority or a person who violates the rules of the prison regulating the conduct of visitors shall be subject to a fine of up to twenty-five dollars. A prison officer who, except in the discharge of his lawful duty, or any other person who, except on the authority of a written permit from the head of the prison, communicates or interferes in any manner with any prisoner at work outside the precinct of a prison, or who bring or attempts to introduce into the prison or to convey to a prisoner any substance or thing prohibited by law, may be fined in an amount up to fifty dollars or be imprisoned for not more than three months.

#### **4.Right to correspond.**

A prisoner shall be allowed to send and receive letters subject to the necessary limitations and supervision imposed by the prison rules.

Prior legislation: L. 1969-70, CrPL 2: 3413; 1956 Code 8:714, 716, 717; L. 1938, ch. XXV, §§41, 43, 49.

### **§34.14. Labor by prisoners.**

#### **1 .General policy.**

All prisoners under sentence shall be required to work subject to their physical and mental fitness as determined medically. Sufficient work of a useful nature shall be provided to keep prisoners actively

employed for a normal working day. The work program shall be so administered that it is not a punishment but rather a means of furthering the rehabilitation of the prisoner, his training for work, the forming of better work habits, and of preventing idleness and disorder. A prisoner held in detention pending trial shall be offered an opportunity to work, but shall not be required to work. He shall be paid for any labor performed by him.

## **2. Kinds of labor.**

The prisoners shall be employed so far as possible in constructive and diversified activities in the production of goods, services, and foodstuffs to maintain the institution and its inmates and for the use of the Republic or its political subdivisions or agencies. To accomplish these purposes, the warden or other administrative head, with the approval of the Attorney General, shall establish and maintain prison industries and prison farms in his institution, and may enter into arrangements with the political subdivisions or agencies of the Republic for the employment of prisoners in the improvement of public works and in the improvement and conservation of the natural resources of the Republic.

## **3. Purchases from correctional institutions.**

All departments, political subdivisions, and agencies of the Republic shall purchase from the correctional institutions all articles and products required by them which are produced or manufactured by prison labor in such correctional institutions, unless excepted from this authorization by the Attorney General.

## **4. Hiring out forbidden.**

The labor or time of a prisoner shall not be contracted for or hired out to any employer outside the correctional system except to political subdivisions or agencies of the Republic in accordance with arrangements made pursuant to paragraph 2 of this section.

## **5. Assignment of work.**

Insofar as opportunity is afforded by the kinds of work performed under the prison program and insofar as permitted by the requirements of prison discipline, each prisoner shall be assigned to work for which he has a preference and which will increase his ability to earn a living after release.

## **6. Remuneration.**

Prisoners shall be paid remuneration for their work which will stimulate interest and keenness in the work and which is equitable in view of the quality and quantity of work performed, the skill required for its performance, and the economic value of similar work outside of correctional institutions. The regulations may provide for the making of deductions from prisoner's wages to defray part or all cost of prisoner maintenance, but a sufficient amount shall remain after such deduction to enable the prisoner to contribute to support of his dependents, if any, to make necessary purchases from the commissary, and to set aside sums to be paid to him at the time of his release from the institution.

## **7. Health and safety; compensation for injuries.**

The precautions used to protect the health and safety of free workmen shall likewise be observed in correctional institutions. Insofar as permitted by legislative appropriations, the warden or other administrative head shall make appropriate arrangements for the compensation of prisoners of damages from injuries arising out of their employment.

Prior legislation: L. 1969-70, CrPL 2:3414; 1956 Code 8:733; L. 1938, ch. XXV, §44.

## **§34.1 5. Information to prisoners.**

Every prisoner on admission to a correctional institution shall be provided with information about the regulations governing treatment of prisoner of his category, the disciplinary requirements of the institutions and the authorized methods of seeking information and making complaints. If a prisoner is illiterate, such information shall be conveyed to him orally.

Prior legislation: L. 1969-70, CrPL 2: 3415.

#### **§34.16. Complaints by prisoners.**

Every prisoner shall have the opportunity each weekday of making requests or complaints to the director of the institution or his representative. A prisoner shall also be permitted to make requests or complaints to an official inspecting the institution and to talk to him without the director of the institution or other members of the staff being present.

Prior legislation: L. 1969-70, CrPL 2:3416.

#### **§34.17. Notification of death, illness, transfer.**

Upon the death or serious illness of or serious injury to a prisoner, or his transfer to another institution, the director of that institution shall at once inform the spouse, if the prisoner is married, or the nearest relative, and shall in any event inform any other person previously designated by the prisoner. A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner shall be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

Prior legislation: L. 1969-70, CrPL 2: 3417.

#### **§34.18. Discipline and control.**

##### **1. By order of warden.**

No prisoner shall be punished except on order of the warden or other administrative head of the institution or of a deputy designated for that purpose; nor shall any punishment be imposed otherwise than in accordance with the provisions of this section. The right to inflict punishment shall not be delegated to any prisoner or group of prisoners, and no warden or other administrative head shall permit any prisoner or group of prisoners to assume authority over any other prisoner or group of prisoners.

