

**Connecticut Legislative Histories**

**Landmark Series**

**1969 Public Act No. 828,  
Volume One**

**Hartford, Connecticut State Library,  
Law & Legislative Reference Unit,  
2005.**

Compiled from the following  
Connecticut General Assembly documents  
on deposit in the  
Law & Legislative Reference Unit of Connecticut State Library

**13 Senate Proceedings, Part 7, 1969 Session, pp. 3507, 3519-3547.**

**13 House of Representatives Proceedings, Parts 2 and 11, 1969  
Session, pp. 961-967, 5033-5063.**

**Connecticut. Joint Standing Committee Hearings,  
Judiciary and Governmental Functions, Part 1, 1969 Session,  
pp. 1-35, 254-258.**

*with*

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# PREFACE

This is the legislative history of the act which compiled the criminal law of Connecticut into a Penal Code. This act replaced a patchwork of random, contradictory, and overlapping criminal sections with a rational, cohesive and coherent Penal Code. The delayed effective date of 1971 permitted the legal community to study the new law before implementation.

The Commission to Revise the Criminal Statutes was established by Special Act in 1963 and worked for six years to produce this legislation which is based on the 1962 Model Penal Code of the American Law Institute and the 1964 New York Penal Law. The Commission revised and codified the substantive criminal law and did not address the problems of criminal procedure. Attorney David M. Borden, who was the Executive Director of the Commission in charge of drafting and research, is now a Connecticut Supreme Court Justice.

This act codified the common law principles of criminal liability, created the new concept of an affirmative defense, and eliminated the common law right to forcefully resist arrest. The act established a system of five felonies and four misdemeanors with uniform penalties within these categories. Sentencing statutes were clarified by defining the concepts of conditional and unconditional discharge. The homicide statute was changed to a single degree with the sole criminal intent of causing death, thereby eliminating the requirements of malice and premeditation. Assault crimes were divided into three degrees and address the effect on the victim in addition to the means used for the assault.

New offenses of threatening, eavesdropping and tampering with private communications were created. This act incorporated the American Law Institute policy that sexual conduct between consenting adults, in private, not involving the corruption of youth or commercialization, is not the business of criminal law. The offenses of lascivious carriage, fornication, and seduction were repealed. The obscenity statute was rewritten to reflect the U.S. Supreme Court rulings that obscenity was not constitutionally protected speech (*Roth v. U.S.*, 354 U.S. 476 (1956)) and that dissemination of obscenity to minors was not protected by the First and Fourteenth Amendments (*Ginsberg v. New York*, 390 U.S. 629 (1968)).

Glossary of terms and abbreviations:

**American Law Institute**-a nationwide association of eminent legal scholars, jurists and practicing attorneys who review and restate the fundamental principles of the common law to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice and to encourage and carry on scholarly and scientific legal work.

**Committee Bill** - a bill which is redrafted by a Committee after being introduced by an individual legislator.

**Favorable Report**-a report compiled by the committee clerk on a standard form. Among other things, the favorable report summarizes public hearing testimony and lists organizations that support and oppose the bill. Once the committee has conducted a public hearing on a bill, it will meet to determine if the bill merits a favorable report. The Favorable Report is a recommendation to the General Assembly as a whole that the bill ought to pass. Favorably reported bills are referred to the floor of the originating chamber, or to another committee for review. The Favorable Report is usually accompanied by a one-page committee roll call vote. Also known as "JF".

**File**-this is the version of a bill which has been prepared for consideration in the House and Senate. Each favorably reported bill will be reviewed and reissued as a File. File versions have distinctive numbers which are separate from the bill number.

**JF**- Joint Favorable, another term for the Joint Committee's Favorable Report. It is also used in the phrase "JF deadline", as each committee has a deadline for the reporting of bills. "JF" is the joint committee's recommendation to the full General Assembly that it pass a bill.

**Modified Bill** - the version of a bill based on the File but which incorporates subsequent floor amendments.

**Proposed Bill** - a bill which is introduced by an individual legislator at the beginning of the session and which is not fully drafted.

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3. [Proposed] Bill No. 7182, "An Act Concerning the Adoption of a Penal Code". Introduced January 30, 1969.
4. Committee Bill No. 7182, "An Act Concerning Revision and Codification of the Substantive Criminal Law".

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5. Transcript of House floor debate, March 20, 1969. [*Editor's note: the House was discussing a different bill when Rep. Carrozzella remarked that House Bill 7182 would cover the situation*].
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**Legislative History  
of  
“An Act Concerning Revision and Codification  
of the Substantive Criminal Law.  
This act shall be known as the  
Penal Code”**

**Public Act 69-828  
1969 House Bill No. 7182**

**Volume One**

1.

**State of Connecticut. Report of the Commission to Revise the Criminal Statutes, as provided by Special Act No. 351 of the 1963 Session of the General Assembly. 1965.**

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1963/65  
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State of Connecticut

Report of the Commission  
to  
Revise the Criminal Statutes



As provided by Special Act No. 351 of the  
1963 Session of the General Assembly

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## I. ESTABLISHMENT OF THE COMMISSION

Special Act, No. 351, enacted by the 1963 General Assembly, established a commission of eleven members "to revise and codify the criminal statutes of the state" and to "report its findings and specific recommendations for substantive and clarifying changes in said statutes to the General Assembly on or before February 1, 1965."

## II. MEMBERSHIP OF THE COMMISSION

The members of the Commission are:

Chairman, Rep. Robert J. Testo  
Vice-Chairman, Rep. Benjamin Schlossbach  
Rep. John Carrozzella  
Rep. Benjamin L. Barringer  
Sen. Anthony P. Miller  
Sen. William F. Hickey, Jr.  
Sen. James L. Glynn  
Sen. Morgan K. McGuire  
Professor Thomas L. Archibald, University of Connecticut Law School  
Professor Richard C. Donnelly, Yale Law School  
Arthur M. Lewis, Esq.

David M. Borden is the Executive Director of the Commission, in charge of research and drafting. Lucille M. Dow is the Secretary to the Commission.

## III. THE TASK OF THE COMMISSION

### A. Limitation to Substantive Revision and Codification

The first job of the Commission was to interpret its mandate from the General Assembly. The Commission decided that it was to work on a revision and codification of the substantive criminal statutes, but not to deal with the problems of criminal procedure. This decision was based on two factors: (1) the language of the Special Act establishing the Commission; (2) the general feeling of the Commission that the problems of criminal procedure are of such magnitude and in such a state of uncertainty at present that they require separate and independent study.

### B. The Need for Substantive Revision and Codification

One reason for substantive revision of our criminal laws is to maintain Connecticut's position as a state in the forefront of enlightened legal reform. Connecticut prides itself, and rightly so, on being one of the first states to adopt the sorely-needed Uniform Commercial Code. It prides itself, also, on being one of the first states to adopt a widescale public defender system for defense of the indigent. The same need for maintaining its tradition of providing fair, rational and understandable laws for its citizens and inhabitants applies to the area of substantive criminal laws. There is a great deal of activity throughout the nation in this area. Approximately ten years ago the American Law Institute, a nationwide association of eminent legal scholars, jurists and practicing attorneys, undertook the task of formulating a modern, rational penal code to be used as a guide for criminal reform. The result was the Model Penal Code, published in 1962. In 1961 the State of New York established a State Commission on Revision of the Penal Law and Criminal Code. The result is its proposed New York Penal Law, published in 1964 for study and examination by the bench, bar, legislature and public, and presently undergoing vigorous discussion in New York. Illinois has recently enacted a revision of its criminal laws, based partly on the ALI's Model Penal Code. Minnesota, Wisconsin, Louisiana and New Mexico have also revised their criminal codes in the past few years. The following states are presently in the process of revising their criminal laws: California, Colorado, Georgia, Hawaii, Kansas, Maine, Montana, Nevada, Oklahoma and Pennsylvania.

A more basic reason, however, for such a revision of the criminal laws is that examination of the present laws indicates that it is sorely needed. The present criminal laws have, for the most part, no rational scheme or structure holding them together. Since many of them were enacted in patchwork, bit-by-bit fashion, many of the distinctions drawn have no rational basis. Many of the provisions are unfair, inadequate and inconsistent with each other. There are serious gaps, contradictions, overlapping and duplication. Many of the provisions suffer from gross and unnecessary particularization, and lack of clarity. It has been said that the quality of a society is reflected in the way in which it deals with its offenders. Whom a society marks as an offender and how it treats him measures the society's degree of enlightenment and commitment to both order and liberty. A complete revision of Connecticut's criminal laws will serve to heighten that degree of enlightenment and emphasize that commitment.

### C. General Recommendations

The Commission recommends that a new penal code be formulated which will be rational, coherent, cohesive and intelligible. It should take into account modern knowledge and information. It should correct the inequities and deficiencies of the present Connecticut criminal laws. Of course, that which is desirable and wise in the present law should be retained and integrated into the new proposal.

The Commission emphasizes that what it recommends is not a patchwork job on the present law aimed merely at remedying the glaring inequities and clarifying the gross ambiguities. What it recommends is a thorough-going reconstruction of a penal code, based on reason and experience, internally consistent, clear, reflecting an enlightened and informed outlook, drawn from the recent laws and from the body of well thought-out work which has been done in other states and by the American Law Institute.

The construction of such a code is, moreover, a relatively long-term task, requiring manpower and time, as experience elsewhere teaches. For example, it took the American Law Institute nearly ten years to complete its draft. It took the New York Commission, with a staff of one chief counsel, nine assistant counsels and one administrative assistant, three years to complete its proposal. In view of this experience, the Commission estimates that, with adequate staff, it would probably take until the 1969 Session of the General Assembly to complete the job.

The Commission has but made a start on this task. The Commission decided to begin the revision with the property crimes, such as arson, destruction of property, burglary, trespass, theft, etc.. The memoranda and proposed drafts contained in part V of this Report, dealing with arson, reckless burning and criminal mischief are part of the results of that beginning. Memoranda and proposed drafts on burglary and criminal trespass are in the process of preparation. The limitations of time prevented these from being included in this report. The material submitted herein, however, indicates the kind of analysis and revision which is required. The Commission emphasizes that these proposals are not submitted for enactment, but for study, examination and appraisal, as part of what, hopefully, will eventually be a comprehensive code. The Commission thinks, also, that it would be wiser to submit all recommendations for enactment at once, as a comprehensive code, for the following reason: the anticipated code, like the Model Penal Code and the Proposed New York Penal Law, would be an interrelated, independent scheme, and therefore enactment of part of it, without the rest, would lead to serious problems of inconsistencies, duplication, definition and interpretation.

## IV. ACTIVITY OF THE COMMISSION

The activity of the Commission can be divided into three segments: (1) preliminary work; (2) hearings; (3) analysis and drafting.

The preliminary work of the Commission consisted of defining its task, setting up the procedural groundwork as to how to go about the task, and communicating with other states in order to gather information as to how they have proceeded and what they have done or are doing.

The Commission then held two sets of hearings, to which were invited the judges of the state, members of the bar, public defenders, state's attorneys, prosecutors and police officials. These hearings, which were limited to discussion of the existing property crime statutes, were held on April 6, 1964 at the State Capitol and on April 27, 1964 at the Yale Law School. The Commission met fourteen times in all, beginning with its initial meeting on October 29, 1963 and ending with its final meeting on January 13, 1965.

The analysis and drafting performed by the Commission focused on the state of the Connecticut law as it now exists; analysis of defects therein; comparison with the Model Penal Code, Proposed New York Penal Law, and other pertinent statutes; discussion of basic policy questions raised by the analysis and comparison; and preparation of tentative proposed drafts of revision of specific property crimes to be set into the over-all code structure, along with explanatory comments. Each proposed draft itself went through two or three stages of drafting and revision, to test for ambiguity and to strive for clarity and fairness.

## V. FINDINGS AND SPECIFIC RECOMMENDATIONS

### A. Analyses of Present Connecticut Law

#### 1. Arson and Reckless Burning

(a) List of Sections. The following is a list of sections of the Connecticut General Statutes (1958 Revision) which deal with arson and other burning activities: sections 53-10, 53-11, 53-42, 53-80, 53-82 through 53-90, 53-122 and 53-124.

#### (b) Defects and Analysis

(1) The criminal state of mind required by Sections 53-82 — 53-85 is "wilfully and maliciously". This is quite vague, artificial and inexact. For example, the Supreme Court of Errors has held that "malice need not be express, but may be implied; it need not take the form of malevolence or ill will, but it is sufficient if one deliberately and without justification or excuse sets out to burn the dwelling house of another". *State v. Pisano*, 107 Conn. 630 (1928). The Court here has employed a familiar judicial device in accepting "implied" malice as meeting the statutory requirement, and then has gone on to define malice, which ordinarily would include some element of malevolence or ill will, as "deliberately and without justification or excuse". The term, "wilfully", is left undefined, and is subject to the same vagueness and inexactitude as is "maliciously". See *State v. Foote*, 71 Conn. 737 (1899) (wilfully in sec. 53-45 means in the spirit of wantonness or with an evil intent or guilty purpose, and not merely intentionally). The terms "purposely", "intentionally", and "recklessly" in the Model Penal Code and Proposed New York Penal Law, which are defined in precise terms, are preferable. This analysis, however, does not examine in detail the mens rea elements of the crimes discussed.

(2) Sections 53-82 — 53-84 appear to grade the offense by the type of property burned. Section 53-82 deals with vessels, dwelling houses, churches, schools, theaters, auditoriums, assembly halls, or other structures used for public gatherings (and kitchens, shops, garages, barns, stables or other structures adjoining or belonging to these named structures) regardless of whether they are finished or unfinished, occupied or vacant. Section 53-83 deals with any building, vessel or structure not named in Section 53-82. Section 53-84 deals with burning the personal property of another worth more than \$25.

This gradation reveals the rationales behind these three sections. On one hand, the differentiation by types of property indicates that what is being

deterred is deprivation of property. On the other hand, the fact that section 53-82 provides the most severe penalties for burning of types of property likely to be occupied by human beings indicates that what is being deterred is danger to the person. This second rationale is undercut, however, by the fact that section 53-82 applies to those types of property whether they are finished or unfinished, occupied or vacant. Furthermore, this section does not, apparently, cover such analogous structures as factories and office buildings, the burning of which would involve similar great risk to large concentrations of people. Such a burning would fall within section 53-83, which carries a much lighter sentence. Thus, burning a factory would be regarded less seriously than burning a suburban garage, even one unattached to the house. Section 53-11 raises a further complication by providing for life imprisonment for anyone "who endangers the life of another by wilfully burning any building or vessel". Note that this section requires that it be "wilfully", not "wilfully and maliciously", and that one's life need only be "endangered". This seems a disproportionate penalty even for such a serious risk, at least when the person's life was only endangered by his nearness to the fire and was not lost.

(3) Section 53-84 prohibits burning another's personal property worth more than \$25 and carries a penalty of imprisonment of from six months to three years. This provision creates absurd inconsistencies. First, there seems to be no criminalological reason for focusing on burning, without regard to the risks involved in burning, of another's personal property. For example, burning another's expensive camera in an incinerator should be treated no differently from stealing it and selling it to a "fence" or throwing it into the river. What is socially harmful here is the permanent deprivation of one's property, and not the way it is disposed of. Secondly, section 53-84 is inconsistent with section 53-63, the larceny section. The person who burns the camera in the incinerator would be subject to a minimum sentence of six months and a maximum sentence of three years, under section 53-84. The person who steals the same camera would be subject to imprisonment of not more than six months or a fine of not more than \$100, or both, if the camera were worth less than \$50 but more than \$15.

(4) Section 53-86 prohibits any person from "wilfully and with intent to injure, prejudice or defraud another", burning any "building, structure or personal property", whether his own or that of another, which property is insured against fire. The section carries a penalty of imprisonment from six months to five years. Although aimed primarily at the person who burns his own property in order fraudulently to collect on his fire insurance, it is so loosely drafted that it covers much more than is justified. In effect, it makes it a special crime, regardless of the risks created or the type of property burned, to burn insured property. It creates, in effect, a crime against fire insurance companies. For example, the language of this section would cover the case in which A intentionally burns in an incinerator B's \$20 camera which is covered by B's comprehensive homeowner's policy. A would be subject to imprisonment of from six months to five years. Yet, if there were no insurance covering the camera, A would not even come within section 53-84 (burning personal property of more than \$25 value), and would come within section 53-126, which prohibits wilful injury to another's personal property not otherwise specified in the statutes and which carries a penalty of not more than a \$100 fine or not more than six months imprisonment or both.

(5) The purpose of sections 53-88, 53-89 and 53-90 appears to be to deal with situations where there is a risk of damage to property by the negligent or reckless use of fire. The defect in these sections, however, is that they are poorly drafted to carry out their purpose. They are too specific. For example, section 53-89 prohibits fires in a woodland within twenty feet of combustible material. Section 53-88 deals only with unauthorized fires on land. Such specificity is wooden and unworkable.

(6) Section 53-80 deals with explosives. On principle, the use of explosives should be treated essentially the same as the use of fire, since the risks created

by each are essentially the same: the risk of sudden, complete destruction of property or personal injury, and the risk of the destructive agent spreading beyond human control. Yet this section contains material differences from the arson sections. First, the *mens rea* element here is defined as "wilfully", not "wilfully and maliciously", as in arson. Secondly, the penalty differs: there is no mandatory minimum sentence of two years here, and there is an alternative or additional fine of not more than \$5,000. Thirdly, the language of this section dealing with behavior preliminary to the actual causing of the explosion — e.g., manufacturing explosives knowing or having reason to believe they will be used criminally, or encouraging or inciting such use, or contributing money for such purpose — is much different and goes much further than the corresponding language of sections 53-85 and 53-87, which are the "attempted arson" statutes. Both the Model Penal Code and the New York proposal deal with such matters in separate, general sections concerning criminal attempt, criminal solicitation, and the like.

## 2. Criminal Mischief

(a) **List of Sections.** The following is a list of sections of the Connecticut General Statutes (1958 Revision) which deal with or are related to destruction of property: sections 53-42 through 53-46, 53-48 through 53-55, 53-81, 53-84, 53-88 through 53-99, 53-104, 53-105, 53-108 through 53-126, 53-335.

### (b) Defects And Analysis

#### (1) Offenses Against Public Property.

(a) The principal defect in these sections, which deal mainly with damage to public property, is the total lack of consistency among or rationality behind the various sentences. Section 53-42, which deals with destruction of military provisions, or public buildings, provides for not more than ten years imprisonment. Section 53-44, which deals, among other things, with inciting and destruction of public or private property, provides a \$5,000 fine or ten year imprisonment or both. Section 53-45, which deals, among other things, with damaging a public building or voting booth, provides a \$100 fine or six months imprisonment. Section 53-46, which deals with damage to certain items in public parks provides a \$250 fine or six months imprisonment or both. Section 53-49, which deals with damage to library books, provides a \$500 fine. Section 53-50, which deals with damage to fire, police or other municipal alarm systems, provides a \$200 fine or one year imprisonment or both.

(b) Another defect is unnecessary particularization. Section 53-45, for example, specifies injury to "the heating plant or equipment or furniture" of a public building. Section 53-46 specifies sixteen separate items contained in a public park or grounds.

(c) A third defect is the lack of clear and precise definitions for the *mens rea* elements of the crimes. The most common language used is "wilfully". See sections 53-42, 53-43, 53-45, 53-46, 53-48 and 53-49. "Wilfully" is undefined by the statutes. The Supreme Court of Errors has defined it as meaning in the spirit of wantonness or with an evil intent or guilty purpose, and not just intentionally. *State v. Foote*, 71 Conn. 237 (1899). Such a definition is not very helpful, since it brings us back to the question of "evil" intent or "guilty" purpose. Section 53-50, on the other hand, uses the language "unlawfully and intentionally". While "intentionally" has a relatively clear and definite meaning, "unlawfully" does not. Does it mean in violation of a criminal statute, or a civil rule of law, or both?

#### (2) Offenses Against Private Property

These sections can be broken down roughly into several groups. Each group consists of sections which prohibit the same general type of anti-social behavior. An analysis of these groups follows. The title of each group herein is not statutory language, and is used merely for purposes of identification and analysis. The sentences described are the upper limits.

(a) **Negligent and Unauthorized Burning.**

Section 53-88 prohibits kindling a fire on another's (or public) property without permission. Section 53-89 prohibits kindling a fire on a woodland within twenty feet of combustible material. Section 53-90 prohibits dropping a lighted match, cigar, cigarette or other burning substance in or close to combustible material.

These sections apply whether or not property is damaged thereby, and can thus be viewed as a regulatory scheme, similar to traffic laws. That is, their rationale is the prevention of unreasonable risks; as running a red light is a violation because it creates the risk of an accident, so is kindling a fire within twenty feet of combustible material because it creates the risk of a fire.

As is stated in the analysis of the arson laws, these sections are poorly drafted to carry out their purpose. They are so specific that they are wooden and unworkable.

(b) **Rubbish, Filthy Substances, and Littering and Obstructing Highways.** The rationale of these sections can be viewed as the prevention of minor property annoyances, usually not resulting in any permanent damage.

Section 53-91 prohibits unauthorized "dumping" of rubbish on someone else's property, and provides for a \$100 fine or thirty days imprisonment or both. The section on its face contains no requirement of mens rea, although some kind of intent requirement would probably be found in the word "dumps".