##### **2. Methods of punishment permitted.**

Except in flagrant or serious cases, punishment for a breach of discipline shall consist of deprivation of privileges. In case of assault, escape, or attempt to escape, or other serious or flagrant breach of discipline, the warden or other administrative head may order that a prisoner's reduction of term for good behavior in accordance with section 34.19 be forfeited. No cruel, degrading, or corporal punishment including punishment by confinement in a dark cell, shall be inflicted on any prisoner. Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it. A prisoner in solitary confinement shall be visited by a physician at least once every twenty-four hours. The period of such confinement shall not exceed seven days.

##### **3. Records.**

The warden or other administrative head of an institution shall maintain a record of breaches of rules, of the disposition of each case, and of the punishment, if any, for each such breach. Each breach of the rules by a prisoner shall be entered in his file, together with the disposition or punishment therefor.

Prior legislation: L. 1969-70, CrPL 2:3418; 1956 Code 8;735, 736, 761; L. 1938, ch. XXV, §§20, 25, 30.

### **§34.1 9.Reduction of term for good behavior.**

#### **1.Definite terms.**

For good behavior and faithful performance of duties, the term of imprisonment of a prisoner sentenced or committed for a definite term of more than thirty days shall be reduced by three days for each month of such term. Such reductions of terms may be forfeited, withheld, or restored by the warden or other administrative head of the institution for good cause.

#### **2.Indefinite terms.**

After provisions of section 31 .3 and the provisions of this title relating to parole have become effective, the term of a prisoner sentenced to imprisonment for a term with a maximum in excess of one year shall be reduced by four days for each month of such term for good behavior and faithful performance of duties. The total of all reductions shall be deducted:

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

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

#### **3.Warden to make awards and forfeitures.**

Reductions of terms of imprisonment in accordance with the provisions of this section shall be awarded by the warden or other administrative head of the institution and may be forfeited, withheld, and restored by him for good cause, but no reduction of a prison term shall be forfeited or withheld after a prisoner is released on parole.

#### **4. Report of reductions granted, forfeited, and restored.**

The warden or other administrative head of the institution shall regularly report all reductions of prison terms for good behavior and faithful performance of duties and all forfeitures and restorations of such reduction to the Department of Justice. After the provisions of this title relating to parole have become effective, the Attorney General shall, on the basis of such report, inform the Board of Parole of all prisoners who are expected to become eligible for release on parole or whose release on parole will become mandatory within the next three months.

Prior legislation: L. 1969-70, CrPL 2:3419; 1956 Code 8: 748; L. 1938, ch. XXV, §37.

### **§34.20.Leaves from prison.**

#### **1 .Com passionate leave.**

The Attorney General shall formulate rules or regulations governing compassionate leave from institutions and, in accordance with such rules and regulations, may permit any prisoner to leave his institution for short periods of time, either by himself or in the custody of an officer, to visit a close relative, to return to his home during what appears to be his own last illness, or to return to his home during what appears to be his own last illness, or to return to his home for other compelling reasons which strongly appeal to compassion. The rules or regulations shall provide for the manner in which compassionate leave shall be granted, for its duration, and for the custody, transportation, and care of the prisoner during his leave. They shall also provide for the manner in which the expense connected with such leave shall be borne, and may allow the prisoner, or anyone in his behalf, to reimburse the state for such expense.

#### **2. Preparole furlough.**



After the provisions of this title relating to parole have become effective, the Director of Correction, on the recommendation of the Board of Parole, may grant a preparole furlough, not to exceed one week, to any prisoner whose parole release date has been fixed in accordance with section 35.4(2) by the Board of Parole. The purpose of such a furlough shall be to enable the prisoner to secure employment, to find adequate living quarters for himself and his family, or, generally, to make more effective plans and arrangements to ward his release on parole.

Prior legislation: L. 1969-70, CrPL 2: 3420.

### **§34.21. Bringing up prisoner to testify.**

#### **1 .Issuance of warrant.**

Any judge, magistrate, or justice of the peace may issue a warrant directed to the warden or other administrative head of a correctional institution ordering him to bring up any prisoner to be examined as a witness in any cause or matter pending in the court over which he presides or before an authorized administrative body or investigative commission. Such warrant shall be granted only if there is probable ground for believing that the evidence to be granted only if there is probable ground for believing that the evidence to be given by the prisoner is material. The application shall specifically state that the evidence is material, and that the application is not made for the mere purpose of delay, and shall briefly state facts to which it is expected that the prisoner will testify.

#### **2. Bringing prisoner to court.**

The warden or other administrative head of the prison where the prisoner is confined shall forthwith obey such warrant by seeing that the prisoner is brought to court and delivered to the officer of the court specified in the warrant. The warden or other administrative head of the institution where the prisoner is confined shall not be liable for his escape while the prisoner is in custody of the court or officer of the court.

#### **3. Record.**

Every warrant issued under the provisions of this section shall be issued in triplicate, two copies of which shall be deposited with the warden or other administrative head of the institution when the warrant is served upon him. Both copies of the warrant shall be endorsed by the warden with the date of service, time of delivery of the prisoner, and date of his return. One copy shall be filed with the individual file of the prisoner, and the other copy shall be annexed to the report to the Attorney General by the warden or other administrative head of the institution. In addition, an entry of the transaction shall be made in the prison register.

Prior legislation: L. 1969-70, CrPL 2:3421; 1956 Code 8;739, 740; L. 1938, ch. XXV, §§34,36.

### **§34.22. Care of prisoner on release.**

When a prisoner is released from an institution, either on parole or upon final discharge, he shall be returned any money or personal possessions taken from him on commitment, in accordance with the provisions of section 34.7. The warden or other administrative head shall furnish him with decent and appropriate clothing; if there is transportation to the place where he will reside, a ticket to such place; the earnings set aside for him in the wage fund and such additional sum of money as may be needed to enable him to meet his immediate needs.

Prior legislation: L. 1969-70, CrPL 2:3422.

### **§34.23. Detention of prisoner beyond termination of sentence because of mental disease or defect.**

When two physicians approved by the Department of Justice find upon examination that a prisoner about to be discharged from an institution suffers from a mental disease or defect of such a nature that his release or discharge will endanger public safety or the safety of the prisoner, the warden or

other administrative head of the institution shall apply to the court which committed the prisoner for an order transferring him to a mental institution outside the supervision of the Department of Justice. The judge shall grant the order if he finds, after a hearing, at which the prisoner may be represented by counsel, that release of the prisoner would in fact endanger the public safety or his own safety. The commitment to the mental institution shall be for a period of six months, and may be extended on order of the court for successive periods of six months so long as the release of the prisoner would be dangerous.

Prior legislation: L. 1969-70, CrPL 2:3423.

## **Chapter 35. PAROLE**

### **§35.1. Release on parole; parole term.**

#### **1. Parole for all offenders sentenced to more than one year.**

An offender sentenced to an indefinite term of imprisonment shall be released conditionally on parole at or before the expiration of the maximum of such term less time off for good behavior.

#### **2. Parole term.**

A sentence to an indefinite term of imprisonment includes as a separate portion of the sentence a term to be known as the parole term. Such term shall include the period or periods during which the offender is at large on parole and any period or periods during which he is confined in prison after recommitment for violation of the conditions of the parole. The minimum of such term is one year and the maximum is two years.

#### **3. Effect of final release.**

When the maximum of his parole term has expired or he has been sooner discharged from parole under section 35.13, an offender shall be deemed to have served his sentence and shall be released unconditionally.

Prior legislation: L. 1969-70, CrPL 2:3501.

### **§35.2. Parole eligibility and hearing.**

Every prisoner sentenced to an indefinite term of imprisonment shall be eligible for release on parole upon completion of his minimum term of imprisonment less reductions for good behavior granted in accordance with section 34.19. Within sixty days before a prisoner becomes eligible for parole, the prisoner shall have a hearing before the Board of Parole or a member or members designated by the Board to determine whether he shall be released. The hearing shall be conducted in an informal manner, but a verbatim record of the proceedings shall be made and preserved. The prisoner shall be entitled to have assistance of counsel at the hearing, subject to the power of the Board to prevent abuse of that privilege.

Prior legislation: L. 1969-70, CrPL 2: 3502.

### **§35.3. Parole plan.**

Each prisoner in advance of his parole hearing shall prepare a parole plan, setting forth specific information as to where and with whom he will reside and what occupation or employment he will follow. The institutional staff shall render reasonable aid to the prisoner in the preparation of his plan and in securing information for submission to the Board of Parole. A prisoner shall be entitled to consult with his own legal counsel in preparation for a hearing before the Board of Parole.

Prior legislation: L. 1969-70 CrPL 2:3503.

#### **§35.4. Decision on release on parole; date.**

##### **1. Requirements concerning decision.**

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

##### **2. Time of release fixed by Board.**

If the Board fixes the release date, such release date shall be not less than sixty days nor more than six months after the date of the prisoner's parole hearing, unless there are special reasons for fixing an earlier or later release date.

##### **3. Annual hearings.**

If the Board defers the case for reconsideration, it shall hold a hearing subject to all the provisions applicable to the first hearing, at least once a year until a release date is fixed. The Board may in its discretion order a reconsideration or a rehearing of the case at any time.

##### **4. Mandatory release date.**

If the Board fixes no earlier release date, a prisoner's release on parole shall become mandatory at the expiration of the maximum term of his imprisonment, less reductions allowed in accordance with section 34.19.

Prior legislation: L. 1960-70, CrPL 2:3504.

#### **§35.5. Criteria for determining date of release from prison on parole.**

##### **1. Grounds for postponement of release.**

Whenever the Board of Parole considers the release of a prisoner who is eligible for release on parole, it shall be the policy of the Board to order his release, unless the Board is of the opinion that his release should be deferred because:

- (a) There is substantial risk that he will not conform to the conditions of parole; or
- (b) His release at that time will depreciate the seriousness of his crime and thus promote disrespect for law; or
- (c) His release will have a substantially adverse effect on institutional discipline; or
- (d) His continued correctional treatment, medical care, or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life when released at a later date.