Section 53-92 prohibits putting any deleterious or filthy substance on or in a "building, vessel or clothing", with "intent unlawfully to injure" it, and provides a \$100 fine or four months imprisonment or both. There does not seem to be any good reason why dumping rubbish on someone's property should carry a maximum thirty day term while putting some other "filthy or deleterious substance" on someone's clothing or building should carry a maximum four month term. Furthermore, there is no reason why the crime of putting filthy substances on someone else's property should be limited to buildings, vessels or clothing. Putting such substances on furniture, for example, is likely to be much more harmful than putting them on a wooden building or a fiberglass sailboat.

Section 53-51a prohibits throwing (or leaving in such a way that it is likely to be blown or tracked) certain offensive material on highways, streets, state parks, forests or beaches, and provides that when these materials are thrown from a motor vehicle, the operator is deemed prima facie to have committed the offense. It provides for a \$100 fine or thirty days imprisonment or both.

Section 53-52 prohibits wilfully using a public highway in such a way as to injure its surface, and provides for a \$50 fine or thirty day imprisonment or both. Section 53-53 prohibits using a chained wheel on a highway unless the shoe of the chain is at least six inches wide, and provides a \$5 fine. Section 53-54 prohibits dragging a log or stone on the highway and thereby damaging it (unless the actor immediately repairs the highway), and provides a \$7 fine. Section 53-55 prohibits the unauthorized deposit of stones or waste material on a highway, thereby interfering with the repairing of the highway, and provides a \$7 fine.

(c) **Unauthorized Damage to Property.** These sections deal generally with wilful destruction of specified types of property. Their rationale is the protection of certain types of property from damage. Some of the sections also contain language dealing with the elements of minor trespass and theft which often accompany such destruction, but those aspects will be discussed in connection with the analysis of the crimes of trespass and theft.

The principal defect of these sections is their unnecessary particularization, unaccompanied by any consistency of sentence. Where the conditions are such that different criminalological problems arise in connection with different types

of behavior or property, statutory particularization is justified. But where, as here, no such conditions obtain, it is not justified and, in fact, leads to inequity and duplication.

The following chart illustrates the degree of particularization, the lack of consistency of sentence, and the possibilities for duplication.

Section	Type of Property	Sentence
53-104	growing grain, grass, lawn	\$7/30 days
53-105	product of a field, garden or land	\$100/6 months
53-109	fence, gate or other property	\$10-200/60 days
53-111	cranberry meadow	\$200/12 months
53-112	bridge, lock, dam, flume, or pile of wood, boards, timber, lumber	\$500/7 years
53-113	homing pigeon	\$25
53-114	bees	\$7/30 days
53-115	tree, shrub, fence, trellis, framework, structures, creeping fern, crops, fruit, vegetable	\$100/12 months
53-116	trees more than 4" in diameter, hoop-poles	\$200/90 days
53-117	evergreens, mountain laurel, branches of trees or shrubs	\$10-25
53-118	bird food plants	\$20
53-119	trailing arbutus	\$20
53-122	bridge, fire engine, mill, manufactory, steamboat, horse, ass, mule, neat cattle, clothes in process of manufacture	\$1000/6 months
53-335	property in cemeteries	\$100/6 months

Note the extreme disparity in the sentence limits. It takes fourteen separate sections to deal with damage to the named kinds of property. And the prohibition of sections 53-104, 53-105, 53-115, 53-116, 53-117, 53-118 and 53-119 against destruction of grain and other growing items overlap each other; sections 53-109 and 53-115 both prohibit damage to fences, each section providing a different sentence; sections 53-112 and 53-122 each prohibit damage to bridges, with different sentences; the prohibition against destruction of "structures" in section 53-115 overlaps section 53-122, each section providing a different sentence; and the language "other property" in section 53-109 overlaps everything.

(d) **Damage Involving Public Utilities and Transportation.** The rationale behind these sections is the protection of public utilities and modes of public transportation and communication. Section 53-124 prohibits damage to property belonging to a public service company which is used for public communication or for the production, storage or distribution of electricity, water or gas, and provides a fine of \$500 or two years imprisonment or both. Section 53-125 prohibits damage, by anyone with the duty of caring for passengers and baggage, to that baggage, and provides a \$50 fine. Section 53-93 prohibits obstruction of the navigation of any canal, and provides a \$500 fine or one year imprisonment or both.

Sections 53-94 through 53-99 deal with railroads. Section 53-94 prohibits placing an obstruction on or removing any part of a "railroad", and provides a sentence of ten years, and if done with intent to throw a car "from the tracks of such railroad" or obstruct the motion of any car, thirty years. This section is aimed at risking or causing a train-wreck or derailment, but is drafted in such a way that it could result in an excessively harsh sentence for a much more minor offense. It could be argued, that is, that the use of the language "track of such railroad" in the clause imposing the thirty year

sentence, and the obvious concern of that clause with derailment, indicates that the first clause, imposing the ten year sentence, is aimed at the removal of or obstruction of any property owned by a railroad, including, presumably, the depot or office building. Section 53-95 prohibits putting filth or rubbish on any railroad or railroad depot, and provides a \$50 fine. Section 53-96 prohibits any "nuisance" on any railroad bridge, and provides a \$7 fine or thirty days imprisonment or both. Section 53-97 prohibits, in effect, tampering with railroad or trolley cars, or removing "the waste packing or bearing from any journal box" used on such cars, and provides a sentence of \$500 or three years or both. Section 53-98 prohibits, in effect, tampering with electrical parts of an electric train or street railway, and provides a sentence of \$500 or three years or both. Section 53-99 prohibits, in effect, tampering with railroad switches or signals and provides a sentence of \$1000 or ten years or both. It appears, like section 53-94, to aim at the train-wreck or derailment situation, but its sentence is inconsistent therewith.

Section 53-112 prohibits the wilful and malicious damage to any bridge, lock, dam or flume, or any pile or parcel of wood, boards, timber or lumber, and carries a fine of \$500 or seven years imprisonment or both. The language referring to destruction of bridges, locks or dams seems to be aimed at the situation where the destruction of such a structure could lead to wholesale catastrophe, and in this sense is akin to the sections protecting public transportation and communication.

The principal defect of these sections is, again, over-particularization. Apparently having been drafted in an era when shipping and rail were the principal modes of transportation, they do not mention interference with trucking or airplanes, and deal with railroads in too much detail.

Another familiar defect in those sections is inconsistency in sentencing. Each section has a separate sentence, depending on the type of property damaged. Yet in most cases there is no apparent reason for the differences. For example, section 53-94, which deals with obstructing or removing part of a railroad, provides from ten to thirty years; section 53-99, which deals with tampering with railroad switches and signals, provides a \$1000 fine or ten years or both. Yet both proscribe the same kind of dangerous behavior. Note also that section 53-112 provides the excessively harsh possible penalty of a \$500 fine or seven year sentence for destruction of "any pile or parcel of wood, boards, timber or lumber, of another", without regard, apparently, to the value of the wood.

(e) **Damage to Land Marks, Guide Posts, Advertisements and Notices.** Section 53-120 prohibits the wilful destruction of guide posts, milestones or boundary marks, and provides a \$100 fine or six months or both. Its rationale is the protection of the delineation of boundaries and distances, and thus indirectly the protection of the security of title and accuracy of surveying.

Section 53-121 prohibits the wilful destruction of any advertisements, posters or notices on private billboards, and provides a \$7 fine or thirty days imprisonment or both. The limitation to "private billboards" probably would exclude from the statute destruction of such similar items as an advertisement on the side of a bus or in a store front, or a neon sign advertising a commercial establishment. It is questionable, at any rate, whether a separate section on damage to advertisements or notices is necessary. It is arguable, however, that it is justified on the ground that, while the actual pecuniary loss involved in the damage to the poster is negligible, the pecuniary loss as a result of the loss of advertising can be considerable. On the other hand, this potential loss is so conjectural that it seems preferable, in the interest of statutory simplicity and brevity, simply to include such destruction, though not explicitly, in a generally drafted section.

(f) **Exposing Poison to Animals.** This section, which acts as a kind of companion to part of section 53-122 (administering poison to cattle, etc.)

prohibits the negligent or malicious placing of poison in any public place or any place accessible to dogs, game or fur-bearing animals, and provides a \$50 fine or three months imprisonment or both (plus higher penalties for subsequent offenses). It also provides that certain facts are *prima facie* evidence of a violation. Note that this section deals only with the placing of poison; in effect, it prohibits the negligent or malicious creation of a risk of poisoning certain animals or of creatures eating poison in public places. Even if the poison is never consumed, however, the crime has been committed.

(g) **Catch All.** Section 53-126 simply prohibits the wilful destruction of any personal property of another not otherwise specified in Title 53 (Crimes), and provides a \$100 fine or six months imprisonment or both.

The preceding discussion of the sections dealing with destruction of private property makes clear that, like the corresponding sections on public property, there are three main defects: (1) inconsistency in penalties; (2) gross and unnecessary particularization; (3) lack of clarity and consistency in the *mens rea* elements of the crimes. In this last respect, not only are the terms undefined, but they vary with the sections without apparent reason. Among the sections described here, the following terms are used, from place to place: wilfully; with intent; wilfully and without color of right; without permission; wilfully and unlawfully; wilfully and maliciously; negligently or maliciously.

#### B. Preliminary Comments on Proposed Drafts

The proposed drafts recommended herein are submitted for examination, study and appraisal only, and not for enactment. They are drafted, as this report, the drafts themselves and the comments thereto indicate, for later inclusion in a comprehensive criminal code. This code will contain, in addition to definitions of the crimes, a new and more rational scheme for grading of penalties and for sentencing, clarification of the requirements of criminal intent, and articulation of general principles of criminal liability, responsibility, justification and defense.

Throughout the drafts there are certain blanks. These are intentional. They indicate that the specific crime will be integrated into a penalty grading scheme in the final, comprehensive code. That is, crimes will be classified as first degree felonies, second degree felonies, etc., each classification carrying with it a range of penalties. The blanks simply indicate that the proposed drafts of the specific crimes are not yet classified, since the grading scheme has not yet been determined by the Commission.

#### C. Proposed Drafts Without Comments

##### 1. Arson and Reckless Burning

###### Article ..... Arson and Reckless Burning

Section ..... **Definitions.** For purposes of this article, "building", in addition to its ordinary meaning, includes any water-craft, air-craft, trailer, sleeping car, or other structure or vehicle, adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, such as, but not limited to, separate apartments, offices or rented rooms, any unit not occupied by the actor is, in addition to being a part of such building, a separate building. A building is that of another if anyone other than the actor has a possessory or proprietary interest therein.

###### Section ..... **Arson in the First Degree**

A person is guilty of arson in the first degree if, with intent to destroy or damage a building, he starts a fire or causes an explosion, and

1. at the time, another person is present in such building or is not in such building but is so close to such building as to be in substantially the same danger as a person in such building would be, and

2. the actor is either aware that a person is present in or close to such building, or his conduct manifests an indifference as to whether a person is present in or close to such building.

Arson in the first degree is a .....

**Section ..... Arson in the Second Degree**

A person is guilty of arson in the second degree if he starts a fire or causes an explosion

1. with intent to destroy or damage a building
  - (a) of another, or
  - (b) whether his own or another's, to collect insurance for such loss, and
2. such act subjects another person to a substantial risk of bodily injury or another building to a substantial risk of destruction or damage.

Arson in the second degree is a .....

**Section ..... Arson in the Third Degree**

A person is guilty of arson in the third degree if he recklessly causes destruction or damage to a building of another by intentionally starting a fire or causing an explosion.

Arson in the third degree is a .....

**Section ..... Reckless Burning**

A person is guilty of reckless burning if he intentionally starts a fire or causes an explosion, whether on his own property or another's, and thereby recklessly places a building of another in danger of destruction or damage.

Reckless burning is a .....

**2. Criminal Mischief**

**Article ..... Criminal Mischief**

**Section ..... Criminal Mischief In The First Degree**

A person is guilty of criminal mischief in the first degree when:

1. with intent to cause damage to tangible property of another and having no reasonable ground to believe that he has a right to do so, he damages tangible property of another in an amount exceeding one thousand five hundred dollars, or
2. with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that he has a right to do so, he damages or tampers with tangible property of a common carrier, gas, electric, waterworks, telephone or telegraph company, or any other public utility or mode of public transportation, power or communication, and thereby causes an interruption or impairment of service rendered to the public.

Criminal mischief in the first degree is a .....

**Section ..... Criminal Mischief In The Second Degree**

A person is guilty of criminal mischief in the second degree when:

1. with intent to cause damage to tangible property of another and having

no reasonable ground to believe that he has a right to do so, he damages tangible property of another in an amount exceeding two hundred fifty dollars, or

2. with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that he has a right to do so, he damages or tampers with tangible property of a common carrier, gas, electric, waterworks, telephone or telegraph company, or any other public utility or mode of public transportation, power or communication, and thereby causes a risk of interruption or impairment of service rendered to the public.

Criminal mischief in the second degree is a .....

**Section ..... Criminal Mischief In The Third Degree**

A person is guilty of criminal mischief in the third degree when, having no reasonable ground to believe that he has a right to do so, he

1. intentionally or recklessly
  - (a) damages tangible property of another, or
  - (b) tampers with tangible property of another and thereby causes tangible property of another to be placed in danger of damage; or
2. damages tangible property of another by negligence in the employment of or causing of fire, explosives, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage.

Criminal mischief in the third degree is a .....

**D. Proposed Drafts With Comments**

**1. Arson and Reckless Burning**

**Section ..... Definitions.** For purposes of this article, "building" in addition to its ordinary meaning, includes any water-craft, air-craft, trailer, sleeping car, or other structure or vehicle, adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, such as, but not limited to, separate apartments, offices or rented rooms, any unit not occupied by the actor is, in addition to being a part of such building, a separate building. A building is that of another if anyone other than the actor has a possessory or proprietary interest therein.

**(a) Preliminary Comment, Rationale, and Comment on "Definitions"**

**(1) Preliminary Comment.** This article does not define the criminal intent, or the mens rea, elements of the crime. Rather, it assumes and adopts the language and definitions of the Proposed New York Penal Law. Thus, "intent" and "recklessly" are defined as follows: (1) "A person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when his conscious object is to cause that result or to engage in that conduct." (2) "A person acts recklessly when he consciously disregards a substantial and unjustifiable risk (a) that the result described by a statute defining an offense will occur, or (b) that a circumstance described by a statute defining an offense exists, and when the disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation." Proposed New York Penal Law sec. 45 (1964). These definitions are similar to the Model Penal Code definitions of "Purposely" and "Recklessly". MPC sec. 2.02 (Proposed Official Draft) (1962). An analysis

of the mens rea elements, and which language is preferable, will be done at a subsequent date in connection with the inquiry into general principles of culpability.

This Article also does not set the penalties for the crimes. Thus, the categorization of each section into a particular grade of felony or misdemeanor is left blank. This will be completed in connection with the inquiry into the general grading scheme.

(2) **Rationale of Arson and Reckless Burning.** The primary rationale of this Article is the protection of human life or safety. Thus, the various grades defined in the Article differ depending on the degree of risk to human life, as in the Proposed New York Penal Law, upon which this Article is based. And the Article is limited to situations where either life is actually endangered, or a building, which is defined to include structures typically containing human beings, is endangered. The secondary rationale is the protection of particularly cherished property. Thus, arson in the third degree and reckless burning deal with danger to buildings of another.

(3) **Comments on "Definitions"**

(a) **"Building".** The definition of "building" is a combination of those definitions contained in the Model Penal Code and Proposed New York Penal Law. Its purpose is to include those structures and vehicles which typically contain human beings for extended periods of time. The "ordinary" meaning of "building" is left to judicial elaboration, for purposes of flexibility.

(b) **"Separate Units".** The second sentence in the paragraph, dealing with separate units, makes clear that an apartment building, for example, is both a building in itself and a collection of buildings. This is not clear under the Proposed New York Penal Law, although it is made clear in the Model Penal Code by the definition of each separate unit as "an occupied structure of another". The language employed here is simple and accomplishes the same result. Thus, if A sets fire to his own apartment while B is present in the next apartment, this should be first degree arson; yet, under the Proposed New York Penal Law, which states that each separate unit "shall be deemed a separate building", and requiring for first degree arson that another person be "in" the "building", it is arguable that B is "in" a separate building, and that the first degree arson section does not apply. The second sentence of our proposed definition covers this defect. The language, "such as, but not limited to, separate apartments, offices or rented rooms", in the second sentence is included to indicate what types of units are meant by "separate units".

(c) **"Building Of Another".** This definition is taken from the Model Penal Code. MPC sec. 220.1 (Proposed Official Draft) (1962).

**Section ..... Arson in the First Degree**

A person is guilty of arson in the first degree if, with intent to destroy or damage a building, he starts a fire or causes an explosion, and

1. at the time, another person is present in such building or is not in such building but is so close to such building as to be in substantially the same danger as a person in such building would be, and

2. the actor is either aware that a person is present in or close to such building, or his conduct manifests an indifference as to whether a person is present in or close to such building.

Arson in the first degree is a .....

(b) **Comments on Arson in the first Degree**

(1) This section is aimed at the situation where, when the fire or explosion is started, a person is in or near the building and is thus placed in great danger. The Proposed New York Penal Law only includes, in first degree arson, the situation where a person is actually "in" the building. The Commission thinks

that the situation in which a person is so near to the building as to subject him to essentially the same risks should be treated similarly. The section accomplishes this result.

(2) The Proposed New York Penal Law requires only that the actor be "aware" of the presence of another person in the building or that it is a reasonable possibility that a person is in the building. The Commission approves of the requirement that the actor be aware of the other person's presence, but thinks that the "reasonable possibility" standard is too low for such a severe crime. The second clause of subsection 2 is, therefore, suggested as a substitute. Under this language the actor's conduct must manifest a "high degree of indifference" as to whether someone is in or close to the building. This language is more consistent with the alternative requirement of awareness, in that both requirements indicate serious disregard for the safety of others.

(3) Note that, in arson in the first degree, there is no requirement that the building be that of "another". This is consistent with the rationale stated above. This section is concerned mainly with serious risks to the life and safety of others.

#### Section ..... Arson in the Second Degree

A person is guilty of arson in the second degree if he starts a fire or causes an explosion

1. with intent to destroy or damage a building
  - (a) of another, or
  - (b) whether his own or another's, to collect insurance for such loss, and
2. such act subjects another person to a substantial risk of bodily injury or another building to a substantial risk of destruction or damage.

Arson in the second degree is a .....

#### (c) Comments on Arson in the Second Degree

(1) This section is aimed at two types of situations. First, it aims at the situation in which the actor burns or explodes another's building. Second, it aims at the typical "arson for insurance" situation, where the actor burns or explodes a building in order to collect insurance. In either case, however, an essential element is danger to another person or another building. This requirement stems from the basic rationale behind the law of arson: protection of human life and safety. The inclusion of danger to another building (even if owned by the actor) is justified by the fact that buildings typically contain human beings, and thus danger to another building is likely to endanger another person's life or safety.

(2) Although the Proposed New York Penal Law makes the facts that the actor owned the building, was destroying it lawfully and properly, and could not have endangered another person or building a matter of affirmative defense, this section requires that the prosecution prove, as a part of its *prima facie* case, that the building was that of another (except in the case of "arson for insurance") and that either another person or another building was endangered. The reason for this change is that the New York proposal would make many lawful and proper burnings or explosions *prima facie* arson in the second degree, and would thus place the burden of proving an affirmative defense on an otherwise innocent individual. This seems too harsh, especially in view of the availability of the lesser crimes of reckless burning and criminal mischief.

(3) The language "without his consent" could be added in subparagraph (a) to make clear that this section does not apply, for example, to the ordinary, lawful demolition contractor who might otherwise come within a literal reading

of the section. The Commission thinks this is a better dealt with, however, in the article on general principles of liability and/or justification.

(4) It is an essential element that the fire or explosion subjects another person "to a substantial risk of death or bodily injury or another building to a substantial risk of destruction or damage". This is a higher standard than the "reasonable possibility" of danger required by the New York proposal. The Commission thinks that this higher standard is desirable, in view of the fact that it can be argued that almost any fire or explosion involves a "reasonable possibility" of danger, since it is likely to attract bystanders .

**Section ..... Arson in the Third Degree**

A person is guilty of arson in the third degree if he recklessly causes destruction or damage to a building of another by intentionally starting a fire or causing an explosion.

Arson in the third degree is a .....

(d) **Comments on Arson in the Third Degree.** This is essentially the same provision as is contained in the New York proposal. It is aimed at the reckless destruction of the building of another by intentionally starting a fire or causing an explosion. The only difference is that this section makes it a part of the prosecution case, rather than defense, that the building damaged is that of "another". Thus, it is consistent with the allocation of burden of proof in arson in the second degree.

At this grade of offense, the secondary rationale of arson—protection of particularly cherished property—becomes more prominent. This section deals with destruction of another's building without regard to risk to human life or safety.

**Section ..... Reckless Burning**

A person is guilty of reckless burning if he intentionally starts a fire or causes an explosion, whether on his own property or another's, and thereby recklessly places a building of another in danger of destruction or damage.

Reckless burning is a .....

(e) **Comments on Reckless Burning.** Whereas arson in the third degree dealt with the actual destruction of or damage to the building of another by recklessness, this section deals with recklessly endangering the building of another.

**(f) Relation of Proposed Draft to Present Connecticut Law**

(1) **Disposition of Present Law.** The following chart illustrates the present Connecticut Statutes dealing with arson and burning, the anticipated disposition thereof in connection with the proposed article on Arson and Reckless Burning, and the effect of that disposition.