##### **2. Factors to be considered by the Board.**

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

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

- (c)The prisoner's ability and readiness to assume obligations and undertake responsibilities;
- (d)The prisoner's intelligence and training;
- (e)The prisoner's family status and whether he has relatives who display an interest in him, or whether he has other close and constructive associations in the community;
- (f)The prisoner's employment history, his occupational skills, and the stability of his past employment;
- (g)The type of residence, neighborhood, or community in which the prisoner plans to live;
- (h)The prisoner's past use of narcotics, or past habitual and excessive use of alcohol;
- (i)The prisoner's mental or physical make-up, including any disability or handicap which may affect his conformity to law;
- (j)The prisoner's prior criminal record, including the nature and circumstances, recency and frequency of previous offenses;
- (k)The prisoner's attitude toward law and authority;
- (l)The prisoner's conduct in the institution, including particularly whether he has taken advantage of any opportunities for self-improvement afforded by the institutional program, whether he has been punished for misconduct within six months prior to his hearing, whether he has forfeited any reductions of term during his period of imprisonment, and whether such reductions have been restored at the time of hearing;
- (m)The prisoner's conduct and attitude during any previous experience of probation or parole and the recency of such experience.

Prior legislation: L. 1969-70, CrPL 2: 3505.

#### **§35.6. Data to be considered in determining parole release.**

Before making a determination regarding a prisoner's release on parole, the Board of Parole shall cause to be brought before it all of the following records and information regarding the prisoner:

- (a)A report prepared by the institutional parole staff, relating to his personality, social history, and adjustment to authority, and including any recommendations which the institutional staff may make;
- (b)All official reports of his prior criminal record, including reports and records of earlier probation and parole experiences;
- (c)The presentence investigation report of the sentencing court;
- (d)Recommendations regarding his parole made at the time of sentencing by the sentencing judge or the prosecutor;
- (e)The reports of any physical , mental, or psychiatric examinations of the prisoner;
- (f)Any relevant information which may be submitted by the prisoner, his attorney, the victim of his crime, or by other persons;
- (g)The prisoner's parole plan;
- (h)Such other relevant information concerning the prisoner as may be reasonably available.

Prior legislation: L. 1969-70, CrPL 2:3506.

#### **§35.7. Conditions of parole**

## 1 .Permissible conditions.

When a prisoner is released on parole, the Board of Parole shall require as a condition of his parole that he refrain from engaging in criminal conduct. The Board of Parole may also require that he conform to any of the following conditions of parole:

- (a)Meet his specified family responsibilities;
- (b)Devote himself to an approved employment or occupation;
- (c)Remain within the geographic limits fixed in his certificate of parole, unless granted written permission to leave such limits;
- (d)Report, as directed, in person and within thirty-six hours of his release to his parole officer;
- (e)Report in person to his parole officer at such regular intervals as may be required;
- (f)Reside at the place fixed in his certificate of parole and notify his parole officer of any change in his address or employment;
- (g)Have in his possession no firearm or other dangerous weapon unless granted written permission;
- (h)Submit himself to available medical or psychiatric treatment, if the Board so requires;
- (i)Refrain from associating with persons known to him to be engaged in criminal activities or, without permission of his parole officer, with persons known to him to have been convicted of a felony;
- (j)Satisfy and other conditions specially related to the cause of his offense and not unduly restrictive of his liberty or incompatible with his freedom of conscience.

Any of the conditions of parole here authorized may be imposed at the time of release or imposed or modified at any time during the parole term.

## 2.Certificate of parole.

Before release on parole, a parolee shall be provided with a certificate of parole setting forth the conditions of his parole.

Prior legislation: L. 1969-70, CrPL 2: 3507.

### §35.8. Sanctions less than revocation for violation of conditions of parole.

If the parole officer has reasonable cause to believe that a parolee has violated a condition of parole, he shall notify the Board of Parole, and submit the parolee's record to the Board. After consideration of the record, and after such further investigation as it may deem appropriate, the Board may order:

- (a)That the parolee receive a reprimand and warning from the Board;
- (b)That parole supervision and reporting be intensified;
- (c)That reductions of the parole term for good behavior be forfeited or withheld;
- (d)That the parolee be required to conform to one or more additional conditions of parole which may be imposed in accord with section 35.7.

If the Board is of the opinion that the violation may justify revocation of the parole, it shall have the parolee brought before it for a hearing as required by section 35.10.

Prior legislation: L. 1969-70, CrPL 2:3508.

### **§35.9. Arrest or notice to appear on violation.**

#### **1.Procedure to bring parolee before Board on violation.**

At any time while the parolee is at large on parole, the Board may issue a warrant for his arrest for violation of any of the conditions of parole, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the parolee. The warrant shall authorize all officers named therein to return the prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the Board.

#### **2.Arrest in emergency situation.**

If a parole officer or district parole supervisor has reasonable cause to believe that a parolee has violated or is about to violate a condition of his parole and that an emergency situation exists so that awaiting action by the Board of Parole under paragraph 1 of this section would create an undue risk to the public or to the parolee, such parole officer or district parole supervisor may arrest such parolee without a warrant or may deputize any peace officer to do so. Upon such arrest, the parole officer shall immediately notify the court and shall submit in writing a report stating the grounds for the arrest.

Prior legislation: L. 1969-70, CrPL 2: 3509.