Section	Disposition	Effect
53-80	to be repealed	conduct to be covered by article on inchoate crimes
53-82	to be repealed	conduct covered by arson proposal
53-83	to be repealed	conduct covered by arson proposal
53-84	to be repealed	conduct not covered by arson proposal; to be covered by proposal on criminal mischief
53-85	to be repealed	conduct to be covered by article on inchoate crimes

Section	Disposition	Effect
53-86	to be repealed	conduct covered by proposal
53-87	to be repealed	conduct to be covered by article on inchoate crimes
53-88	to be repealed	conduct not covered by arson proposal; to be covered by article on trespass as to trespass aspects; to be covered by article on criminal mischief insofar as criminal negligence causes damage to tangible property of another
53-89	to be repealed	conduct not covered by arson proposal; to be covered by article on criminal mischief insofar as criminal negligence causes damage to tangible property of another
53-90	to be repealed	conduct not covered by arson proposal; to be covered by article on criminal mischief insofar as criminal negligence causes damage to tangible property of another
53-10	delete language "or by wilfully burning any building or vessel"	conduct covered by arson proposal, but no longer as capital crime
53-11	delete language "or who endangers the life of another by wilfully burning any building or vessel"	conduct covered by arson proposal and by anticipated article on endangering the person, but no longer by life imprisonment
53-42	delete language "or any public building"	conduct covered by arson proposal
53-122	to be repealed	conduct covered by arson proposal and by proposal on criminal mischief
53-124	to be repealed	conduct covered by arson proposal and by proposal on criminal mischief

Section 53-87 (Placing Inflammable Material Near Buildings), section 53-85 (Arson; Attempt to Burn Buildings, Vessels, or Personal Property) and section 53-80 (Explosives Intended for Injury to Person or Property), which deal with attempts and other preliminary stages of criminal burning or exploding, are not included in this Article, as the chart indicates. This does not mean, however, that this behavior will be sanctioned. Rather, this kind of activity, along with the provisions prohibiting "counseling", "aiding", and "procuring", will be treated under the separate definitions of Attempt, Criminal Solicitation, and so-called "inchoate crimes". Both the Proposed New York Penal Law and the Model Penal Code follow this pattern.

Section 53-84, which makes burning of personal property a form of arson, is not covered by the proposal, because such conduct does not fall within the rationale of arson. As the analysis above indicates, treatment of this conduct as arson is inconsistent with other property crimes, where the usual risks of fire are not present. Instead, this conduct will be covered by the article on criminal mischief.

Sections 53-88—53-90 comprise a minor regulatory scheme dealing with risk of damage to property by negligent use of fire. To this extent they are not within the rationale of arson and will be covered, to some extent, as the chart indicates, by the articles on criminal trespass and criminal mischief.

(2) **Curing of Defects In and Basic Differences from Present Law.** The proposal would cure the following serious defects which now exist in the Connecticut law on arsonous activity: (1) gross and unnecessary particularization; (2) inconsistency of penalties; (3) lack of clarity and consistency in the mens rea element of the crime; (4) lack of a clear rationale behind the statutory provisions, with distinctions based on the rationale.

The basic differences between the proposal and the present law are as follows. Whereas the present law goes to great lengths to specify the types of buildings and other structures which the arson law covers, and as a result leaves out several, the proposal contains a definition of "building" which includes any structure likely to contain human beings. Whereas the present law contains gross inconsistencies of penalties, the proposal creates four grades of offense, depending on the seriousness of the conduct. Whereas the present law sets out vague, artificial and inexact mens rea requirements, the proposal's mens rea requirements are clear and exact. Whereas the present law appears to have no clearly defined rationale, and draws distinctions unsupported by reason, the rationale of the proposal is clearly articulated and is rationally related to the distinctions drawn. Whereas the present law treats the use of fire and the use of explosives differently, the proposal treats them the same, for the reason that the risks created by each are essentially the same: the risk of sudden, complete destruction of property or personal injury, and the risk of the destructive agent spreading beyond human control. Whereas the present law is framed in terms of "burning" with the result that there must be an actual burning of property and anything less is an attempt, punished less severely than where a charring takes place, the proposal is drafted in terms of "starting a fire" or "causing an explosion", without regard to whether an actual burning takes place, with the result that the attempt is punishable equally with the completed crime.

## **2. Criminal Mischief**

### **(a) Preliminary Comments, Basic Rationale and Basic Structure**

(1) **Preliminary Comments.** Like the proposed article on Arson and Reckless Burning, this proposed article on Criminal Mischief assumes the basic structural background and mens rea definitions of the Proposed New York Penal Law and the Model Penal Code. Thus the grades of the respective crimes are left blank, to be decided on when the final grading scheme is determined.

(2) **Basic Rationale.** The basic rationale behind the crime of criminal mischief is the protection against destruction, and the risk of destruction, of tangible property; and the protection against interruption, and the risk thereof, of vital public services.

(3) **Basic Structure.** The proposed criminal mischief article is based primarily on the Proposed New York Penal Law, and partly on the Model Penal Code. See Proposed New York Penal Law Art. 150 (1964); MPC sec. 220.3 (Proposed Official Draft) (1962).

Criminal mischief is divided into three degrees. Criminal mischief in the first degree is the most serious. It deals with intentional damage to tangible property in an amount exceeding \$1500, and with serious forms of intentional interruption of modes of public utilities, transportation and communication.

Criminal mischief in the second degree deals with intentional damage to tangible property in an amount between \$250 and \$1500, and with less serious forms of intentional interruption of modes of public utilities, transportation and communication.

Criminal mischief in the third degree deals with three types of behavior: (1) intentional or reckless damage to tangible property; (2) intentional or reckless tampering with tangible property, thereby endangering tangible property; (3) damage to tangible property by negligence involving fire, explosives, and other means of causing potentially widespread injury or

damage. It should be noted here, however, that the term "negligence" is used in a sense different from ordinary civil negligence; it must be "a gross deviation from the standard of care that a reasonable person would observe in the actor's situation". MPC sec. 2.02 (Proposed Official Draft) (1962); 63 Col. L. Rev. 592 (1963) (Foreword by Herbert Wechsler, Chief Reporter, Model Penal Code).

#### Section ..... Criminal Mischief in The First Degree

A person is guilty of criminal mischief in the first degree when:

1. with intent to cause damage to tangible property of another and having no reasonable ground to believe that he has a right to do so, he damages tangible property of another in an amount exceeding one thousand five hundred dollars, or
2. with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that he has a right to do so, he damages or tampers with tangible property of a common carrier, gas, electric, waterworks, telephone or telegraph company, or any other public utility or mode of public transportation, power or communication, and thereby causes an interruption or impairment of service rendered to the public.

Criminal mischief in the first degree is a .....

#### (b) Comments On Criminal Mischief In The First Degree

(1) **Subsection 1.** Subsection 1 deals with intentional damage to property in an amount exceeding \$1500. It is essentially the same as the corresponding provision in the Proposed New York Penal Law. See Proposed New York Penal Law sec. 150.10 (1964). The only difference between this subsection and the New York proposal is the addition of the phrase "of another" after the phrase "damages property". The reason for this addition is to make clear that, in order for an offense to have been committed under this subsection, damage must be done to property other than the actor's. It would be incongruous to penalize the actor, in the absence of other circumstances (such as insurance fraud), for damage to his own property. This same addition is carried through in the sections on criminal mischief in the second and third degrees, for the same reason.

The first important element in this subsection is the nature of the intent required: "intent to cause damage to tangible property of another". Thus, this quite exact, well-defined and easily understood requirement would replace the melange of *mens rea* elements presently scattered throughout the Connecticut criminal mischief sections. See the analysis of Connecticut law on criminal mischief, below. Note that the subsection clearly spells out the requirement that the intended and damaged property be "tangible property". Thus, this broad phrase would replace the present gross particularization based on enumerating various specific types of property. Note also that it is clearly required that the actor's intent be directed to, and his damage done to, property "of another". The phraseology does not require, however, that the property actually damaged be the same property or owned by the same person. Thus if A intends to damage B's property but damages C's property instead, he is still guilty of a violation of this subsection, because he intended to damage property "of another" (B) and did damage property "of another" (C). The reason for this is that he should not be excused by his own ineptitude.

The second important element in this subsection is the requirement that the actor has "no reasonable ground to believe that he has a right to do so"—i.e., damage another's property. The draft clearly places this burden of proof on the prosecution. The reason for doing so is as follows. Clearly one who reasonably believes that he has a right to destroy another's property—for example, the innocent but reasonably mistaken demolition contractor—should

not be liable to criminal prosecution, although he may be liable for civil damages. The question is whether to make this a matter of the prosecution's *prima facie* case or of affirmative defense. The Commission thinks that it should be a matter for the prosecution to prove, since to do otherwise would be to make otherwise innocent people *prima facie* criminals.

The third important element is that there be actual damage to property of another in an amount exceeding one thousand five hundred dollars. This amount was taken from the New York proposal.

(2) Subsection 2. Subsection 2 deals with intentional interruption of modes of public utilities, transportation and communication. It is based on, but differs somewhat from, the corresponding New York proposal. See Proposed New York Penal Law Art. 150 (1964). There are four essential elements in the subsection.

The first element is intent. There must be an "intent to cause an interruption or impairment of service rendered to the public".

The second element is that the actor must act without reasonable ground for doing so.

The third element is damage. There must be damage to or tampering with tangible property of the listed public services. The list is intentionally inclusive, and contains language which will include other, perhaps as yet unknown, types of services which, because of their "public" nature, should be entitled to the same protection without the necessity of future statutory amendment.

The fourth element is that the actor "thereby causes an interruption or impairment of service rendered to the public". Thus this subsection aims at intentional damage to public services which results in an actual interruption or impairment of such service.

#### Section ..... Criminal Mischief In The Second Degree

A person is guilty of criminal mischief in the second degree when:

1. with intent to cause damage to tangible property of another and having no reasonable ground to believe that he has a right to do so, he damages property of another in an amount exceeding two hundred fifty dollars, or
2. with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that he has a right to do so, he damages or tampers with tangible property of a common carrier, gas, electric, waterworks, telephone or telegraph company, or any other public utility or mode of public transportation, power or communication, and thereby causes a risk of interruption or impairment of service rendered to the public.

Criminal mischief in the second degree is a .....

#### (c) Comments on Criminal Mischief In The Second Degree

(1) Subsection 1. This subsection is identical to subsection 1 of Criminal Mischief In The First Degree, except that this subsection deals with damage to property in an amount exceeding two hundred fifty dollars. Subsection 1 of Criminal Mischief In The First Degree dealt with damage exceeding one thousand five hundred dollars in value. Like its first degree counterpart, the two hundred fifty dollar figure was taken from the New York proposal.

(2) Subsection 2. This subsection is identical to subsection 2 of Criminal Mischief In The First Degree, with one exception. That exception is that whereas subsection 2 of Criminal Mischief In The First Degree requires an actual interruption or impairment of public service, this subsection requires only that the actor's conduct causes a risk of such interruption or impairment. Thus, where the conduct results in actual interruption, it will be first degree

criminal mischief; where the conduct does not result in such an interruption, but as a result of the conduct there was a risk of such an interruption, it will be second degree criminal mischief.

Section ..... Criminal Mischief In The Third Degree

A person is guilty of criminal mischief in the third degree when, having no reasonable ground to believe that he has a right to do so, he

1. intentionally or recklessly

(a) damages tangible property of another, or

(b) tampers with tangible property of another and thereby causes tangible property of another to be placed in danger of damage; or

2. damages tangible property of another by negligence in the employment of or causing of fire, explosives, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage.

Criminal mischief in the third degree is a .....

(d) **Comments on Criminal Mischief In The Third Degree.** This section is based on a combination of the corresponding provisions of the Model Penal Code and the Proposed New York Penal Law. See MPC sec. 220.3 (Proposed Official Draft) (1962); Proposed New York Penal Law sec. 150.00 (1964). It is divided into two subsections, each of which proscribes certain behavior, described below.

A general requirement of the crime, modifying each subsection, is that the actor acts "having no reasonable ground to believe that he has a right to do so". Consistently with criminal mischief in the first and second degrees, the burden of proof as to this element is placed on the prosecution, and for the same reason, i.e., to protect otherwise innocent parties from being *prima facie* criminals.

This section deals with intentional damage to property in an amount up to two hundred fifty dollars, with situations where there is no actual damage but there is danger of damage from the actor's tampering with property, and with damage to property by negligence involving certain inherently destructive forces, such as fire, explosives, etc.

(1) **Subsection 1.** Subsection 1 is based on, and is nearly identical to, the corresponding New York proposal. The only difference is that this draft makes clear that the property being endangered by the actor's tampering must be property of someone other than the actor. The New York proposal leaves this question unclear.

This subsection is itself divided into two paragraphs—(a) and (b). Paragraph (a) prohibits intentional or reckless damage to tangible property of another. Note that under this paragraph the actor must act intentionally or recklessly; there must be actual damage; and the damage must be to tangible property of another.

Paragraph (b) prohibits intentional or reckless tampering with tangible property of another, which results in another's property being placed in danger of damage. Thus this subsection deals with the situations where the actor tampers with property and the result is not actual damage but the risk thereof. The word "tamper" is meant to be general and to include all forms of manipulation, defacing, etc. Its definition is left to judicial elaboration, in the interest of flexibility.

(2) **Subsection 2.** This subsection, which is based on the corresponding provision of the Model Penal Code, deals with damage to tangible property of another by negligence involving forces or means of causing widespread

damage. Note that, whereas subsection 1 required intentional or reckless conduct, this subsection requires only negligent conduct, but that negligence is defined as a gross deviation from the conduct of a reasonable man, and therefore is more than ordinary civil negligence. See MPC sec. 2.02 (Proposed Official Draft) (1962); 63 Col. L. Rev. 592 (1963) (Foreword by Herbert Wechsler, Chief Reporter, Model Penal Code). It may be argued that negligent behavior should not be made criminal. It might include, for example, a plumber using a blow-torch negligently and thereby damaging the property. It may be argued that such behavior, while reprehensible, is not so anti-social that it need be treated by the criminal law, and that it should be left to the law of torts to deter such behavior. The Proposed New York Penal Law apparently accepts this line of argument, for it does not include negligence in its Criminal Mischief section.

The Commission thinks, nevertheless, that behavior which is negligent, as defined involving potentially widespread injury or damage should be penalized. The specified destructive elements, are "fire, explosives, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage". The last phrase is a catch-all intended to include any other similar forces left out by inadvertence or perhaps not yet known to man. The reasons for the Commission's decision are as follows: (1) the presence of a penalty for certain dangerous negligent behavior is now felt in our criminal law in the statutes dealing with negligent homicide and with negligent use of fire (sections 53-88—53-90); (2) the section, as drafted, condemns not simple tort negligence but something more anti-social; and (3) the grading scheme will probably follow that of the Model Penal Code, which would make this behavior not a "crime" but a "violation", which carries only a fine, not imprisonment, and which "shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense". MPC sec. 1.04 (Proposed Official Draft) (1962).

(e) Relation of Proposed Draft to Present Connecticut Law

(1) Disposition of Present Law. The following chart illustrates the present Connecticut statutes dealing with damage to property, the anticipated disposition thereof in connection with the proposed article on Criminal Mischief, and the effect of that disposition.

Section	Disposition	Effect
53-88	to be repealed	conduct not covered by proposal; kindling activity covered only insofar as criminal negligence causes damage to tangible property of another; trespass aspects to be covered by article on trespass
53-89	to be repealed	conduct not covered by proposal; kindling activity covered only insofar as criminal negligence causes damage to tangible property of another.
53-90	to be repealed	conduct not covered by proposal; covered only insofar as criminal negligence causes damage to tangible property of another
53-96	to be repealed	conduct not covered by proposal
53-123	to be repealed	conduct not covered by proposal
53-42	to be repealed	conduct covered by proposal
53-46	part to be repealed; part to be transferred	language concerning highways and highway fixtures to be transferred; rest covered by proposal

Section	Disposition	Effect
53-48	to be repealed	conduct covered by proposal
53-49	part to be repealed; part to be transferred	part concerning destruction of books, etc., covered by proposal; part concerning failure to return books, etc., to be transferred
53-81	to be repealed	conduct covered by proposal
53-91	to be repealed	conduct covered by proposal only insofar as causes damage or danger of damage
53-92	to be repealed	conduct covered by proposal only insofar as causes damage or danger of damage
53-93	to be repealed	conduct covered by proposal
53-94	to be repealed	conduct covered by proposal
53-95	to be repealed	conduct covered by proposal only insofar as causes damage or danger of damage, or causes or risks interruption or impairment of railroad service
53-97	to be repealed	conduct covered by proposal
53-98	to be repealed	conduct covered by proposal
53-99	to be repealed	conduct covered by proposal
53-109	to be repealed	conduct covered by proposal
53-112	to be repealed	conduct covered by proposal
53-113	to be repealed	conduct covered by proposal
53-115	to be repealed	conduct covered by proposal
53-116	to be repealed	conduct covered by proposal
53-117	to be repealed	conduct covered by proposal
53-118	to be repealed	conduct covered by proposal
53-119	to be repealed	conduct covered by proposal
53-120	to be repealed	conduct covered by proposal
53-121	to be repealed	conduct covered by proposal
53-122	to be repealed	conduct covered by proposal
53-125	to be repealed	conduct covered by proposal
53-126	to be repealed	conduct covered by proposal
53-84	to be repealed	conduct covered by proposal
53-335	to be repealed	conduct covered by proposal
53-43	to be repealed	conduct to be covered by article on inchoate crimes
53-44	to be repealed	conduct to be covered by article on inchoate crimes
53-45	to be repealed	conduct covered by proposal and by article on endangering the person to be proposed
53-104	to be repealed	conduct covered by proposal and by article on trespass
53-105	to be repealed	conduct covered by proposal and by article on trespass
53-108	to be repealed	conduct not covered by proposal; to be covered by article on trespass and theft
53-110	to be repealed	conduct covered by proposal and by article on trespass
53-111	to be repealed	conduct covered by proposal and by articles on trespass and theft

Section	Disposition	Effect
53-114	to be repealed	conduct not covered by proposal; may be covered by article on inchoate crimes
53-124	to be repealed	conduct covered by proposal and by article on arson
53-50	to be transferred	
53-51(a)	to be transferred	
53-52	to be transferred	
53-53	to be transferred	
53-54	to be transferred	
53-55	to be transferred	

Conduct which is penalized by five present specific sections would, under the proposed article, no longer be considered criminal. Three of these sections (53-88 — 53-90) proscribe conduct which involves the risk of fire and which, at the most, would ordinarily be considered civil negligence if damage ensued. Section 53-96, which prohibits committing "any nuisance" on a railroad bridge is also eliminated, as is section 53-123, which prohibits the negligent or malicious exposure of poison to animals. It is the judgment of the Commission that the conduct described by those sections is better left for its deterrence to the civil law of damages or, where applicable, the law of inchoate crimes.

Most of the conduct presently prohibited by Connecticut law in this area would also be prohibited by the proposed article, taken in conjunction with other proposed articles as the above chart shows.

Several of the present sections should be transferred to other parts of the General Statutes, outside the proposed Penal Code since, although they involve elements of destruction of property, they deal intimately with elements which are covered at great length and in great particularity elsewhere, namely highways and fire departments.

(2) **Curing Of Defects In and Basic Differences From Present Law.** The proposal would cure the following serious defects which now exist in the Connecticut law on damage to property: (1) gross and unnecessary particularization; (2) inconsistency of penalties; (3) lack of clarity and consistency in the mens rea element of the crime; and (4) lack of a clear rationale behind the statutory provisions, with distinctions based on the rationale.

The basic differences between the proposal and the present law are as follows. It covers in three sections what the present statutes take thirty sections to cover. Whereas the present law contains gross inconsistencies of penalties, the proposal creates three grades of offense, depending on the seriousness of the conduct. Whereas the present law goes to great lengths to specify the types of property protected, the proposal deals with all "tangible property", which substitutes for the seemingly interminable list of types of property protected. Whereas the present law sets out vague, artificial, inexact and inconsistent mens rea requirements, the proposal's mens rea requirements are clear and exact. Whereas the present law appears to have no clearly defined rationale, and draws distinctions unsupported by reason, the rationale of the proposal is clearly articulated and is rationally related to the distinctions drawn. Whereas the present law treats damage to public services in a spotty, inadequate, out-of-date manner, the proposal brings this treatment up-to-date.

Respectfully submitted,

ROBERT J. TESTO, Chairman

BENJAMIN SCHLOSSBACH, Vice-Chairman

2.

**State of Connecticut. Report of the Commission to Revise the Criminal Statutes, as provided by Special Act No. 351 of the 1963 Session of the General Assembly and by Special Act No. 314 of the 1965 Session of the General Assembly.**  
**1967.**

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Report of  
The Commission  
To Revise The  
Criminal Statutes

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## I. INTRODUCTION

Special Act No. 351, enacted by the 1963 General Assembly, established a Commission of eleven members "to revise and codify the criminal statutes of the state" and "to report its findings and specific recommendations for substantive and clarifying changes in said statutes to the General Assembly on or before February 1, 1965." Special Act No. 314, enacted by the 1965 General Assembly, continued the Commission in office and directed it to report its findings and recommendations to the General Assembly on or before February 1, 1967.

This report, therefore, is a continuation of the report made to the 1965 General Assembly. The Commission has continued in its task of formulating a new penal code which will be rational, coherent, cohesive and intelligible. The proposals of the Commission are limited, in accordance with its mandate, to changes in the substantive, rather than procedural, criminal law. The Commission dealt with procedure only where it was a necessary incident of its substantive task, such as in the revision of the provisions dealing with sentencing.