### **§35.10.Hearing to determine revocation of parole.**

#### **1 .Procedure.**

At the time appointed in a notice to appear, or promptly after arrest of a parolee on warrant or after receiving a report of arrest from a parole officer following an arrest without a warrant, the Board of Parole shall hold a hearing in the presence of the parolee if it is of the opinion that the violation may justify revocation of the parole. If the parolee has not had time to prepare for the hearing, the Board shall grant an adjournment. The institutional parole staff shall render reasonable aid to the parolee in preparation for the hearing and he shall be permitted to consult with his own legal counsel. At the hearing, the parolee may admit, deny, or explain the violation charged, and he may present proof, including affidavits and other evidence, in support of his contention. A verbatim record of the hearing shall be made and preserved.

#### **2.When revocation may be ordered.**

After a hearing, the Board may order revocation of parole if it is satisfied, upon substantial evidence, that:

- (a)The parolee has failed, without a satisfactory excuse, to comply with a substantial requirement imposed as a condition of his parole; and
- (b)The violation of the condition involves: (i) the commission of another crime; or (ii) conduct indicating a substantial risk that the parolee will commit another crime; (iii) conduct indicating that the parolee is unwilling to comply with proper conditions of parole.

#### **3.Vote necessary for revocation.**

Parole revocation shall be by majority vote of the Board.

Prior legislation: L. 1969-70, CrPL 2:3510.

### **§35.11 .Effect of conviction of crime while on parole.**

In sentencing a person for a crime committed while he is on parole, the court shall determine whether the sentence of imprisonment for the new crime and any further imprisonment which the

Board of Parole may require the defendant to serve on revocation of the parole shall run concurrently or consecutively. To determine the date of the prisoner's eligibility for release on parole following his new conviction, the sentence of imprisonment for the new crime and the further term of imprisonment for violation of the parole shall be treated as a single sentence.

Prior legislation: L. 1969-70, CrPL 2: 3511.

### **§35.12. Tolling of parole term.**

If a parolee violates the conditions of his release, the time of his parole term shall continue to run until the issuance of a notice to appear or a warrant of arrest under the provisions of section 35.9. At that time the running of the parole term shall be tolled pending a decision of the Board as to revocation, unless the Board decides that this period shall be counted as part of the parole term.

Prior legislation: L. 1969-70, CrPL 2: 3512.

### **§35.1 3. Eligibility for discharge from parole; time of mandatory discharge.**

At the termination of the minimum parole term less reductions for good behavior, the Board of Parole shall determine whether the parolee shall be discharged from parole at that time. If the parolee is not then discharged, the Board of Parole shall determine whether he shall be discharged after the expiration of another six months of the parole term. In case of a revocation of parole, the Board may defer a consideration of the parolee's eligibility for discharge until six months after reimprisonment. In deciding whether a discharge from parole shall be granted, the Board shall act favorably if in its opinion such discharge is not incompatible with the protection of the public. A parolee's discharge from parole or from recommitment for violation of the parole term becomes mandatory upon completion of the maximum parole term less reductions for good behavior.

Prior legislation: L. 1969-70, CrPL 2:351 3.

### **§35.14. Reduction of parole term for good behavior.**

For good conduct in conformity with the conditions of parole, a parolee's parole term shall be reduced by three days for each month of such parole term. The total of such reductions shall be deducted:

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

(b) From the maximum of his parole term to determine the date when his discharge from parole becomes mandatory. Reduction of parole terms shall be awarded by the Board of Parole and may be forfeited, withheld, and restored by the Board.

Prior legislation: L. 1969-70, CrPL 2: 3514.

### **§35.1 5. Finality of determination by Board of Parole.**

No court shall have jurisdiction to review or set aside, except for denial of a hearing when a right to be heard is conferred by law, a decision of the Board of Parole withholding, forfeiting, or refusing to restore a reduction of a parole term for good behavior or regarding the release, or deferment of release on parole of a prisoner whose maximum prison term has not expired, the imposition or modification of conditions of parole, the revocation of parole, or the discharge from parole or from reimprisonment before the end of the parole term.

Prior legislation: L. 1969-70, CrPL 2:3515.

## **Chapter 36. DEATH PENALTY**

### **§36.1. Execution of death sentence.**

No sentence of death shall be carried into execution except by warrant under the hand and seal of the President directed to the officer appointed to carry such sentence into execution.

Prior legislation: L. 1969-70, CrPL 2:3601; 1956 Code 8:326; Rev. Stat. §787.

## **PART IV**

### **Division of Correction**

#### **Chapter 41. ORGANIZATION OF DIVISION OF CORRECTION**

##### **§41.1. Creation and responsibilities.**

There is created in the Department of Justice a Division of Correction, which shall be charged with the following responsibilities:

- (a) To establish, maintain, and administer all correctional institutions in the Republic, including prisons, reformatories, parole and probation hostels, work camps, local jails, and such other facilities as may be required for the custody, detention, control, correctional treatment, and rehabilitation of committed offenders, and for the safekeeping of such other persons as may be remanded thereto in accordance with law;
- (b) To administer the release of prisoners under parole supervision and to administer parole services in the institutions and in the community;
- (c) To administer probation services in the community;
- (d) To develop policies and programs for the correctional treatment and rehabilitation of offenders committed to institutions in the Division;
- (e) To establish standards for the management, operation, personnel, and programs of, and to exercise powers of supervision, visitation, and inspection over, all institutions in the Republic for the detention of persons charged with or convicted of an offense, or for the safekeeping of such other persons as may be remanded thereto in accordance with law, and to close any such institution which is inadequate.