The Commission persists in its initial judgment that Connecticut needs a new penal code. The new code, as was stated in our report to the 1965 General Assembly, should take into account modern knowledge and information; should be based on reason and experience; should be clear and internally consistent; and should reflect an enlightened and informed outlook. The Commission has worked with these standards in mind, and has attempted to meet them.

The material contained in this report consists of the completed work of the Commission to date. In addition, the staff has substantially completed the background research and analysis necessary to further Commission recommendations on abortion, capital punishment, the insanity defense, breach of peace and related crimes, and the general principles of culpability and justification. The Commission estimates that it will be able to complete the code by the 1969 session of the General Assembly. It therefore requests that it be continued until then.

The Commission emphasizes that the proposals submitted herein, like those made in its previous report, are not submitted for enactment but for study, examination and appraisal, as part of what will eventually be a comprehensive code.

## II. MEMBERSHIP OF THE COMMISSION

Chairman, Rep. Robert J. Testo  
Vice-Chairman, Rep. Benjamin Schlossbach  
Rep. John Carrozzella  
Rep. Benjamin L. Barringer  
Sen. Anthony P. Miller  
Sen. William F. Hickey, Jr.  
Sen. James L. Glynn

Sen. Morgan K. McGuire  
Professor Thomas L. Archibald, University of Connecticut Law School  
Professor Abraham S. Goldstein, Yale Law School (appointed to re-  
place Professor Richard C. Donnelly, who died)  
George Gilman, Esq. (appointed to replace Arthur M. Lewis, Esq.,  
who resigned)

**Staff**

David M. Borden, Esq., Executive Director  
Andrew D. Cretella, Esq., Research Assistant  
Robert Delaney, Esq., Research Assistant  
Ann T. Gutt, Secretary

**III. ACTIVITY OF THE COMMISSION**

Since the submission of its previous report the Commission met twenty-four times, beginning with its initial meeting on September 30, 1965 and ending with its final meeting on April 17, 1967. The work of the Commission consisted of a thorough examination and analysis of the present Connecticut law in each area dealt with, and comparison with the Model Penal Code, recently enacted New York Revised Penal Law and other pertinent statutes. Work on each area involved discussion of the basic policy questions raised and preparation of tentative and final drafts of specific criminal provisions to be set into the over-all code, along with explanatory comments.

**IV. FINDINGS AND SPECIFIC RECOMMENDATIONS**

**A. Proposed Drafts of Completed Portion of Code**

The following proposed drafts constitute the portion of the code which the Commission has completed to date, except for the proposed drafts and comments on arson and criminal mischief, which are published in our 1965 report.

Since the Commission has not yet reached the point of assigning specific penalty categories to the offenses defined, the degree of felony or misdemeanor is left blank as to each offense. Also, at various points language is surrounded by double parentheses. This indicates that the Commission is as yet undecided as to that particular language and has only tentatively decided to use it for the time being.

## PART ONE

### GENERAL PROVISIONS

#### TITLE A. TITLE, GENERAL PURPOSES, GENERAL RULE OF APPLICATION AND DEFINITIONS

##### ARTICLE 1. SHORT TITLE, PURPOSES AND RULE OF APPLICATION

###### Section 1.00. Short title.

This chapter shall be known as the "Penal Code."

###### Section 1.05. General purposes.

The general purposes of the provisions of this chapter are:

1. to proscribe conduct which unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;
2. to give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
3. to define the act or omission and the accompanying mental state which constitute each offense;
4. to differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties therefor; and
5. to insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, and their confinement when required in the interests of public protection.

###### Section 1.10. Application of chapter to offenses committed before and after enactment.

1. The provisions of this chapter shall apply to and govern the construction and punishment of any offense defined in this chapter and committed after the effective date thereof, as well as the construction and application of any defense to a prosecution for such an offense.

2. Unless otherwise expressly provided, or unless the context otherwise requires, the provisions of this chapter shall govern the construction of and punishment for any offense defined outside of this chapter and committed after the effective date thereof, as well as the construction and application of any defense to prosecution for such an offense.

3. The provisions of this chapter do not apply to or govern the construction or punishment of any offense committed prior to the effective date of this chapter, or the construction or application of any defense to a prosecution for such an offense. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this chapter had not been enacted.

##### ARTICLE 2. DEFINITIONS (tentative)

###### Section 2.00. Definitions of general use in this chapter.

Except where different meanings are expressly specified in sub-

sequent provisions of this chapter, the following terms have the following meanings:

1. "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or government agency.

2. "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible, movable property.

3. "Physical injury" means impairment of physical condition or substantial pain.

4. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of any of the bodily functions.

5. "Deadly physical force" means physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.

6. "Deadly weapon" means an instrument, article or substance readily capable of causing death or serious physical injury, and so made, designed or constructed that such is its primary function.

7. "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury, and includes a "vehicle" as that term is defined in this section.

8. "Public servant" means (a) any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, and (b) any person exercising the functions of any such public officer or employee. The term "public servant" includes a person who has been elected or designated to become a public servant.

9. "Vehicle" means a "motor vehicle" as defined in Title 14 Chapter 246, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail.

10. "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

11. "Benefit" means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

## **TITLE B. OFFENSES AND SENTENCES**

### **ARTICLE 3. DEFINITIONS AND CLASSIFICATION OF OFFENSES**

#### **Section 3.00. Classification of offenses.**

1. **Offense.** The term "offense" means a breach of any law of this state, local law or ordinance of a political subdivision of this state,

other than one that defines a motor vehicle infraction, for which a sentence to a term of imprisonment or to a fine is authorized upon conviction thereof. An offense is either a crime or a violation.

2. Crime. The term "crime" comprises felonies and misdemeanors.

3. Violation. Every offense which is not a crime is a "violation." Conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

4. Notwithstanding the provisions of subdivision 1 of this section, the provisions of Article ..... (Authorized Disposition of Offenders), Article ..... (Sentence of Probation, Conditional Discharge and Unconditional Discharge) and Article ..... (Sentences of Imprisonment) shall be applicable to motor vehicle infractions.

#### **Section 3.05. Felony; definition, classification and designation.**

1. Definition. An offense is a felony if a person convicted thereof may be sentenced to a term of imprisonment which is in excess of one year.

2. Classifications. Felonies are classified, for the purpose of sentence, into five categories as follows:

- (a) Class A felonies;
- (b) Class B felonies;
- (c) Class C felonies;
- (d) Class D felonies; and
- (e) unclassified felonies.

3. Designation. The particular classification of each felony defined in this chapter is expressly designated in the section or article defining it. Any offense defined outside this chapter which, by virtue of any expressly specified sentence, is within the definition set forth in subdivision 1 of this section shall be deemed an unclassified felony.

#### **Section 3.10. Misdemeanor; definition, classification and designation.**

1. Definition. An offense is a misdemeanor if a person convicted thereof may be sentenced to a term of imprisonment which cannot exceed one year.

2. Classifications. Misdemeanors are classified for the purpose of sentence, into four categories as follows:

- (a) Class A misdemeanors;
- (b) Class B misdemeanors;
- (c) Class C misdemeanors; and
- (d) unclassified misdemeanors.

3. Designation. The particular classification of each misdemeanor defined in this chapter is expressly designated in the section or article defining it. Any offense defined outside this chapter which, by virtue of an expressly specified sentence, is within the definition set forth in subdivision 1 of this section shall be deemed an unclassified misdemeanor.

#### **Section 3.15. Violation; definition and designation.**

1. Definition. An offense is a violation if the only sentence authorized for conviction thereof is a fine.

2. Designation. Every violation defined in this chapter is expressly designated as such. Any offense defined outside this chapter which is not expressly designated a violation shall be deemed a violation if, notwithstanding any other express designation, it is within the definition set forth in subdivision 1 of this section.

**ARTICLE ..... AUTHORIZED DISPOSITION OF OFFENDERS.**

**Section ..... Authorized dispositions.**

1. In general. Every person convicted of an offense shall be sentenced in accordance with this title.

2. Class A felony. Every person convicted of a Class A felony shall be sentenced to imprisonment in accordance with section ..... (unless such person is sentenced to death in accordance with section .....)

**Section ..... Authorized dispositions.**

1. In general. Every person convicted of an offense shall be sentenced in accordance with this article.

2. When a person is convicted of an offense, the sentence of the court shall be as follows:

- (a) a term of imprisonment authorized by article .....; or
- (b) a reformatory sentence authorized by sections 17-389 and 17-391;

or

- (c) a fine authorized by article .....; or
- (d) both imprisonment and a fine; or
- (e) both imprisonment, with the execution of said sentence of imprisonment suspended, entirely or after a period set by the court, and

1. a period of probation authorized by article .....; or

2. a period of conditional discharge authorized by article .....; or

(f) both imprisonment, with the execution of said sentence of imprisonment suspended, entirely or after a period set by the court, and a fine and

1. a period of probation, or

2. a period of conditional discharge; or

(g) both a fine and a reformatory sentence; or

(h) a sentence of unconditional discharge authorized by section .....

3. Revocable dispositions; probation and conditional discharge. Sentences of probation and conditional discharge, as authorized by article ....., are revocable dispositions, in that such sentence shall be deemed a tentative one to the extent that it may be altered or revoked in accordance with that article, but for all other purposes it shall be deemed to be a final judgment of conviction.

**ARTICLE ..... SENTENCES OF PROBATION, CONDITIONAL DISCHARGE AND UNCONDITIONAL DISCHARGE.**

**Section ..... Sentences of probation and conditional discharge.**

1. Criteria for sentence of probation. The court may sentence a

person to a period of probation upon conviction of any crime other than a class A felony if the court, having regard to the nature and circumstances of the crime and to the history, character and condition of the defendant, is of the opinion that:

- (a) present or extended institutional confinement of the defendant is not necessary for the protection of the public;
- (b) the defendant is in need of guidance, training or assistance which, in his case, can be effectively administered through probation supervision; and
- (c) such disposition is not inconsistent with the ends of justice.

2. Criteria for sentence of conditional discharge. The court may impose a sentence of conditional discharge for an offense, other than a class A felony, if the court, having regard to the nature and circumstances of the offense and to the history, character and condition of the defendant, is of the opinion that:

- (a) present or extended institutional confinement of the defendant is not necessary for the protection of the public; and
- (b) probation supervision is not appropriate.

3. Sentence. When the court imposes a sentence of conditional discharge the defendant shall be released with respect to the conviction for which the sentence is imposed but shall be subject, during the period of conditional discharge, to such conditions as the court may determine. The court shall impose the period of conditional discharge authorized by subdivision 4 of this section and shall specify, in accordance with section \_\_\_\_\_, the conditions to be complied with. When a person is sentenced to a period of probation the court shall impose the period authorized by subdivision 4 of this section, and may impose any conditions authorized by section \_\_\_\_\_. When a person is sentenced to a period of probation, he is thereby placed under the supervision of the probation commission.

4. Periods of probation or conditional discharge. Unless terminated sooner, the period of probation or conditional discharge shall be as follows:

- (a) for a felony, not more than five years;
- (b) for a class A misdemeanor, not more than three years;
- (c) for a class B misdemeanor, not more than two years;
- (d) for a class C misdemeanor, not more than one year; and
- (e) for an unclassified misdemeanor, the period of probation shall be not more than two years if the authorized sentence of imprisonment is in excess of three months, otherwise the period of probation shall be not more than one year.
- (f) for failure to provide subsistence for dependents, a determinate or indeterminate period.

5. One year review. When a person has been on probation for a longer period than one year, the probation officer shall, as soon as is convenient after the expiration of one year's probation, call the matter to the attention of the sentencing court or judge with a recommendation as to the advisability of the continuance of probation. The person on probation shall be given reasonable notice of this action and shall be entitled to be heard by the court or judge with respect thereto.

Section ..... **Conditions of probation and conditional discharge.**

1. When imposing sentence of probation or conditional discharge, the court may, as a condition of the sentence, require that the defendant:

(a) work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;

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

(c) support his dependents and meet other family obligations;

(d) make restitution of the fruits of his offense or make reparation, in an amount he can afford to pay, for the loss or damage caused thereby. When restitution or reparation is a condition of the sentence the court may fix the amount thereof and the manner of performance;

(e) If a minor, (i) reside with his parents or in a suitable foster home, (ii) attend school, and (iii) contribute to his own support in any home or foster home;

(f) post a bond or other security for the performance of any or all conditions imposed;

(g) refrain from violating any criminal law of the United States, the State of Connecticut or any other state;

(h) satisfy any other conditions reasonably related to his rehabilitation.

The court shall cause a copy of any such order to be delivered to the defendant and to the probation officer, if any.

2. When a defendant has been sentenced to a period of probation, the probation commission, or probation officer, may require that the defendant comply with any or all conditions which the court could have imposed under subdivision 1 of this section and which are not inconsistent with any condition actually imposed by the court.

3. At any time during the period of probation or conditional release, after hearing and for good cause shown, the court may modify or enlarge the conditions, whether originally imposed by the court under this section or otherwise, and may extend the period, provided that the original period with any extensions thereof shall not exceed the periods authorized by section \_\_\_\_\_. The court shall cause a copy of any such order to be delivered to the defendant and to the probation officer, if any.

Section ..... **Calculation of periods of probation and of conditional discharge.**

1. A period of probation or conditional discharge commences on the day it is imposed, except that, where it is preceded by a sentence of imprisonment with execution suspended after a period of imprisonment set by the court, it commences on the day the defendant is released from said imprisonment. Multiple periods, whether imposed at the same or different times, shall run concurrently.

2. Issuance of a warrant or notice to appear for violation pursuant to section \_\_\_\_\_ shall interrupt the period of the sentence as of the date of such issuance until a final determination as to the violation has been made by the court.

3. In any case where a person who is under a sentence of probation or of conditional discharge is also under an indeterminate sentence of imprisonment, or a reformatory sentence, imposed for some other offense by a court of this state, the service of the sentence of imprisonment shall satisfy the sentence of probation or of conditional discharge unless the sentence of probation or of conditional discharge is revoked prior to the next to occur of parole under, or satisfaction of, the sentence of imprisonment. Provided, however, that the service of an indeterminate or reformatory sentence of imprisonment shall not satisfy a sentence of probation if the sentence of probation was imposed at a time when the sentence of imprisonment had one year or less to run.

Section ..... Violation of probation or conditional discharge.

1. Arrest. At any time during the period of probation or conditional discharge, the court or any judge thereof may issue a warrant for the arrest of a defendant for violation of any of the conditions of probation or conditional discharge, or may issue a notice to appear to answer to a charge of such violation, which notice shall be personally served upon the defendant. Any such warrant shall authorize all officers named therein to return the defendant to the custody of the court or to any suitable detention facility designated by the court. Any probation officer may arrest any defendant on probation without a warrant or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of the probation officer, violated the conditions of his probation. Such written statement, delivered with the defendant by the arresting officer to the official in charge of any county jail or other place of detention, shall be sufficient warrant for the detention of the defendant. After making such an arrest, such probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime shall be applicable to any defendant arrested under the provisions of this section. Upon such arrest and detention, the probation officer shall immediately so notify the court or any judge thereof. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charges.

2. Hearing. At this hearing the defendant shall be informed of the manner in which he is alleged to have violated the conditions of his probation or conditional discharge, shall be advised by the court that he has the right to retain counsel and, if indigent, shall be entitled to the services of the public defender, and shall have the right to cross-examine witnesses and to present evidence in his own behalf.

3. If such violation is established, the court may continue or revoke the sentence of probation or conditional release or modify or enlarge the conditions, and, if said sentence is revoked, require the defendant to serve the sentence imposed or any lesser sentence. No such revocation shall be ordered, however, except upon consideration of the whole record and except if such violation is established by reliable and probative evidence.

**Section ..... Termination of probation or conditional discharge.**

The court or sentencing judge may at any time during the period of probation or conditional discharge, after hearing and for good cause shown, terminate probation or conditional discharge and discharge the defendant.

**Section ..... Sentence of unconditional discharge.**

1. **Criteria.** The court may impose a sentence of unconditional discharge in any case where it is authorized to impose a sentence of conditional discharge under section ..... if the court is of the opinion that no proper purpose would be served by imposing any condition upon the defendant's release.

2. **Sentence.** When the court imposes a sentence of unconditional discharge, the defendant shall be released with respect to the conviction for which the sentence is imposed without imprisonment, probation supervision or conditions. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

**ARTICLE ..... SENTENCES OF IMPRISONMENT.**

**Section ..... Indeterminate sentence of imprisonment for felony.**

1. **Indeterminate sentence.** A sentence of imprisonment for a felony shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subdivision 2 of this section and the minimum period of imprisonment shall be as provided in subdivision 3 of this section.

2. **Maximum term of sentence.** The maximum term of an indeterminate sentence shall be fixed as follows:

- (a) for a class A felony, the term shall be life imprisonment;
- (b) for a class B felony, the term shall be fixed by the court, and shall not exceed fifteen years;
- (c) for a class C felony, the term shall be fixed by the court, and shall not exceed ten years;
- (d) for a class D felony, the term shall be fixed by the court and shall not exceed five years; and
- (e) for an unclassified felony, the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law that defines the crime.

3. **Minimum period of imprisonment.** The minimum period of imprisonment under an indeterminate sentence shall be at least one year and shall be fixed as follows:

- (a) in the case of a class A felony, the minimum period shall be fixed by the court and specified in the sentence. Such minimum sentence shall not be less than one nor more than ten years;
- (b) where the sentence is for a class B, C or D felony and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that the ends of justice and best interests of the public require that the court fix a minimum period of imprisonment, the court may fix the minimum. In such event, the minimum period shall be specified in the sentence

and shall not be more than one-half of the maximum term imposed, except where the maximum is less than three years.

**Section ..... Alternative definite sentence for class C or D felony.**

Notwithstanding the provisions of section ..... of this article, when a person is sentenced for a class C or D felony and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less.

**Section ..... Sentence of imprisonment for misdemeanors.**

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year.

2. Class B misdemeanor. A sentence of imprisonment for a class B misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed six months.

3. Class C misdemeanor. A sentence of imprisonment for a class C misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed three months.

4. Unclassified misdemeanor. A sentence for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law that defines the crime.

**Section ..... Place of imprisonment.**

1. Indeterminate sentence. When an indeterminate sentence of imprisonment is imposed, the court shall commit the defendant to the State Prison.

2. Definite sentence. When a definite sentence of imprisonment is imposed, the court shall commit the defendant to the custody of the jail administrator.

**Section ..... Concurrent and consecutive terms of imprisonment.**

1. When multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and to the undischarged term or terms in such manner as the court directs at the time of sentence. The court shall state whether the respective maxima and minima shall run concurrently or consecutively with respect to each other, and shall state in conclusion the effective sentence imposed. When a person is sentenced to the State Prison for two or more separate offenses and the term of imprisonment for a second or further term is ordered to begin at the expiration of the first and each succeeding terms of sen-

tence named in the warrant of commitment, the court imposing such sentences may name no minimum term of imprisonment except under the first sentence, and in such case the several maximum terms shall, for the purpose of this section and of sections 54-125 to 54-131, inclusive be construed as one continuous term of imprisonment.

**Section \_\_\_\_\_ . Commencement and calculation of terms of imprisonment.**

1. Indeterminate sentences. An indeterminate sentence of imprisonment commences when the prisoner is received in the institution to which he was sentenced.

2. Definite sentences. A definite sentence of imprisonment commences when the prisoner is received in the custody to which he was sentenced. Where a person is under more than one definite sentence, the sentences shall be calculated as follows:

(a) If the sentences run concurrently, the terms merge in and are satisfied by discharge of the term which has the longest term to run;

(b) If the sentences run consecutively, the terms are added to arrive at an aggregate term and are satisfied by discharge of such aggregate term, or by service of one year imprisonment plus any term imposed for an offense committed while the person is under sentence, whichever is less.

3. Jail time. In imposing sentence of imprisonment, the court may provide that the term imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence. This credit shall be applied against the maximum or minimum of an indeterminate sentence, or against a definite sentence, as specified by the court.

4. Time served under vacated sentence. When a sentence of imprisonment that has been imposed on a person is vacated and a new sentence is imposed on such a person for the same offense or for an offense based on the same act, the new sentence shall be calculated as if it had commenced at the time the vacated sentence commenced, and all time served under or credited against the vacated sentence shall be credited against the new sentence.

5. Escape. When a person who is serving a sentence of imprisonment escapes from custody, the escape shall interrupt the sentence and such interruption shall continue until the return of the person to the institution in which the sentence was being served.

**Section \_\_\_\_\_ . Reduction of definite sentence.**

At any time during the period of a definite sentence, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or the defendant discharged on probation or conditional discharge for a period not to exceed that to which he could have been originally sentenced.

**Section \_\_\_\_\_ . Sentence of imprisonment for persistent offender.**

1. Persistent dangerous felony offender; definition.

A persistent dangerous felony offender is a person who

(a) stands convicted of manslaughter in the ..... degree, arson in the ..... degree, rape, robbery in the ..... degree, kidnapping, or assault in the ..... degree; and

(b) has been, at separate times prior to the commission of the present crime, two or more times convicted of and imprisoned, under a sentence to a term of imprisonment of more than one year or of death, in the state prison or state reformatory in this state or in any other state prison or penitentiary for the following crimes:

(i) the crimes enumerated in paragraph a) of this subdivision 1, the crime of murder, or an attempt to commit any of said crimes or murder; or

(ii) prior to the effective date of this Penal Code, in this state: the crimes enumerated in sections 53-9, 53-10, 53-11, 53-12, 53-13, 53-14, 53-15, 53-16, 53-19, 53-21, 53-69, 53-78, 53-79, 53-80, 53-82, 53-83, 53-86, 53-238, 53-239, assault with intent to kill under section 53-117, or an attempt to commit any of said crimes; or

(iii) in any other state: any crimes the essential elements of which are substantially the same as any of those crimes enumerated in paragraph a) or subparagraph (ii) of this subdivision 1.

2. Persistent felony offender; definition. A persistent felony offender is a person who

(a) stands convicted of a felony; and

(b) has been, at separate times prior to the commission of the present felony, two or more times convicted of and imprisoned under an imposed term of more than one year or of death, in the state prison or state reformatory in this state or in any other state prison or penitentiary for a crime. This subsection 2 shall not apply, however, where the present conviction is for a crime enumerated in paragraph a) of subdivision 1 and either of the two prior convictions were for crimes other than those enumerated in subdivision 1.

3. Persistent theft offender; definition. A persistent theft offender is a person who

(a) stands convicted of theft in the ..... degree or lower degree; and

(b) has been, at separate times prior to the commission of the present theft, twice convicted of the crime of theft.

4. Affirmative defense. It is an affirmative defense to the charge of being a persistent offender under this section that (a) as to any of the prior convictions on which the state is relying the defendant was pardoned on the ground of innocence, and (b) without that conviction, the defendant was not two or more times convicted and imprisoned as required by this section.

5. Authorized sentence of persistent dangerous felony offender. When any person has been found to be a persistent dangerous felony offender, and when the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by section ..... for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by that section for a class A felony.

6. Authorized sentence for persistent felony offender. When any person has been found to be a persistent felony offender, and when the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by section ..... for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by that section for the next higher degree of felony.

7. Authorized sentence for persistent theft offenders. When any person has been found to be a persistent theft offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration will best serve the public interest, the court, in lieu of imposing the sentence authorized by section ..... for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by that section for a class D felony.

#### ARTICLE ..... FINES.

##### Section ..... Fines for felonies.

1. Class A or B felony. A sentence to pay a fine for a class A or B felony shall be a sentence to pay an amount, fixed by the court, not exceeding ten thousand dollars.

2. Class C or D felony. A sentence to pay a fine for a class C or D felony shall be a sentence to pay an amount, fixed by the court, not exceeding five thousand dollars.

3. Unclassified felony. A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, in accordance with the fine specified in the law that defines the crime.

##### Section ..... Fines for misdemeanors.

1. Class A or B misdemeanor. A sentence to pay a fine for a class A or B misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding one thousand dollars.

2. Class C misdemeanor. A sentence to pay a fine for a class C misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars.

3. Unclassified misdemeanor. A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, in accordance with the fine specified in the law that defines the crime.

##### Section ..... Fine for violation.

A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars. In the case of a violation defined outside this chapter, if the amount of the fine is expressly specified in the law that defines the offense, the amount of the fine shall be fixed in accordance with that law.

Section ..... Alternative fine.

If a person has gained money or property through the commission of any felony, misdemeanor or violation, then upon conviction thereof the court, in lieu of imposing the fine authorized for the offense under one of the above sections, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In such case the court shall make a finding as to the amount of the defendant's gain from the offense, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the term "gain" means the amount of money or the value of property derived.

TITLE ..... OFFENSES INVOLVING DAMAGE TO AND INTRUSION UPON PROPERTY.

ARTICLE ..... BURGLARY AND CRIMINAL TRESPASS.

Section ..... Definitions.

The following definitions are applicable to this article:

1. "Building," in addition to its ordinary meaning, includes any watercraft, aircraft, trailer, sleeping car, or other structure or vehicle, adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not occupied by the actor is, in addition to being a part of such building, a separate building.

2. "Dwelling" means a building which is usually occupied by a person lodging therein at night, whether or not a person is actually present.

3. "Night" means the period between thirty minutes after sunset and thirty minutes before sunrise.

The following definition is applicable only to the sections on burglary:

1. "Enter or remain unlawfully." A person "Enters or remains unlawfully" in or upon premises when the premises, at the time of such entry or remaining, are not open to the public and when the actor is not otherwise licensed or privileged to do so.

Section ..... Burglary in the First Degree.

A person is guilty of burglary in the first degree when he enters or remains unlawfully in a building with intent to commit a crime therein and when:

1. he is armed with explosives or a deadly weapon; or
2. in the course of committing the offense, he intentionally, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone.

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

Burglary in the first degree is a .....

Section ..... **Burglary in the Second Degree.**

A person is guilty of burglary in the second degree when he enters or remains unlawfully in a dwelling at night with intent to commit a crime therein.

Burglary in the second degree is a .....

Section ..... **Burglary in the Third Degree.**

A person is guilty of burglary in the third degree when he enters or remains unlawfully in a building with intent to commit a crime therein.

Burglary in the third degree is a .....

Section ..... **Affirmative Defense.**

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

Section ..... **Multiple Convictions.**

A person may not be convicted both for burglary and for the offense which it was his intent to commit after the burglarious entry or remaining, unless the additional offense constitutes a .....

Section ..... **Manufacture or Possession of Burglar's Tools.**

A person is guilty of manufacturing or possession of burglar's tools when he manufactures or has in his possession any tool, instrument or other thing adapted, designed or commonly used for advancing or facilitating offenses involving unlawful entry into premises, or offenses involving forcible breaking of safes or other containers or depositories of property, under circumstances manifesting an intent to use or knowledge that some person intends to use the same in the commission of an offense of such character.

Manufacture or possession of burglar's tools is a .....

Section ..... **Criminal Disguise.**

A person is guilty of the crime of criminal disguise when, with intent to commit a crime, he has his face blackened or otherwise disguised in the night.

Criminal disguise is a .....

Section ..... **Criminal Trespass in the First Degree.**

A person is guilty of criminal trespass in the first degree when, knowing that he is not licensed or privileged to do so, he enters or remains in a building.

Criminal trespass in the first degree is a .....

Section ..... **Criminal Trespass in the Second Degree.**

A person is guilty of criminal trespass in the second degree when, knowing that he is not licensed or privileged to do so, he enters or remains in a building or any other premises in defiance of an order to leave or not to enter personally communicated to him by the owner of the premises or other authorized person.

Criminal trespass in the second degree is a .....

**Section ..... Criminal Trespass in the Third Degree.**

A person is guilty of criminal trespass in the third degree when, knowing that he is not licensed or privileged to do so, he enters or remains in premises which are posted in a manner prescribed by law or reasonably likely to come to the attention of intruders, or fenced or otherwise enclosed in a manner designed to exclude intruders, or which belong to the state and are appurtenant to any state institution.

**Section ..... Defenses.**

It is an affirmative defense to prosecution for criminal trespass that:

1. the building involved in the offense under sections ..... and ..... was abandoned; or
2. the premises were at the time of the entry or remaining open to the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or
3. the actor reasonably believed that the owner of the premises, or a person empowered to license access thereto, would have licensed him to enter or remain, or that he was licensed to do so.

**ARTICLE ..... ARSON AND RECKLESS BURNING.**  
(printed in previous report)

**ARTICLE ..... CRIMINAL MISCHIEF.**  
(printed in previous report)

**TITLE ..... OFFENSES INVOLVING THEFT.**

**ARTICLE ..... ROBBERY.**

**Section ..... Definition.**

Robbery is forcible stealing. A person forcibly steals property and commits robbery when in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of:

1. preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or
2. compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.

**Section ..... Robbery in the Third Degree.**

A person is guilty of robbery in the second degree when he forcibly steals property.

Robbery in the third degree is a .....

**Section ..... Robbery in the Second Degree.**

A person is guilty of robbery in the second degree when he forcibly steals property and when:

1. he is aided by another person actually present; or
2. he or another participant in the crime threatens the use of what

purports to be or what he represents by his words or conduct to be a deadly weapon or a dangerous instrument.

Robbery in the second degree is a .....

**Section ..... Robbery in the First Degree.**

A person is guilty of robbery in the first degree when he forcibly steals property and when in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:

1. causes serious physical injury to any person who is not a participant in the crime; or
2. is armed with a deadly weapon or dangerous instrument.

Robbery in the first degree is a .....

**ARTICLE ..... LARCENY.**

**Section ..... Definition of terms.**

The following definitions are applicable to this title:

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

2. "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

3. "Deprive." To "deprive" another of property means (a) to withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him, or (b) to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

4. "Appropriate." To "appropriate" property of another to oneself or a third person means (a) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit, or (b) to dispose of the property for the benefit of oneself or a third person.

5. "Owner." When property is taken, obtained or withheld by one person from another person, an "owner" thereof means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds it from him by larcenous means.

A joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof.

In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest therein, even if legal title lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

**Section \_\_\_\_\_ Larceny; defined.**

1. A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

2. Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:

(a) By conduct heretofore known as common law larceny by trespassory taking, common law larceny by trick, embezzlement or obtaining property by false pretenses;

(b) By acquiring property lost, mislaid or delivered by mistake.

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

(c) By committing the crime of issuing a bad check.

(d) By extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

(i) Cause physical injury to some person in the future; or

(ii) Cause damage to property; or

(iii) Engage in other conduct constituting a crime; or

(iv) Accuse some person of a crime or cause criminal charges to be instituted against him; or

(v) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(vi) Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or

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

(viii) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

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

**Section ..... Larceny; value of stolen property.**

For the purposes of this title, the value of property shall be ascertained as follows:

1. Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

2. Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

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

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

3. When the value of property cannot be satisfactorily ascertained pursuant to the standards set forth in subdivisions 1 and 2 of this section, its value shall be deemed to be an amount less than fifty dollars.

Amounts included in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

**Section ..... Petit larceny.**

A person is guilty of petit larceny when he steals property.

Petit larceny is a .....

**Section ..... Grand larceny in the third degree.**

A person is guilty of grand larceny in the third degree when he steals property and when:

1. The value of the property exceeds fifty dollars; or

2. The property consists of a public record, writing or instrument kept, held or deposited according to law with or in the keeping of any public office or public servant; or

3. The property consists of a sample, culture, microorganism, specimen, record, recording, document drawing or any other article material, device or substance which constitutes, represents, evidences, reflects, or records a secret scientific or technical process, invention or formula or any phase or part thereof. A process, invention or formula is "secret" when it is not, and is not intended to be, available to anyone other than the owner thereof or selected persons having access thereto for limited purposes with his consent, and when it accords or may accord the owner an ad-

vantage over competitors or other persons who do not have knowledge or the benefit thereof; or

4. The property, regardless of its nature and value, is taken from the person of another; or

5. The property, regardless of its nature and value, is obtained by extortion.

Grand larceny in the third degree is a .....

**Section ..... Grand larceny in the second degree.**

A person is guilty of grand larceny in the second degree when he steals property and when the value of the property exceeds five hundred dollars.

Grand larceny in the second degree is a .....

**Section ..... Grand larceny in the first degree.**

A person is guilty of grand larceny in the first degree when he steals property and when:

1. The property regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will (a) cause physical injury to some person in the future, of (b) cause damage to property, or (c) use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such a manner as to affect some person adversely, or

2. The value of the property exceeds two thousand dollars.

Grand larceny in the first degree is a .....

**Section ..... Receiving stolen property.**

A person is guilty of larceny by receiving stolen property if he receives, retains, or disposes of property of another knowing that it has probably been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

Larceny by receiving stolen property is a .....

**Section ..... Theft of services.**

The following definitions are applicable to this section.

1. "Service" includes, but is not limited to, labor, professional service, public utility and transportation service, the supplying of hotel accommodations, restaurant services, entertainment, and the supplying of equipment for use.

2. "Credit card" means any instrument, whether known as a credit card, credit plate, charge plate, or by any other name, which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

Section ..... Theft of services.

A person is guilty of theft of services when:

1. With intent to defraud, he obtains or attempts to obtain a service, or induces or attempts to induce the supplier of a rendered service to agree to payment therefor on a credit basis, by the use of a credit card which he knows to be stolen, forged, revoked, cancelled, unauthorized or in any way invalid for the purpose; or

2. With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids or attempts to avoid such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false; or

3. With intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such transportation service which has been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay; or

4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by himself or another person by means of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) any misrepresentation of fact which he knows to be false, or (c) any other artifice, trick, deception, code or device; or

5. With intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device provided by the supplier of the service, he tampers with such device or with other equipment related thereto, or in any manner attempts to prevent the meter or device from performing its measuring function, without the consent of the supplier of the service. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved; or

6. With intent to obtain, without the consent of the supplier thereof, gas, electricity, water, steam or telephone service, he tampers with any equipment of the supplier thereof designed to supply or to prevent the supply of such service either to the community in general or to particular premises; or

7. Obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not entitled to the use thereof, and with intent to derive a commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.

Theft of services is a .....

**Section ..... Misapplication of property.**

1. A person is guilty of misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that the same will be returned to the owner at a future time, he loans, leases, pledges, pawns or otherwise encumbers such property without the consent of the owner thereof in such manner as to create a risk that the owner will not be able to recover it or will suffer pecuniary loss.

2. In any prosecution under this section, it is a defense that, at the time the prosecution was commenced, (a) the defendant had recovered possession of the property, unencumbered as a result of the unlawful disposition, and (b) the owner had suffered no material economic loss as a result of the unlawful disposition.

Misapplication of property is a .....

**Section ..... Obtaining property by false pretenses.**

Any person who, by any false token, pretense or device obtains from another any property, with intent to defraud him or any other person is guilty of obtaining property by false pretenses.

Obtaining property by false pretenses is a .....

**Section ..... False promise.**

A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct. In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed.

Obtaining property by false promise is a .....

**Section ..... Criminal impersonation.**

A person is guilty of criminal impersonation when he:

1. Impersonates another and does an act in such assumed character with intent to obtain a benefit or to injure or defraud another; or

2. Pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit or to injure or defraud another; or

3. Pretends to be a public servant, or wears or displays without authority any uniform or badge by which such public servant is lawfully distinguished, with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

Criminal impersonation is a .....

**Section ..... Unlawfully concealing a will.**

A person is guilty of unlawfully concealing a will, when, with intent to defraud, he conceals, secretes, suppresses, mutilates, or destroys a will, codicil or other testamentary instrument.

Unlawfully concealing a will is a .....

**Section ..... Defrauding of public community by officer.**

Any officer or agent of any public community is guilty of defrauding of public community by officer, who, with intent to prejudice it, appropriates its property to the use of any person or makes upon its books any false entry or draws any order upon its treasury or presents or aids in procuring to be allowed any fraudulent claim against such community.

Defrauding the public community by officer is a .....

**Section ..... Diversion from state of benefit of labor of employees.**

Any person who fraudulently procures or attempts to procure, for himself or another, from any employee of the state or any department thereof, the benefit of any labor which the state or any department thereof is entitled to receive from such employee during his hours of employment or fraudulently aids or assists in procuring or attempting to procure the benefit of any such labor shall be guilty of diversion from the state of benefit of labor of employees.

Diversion from the state of benefit of labor of employees is a .....

**Section ..... Issuing a bad check; definitions of terms.**

The following definitions are applicable to this article.

1. "Check" means any check, draft or similar sight order for the payment of money which is not post-dated with respect to the time of utterance.

2. "Drawer" of a check means a person whose name appears thereon as the primary obligor, whether the actual signature be that of himself or of a person purportedly authorized to draw the check in his behalf.

3. "Representative drawer" means a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor.

4. "Utter." A person "utters" a check when, as a drawer or representative drawer thereof, he delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to such check. One who draws a check with intent that it be so delivered is deemed to have uttered it if the delivery occurs.

5. "Pass." A person "passes" a check when, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and uttered by another, he delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect thereto.

6. "Funds" means money or credit.

7. "Insufficient funds." A drawer has "insufficient funds" with a drawee to cover a check when he has no funds or account whatever, or funds in an amount less than that of the check; and a check dishonored for "no

account" shall also be deemed to have been dishonored for "insufficient funds."

8. "Credit." "Credit" means an arrangement or understanding with such bank or depository for the payment of such check, draft or order in full on presentation.

**Section ..... Issuing a bad check.**

A person is guilty of issuing a bad check when:

1. As a drawer or representative drawer, he utters a check knowing that he or his principal, as the case may be, does not then have sufficient funds with the drawee to cover it, and (a) he intends or believes at the time of utterance that payment will be refused by the drawee upon presentation, and (b) payment is refused by the drawee upon presentation; or

2. He passes a check knowing that the drawer thereof does not then have sufficient funds with the drawee to cover it, and (a) he intends or believes at the time the check is passed that payment will be refused by the drawee upon presentation, and (b) payment is refused by the drawee upon presentation.

Issuing a bad check is a .....

For the purposes of this section, but not for purposes of prosecution for larceny by issuing a bad check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid, if:

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

(b) payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue and the issuer failed to make good within 8 days after receiving notice of that refusal.

**ARTICLE ..... FORGERY AND RELATED OFFENSES.**

**Section ..... Forgery; definitions of terms.**

1. "Written instrument" means any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

2. "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof. An endorsement, attestation, acknowledgment or other similar signature or statement is deemed both a complete written instrument in itself and a part of the main instrument in which it is contained or to which it attaches.

3. "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

4. "Falsely make." A person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an

incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof.

5. "Falsely complete." A person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

6. "Falsely alter." A person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

7. "Forged instrument" means a written instrument which has been falsely made, completed or altered.

**Section ..... Forgery in the third degree.**

A person is guilty of forgery in the third degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument, or alters or possesses any written instrument which he knows to be forged.

Forgery in the third degree is a .....

**Section ..... Forgery in the second degree.**

A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument or utters or possesses any written instrument which he knows to be forged, which is or purports to be, or which is calculated to become or represents if completed:

1. A deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create transfer, terminate or otherwise affect a legal right, interest, obligation or status; or

2. A public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or

3. A written instrument officially issued or created by a public office, public servant or governmental instrumentality; or

4. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

"Drugs" as defined in this section includes all drugs except "narcotic drugs" as defined in Title 19, Chapter 344, State Narcotic Drug Act.

Forgery in the second degree is a .....

**Section ..... Forgery in the first degree.**

A person is guilty of forgery in the first degree when, with intent to defraud, deceive or injure another, he falsely makes, completes, or alters a written instrument or utters or possesses any written instrument which he knows to be forged, which is or purports to be, or which is calculated to become or represent if completed:

1. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality; or

2. Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property.

Forgery in the first degree is a .....

**Section ..... Criminal simulation.**

A person is guilty of criminal simulation when:

1. With intent to defraud, he makes or alters any object in such manner that it appears to have an antiquity, rarity, source or authorship which it does not in fact possess; or

2. With knowledge of its true character and with intent to defraud, he utters or possesses an object so simulated.

Criminal simulation is a .....

**Section ..... Forgery of symbols of value.**

A person is guilty of forgery of symbols of value when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument or utters or possesses any written instrument which he knows to be forged, which is or purports to be, or which is calculated to become or represent if completed part of an issue of tokens, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services.

Forgery of symbols of value is a .....

**Section ..... Unlawfully using slugs; definition of terms.**

The following definitions are applicable to sections ..... and .....

1. "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle designed (a) to receive a coin or bill or token made for the purpose, and (b) in return for the insertion or deposit thereof, automatically to offer, to provide, to assist in providing or to permit the acquisition of some property or some service.

2. "Slug" means an object or article which, by virtue of its size, shape or any other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill or token.

3. "Value" of a slug means the value of the coin, bill or token for which it is capable of being substituted.

**Section ..... Unlawfully using slugs in the second degree.**

A person is guilty of unlawfully using slugs in the second degree when:

1. With intent to defraud the owner of a coin machine, he inserts or deposits a slug in such machine; or

2. He makes, possesses or disposes of a slug with intent to enable a person to insert or deposit it in a coin machine.

Unlawfully using slugs in the second degree is a .....

**Section ..... Unlawfully using slugs in the first degree.**

A person is guilty of unlawfully using slugs in the first degree when he makes, possesses or disposes of slugs with intent to enable a person to insert or deposit them in a coin machine, and the value of such slugs exceeds one hundred dollars.

Unlawfully using slugs in the first degree is a .....

**TITLE ..... OFFENSES AGAINST THE PERSON.**

**ARTICLE ..... ASSAULT AND RELATED OFFENSES.**

**Section ..... Assault in the third degree.**

A person is guilty of assault in the third degree when:

1. With intent to cause physical injury to another person, he causes such injury to such person or to a third person; or

2. He recklessly causes serious physical injury to another person; or

3. With criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a .....

**Section ..... Assault in the second degree.**

A person is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or

2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or

3. With intent to prevent a peace officer from performing a lawful duty, he causes physical injury to such peace officer; or

4. He recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

5. For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the same.

Assault in the second degree is a .....

**Section ..... Assault in the first degree.**

A person is guilty of assault in the first degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or

2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or

3. Under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person.

Assault in the first degree is a .....

**Section ..... Threatening.**

A person is guilty of threatening when, by physical threat, he intentionally places or attempts to place another person in fear of imminent serious physical injury, or when he threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.

Threatening is a .....

**Section ..... Reckless endangerment in the second degree.**

A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of physical injury to another person.

Reckless endangerment in the second degree is a .....

**Section ..... Reckless endangerment in the first degree.**

A person is guilty of reckless endangerment in the first degree when, under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of serious physical injury to another person.

Reckless endangerment in the first degree is a .....

**ARTICLE ..... HOMICIDE.**

**Section ..... Homicide defined.**

Homicide means conduct which causes the death of a person. "Person," when referring to the victim of a homicide, means a human being who has been born alive.