Prior legislation: L. 1969-70, CrPL 2:41 01.

##### **§41.2. Director of Correction; Assistant Director.**

###### **1 .Appointment.**

The Division of Correction shall be under the direction of the Director of Correction, who shall be appointed by the President with the advice and consent of the Senate and who shall be responsible directly to the Attorney General. If no Liberian trained in modern correctional precepts and methods is available for appointment, the President may appoint a qualified foreigner to serve until such time as a Liberian becomes available. If necessary to carry out the functions of the Division, the President shall also appoint an Assistant Director to perform such duties as the Director may assign to him.

###### **2. Duties.**

The Director of Correction shall:

- (a) Supervise and be responsible for the administration of the Division;
- (b) Establish and administer programs and policies for the operation of the institutions in the Division and for the correction and rehabilitation of prisoners;
- (c) Appoint and remove subordinate officers and employees of the Division, other than the members of the Board of Parole, in accordance with law, and delegate appropriate powers and duties to them;



- (d) Make rules and regulations for the government, correctional treatment, and rehabilitation of prisoners, the administration of institutions in the Division, and the regulation of officers and employees under his jurisdiction;
- (e) Order the transfer of prisoners committed to the custody of the Division among institutions of the Division or for custody in hospitals or mental institutions outside the Division, where such transfer is in conformity with the provisions of section 34.3 of this title;
- (f) Collect, develop, and maintain such statistical information concerning offenders, sentencing practices, and correctional treatment as may be useful in practical penological research or in the development of treatment programs;
- (g) Exercise in accordance with law, supervisory power over all institutions in the Republic for the detention of persons charged with or convicted of an offense, or for the safekeeping of such other persons as may be remanded thereto in accordance with law;
- (h) Transmit to the Attorney General an annual report on the operations of the Division for the preceding year;
- (i) Exercise all powers and perform all duties necessary and proper in carrying out the foregoing responsibilities.

Prior legislation: L. 1969-70, CrPL 2:41 02.

#### **§41.3. Organization of Division of Correction.**

There shall be in the Division of Correction the following administrative subdivisions:

- (a) Bureau of Correctional Institutions;
- (b) Bureau of Probation and Parole;
- (c) Board of Parole.

Prior legislation: L. 1969-70, CrPL 2:41 03.

#### **§41.4. Employees subject to civil service.**

Except as otherwise provided by statute, the officers and employees in the Division of Correction shall be appointed, promoted, and discharged in accordance with the provisions of the Civil Service Act.

Prior legislation: L. 1969-70, CrPL 2:41 04.

#### **§41.5. Bond required of wardens.**

Each warden or other head of a correctional institution shall be required to give bond with sufficient security for the faithful performance of his duties as provided in the Public Employment Law.

Prior legislation: L. 1969-70, CrPL 2:41 05; L. 1955-56, ch. VIII; 1956 Code 8:705; L. 1938, ch. XXV, §46.

### **Chapter 42. BUREAU OF CORRECTIONAL INSTITUTIONS**

#### **§42.1. Function and supervision.**

The Bureau of Correctional Institutions shall be responsible for the operation of all correctional institutions in the Republic and for the suitable treatment of all prisoners. The Bureau shall be headed by the Chief of the Bureau who shall be appointed by, and serve during the pleasure of, the President. The person appointed to that position shall have received specialized training in prison

administration and shall believe in the furtherance of a rehabilitary program and individualized treatment for convicted prisoners.

Prior legislation: L. 1969-70, CrPL 2:4201; 1956 Code 8:706; L. 1938, ch. XXV, §18.

## **§42.2. Personnel.**

### **1 .Appointment.**

The Chief of the Bureau shall, in accordance with the provisions of the Civil Service Act, and, subject to the approval of the Attorney General and the Director of Correction, appoint the wardens or other administrative heads for each of the correctional institutions maintained by the Division, except the local jails. The Chief of the Bureau shall also appoint professional, technical, skilled, and other subordinate officers and employees as may be required for the effective administration of the correctional institutions of the Division of Correction in accordance with the provisions of the Civil Service Act, and in the case of institutional employees he shall consider the recommendations of the respective wardens or other administrative heads of institutions.

### **2. Qualifications.**

Personnel in the custodial and treatment programs of institutions shall have such special training or experience in correctional matters as the Director of Civil Service may require upon the advice of the Chief of the Bureau. No male person shall be appointed or assigned to positions involving the immediate supervision and control of female prisoners.

### **3. Training.**

Civilian instructors certified by the Department of Public Instruction shall, as far as practicable, be employed for the academic and vocational training of prisoners. Each new officer or employee in the custodial or training program of a correctional institution shall participate in an institutional training program for new employees. Every officer and employee in the Bureau of Correctional Institutions shall participate in such in-service training programs as the Chief of the Bureau may require from time to time.