**Section ..... Criminally negligent homicide.**

A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person. This section does not apply, however, where the defendant caused said death by a motor vehicle.

Criminally negligent homicide is a .....

**Section ..... Misconduct with a motor vehicle.**

A person is guilty of misconduct with a motor vehicle when, with criminal negligence in the operation of a motor vehicle or in consequence

of his intoxication while operating a motor vehicle, he causes the death of another person.

Misconduct with a motor vehicle is a .....

**Section ..... Manslaughter in the second degree.**

A person is guilty of manslaughter in the second degree when:

1. He recklessly causes the death of another person; or
2. He intentionally causes or aids another person to commit suicide.

Manslaughter in the second degree is a .....

**Section ..... Manslaughter in the first degree.**

A person is guilty of manslaughter in the first degree when:

1. With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or
2. With intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance, as defined in paragraph (a) of subdivision one of section ..... The fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subdivision; or
3. Under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person.

Manslaughter in the first degree is a .....

**Section ..... Murder.**

A person is guilty of murder when:

1. With intent to cause the death of another person, he causes the death of such person or of a third person or causes a suicide by force, duress or deception; except that it in any prosecution under this subdivision, it is an affirmative defense that:

(a) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime; or

2. Acting either alone or with one or more other persons, he commits or attempts to commit ((robbery, burglary, kidnapping, arson, rape in the first degree, deviate sexual intercourse in the first degree, sexual abuse in the first degree, escape in the first degree, or escape in the second degree)) and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants, except that in any prosecution under this subdivision, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

Evidence that the defendant suffered from a mental disease, mental defect or other mental abnormality is admissible, in a prosecution under subdivision 1 of this section, on the question of whether the defendant acted with intent to cause the death of another person.

Murder is punishable as a class A felony ((unless the death penalty is imposed as provided by section .....)).

#### ARTICLE ..... SEX OFFENSES.

##### Section ..... Sex offenses; definitions.

The following definitions are applicable to this article:

1. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight. Its meaning is limited to persons not married to each other.

2. "Deviate sexual intercourse" means (a) sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva, or (b) any form of sexual conduct with an animal or dead body.

3. "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party.

4. "Female" means any female person who is not married to the actor.

5. "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.

6. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or owing to any other act committed upon him without his consent.

7. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

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

**Section ..... Sex offenses; lack of consent.**

1. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.

2. Lack of consent results from:

(a) forcible compulsion; or

(b) incapacity to consent; or

(c) where the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

3. A person is deemed incapable of consent when he is:

(a) less than sixteen years old; or

(b) mentally defective; or

(c) mentally incapacitated; or

(d) physically helpless.

**Section ..... Sex offenses; affirmative defenses.**

1. Lack of knowledge. In any prosecution for an offense under this article in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

2. Reasonable mistake of age. In any prosecution for an offense under this article in which the criminality of the actor's conduct depends on the alleged victim's age being below a critical age other than eleven, it is an affirmative defense to such offense that the actor reasonably believed the alleged victim to be above the critical age.

3. Spouse relationships. In any prosecution for an offense under this article it is an affirmative defense that the defendant and alleged victim were, at the time of the alleged offense, living together by mutual consent in a relationship of cohabitation as man and wife, regardless of the legal status of their relationship.

**Section ..... Sex offenses; corroboration.**

A person shall not be convicted of any offense defined in this article, or of an attempt to commit the same, solely on the uncorroborated testimony of the alleged victim. Corroboration may be circumstantial. This section shall not apply to the offense of sexual abuse in the third degree.

**Section ..... Prompt complaint.**

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

**Section ..... Sexual misconduct in the first degree.**

A person is guilty of sexual misconduct in the first degree when:

1. He has sexual intercourse with another person, or engages in deviate

sexual intercourse with another person or causes another person to engage in deviate sexual intercourse, and

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

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

Sexual misconduct in the first degree is a .....

**Section ..... Sexual misconduct in the second degree.**

A person is guilty of sexual misconduct in the second degree when:

1. Being a male, he engages in sexual intercourse with a female without her consent; or

2. He engages in deviate sexual intercourse with another person without the latter's consent; or

3. He engages in sexual conduct with an animal or dead body.

Sexual misconduct in the second degree is .....

**Section ..... Rape in the first degree.**

A male is guilty of rape in the first degree when he engages in sexual intercourse with a female:

1. By forcible compulsion; but it is an affirmative defense to prosecution under this subdivision 1 that the female had previously consensually engaged in sexual intercourse with the actor; or

2. Who is incapable of consent by reason of being physically helpless; or

3. Who is less than eleven years of age.

Rape in the first degree is a .....

**Section ..... Rape in the second degree.**

A male is guilty of rape in the second degree when he engages in sexual intercourse with a female:

1. By forcible compulsion; or

2. When he is eighteen years old or more and the female is less than fourteen years old.

Rape in the second degree is a .....

**Section ..... Rape in the third degree.**

A male is guilty of rape in the third degree when:

1. He engages in sexual intercourse with a female who is incapable of consent by reason of some factor other than being less than sixteen years old; or

2. Being twenty-one years old or more, he engages in sexual intercourse with a female less than sixteen years old.

Rape in the third degree is a .....

**Section ..... Deviate sexual intercourse in the first degree.**

A person is guilty of deviate sexual intercourse in the first degree when he engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse:

1. By forcible compulsion; but it is an affirmative defense to prosecution under this subdivision 1, that the other person had previously consensually engaged in deviate sexual intercourse with the actor; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old.

Deviate sexual intercourse in the first degree is a .....

**Section ..... Deviate sexual intercourse in the second degree.**

A person is guilty of deviate sexual intercourse in the second degree when he engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse:

1. By forcible compulsion; or
2. When he is eighteen years old or more and the other person is less than fourteen years old.

Deviate sexual intercourse in the second degree is a .....

**Section ..... Deviate sexual intercourse in the third degree.**

A person is guilty of deviate sexual intercourse in the third degree when he engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse, and

1. The other person is incapable of consent by reason of some factor other than being less than sixteen years old; or
2. He is twenty-one years old or more and the other person is less than sixteen years old.

**Section ..... Sexual abuse in the first degree.**

A person is guilty of sexual abuse in the first degree when he subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than eleven years old.

Sexual abuse in the first degree is a .....

**Section ..... Sexual abuse in the second degree.**

A person is guilty of sexual abuse in the second degree when he subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than sixteen years old; or
2. Less than fourteen years old.

Sexual abuse in the second degree is a .....

**Section ..... Sexual abuse in the third degree.**

A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that

1. Such other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen years old, and
2. Such other person was more than fourteen years old, and
3. The defendant was less than five years older than such other person.

Sexual abuse in the third degree is a .....

**Section ..... Venereal examination.**

The court before which is pending any case involving a violation of any provision of this Article shall, before the final disposition of such case, order the examination of the accused person to determine whether or not he is suffering from any venereal disease, unless the court from which such case has been bound over has ordered the examination of the accused person for such purpose, in which event the court to which such bindover is taken may determine that a further examination of such accused person is unnecessary. A report of the result of such examination shall be filed with the state department of health on a form supplied by it. If such examination discloses the presence of venereal disease, the court may make such order with reference to the continuance of the case or the detention, treatment or other disposition of such person as the public health and welfare require. Such examination shall be conducted at the expense of the state department of health. Any person who fails to comply with any order made by any court under the provisions of this section shall be guilty of a .....

## **B. COMMENTS AND BACKGROUND ON PROPOSED DRAFTS**

### **1. Comments on Articles 1 and 2, Title, General Rules of Construction and Application and Definitions.**

**Short Title.** This section sets out the title of the proposed code. The Commission chose this title as against the New York title (Penal Law) and MPC title (Penal and Correctional Code) because it wanted the title to suggest the process of codification (hence the word "Code" rather than "Law") and because it did not want to suggest that the code revises the "correctional" or prison system.

**General purposes.** This section sets out the general purposes of the provisions of the code, and thus the general purposes of the criminal law itself. It is taken directly from the New York proposal.

**Application of chapter to offenses committed before and after enactment.** This section is taken from the New York proposal. It adopts the principle that the code affects, in every way, only those offenses committed subsequent to the effective date of the code. It rejects the MPC proposal that certain aspects of the code, such as defenses, sentencing and

parole, are, with the defendant's consent, applicable to pre-enactment offenses. Further, it does not go into the question of when an offense has been committed, e.g., when one element was committed pre-code and another post-code. These questions are left to judicial elaboration. It makes clear, also, that the general principles of culpability and principles of sentencing herein are applicable to offenses defined outside this code, except where the context requires otherwise.

**Principle of construction.** Both the MPC and New York proposal explicitly state a principle of statutory construction; and both, in so doing, explicitly reject the principle, long followed in this state, that a penal law must be strictly construed. The Commission, in two separate meetings, considered the question of whether to retain or reject the strict construction rule.

The main argument for its rejection is that the code makes a serious effort to define the offenses as clearly as possible; furthermore, one of the general purposes articulated in TITLE ONE is "to give fair warning of the conduct prescribed and of the sentences authorized upon conviction." Therefore, since the purpose of the strict construction rule is to insure that an accused had fair warning, the strict construction rule is unnecessary, and the provisions of the code should, like any other statute, be interpreted according to their purposes.

The Commission decided, however, to retain the strict construction rule, for the following reason: since the code attempts to define the offenses and draw the distinctions as clearly as possible, the limits thus set should be strictly adhered to, without the risk of judicial enlargement inherent in the proposal. Furthermore, the proposal would create a situation in which the strict construction rule would not be applicable to code offenses, but would be applicable to the great number of criminal offenses remaining outside the code, thus creating an unfair and anomalous situation.

Having decided to retain the strict construction rule, the Commission then considered whether to do so by explicit statutory statement or not. To do so by statutory statement would have, however, led to problems of formulation and articulation, since the rule now derives from case law. See *State v. Archambault*, 146 Conn. 605 (1959); *State v. Scarano*, 149 Conn. 34 (1961). The Commission therefore decided to retain the rule *sub silentio*, by not mentioning it, intending statutory silence to imply a retention of this long-established rule.

**Definitions of general use in this chapter.** These definitions are taken largely from the New York proposal. They are, however, only tentative. The Commission decided to adopt the structure of the New York definitions, as opposed to that of the MPC; but the decision to use the New York definitions themselves is only tentative, in order to have some definitions for the draftsmen to work with and in order to test these definitions against each offense as it is drafted.

## **2. Comparison of Connecticut Law, Model Penal Code and New York Proposal Regarding Title, General Rules of Construction and Application and Definitions.**

#### Title.

**Connecticut.** The Connecticut criminal law provisions have no specific title. Most of them are now contained in Title 53 of the General Statutes, although many are located at various places throughout the statutes.

**Model Penal Code.** The American Law Institute suggests as a title: The Penal and Correctional Code.

**New York Proposal.** The New York proposal is entitled the "Revised Penal Law."

#### General Purposes of the Code.

**Connecticut.** The Connecticut statutes do not articulate the general purposes of the criminal law, and the Commission has been unable to find any cases that do so.

**Model Penal Code.** The provisions of the Model Penal Code concerning its purposes are divided into two parts: the purposes of the provisions defining the offense; and, the purposes of the provisions concerning sentencing. In all, thirteen separate purposes are articulated. The corresponding sections of the New York proposal cover essentially the same ground in five provisions.

**New York Proposal.** Five general purposes are articulated by the New York proposal. They are concise, direct and easily understood. The five are as follows:

- (1) To proscribe conduct which unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;
- (2) to give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
- (3) to define the act or omission and the accompanying mental state which constitute each offense;
- (4) to differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties therefor; and
- (5) to insure the public safety by preventing the commission of offenses through the deterrent influences of the sentences authorized, the rehabilitation of those convicted, and their confinement when required in the interests of public protection.

It should be noted that the fifth purpose clearly articulates the three generally recognized purposes of criminal sanctions: deterrence, rehabilitation, and public protection through confinement.

#### Principles of Construction.

**Connecticut.** The only present statutory guide to construction of our statutes is contained in the general language of section 1-1, which reads as follows:

In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired

a peculiar and appropriate meaning in the law, shall be construed and understood accordingly.

The rule is also well recognized that a penal statute should be strictly construed, but that strictness should not exalt technicalities above substance or stifle an obvious legislative purpose or intent. *State v. Archambault*, 156 Conn. 605 (1959); *State v. Scarano*, 149 Conn. 34 (1961).

**Model Penal Code.** The Model Penal Code offers the principle that the language be construed according to its "fair import," but that when it is ambiguous, it be construed according to the purposes articulated. This principle has been followed in many Connecticut civil cases. See, e.g., *State v. Murzyn*, 142 Conn. 329 (1955) (civil contempt proceeding by Attorney General). It may be argued that this principle is undesirable, because it seems to preclude a court from looking to the purpose of a statute if its meaning appears clear and unambiguous. Statutory enactment, it may be argued, is a purposive act; statutes are enacted to carry out particular purposes, and a court should not be precluded from looking to a statute's purpose where its literal application would lead to an obvious absurdity or injustice. Indeed, the various criminal defenses, such as insanity, entrapment, duress, etc., can be viewed as judicially implied gaps in the criminal law in order to make it conform to its purpose.

**New York Proposal.** The New York proposal, which substantially restates the existing New York law, disregards both the "strict construction" principle and the principle of literal application in the absence of ambiguity. It reads as follows:

The general rule that a penal statute is to be strictly construed does not apply to this chapter, but the provisions herein must be construed according to the fair import of their terms to promote justice and effect the objects of the law.

It may be argued, for the abolition of the rule that penal statutes be strictly construed, that one of the articulated purposes of the law is to give fair warning of the conduct proscribed and of the sentences authorized, and that giving effect to this purpose does away with the necessity of the "strict construction" principle. The Commission, as is noted above, rejected this argument in favor of the strict construction rule.

#### **Application of Code to Offenses Committed Before and After Enactment.**

**Connecticut.** The present Connecticut provision on the effect of repeal of a statute is contained in section 1-1 of the penal statutes. It reads as follows:

The repeal of an act shall not affect any punishment, penalty or forfeiture incurred before the repeal takes effect, or any suit, or prosecution, or proceeding pending at the time of the repeal, for an offense committed, or for the recovery of a penalty or a forfeiture incurred under the act repealed.

The general effect of this section is that a statute governs the prosecution of a crime committed prior to the effective date of repeal of the statute.

**Model Penal Code.** The Model Penal Code takes the position that, with certain important exceptions explained below, the Code does not apply to offenses committed prior to its effective date, and that the prior law is continued in effect for that purpose, as if the code were not in force. It provides that an offense "was committed prior to the effective date of the Code if any of the elements of the offense occurred prior thereto." MPC sec. 1.01 (Proposed Official Draft) (1962).

The exceptions to this rule, under which the provisions of the Code apply to cases pending on or after the effective date of the Code, are as follows:

(1) The procedural provisions of the code apply insofar as is feasible. This exception is not relevant to our inquiry, since our proposal deals only with the substantive law.

(2) Provisions affording a defense or mitigation apply, with the consent of the defendant. It may be argued that this is unwise and undesirable for the following reasons:

(a) it permits a defendant to choose to be protected by defenses and factors of mitigation which were not applicable to the law he violated; and

(b) it may be difficult to administer procedurally, since the Code offenses and defenses are drafted as a package and in many cases refer to each other. It should be noted that neither New York nor Wisconsin adopted this provision.

(3) The Court, with the defendant's consent, may apply the sentencing provisions of the Code. This appears to give the Court discretion to do so, if the defendant so consents. Thus, if the defendant consents, the final choice as to whether to do so lies with the Court. It may be argued that this is a wise provision theoretically, since the Court may at a given term be sentencing several different defendants for essentially the same conduct, some of whom committed their offenses before and some after the effective date of the Code. Under such circumstances, it may be argued that the Court, which alone has the responsibility for sentencing, should be allowed this choice in order to facilitate its attempt at even-handed treatment. Again, however, it is difficult to see how this would work out in practice, since the sentencing scheme of the Code is related directly to the definition of the Code offenses, which are different in definition and degree from the pre-Code offenses. New York does not follow this proposal.

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

**New York Proposal.** The New York proposal takes the clear and simple position that all of its provisions, including defenses and sentencing, govern only offenses committed after its effective date, and that any offenses committed prior thereto must be treated under the law existing at that time. There is no doubt that this is an administratively simpler proposal than that of the Model Penal Code.

### Territorial Applicability.

**Connecticut.** Section 54-77 of the General Statutes provides that a person charged with an offense shall be tried in the county "wherein it was committed." This section lays the venue of trials, but does not answer the questions which arise as to "where" a particular crime is "committed" when, for example, one element occurs in one place and another element in a different place. Furthermore, this section does not answer the question of where, in relation to the boundaries of the state, the crime must have been committed in order for the state to have jurisdiction therefor. The basic rule, of course, is that the crime must have been "committed within" the state. *Gilbert v. Steadman*, 1 Root 403 (1792). However, there are some other Connecticut cases which relax this rule to some extent. *State v. Cummings*, 33 Conn. 260 (1866) holds that one who has committed the crime of theft in one state, and brings the stolen goods into this state, thereby commits the crime of theft in this state. See also *State v. Ellis*, 3 Conn. 185 (1819). And *State v. Brady*, 34 Conn. 118 (1867) holds that if a felony is committed in Connecticut by the procurement of a resident of another state who does not personally come into Connecticut to assist in the felony, the nonresident can be punished here if jurisdiction of his person can be obtained.

**Model Penal Code.** Section 1.03 of the Model Penal Code elaborates in great detail its territorial applicability. It may be summarized as follows:

- (a) conduct or result which is an element of the crime occurs within the state;
- (b) conduct outside the state constitutes an attempt;
- (c) conduct outside the state constitutes a conspiracy to commit a crime within the state and an overt act occurs within the state;
- (d) conduct within the state constitutes an attempt to commit an offense in another jurisdiction, such offense also being an offense under the law of this state;
- (e) omission to perform a legal duty within this state, with respect to domicile, residence, or relationship to a person, thing or transaction in this state;
- (f) the statute expressly forbids certain conduct outside the state, the conduct bears a reasonable relation to a state interest, and the actor knows or should know that his conduct is likely to affect that interest.

**New York Proposal.** The New York proposal does not spell out its territorial applicability. Presumably this leaves such questions to existing New York law and the courts.

### Miscellaneous Applicability Provisions

**New York Proposal.** Section 5.10 of the New York proposal contains three other provisions which limit the applicability of the code. They are summarized as follows:

- (a) the proposal does not cover procedure. This is covered by the code of criminal procedure.

Such a provision, while perhaps helpful, is not necessary for our purposes, since it is obvious that the procedural rules are not being affected.

(b) the proposal does not affect any military law or proceeding. Again, this seems unnecessary.

(c) the proposal does not bar, suspend or affect any civil remedy.

This, too, seems unnecessary, and could conceivably be undesirable. For example, it could be construed as a legislative policy of disapproval of the long-recognized civil doctrine of negligence *per se*.

#### **Definitions of General Use.**

**Connecticut.** The Connecticut statutes do not contain any definitions of general use applicable to the criminal provisions.

**Model Penal Code.** Section 1.13 of the Model Penal Code contains a long list of definitions. Many of these relate primarily to the requirement of culpability.

**New York Proposal.** Section 10.00 of the New York proposal also contains a list of definitions. This list, unlike that of the Model Penal Code, does not contain those definitions which relate primarily to culpability. These are contained in sections on culpability. As is noted above, the Commission has tentatively decided to follow New York in this respect.

### **3. Comments on Article 3. Definitions and Classification of Offenses.**

**Classification of offenses.** This section is taken largely from the New York proposal.

**Subdivision 1** defines "offence" as a breach of any law of the state, or local law or ordinance of a subdivision thereof, excluding motor vehicle infractions, for which imprisonment or a fine is authorized upon conviction. Offenses are either crimes or violations. Most of the sentencing provisions do apply, however, to motor vehicle infractions.

**Subdivision 2** defines a "crime" as either a felony or misdemeanor.

**Subdivision 3** provides that every offense which is not a crime is a violation. The additional language, which is taken from the MPC, states explicitly that a conviction of a violation gives rise to no disability or legal disadvantage based on conviction of a criminal offense. Thus it makes clear that a violation is a new category of offense; a non-criminal offense; conduct which should be proscribed but conviction for which should in no way brand the offender a "criminal."

**Felony; definition, classification and designation.** This section, which is taken largely from the New York proposal, defines, classifies and designates felonies.

**Subdivision 1** employs the traditional definition of a felony as an offense the sentence for which may be more than one year.

**Subdivision 2** divides felonies into five classes, for purposes of sentencing: A through D, and unclassified felonies.

The Commission thinks that this division into four categories, plus the unclassified felonies, is reasonable in light of the need for flexibility in classification.

The concept of the unclassified felony is to deal with the felonies which now exist outside Title 53 of the General Statutes, many of which will, in all likelihood, continue to exist outside of this code. The specific penalties which they now carry will be retained, but they will be subject to the sentencing procedures and principles of the code.

**Misdemeanor; definition, classification and designation.** This section retains the traditional definition of a misdemeanor as an offense carrying a sentence of not more than one year. Misdemeanors are divided into four classifications: A through C, plus unclassified. The purpose of the unclassified misdemeanor is, like the unclassified felony, to deal with the non-code misdemeanors, which retain their present sentences.

**Violation; definition and designation.**

**Subdivision 1** defines a violation as an offense for which the only sentence that may be imposed is a fine. The Commission considered the New York proposal, which includes a jail sentence of not more than fifteen days within the concept of the violation, but rejected it as being inconsistent with the principle of non-criminality.

**Subdivision 2** provides that violations in this chapter are expressly designated as such, and that offenses outside the chapter which fall within the definition of a violation as contained in subdivision 1 are also violations.

**Present Connecticut Statutes Affected.**

The foregoing would affect two present Connecticut statutes: section 1-1 and 54-117 (Conn. Gen. Stat. 1958 Revision).

Section 1-1 defines a felony as any crime punishable by imprisonment for more than one year and a misdemeanor as any other crime, unless it is specifically designated a felony. This section would have to be repealed or amended so as not to cause confusion with the designations set forth in the proposal.

Section 54-117 provides for the retention of common law crimes in Connecticut (as well as specifically prohibiting "assault with intent to kill"). The Commission recommends repeal of this section, insofar as it retains common law crimes. Its disposition as far as assault with intent to kill is concerned is dealt with in our analysis of assault and related offenses.

**4. Comments on Authorized Disposition of Offenders.**

**Authorized dispositions.** This section sets out the various alternative dispositions which the court can make following a conviction. They are imprisonment (jail, prison, or reformatory), probation, conditional discharge (explained below), fine, unconditional discharge, and various combinations thereof. The section is designed to give the sentencing court as much flexibility as is necessary in sentencing.

Subdivisions 2 (e) and (f) make clear that, when the court imposes a sentence of probation or conditional discharge it must first impose a sentence of imprisonment with execution suspended (entirely or partially). This is a departure from both the New York proposal and the MPC, both of which provide for elimination of the "execution suspended" concept and for imposition of the probation or conditional discharge sentence alone. The result of those provisions would be that, upon violation of probation or conditional discharge, the court would then be imposing a sentence for the original offense and in addition, where the violation consists of a new offense, would also be imposing a sentence for the new offense. The Commission decided to retain the "execution suspended" concept and make it a pre-requisite of probation or conditional discharge, however, for the following reasons. First, it informs the probationer or conditional dischargee of what he faces if he violates. Second, it eliminates the risk, in the case where the violation consists of a new offense, of the court, in imposing sentence for the original offense and the new offense, of maximizing the first sentence because the defendant now stands before him as, in effect, a second offender. Third, it lodges in the first judge only, who is the one most familiar with the first offense, the authority to set the maximum sentence to be served for that offense, rather than leaving it to a court sitting perhaps as much as two or three years later. It should be noted that the Commission's recommendations involve the elimination of the concept of "imposition of sentence suspended" as opposed to "execution suspended."

Subdivision 3 makes clear that probation and conditional discharge are revocable dispositions. Thus the court retains jurisdiction of the defendant and can later alter or revoke them. At the same time, they are final judgments of conviction for all other purposes, e.g. appeal.

#### **5. Comments on Probation, Conditional Discharge and Unconditional discharge.**

**Sentence of probation and conditional discharge.** This section sets out the criteria, nature and period of sentences of probation and conditional discharge. The criteria are fairly general, and are an attempt to articulate the guidelines which a court in fact uses in making such a decision.

The concept of conditional discharge, which is taken from both the Model Penal Code and New York Revised Penal Law, is new. It is designed to meet those cases in which present or extended confinement or probation supervision is unnecessary, but some jurisdictional hold on the defendant and some conditions which the defendant should meet are desirable. Unlike the imposition of a sentence of probation, where the court usually leaves the conditions to be set by the probation officer (although it may impose conditions of its own), the court sentencing to a period of conditional discharge must set the conditions, since there is no other intervening agency to do so.

Subdivision 4 sets out the maximum periods of probation and conditional discharge. These provisions involve something of a change from existing Connecticut law, in that the periods vary according to the degree of misdemeanor involved. The provision for a determinate or indeterminate period in cases involving non-support of dependents is a carry-over

from existing law. The reason for it is that the period of required support, e.g. in the case of a small child, may be lengthy and the court may want to tailor its probation or conditional discharge period accordingly.

**Subdivision 5** is largely a carry-over of present section 54-113 requiring a review of each probationer after the first year on probation, and a recommendation by the officer to the court as to continuation or termination. The only change is an additional requirement that the probationer be given notice of this action and an opportunity to be heard. This proposal does not contemplate a formal hearing of any sort, however.

**Conditions of probation and conditional discharge.** This section sets out some of the conditions a court may impose. It is not intended to be exhaustive. It is contemplated that, in sentences of probation, the court will, as it does now, usually leave the conditions to be set by the probation authorities. As is noted above, however, the court will have the responsibility of setting the conditions of conditional discharge.

**Subdivision 2** makes clear that the court may, during the period, modify or enlarge the conditions and extend the period (within the maximum period set by statute), after hearing and for good cause shown. This provision is taken largely from existing Connecticut law.

**Calculation of periods of probation and of conditional discharge.** This section sets out rules for the calculation of, and interruption of, periods of probation and conditional discharge.

**Subdivision 2** makes clear that an issuance of a warrant or notice to appear for a violation interrupts the period. This is aimed at the situation where evidence of a violation may come to the probation officer or court's attention, but the defendant may not be available until after the period has run. Both the Model Penal Code and New York revision set up a rather complex mechanism of "declaration of delinquency," which serves the same purpose, but the Commission thinks that this system is simpler and as effective.

**Violation of probation or conditional discharge.**

**Subdivision 1** is essentially the same as the present section 54-114 regarding arrest for violation. The major change is the deletion of the provision for written report by the probation officer to the court. This is dealt with differently in subdivision 2.

**Subdivision 2** sets out what the Commission regards as minimum standards of fairness to be applicable to hearings on violation charges. At present there is no statutory provision (other than the requirement of a "hearing") governing this situation. The standards required may differ from court to court and from judge to judge. The Commission thinks that, because the defendant's continued freedom is likely to be at stake, and because the decision as to the violation may turn on conflicting sets of facts, the right to counsel, to cross-examine witnesses and to present evidence (which rights are often granted in practice now anyway) should be made clear. The language in subdivision 3, limiting revocation orders to those supported by "the whole record" and by "reliable and probative evidence" is an attempt to reach a middle ground between the requirement of a full, trial-type hearing and allowing revocation simply upon

what may be unsupported hearsay information in the probation officer's report. The language is taken largely from the Federal Administrative Procedures Act, 5. U.S.C. §1006 (c).

**Sentence of unconditional discharge.** This section creates a new concept in theory but not in practical effect. A sentence of unconditional discharge means that the defendant is convicted, but he is released without probation or conditions. In practical effect it is the same as a present sentence with execution suspended and no probation. In such a case, although the language of the court may sound as though there were a sentence hanging over the defendant's head, in fact the court loses jurisdiction over him and the effect is the same as an unconditional discharge. See *Baker v. Potter*, 17 Conn. Supp. 444 (1952). Thus the effect of this section is to change the label of the concept from a misleading one to an accurate one.

#### **6. Comments on Sentences of Imprisonment.**

This article sets out the rules for terms of imprisonment and for calculation thereof. Taken with the article on classification of offenses, it creates a new system of categorization of offenses and sentences. The principal purpose of this system is to cure the gross and irrational disparity among the various authorized sentences which has been the result of the present system of each particularized offense carrying its own particularized authorized sentence.

#### **Indeterminate sentence of imprisonment for felony.**

This section provides an indeterminate sentence for each category of felony. The maximum sentences, ranging downward from life to not more than five years, are set out in subdivision 2. The category of "unclassified felony" is to deal with the myriad of felony offenses existing outside the present Title 53 which are retained and which, because many of them are part of complex regulatory schemes, are not suitable for inclusion in the code.

Subdivision 3 provides the authorized minimum sentences. The court, as to class B, C or D felonies, is given the choice of imposing a minimum or not. If one is imposed, it must be at least one year, but may not be more than one-half the maximum (except where the maximum is less than three years).

The rationale behind this system is, in the first instance, to give the court relatively broad discretionary limits within which to impose sentence, based on its knowledge of the defendant and the circumstances of the offense; but to leave the upper and lower limits of the sentence disparate enough to allow the parole authorities to take an early second look at the situation, based on their information as to the defendant's rehabilitation or need for continued confinement.

**Alternative definite sentence for class C or D felony.** This section permits the court, when sentencing for a class C or D felony, to impose a definite sentence of less than one year.

**Sentence of imprisonment for misdemeanors.** This section sets the limits on sentences for the various categories of misdemeanor, ranging

downward from one year to three months, plus unclassified misdemeanors, which are comparable to unclassified felonies.

**Concurrent and consecutive terms of imprisonment.** This section deals with concurrent and consecutive multiple sentences. The court has the responsibility of stating whether they shall run consecutively or concurrently; and, if minimum sentences are imposed, whether the respective maxima and minima run concurrently or consecutively. The final sentence in the section, however, which is taken largely from the present section 54-121, allows the court, in imposing multiple consecutive sentences, to name a minimum only under the first sentence imposed. This is in line with present practice. The only change in this section from the corresponding language in section 54-121 is from "shall" to "may." The reason for this change is to avoid what would otherwise be an apparent conflict with the previous sentence in the section.

**Commencement and calculation terms of imprisonment.** This section provides that a sentence begins to run when the prisoner is received by the institution or custody to which he was sentenced.

**Subdivision 2 (b)** deals with consecutive definite sentences, and provides that they cannot aggregate more than one year (plus any term imposed for an offense committed while the person is under sentence). This limitation applies whether the sentences are imposed at the same or different times. Thus, this provision can be seen more as a direction to the jail administrator in calculating the total duration of the prisoner's stay, rather than as a direction to the sentencing judge. The reason for this limitation is that since a definite sentence means commission to the custody of the jail administrator, rather than the State Prison, a defendant should not be detained more than one year in the jail system (unless he commits an additional offense while in custody), because of the limited rehabilitative facilities of most of the present jails.

**Subdivision 3** gives the court the discretion to credit against the term imposed the time the person spent in custody prior to the commencement of the sentence, e.g. for inability to post bond.

**Subdivision 4** deals with the situation where the original sentence, under which time has been served, has been vacated, e.g. by a successful appeal, and a new sentence is imposed, e.g. upon reconviction. In such a case, the new sentence must be calculated as if it had commenced at the time the vacated sentence commenced, with all time served under or credited against the old credited against the new.

**Sentence of imprisonment for persistent offender.** This section replaces the present sections on recidivists and changes the approach to this problem. Three categories are created: persistent dangerous felony offender; persistent felony offender; and persistent theft offender.

A persistent dangerous felony offender is one who is convicted of any of the crimes listed in subdivision 1 (a) and who has two or more times been convicted and imprisoned in State Prison or reformatory or another state prison for those crimes or for the crimes listed in 1 (b) (ii) (which are the comparable crimes in the present statutes). The effect of such a

conviction is to give the sentencing court the discretion to impose a life sentence.

A persistent felony offender is one who is convicted of a felony and who has two or more times been convicted and imprisoned in State Prison or reformatory or another state prison for a term of more than one year. The effect of such a conviction is to give the sentencing court the discretion to impose the sentence authorized for the next higher degree of felony. The effect of the exception in 2 (b) is to preclude a life sentence under this section in the case where the present conviction is for one of the dangerous felonies listed in 1 but only one of the prior convictions is for one of those dangerous felonies.

A persistent theft offender is one who is convicted of theft in a misdemeanor degree, but who has two or more times been convicted of theft. The effect of such a conviction is to give the sentencing court discretion to impose the sentence for a class D felony. This provision is taken largely from the present Connecticut provision dealing with persistent theft offender.

The rationale for this scheme is to maintain the severest sentence short of death for the worst multiple offender—the one who has been three or more times convicted of crimes of violence and who has served time in prison for the prior offenses. In such a case, the life sentence is authorized. The Commission does not think that the present system of making the increased penalty mandatory upon the third conviction is necessary, however. It prefers to leave this decision to the sentencing court. The next step down in terms of potential severity is the authorized sentence for the persistent felony offender—in short, the three-time felon. Again, the Commission thinks that the wiser course is to leave the question of increased penalty to the sentencing court. The provision dealing with the persistent theft offender is, as is noted above, largely a restatement of present Connecticut law, giving the court the power to deal more severely with persistent petty theft offenders.

An affirmative defense is provided for in the case where the defendant was pardoned on the ground of innocence as to one or more of the prior convictions. This defense, however, is not meant to relieve the defendant who has such a pardon in his background from persistent offender liability where the state is not relying on that particular conviction but is relying on two or more other prior convictions for which the defendant served the requisite sentences.

The Commission does not contemplate that any change will be necessary in the present procedure of determining whether or not the defendant is a persistent offender—i.e. a second charge and trial (unless there is a plea of guilty) prior to sentencing.

#### **7. Comments on Fines.**

This article is meant to replace the greatly varying amounts of authorized fines which are the result of the present system of each offense carrying its own authorized fine. This problem is especially pertinent in the area of misdemeanors, where fines are more prevalent than in felonies. There are two fines authorized for felonies (plus unclassified felonies),

two fines authorized for misdemeanors (plus unclassified misdemeanors), and one fine authorized for violations. All the figures given are, of course, only maximum figures.

There is also a provision for the court imposing an alternative fine tailored to the amount of money or property gained through the commission of an offense, and a procedure and standard for determining that amount.

#### **Present Connecticut Statutes Affected.**

The foregoing material on sentencing would affect several present Connecticut statutes, as is shown in the following chart.

<i>Section</i>	<i>Affect</i>
54-111	to be repealed (except for reference to second offender driving under influence); material substantially retained in proposal.
54-112	to be repealed; material substantially retained in proposal.
54-113	to be repealed; material changed in part, retained in part.
54-114	to be repealed; material changed in part, retained in part.
54-116	to be repealed (except for reference to second offender driving under influence).
54-117	to be repealed.
54-118	to be repealed; material changed.
54-118a	to be repealed.
54-119	to be repealed.
54-120	to be repealed; material substantially retained in proposal.
54-121	to be repealed; material changed in part, retained in part.
18-18	to be repealed; material retained.

#### **8. Comparison of Connecticut Law, Model Penal Code and New York Proposal Regarding Definitions and Classification of Offenses and Authorized Disposition of Offenders.**

##### **Classification of Offenses.**

**Connecticut.** Connecticut presently follows the traditional practice of dividing all crimes into felonies and misdemeanors. Any crime punishable by death or imprisonment for more than one year is a felony; any other crime, unless specifically designated a felony, is a misdemeanor. Conn. General Statutes, Section 1-1 (1958 Revision).

Specific penalties, usually consisting of either a fine or imprisonment or both, are assigned to offenses which are scattered throughout the statutes and certain chapters contain general penalties which apply to any violation of their provisions. A general penalty consisting of a fine is also provided and is applicable to the violation of any statutory provision for which no penalty is expressly provided.

**Model Penal Code.** The Model Penal Code provides four classifications: felonies, misdemeanor, petty misdemeanors, and violations. They are summarized as follows:

Felonies are divided into three degrees: first, second and third. Each degree carries with it a possible fine and sentence. The sentence is indeterminate, and is divided into a minimum period and a maximum period. In addition, for defendants who are persistent or multiple offenders, professional criminals or who are dangerous, mentally abnormal persons, the court can set certain higher sentences. This is referred to as a sentence to "an extended term of imprisonment."

Misdemeanors and petty misdemeanors carry maximum terms, and fines, but no minima. Like felonies, an "extended term" may be imposed for persistent and multiple offenders, professional criminals, and chronic alcoholics, narcotic addicts, prostitutes or persons of abnormal mental conditions requiring rehabilitation treatment.

Violations carry merely a maximum fine, and it is specifically provided that a violation does not constitute a crime, and that conviction thereof does not give rise to any disability or legal disadvantage based on criminal conviction. The concept of a "violation," as opposed to a crime, is to deal with conduct which should be prohibited, but which is not serious enough to warrant the moral condemnation of the term "crime."

The following chart illustrates the degrees of offenses, the fines, and the ordinary minimum and maximum sentences when applicable, and the extended sentences, where applicable.

Degree	Fine	Min. (ord.)	Max. (ord.)	Min. (ext.)	Max. (ext.)
1. felony—1st	\$10,000	1-10	life	5-10	life
2. felony—2nd	10,000	1-3	10	1-5	20
3. felony—3rd	5,000	1-2	5	1-3	5-10
4. misdemeanor	1,000		1	1	3
5. petty misd.	500		30 days	6 mos.	2
6. violation	500				

In addition, the court can, in any case, impose a fine in any higher amount equal to double the pecuniary gain derived from the offense by the offender, or any higher amount specifically authorized by statute.

There is a separate section concerning penalties against corporations or unincorporated associations. Section 6.04 provides that the court may impose a fine in accordance with the schedule described above, or suspend the sentence. In addition, if the board of directors or a high managerial agent has purposely engaged in a persistent course of criminal conduct, and if the public interest requires that, for the prevention of future criminal conduct, the corporate charter certificate be revoked, civil proceedings are authorized to revoke the charter or certificate.

#### **New York Proposal.**

The New York Proposal provides three classifications: felonies, misdemeanors and violations. They are summarized as follows:

Felonies are divided into five degrees: classes A, B, C, D and E. Each degree carries with it a possible prison sentence and, if the person con-

victed has gained money or property through the crime, a fine. As in the Model Penal Code, the sentences are indeterminate and are divided into minimum and maximum periods. In addition, a person who has been convicted of two prior felonies may be sentenced as a "persistent felony offender," which sentence is the same as that of a class A felony (minimum, 15-25 years; maximum, life).

Misdemeanors are divided into three degrees: Class A, Class B and unclassified. The unclassified misdemeanors are those which are defined outside the scope of the proposal and which carry a specified sentence of in excess of 15 days but not more than one year. In addition, any offense defined outside the proposal which is declared a misdemeanor but does not specify its sentence is deemed a Class A misdemeanor. The sentences for misdemeanors are definite sentences.

A violation is any offense carrying a sentence of not more than fifteen days or only a fine. In addition, offenses outside the proposal are violations if: (1) they carry penalties of either only a fine or imprisonment for not more than fifteen days, or (2) the sentence is specified in a provision enacted prior to the proposal's effective date and the offense was not a crime prior to that date.

There is a separate section concerning penalties for a corporation.

The following chart illustrates the degrees of offenses and penalties:

Degree	Fine	Minimum	Maximum
1. felony A or persistent felony offenders	if defendant has gained money or property through the crime a fine not more than double the value of money or property gained thereby	15-25	life
2. felony B		not more than 1/2 max.	25
3. felony C		not more than 1/2 max.	15
4. felony D		not more than 1/2 max	7
5. felony E		sentence set by board of parole	4
<i>Re: D &amp; E: court has discretion to fix definite sentence of one year or less</i>			
6. misdemeanor A	\$1,000 (max.)		not more than one year
7. misdemeanor B	500 (max.)		not more than 3 mos.
8. unclass. misd.	in accordance with amount specified		in accordance with sentence specified
9. violation	250 (max.)		not more than 15 days
<i>Re: Corporations</i>			
1. felony	\$10,000 (max.)		
2. misdemeanor A or unclass. misd. with sentence of more than 3 mos.	5,000 (max.)		
3. misdemeanor B or unclass. misd. with sentence of not more than 3 mos.	2,000		
4. violation	500 (max.)		

In addition, the court may impose a fine of any higher amount equal to double the amount gained through the offense.

The New York proposal specifically provides that the court, in determining the amount of money or property gained through the crime, shall make a finding based on the record, and if the record does not contain sufficient evidence, the court may conduct a hearing.

#### **Authorized Disposition of Offenders.**

##### **Revocable Dispositions.**

###### **Connecticut.**

Section 54-111 authorizes the court, except in certain specified instances, when a person has been found guilty of a crime to:

- 1) Suspend the imposition or execution of sentence,
- 2) Also place the defendant on probation, and
- 3) Impose a fine and also place defendant on probation.

Section 54-116 authorizes the court, with the same exceptions, to suspend execution of the sentence. A hearing is required and the court may commit the accused to a probation officer or suspend execution indefinitely without such commitment. The scope of this section and subdivisions (1) and (2) of section 54-111 overlap here, although more restrictions are placed on the court in this section.

In section 54-119 the court is further authorized to impose a conditional sentence and a fine when the convicted person is punishable at the court's discretion by either fine or imprisonment.

###### **New York Proposal.**

A convicted person may be sentenced to probation or conditional discharge. Further, the sentence is to be deemed a final judgment of conviction except to the extent that it may be altered or revoked, and the court may impose a fine in any case where a sentence of probation is imposed.

###### **MPC Proposal.**

The MPC authorizes two forms of revocable dispositions:

- 1) suspension of the imposition of sentence, and
- 2) placing the person on probation.

The court can impose conditions on its order, including the payment of a fine, and these conditions can be changed subsequently by the court. When the court puts the defendant on probation, it can add the condition that he serve a term of no more than 30 days first, which is included in his probation term, but if he is subsequently imprisoned upon revocation of probation, the time so served is not credited toward his subsequent sentence.

Section 301.2 sets out the terms for a suspended sentence or probation: five years for a felony, and two years for a misdemeanor or petty misdemeanor; but the court may discharge the defendant at any time prior to the expiration of these terms.

Section 301.3 provides for arrest in cases of violations of the conditions attached to the suspended sentence or probation, and 301.4 provides for notice and hearing therefor.

Section 301.6 provides that a suspended sentence or probation is a final judgment, except to the extent it may be revoked or modified subsequently.

#### **Comment**

##### **Suspended sentences and probation supervision.**

In a suspended sentence the court does not pronounce a sentence, whereas in a suspended execution of sentence, the court pronounces a sentence and then suspends its execution. Connecticut recognizes this distinction in *Dart v. Mecum*, 19 Conn. Supp. 428, 433 (1955).