Prior legislation: L. 1969-70, CrPL 2:4202; 1956 Code 8:704, 708; L. 1938, ch. XXV, §§17,19.

## **§42.3. Powers and duties of wardens and other administrative heads.**

The warden or other administrative head of a correctional institution shall be its chief executive officer, and, subject to the supervisory authority conferred by law on the Chief of the Bureau of Correctional Institutions, shall be responsible for its efficient and humane maintenance and operation, and for its security. The duties and powers of his office shall include the following:

- (a) To receive, retain in prison, and to release, in accordance with law, prisoners duly committed or transferred to an institution in the Division;
- (b) To enforce the provisions of law and the regulations of the Division for the administration of the institution, the government of its officers, and the treatment, training, employment, care, discipline, and custody of the prisoners;
- (c) To take proper measures to protect the safety of the prisoners and personnel of the institution;
- (d) To take proper measures to prevent the escape of prisoners and to effect their recapture;
- (e) To maintain and improve the buildings, grounds, and appurtenances of the institution;
- (f) To make recommendations to the Chief of the Bureau concerning the appointment of professional, technical, and other subordinate officers and employees of the Bureau of Correctional Institutions;

(g) To establish and administer rules, including rules for the operation of the institution and for the proper classification and separation of prisoners therein, consistent with the provisions of this title, and the general policies and regulations of the Division, and subject to the prior approval of such rules by the Director of Correction;

(h) To maintain and preserve the central prisoner file in accordance with section 34.5, and to maintain and preserve records on the management and operation of the institution, including records concerning its industries and the wage funds of prisoners, and to report thereon to the Chief of the Bureau at such times as he may require.

Prior legislation: L. 1969-70, CrPL 2:4203.

#### **§42.4. Visitation and inspection of correctional institutions.**

##### **1 .Inspections mandatory.**

The Chief of the Bureau of Correctional Institutions, or any person to whom he has delegated such power in writing, shall visit once every two weeks and inspect every institution in the Republic for the detention of persons charged with or convicted of an offense, or for safekeeping of such other persons as may be remanded thereto in accordance with law. He shall have full access to the grounds, buildings, books, and records belonging or relating to any such institution, and may require the warden or other head of such institution to provide information relating thereto in person or in written response to a questionnaire. He shall have the power, in connection with the inspection of any such institution, to issue subpoenas, compel the attendance of witnesses and the production of books, papers, and other documents relating to such institution or its officers and to administer oaths and to take the testimony of persons under oath.

##### **2. Permitted visits.**

The President, Vice President, Attorney General, or any of his associates, members of the Legislature, or prosecuting attorney of the county, territory, or district in which the prison is located may visit it without receiving previous permission.

##### **3. Effect of violations.**

If the Chief of the Bureau of Correctional Institutions finds, after inspection by him or by a deputy of an institution, that the laws or regulations relating to the construction, management, and affairs of such institution, and the care, custody, treatment, and discipline of its prisoners, are being violated, or that the prisoners are cruelly, negligently, or improperly treated, or that there is improper or inadequate provision for their sustenance, clothing, care, or other condition necessary to their discipline and welfare, the Chief may in writing order the warden or other head of such institution to remedy the situation within such period of time as the Chief deems appropriate under the circumstances. Failure by a warden or other head of correctional institution to comply with such an order of the Chief within the time specified shall be ground for his dismissal. When an inspection of an institution discloses violation of law in its management or conduct, the Chief of the Bureau shall report such violation to the appropriate law enforcement official.

Prior legislation: L. 1969-70, CrPL 2:4204; 1956 Code 8:711-713, 715; L. 1938, ch. XXV, §§19, 28, 42.

### **Chapter 43. BUREAU OF PROBATION AND PAROLE**

#### **§43.1. Function and organization.**

The Bureau of Probation and Parole shall be charged with the administration of probation and parole services in the community. The Bureau shall be under the direction of the Probation and Parole Administrator, who shall be appointed by, and serve during the pleasure of, the President. The Probation and Parole Administrator shall be a person with appropriate experience in a field of correctional administration, or appropriate university training in relevant disciplines. Such other employees shall be appointed in conformity with the provisions of section 41.4 as are necessary to

carry out the function of the Bureau.

Prior legislation: L. 1969-70, CrPL 2:4301.

### **§43.2. Powers and duties of the Probation and Parole Administrator.**

The Probation and Parole Administrator shall:

(a) Supervise the administration of probation and parole services in the Republic and establish policies, standards, and procedures, and make rules and regulations for the field probation and parole service, regarding probation and parole investigations, supervision, case work, and the ease loads and record keeping;

(b) In conformity with the provisions of section 41.4, appoint district probation and parole supervisors, field probation and parole officers, and such other employees as may be required to carry out adequate probation supervision of persons sentenced to probation and adequate parole supervision of all parolees;

(c) Cooperate closely with the Board of Parole, the criminal courts, the institutional parole staffs, and other institutional personnel;

(d) Make recommendations to the Board of Parole in cases of violation of the conditions of parole and issue warrants of arrest of parole violators when so instructed by the Board.

Prior legislation: L. 1969-79, CrPL 2:4302.

### **§43.3 Duties and organization of the staff.**

#### **1. In general.**

Members of the staff of the Bureau of Probation and Parole shall work under the immediate direction of district probation and parole supervisors, and under the ultimate direction of the Probation and Parole Administrator. They shall be responsible for the investigation, supervision and assistance of parolees, for presentence and other probation investigations, and for the supervision of persons sentenced to probation. As trained workers become available, the staff of the Bureau shall be sufficient in number to limit the case load of every probation and parole officer to a size compatible with adequate investigation or supervision.

#### **2. Duties of probation and parole officers.**

Probation and parole officers shall:

(a) Make such presentence and other probation investigations as may be required by law or directed by the court in which they are serving, and make investigations, prior to a prisoner's release on parole, in cooperation with institutional officers and the Board of Parole, to determine the adequacy of parole plans submitted by the prisoners who are candidates for parole, make reasonable advance preparation for their release on parole, help them in conforming to the conditions of parole, and in making a successful adjustment in the community;

(b) Supervise probationers and parolees, and in supervising them visit each probationer's or parolee's home from time to time, and see that he reports to the officer as frequently as may be required, in the case of a probationer by the order of the court in accordance with section 33.2(2)(k), or as may be required by the officer himself in the light of such probationer's or parolee's personality and adjustment, but no less frequently than twice a month during the first year of probation or parole, except in unusual cases;

(c) Admonish probationers who appear in danger of violating the conditions of the order of probation, and report serious or persistent violations to the sentencing court, and advise the sentencing court when the situation of a probationer requires a modification of the conditions of the order of probation, or when the probationer's adjustment is such as to warrant termination of

probation;

(d) Admonish parolees who appear in danger of violating the conditions of parole, and report to the appropriate district supervisor serious or persistent violations which may require action by the Board of Parole and, in emergency situations, exercise the power of arrest as provided in section 35.9.

### **3. Duties of probation and parole supervisors.**

District probation and parole supervisors shall:

(a) Establish procedures for the direction and guidance of probation and parole officers under their jurisdiction and advise such officers in regard to the most effective performance of their duties;

(b) Supervise probation and parole supervisors under their jurisdiction and evaluate the effectiveness of their case work;

(c) Make regular reports to the Probation and Parole Administrator concerning the activities of the probation and parole officers under their jurisdiction concerning the adjustment of probationers and parolees under their supervision;

(d) Inform the Probation and Parole Administrators when, in the district probation and parole supervisor's opinion, any eligible parolee's conduct and attitude warrant his discharge from supervision, or when any parolee's violation of the conditions of parole is of sufficient seriousness to require action by the Board of Parole, and, in emergency situations, exercise the power of arrest as provided in section 35.9.

Prior legislation: L. 1969-70, CrPL 2:4303.

## **Chapter 44. BOARD OF PAROLE**

### **§44.1. Appointment; qualifications.**

There is created within the Division of Correction an independent Board of Parole to consist of three members to be appointed by the President. One member, who shall devote his full time to the duties of the Board, shall act as chairman and shall be paid a full-time salary. The person appointed as chairman shall have had experience in the field of penology and shall be well versed in the modern methods of treatment of convicted persons and rehabilitation of prisoners. The other two members shall be persons of good character and judicious temperament whose views on goals and methods of correctional treatment are in harmony with those of the Division of Correction. The two nonprofessional members of the Board shall devote at least half of their time to the duties of the Board and shall be adequately compensated for the amount of time devoted to the Board. No member shall, at the time of his appointment or during his tenure, serve as the representative of any political party, or of any executive committee or governing body thereof, or as an executive officer or employee of any political party, organization, association, or committee.

Prior legislation: L. 1969-70, CrPL 2:4401.

### **§44.2. Tenure.**

A member of the Board of Parole shall hold office for six years, and until his successor is appointed; except that, of the members first appointed to the Board, the Chairman shall be appointed to serve for a term of six years, one of the other members shall be appointed to serve for a term of four years, and the third member shall be appointed to serve for a term of two years. A member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term of the member whom he succeeds. Members may be appointed for additional six-year terms. They may be removed by the President solely for corruption or disability, and after an opportunity to be heard.

Prior legislation: L. 1969-70, CrPL 2:4402.

**§44.3. Powers and duties of the Board of Parole.**

The Board of Parole shall have the following duties and powers:

- (a) To determine the time of release on parole of prisoners eligible for parole;
- (b) To fix the conditions of parole, revoke parole, issue or authorize the issuance of warrants for the arrest of parole violators, and impose other sanctions short of revocation for violation of conditions of parole;
- (c) To determine the time of discharge from parole;
- (d) When requested by the President, to advise him concerning applications for pardons, reprieves, or commutations, and to make such investigation and collect such records concerning the facts and circumstances of a prisoner's crime, his past criminal record, social history, and physical, mental, or psychiatric condition as may relate to such application;
- (e) To transmit annually to the Director of Correction a detailed report of its work for the preceding calendar year;
- (f) As a Board, or through any member, to issue subpoenas, compel the attendance of witnesses, and the production of books, papers, and other documents pertinent to the subject of its inquiry, and to administer oaths and to take the testimony of persons under oath.

Prior legislation: L. 1969-70, CrPL 2:4403.

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