According to the New York Commission this form is a carry-over from the days when the only way for a court to relieve a defendant from the effect of an error or miscarriage of justice was to refuse to adjudicate guilt. It has evolved into a vehicle for leniency based on matters extraneous to the legality of the conviction, but confusion still persists on the question of whether a suspended sentence or execution of sentence is a judgment of conviction.

Further, the New York commission points out that in the case of a suspended sentence, since the disposition was never designed as a judgment, it does not express the actual disposition the court is making (actually a defendant is being discharged with or without probation) and the judgment of the court is, in New York, left subjudice even where no disposition is imposed and the court never expects to reconsider the disposition. In the case of a suspended execution of sentence confusion is engendered by the fact that the court can change an already specified sentence.

After considering these objections, New York eliminated the suspended sentence and execution of sentence dispositions. In so doing it attempted to clarify the confusion and ambiguity surrounding them and at the same time satisfy the purposes they serve.

Considering Connecticut law regarding suspended imposition of sentence, the New York commission's basic criticism regarding the anachronistic form involved is applicable; that is, the actual disposition made by the court is not expressed in a clear positive form. The court is really concerned primarily with placing the defendant on probation or discharging him entirely, and use of the suspended imposition of sentence form conceals this purpose. It is also thought that if this form is dropped the practice of placing the defendant on probation will come into clearer focus and that this will encourage its use in appropriate cases.

##### **Imposition of a fine in connection with probation supervision.**

Connecticut, New York and the MPC authorize the court to impose a fine in conjunction with a sentence of probation. In Connecticut the court has complete discretion in imposing such a fine, but the New York proposal limits the amounts, of, and sets criteria for, fines according to the crime committed.

New York has designed its provision to cover the case where the defendant profited from the crime but restitution is impracticable. Fines are not authorized where probation supervision is not considered necessary, as where a sentence of conditional discharge is imposed. In the latter instance, however, restitution may be a condition of the sentence.

Section 302.1 of the MPC authorizes payment of a fine as one of the conditions of probation, although apparently a fine is not authorized as a condition of a suspended sentence. Section 7.02 sets out the criteria for imposing a fine, and article 302 authorizes installment payments of a fine and provides for the consequences of non-payment.

#### **Conditional Discharge.**

The New York proposal authorizes the imposition of a sentence of conditional discharge which is unparalleled in present Connecticut law. This sentence is designed for the situation where the court wishes to retain jurisdiction over a defendant but does not consider his continued probation supervision to be necessary.

Section 54-119 of the Connecticut statutes does authorize a sentence, not really comparable to the above, which is conditional on the payment of a fine. Here, if the fine is paid the defendant is discharged unconditionally but if it is not paid he is subject to a term of imprisonment set out in the original sentence.

The MPC provision comparable to the N.Y. concept of conditional discharge is a suspended imposition of sentence, with conditions attached, but without probation.

#### **Other dispositions.**

##### **Connecticut.**

As previously discussed, in Connecticut law, specific penalties are assigned to particular crimes defined throughout the statutes. These consist, in general, of imprisonment in the state prison, a jail or reformatory, or the imposition of a fine, either alone or in conjunction with a sentence of imprisonment. In certain instances, to be discussed, infra, a defendant is, in effect, unconditionally discharged.

##### **New York.**

Similarly, New York authorizes, in appropriate cases, sentences of imprisonment, reformatory imprisonment, fines, both imprisonment and a fine, and unconditional discharge. Special provisions are set up for penalizing corporations, and the proposal specifies that a court may impose an applicable civil penalty as part of the judgment of conviction. Connecticut has no provision comparable to the latter. The Commission considered, and rejected, such a provision.

The MPC provisions are essentially the same as New York's.

The sentences authorized by the New York and MPC proposals are shown above.

### Probation.

#### Connecticut Law.

#### Statutory authorization – Sections 54-111 and 54-116.

Connecticut authorizes, in Sections 54-111 and 54-116, a sentence of probation to be imposed in conjunction with a suspended sentence or execution of sentence. In neither section is probation authorized after commitment has been made to the State Prison or the Connecticut Reformatory, where the defendant is convicted of operating a motor vehicle under the influence of intoxicating liquor and has been convicted of a like offense by a Connecticut court within the six years immediately preceding or where the defendant is convicted of a felony and has been twice previously convicted of a felony. The removal of the latter two situations from the court's discretionary power seems somewhat arbitrary, considering the many other instances where they are allowed to exercise their discretion.

Section 54-116 overlaps with section 54-111 where a suspension of execution is authorized. However, here a ceiling of two rather than five (see section 54-113) years is placed on the authorized probationary period and commitment may be made in the judge's discretion to a probation officer pro tempore who is appointed by the court or judge. The status of such an officer is not entirely clear. Requirements regarding his qualifications are not set forth in section 54-116, and the general provisions regarding probation officers require that they be appointed by the director of probation pursuant to a qualifying examination. (See sections 54-104 to 54-107.) Except for the existence of the probation officer pro tempore there seems to be no good reason for the court to make use of this section rather than the more general section, section 54-111, where execution of sentence is suspended.

Further, as to section 54-116, ambiguities exist as a result, apparently, of poorly drafted revisions made over the years. (See section 6671 of the 1918 Revision, Appendix.) The statute speaks of "the adjournment of the session at which *such commitment* was issued . . ." when there is no commitment mentioned to which "such commitment" can refer. It would be helpful, if this statute is retained, to amplify and clarify the language regarding continuance of the case in regard particularly to the precise nature of such a continuance. Is the reference intended to be to both continuance of the case *and* commitment to a probation officer, or does commitment refer back only to the execution of the sentence?

Section 54-111 has been interpreted to authorize the court to suspend execution of sentence at any time either before or after the judgment was pronounced and irrespective of whether execution has begun. *State v. Tomczyk* 20 Conn. Supp. 67, 70 (1956). Since 1963 this statute has not applied once commitment has been made to the State Prison or Connecticut Reformatory.

#### Period of Probation.

Section 54-113 sets a five year limitation on the period of probation or suspension of sentence, except when the defendant is charged with failure to provide subsistence for his dependents. Either an indeterminate

or fixed sentence, subject at any time to extension or, after hearing, termination, may be imposed. Continued consideration of the probationer is assured by the provision that after the expiration of one year the probation officer is to advise the court or judge regarding the continuance of probation.

The courts have held that time served on probation is not to be counted to reduce the term or period of a jail sentence when that sentence became operative upon revocation of a stay of execution. *Beldon v. Hugo*, 88 Conn. 500, 508 (1914); *Viel v. Potter*, 20 Conn. Supp. 174, 177 (1957).

#### **Imposition and modification of conditions of probation.**

Section 54-112 provides for but does not require the imposition of conditions of probation or supervision of sentence which may be modified at any time. If the court does not specify such conditions no other person or body is specifically authorized by statute to do so, although in practice the probation commission or officer does so. The probation commission's statutory duties are administrative in nature, pertaining mainly to its personnel, records and reports and the probation officer is required only to furnish the persons under his supervision with statements of the conditions of probation and to instruct them regarding the same.

Although modification of a sentence is authorized by this section, a court may not increase the punishment imposed since to do so would subject a defendant to double punishment for the same offense in violation of the fifth amendment to the United States constitution. Thus the court's action was void when it increased the punishment of a defendant, whose original sentence was for sixty days with execution to be suspended after twenty days, after he had begun to serve his sentence, and ordered the full sixty day sentence to be served. *Viel v. Potter*, 20 Conn. Supp. 174 (1957).

It is to be noted that under the New York proposal the latter type of sentence, termed a "split sentence," may not be imposed, the New York commission's opinion being that it causes complications and confusion.

Under the MPC, there can be a "split sentence" only when probation is ordered, and the imprisonment term can be no more than 30 days.

#### **Violation of conditions of release.**

When the conditions of release have been violated during a period of probation or suspension of sentence fixed under section 54-113, section 54-114 authorizes the court or judge to issue a warrant for the defendant's arrest or a notice to appear to answer to a charge of such violation. A hearing is held on the violation charged and if it is established the probation or suspension may be either continued or revoked and the defendant may be required to serve the sentence imposed or any lesser sentence. If, originally, imposition of the sentence was suspended (so that no sentence was ever pronounced by the court) the court may impose any sentence it might originally have imposed.

This section applies only to periods of probation or suspension fixed pursuant to section 54-113. Since section 54-116 does not fall within the purview of this section, periods of probation or suspension imposed under

its provision are not covered here. Technically then no *statutory* provision exists which covers the court's power over a defendant who has violated conditions of release imposed according to section 54-116.

Where the court suspends execution of a sentence indefinitely and makes no commitment to a probation officer, it retains no implied power to later revoke the suspension. *Baker v. Potter*, 17 Conn. Supp. 444, 448 (1952). Presumably this would also hold true in the case of a suspended sentence or execution of sentence imposed under section 54-111 where no such commitment is made. The court loses jurisdiction over a defendant when it discharges him pursuant to a suspended sentence without probation supervision and cannot at a later time revoke or in any way alter the sentence.

#### **New York Proposal.**

##### **Authorization.**

Unlike Connecticut, the New York proposal establishes guidelines for the court's use in imposing a sentence of probation. The three criteria set forth in subdivision 1 of section 65 are general and are for the purpose of focusing the court's attention on the proper use of the sentence.

Because of the seriousness of the offenses involved the sentence is not available to persons convicted of a class A felony. The basic purpose of probation is conceived as being to provide a method of supervising offenders without removing them from the community and therefore the sentence is also unavailable to defendants sentenced for more than one crime where a sentence of imprisonment is imposed for one of the crimes and where a defendant is already subject to an undischarged indeterminate or reformatory sentence of imprisonment with more than one year to run. In the latter two instances the defendants will be under parole supervision when they are released.

##### **Periods of probation.**

The courts are required, at the time of sentencing, to impose mandatory probationary periods set forth in subdivision 3 of section 65. These periods are of varying lengths depending on the gravity of the offense committed and are of short duration compared to the maximum sentence which may be imposed for the commission of the crime. They are considered to be adequate to allow the court to determine whether its confidence in the defendant was justified and for probation supervision to be effective and may be terminated sooner according to the code of criminal procedure.

It is to be noted that the proposal has deleted a provision contained in New York's existing law for continuing probation when a person is convicted of abandonment, until the seventeenth birthday of his youngest child. The commission was of the opinion that here the ends desired are the continued care and supervision of the offender's dependents and that this responsibility is more properly placed in the machinery of the family court. Connecticut has a provision of similar purport in section 54-113 which excepts persons charged with failure to support their dependents from coverage of the maximum limitation placed on periods of probation.

### Conditions of probation.

A court is required by subdivision 2 of section 65 to specify conditions of probation when sentence is imposed. Such conditions are subject to modification or enlargement and may be revoked if the defendant commits an additional offense. A general standard for use in determining the conditions to be imposed and a list, not intended to be comprehensive, of permissible conditions, are set forth in subdivisions 1 and 2 of section 65.10. In addition, mandatory conditions deemed essential to any system of probation relating to probation supervision are required to be imposed by subdivision 3.

By requiring the imposition of these conditions, specification of and the sentence's duration at the time the defendant is placed on probation, New York intends to make the sentences more meaningful to him and to provide a clear statement of the conditions in the event of a revocation proceeding.

### MPC

#### Authorization

Like the New York proposal, the MPC established guidelines for the court in imposing a sentence of probation. Indeed, section 7.01 provides that, in sentencing, the court shall *not* impose a sentence of imprisonment unless it is of the opinion that it is necessary for the public's protection because:

- (1) there is undue risk he will commit another crime during his probationary period; or
- (2) he is in need of correctional treatment that can be most effectively provided by his imprisonment; or
- (3) a lesser sentence will depreciate the seriousness of his crime.

Subsection (2) of section 7.01 outlines eleven suggested criteria for the court's guidance in imposing probation.

#### Periods of probation.

The periods of probation under the MPC are, as noted above, five years for a felony and two years for a misdemeanor or petty misdemeanor. Unlike New York, therefore, the probationary periods do not vary with the gravity of the offense but are set by the statute, except, of course, as to the distinction between felonies and misdemeanors.

#### Conditions of probation.

Like New York, the MPC requires the court to attach specific conditions when imposing a sentence of probation or when suspending the imposition of a sentence. The MPC suggested conditions are essentially the same as the New York provisions. Section 301.1, which sets out the conditions, is ambiguous, however, on the question of whether, where the court is suspending imposition of sentence, it *must* impose conditions. It seems to require this, but it can be interpreted not to, and it can be argued that the court should have the leeway to release a person unconditionally, even though he has been convicted of a crime. New York provides for this by its concept of "unconditional discharge."

**Conditional discharge.**

**Connecticut Law**

Connecticut does not presently authorize a sentence comparable to that defined in New York as a conditional discharge.

**New York Proposal.**

**Authorization**

Conditional discharge covers the situation where the court wishes to retain jurisdiction over and impose specific obligations upon the defendant but considers direct supervision to be unnecessary or inappropriate. The court is dealing with less serious offenders than under the probation laws and the criteria enumerated are drafted accordingly. The sentence is not available for class A or B felony offenders or when the court is sentencing for a narcotic felony. Probation, it is to be noted, is available in the latter two instances.

When imposing a sentence of conditional discharge for a felony the court must state its reasons on the record.

The MPC provision comparable to the N.Y. sentence of conditional discharge is the suspended imposition of sentence. Here, however, there is no requirement that the reasons for suspending sentence be stated in open court.

**Periods and conditions of conditional discharge.**

Almost all aspects of the conditions and periods of sentences of conditional discharge are the same as for sentences of probation. Again, the court must specify the terms and conditions of the sentence and periods are graduated according to the gravity of the offense. Authority is provided for the extension of such periods where the defendant has been required to make restitution or reparation and has not complied with this requirement within the designated period.

No authority is granted for the imposition of a fine in connection with a sentence of conditional discharge and the mandatory conditions relating to supervision set forth in subdivision 3 of section 65.10 are not applicable.

Under the MPC the periods during which the conditions of suspended sentence run are not graduated: they are five years for a felony and two years for a misdemeanor or petty misdemeanor. The court has the power to discharge sooner, however, and the court can modify the conditions as well. There is no provision authorizing the payment of a fine as a condition of a suspended sentence.

**Sentences of Probation and Conditional Discharge—Calculation of Periods.**

**Commencement of sentences.**

**New York.**

Sentences are to run from the date they are imposed and multiple sentence run concurrently. This has been specified to lend certainty to the calculation of the period. There is no prohibition against a combined period which is in excess of the statutory period for a single sentence.

#### **Connecticut.**

Connecticut law contains no specific provisions for calculating periods of probation.

#### **MPC**

The MPC provisions concerning commencement of sentence of probation or suspended sentence, and the calculations of the periods, are essentially the same as the N.Y. provisions.

#### **Interruption of the sentence of violation of a condition.**

##### **New York.**

Interruption of the probationary or conditional period occurs as of the date a condition is violated. The court enters a declaration of delinquency which dates back to the breach of condition and interrupts the sentence until a final determination of delinquency has been made pursuant to a hearing. This provision assures that the sentence does not expire while, for example, the court which imposed it is awaiting the outcome of a trial on a new offense. In the latter instance the court, without this provision, would be left without power to revoke the sentence. The procedure to be followed here will be contained in the new code of criminal procedure.

##### **Connecticut.**

The Connecticut statutes contain no comparable provision for interrupting the running of the probationary period in such a circumstance. In practice, the issuance of a warrant for violation interrupts the sentence.

#### **MPC**

The MPC has no specific provision comparable to this.

#### **Effect of additional crimes on running of conditional or probationary periods.**

##### **New York.**

In order to prevent duplication of supervision and to allow a person who has served his state prison or reformatory sentence to "wipe the slate clean" New York has proposed provisions to cover the situation where persons on probation or under conditional discharge commit and are sentenced for more than one offense, either at the same or different times.

#### **Satisfaction of sentences.**

Briefly, the service of a sentence of imprisonment will satisfy a sentence of probation or conditional discharge unless the latter sentence is revoked before the defendant is released on parole, conditionally released or finally discharged. Since, under subdivision 1 of section 65 of the New York proposal, a sentence of probation may be imposed where a defendant is subject to an undischarged, indeterminate or reformatory period of imprisonment with less than one year to run, a sentence of probation imposed in such a circumstance is not satisfied by the running of the remainder of the sentence of imprisonment.

The New York commission is of the opinion that no just objective can be served by allowing the sentence of probation or conditional discharge to stand while a defendant is on parole or after he has completed service

of the sentence if imprisonment and the court is not unduly restricted since it can revoke the sentence if it has grounds and wishes to do so.

Where a person who is under parole supervision receives a sentence of conditional discharge for some other offense the court and the parole board retain concurrent jurisdiction, but not supervision, over him. If, here, the conditional sentence is not revoked it will then be deemed satisfied when the defendant is discharged from parole.

#### **Connecticut.**

Connecticut has no comparable provisions.

#### **MPC**

The comparable MPC provisions, in section 7.06 (6), are much more complicated. They are summarized as follows:

**A.** If the defendant is sentenced for more than one offense, or if he is already under sentence and is sentenced for an offense committed prior to the offense for which he is already under sentence:

1. If he is under sentence of imprisonment, the court cannot sentence him to probation or to probation and imprisonment.

2. Multiple periods of probation or suspension run concurrently from the date of the first disposition.

3. If an indefinite prison sentence is imposed, it satisfies a suspended sentence on another count or a prior suspended sentence or probation sentence.

4. If a definite prison sentence is imposed, a suspended sentence on another count or a prior suspended sentence or probation sentence run during the period of imprisonment.

**B.** If the defendant is convicted of an offense committed while under suspension or probation, and the suspension or probation is not revoked:

1. If he is sentenced to an indefinite prison sentence, this satisfies the prior suspended sentence or probation.

2. If he is sentenced to a definite prison term, the prior period of suspension or probation does not run during the period of imprisonment.

3. If the sentence is suspended or he is sentenced to probation, the court has the option of making the period of suspension or probation run concurrently with or consecutively to the remainder of the prior sentence.

#### **Sentence of unconditional discharge.**

##### **New York Proposal.**

In New York a sentence of unconditional discharge is available in any case where the court may impose a sentence of conditional discharge provided the court is of the opinion that no proper purpose would be served by imposing a condition on the defendant's release. Again, if the offense committed was a felony the reasons for the court's action are to be set forth in the record.

When this sentence is imposed the court never expects to see the defendant again; release is without imprisonment, fine or probation supervision. The statute specifies the sentence is a final judgment of conviction.

#### Connecticut.

Connecticut law contains no provision for an unconditional discharge, per se. As discussed, however, the authority given the court in sections 54-111 and 116 to suspend a sentence or execution of a sentence without committing the offender to a probation officer is tantamount to such a disposition.

Interpreting the predecessor of 54-116 which authorized, as does the present section, an indefinite suspension of the execution of the sentence without committing the accused to the custody of a probation officer, the court held that no implied power of revocation is retained by a court in such a case. To hold otherwise, it continued, would be to place an offender in the position of being, in effect, on probation for life and in danger of being required to serve a sentence at some indefinite future time without regard to how exemplary his conduct may have been in the intervening period. *Baker v. Potter*, 17 Conn. Supp. 444, 448, 449 (1952).

The court's reasoning, above, seems equally applicable to a suspended sentence without probation imposed pursuant to section 54-111.

#### MPC

The MPC has no specific provision comparable to the unconditional discharge, although there is a reference to it which says that a suspended sentence for a violation is an unconditional discharge.

#### Indeterminate sentences.

##### Connecticut.

Connecticut's specified sentences are usually indeterminate. Generally the statute defining the crime is so worded that the court has discretion to impose a sentence of "not more than" a certain period of imprisonment or a fine which falls within specified limits or both. Section 54-121 requires the imposition of both a maximum and a minimum term whenever any person is to be imprisoned in the state prison except, of course, where the sentence is life imprisonment or execution for a capital offense. Under section 54-120 the court has discretion, when it is not provided otherwise, to commit an offender to either the jail administrator or the state prison, but confinement in the state prison must be for at least one year.

Where no minimum period of imprisonment is set by statute, section 54-121 requires the minimum term for a single first offense to be set at not less than one year. The parole board is not authorized to release a prisoner before he has been in confinement for the minimum term. (Section 54-125.)

##### New York.

Under New York law indeterminate sentences are mandatory only where the sentence of imprisonment is for the commission of a Class A, B or C felony.

Maximum limits on sentences, as previously noted, are set according to the gravity of the offense, the terms being longer for serious offenses and those usually committed by professionals. Within these limits the court has been given complete discretion to set the maximum since it has access to information regarding the defendant's history, character and condition

and is therefore considered to be the agency best equipped to evaluate the circumstances. A three year lower limit has been placed on maximum terms for the purpose of assuring that the parole board will have an adequate opportunity to supervise the prisoner's orderly return to the community.

As in Connecticut, in New York the minimum term governs the length of time a prisoner must serve before he is eligible for parole. Restrictions are placed on the upper and lower limits of the minimum term. Except in the case of a class A felony, the lower limit is one year and the upper limit not more than one-third of the maximum term actually imposed. The fractional limitation is imposed to keep the lengths of maximum and minimum sentences far enough apart to assure the parole board of adequate time to supervise the prisoner. Even though this limitation is high, it approximates the national average for time served before parole is granted.

The court is not required, except in sentencing for a Class A felony, to impose any minimum sentence. If it does not do so, provision is made for such imposition by the board of parole, which is then subject to restrictions set up in the corrections law. These provisions have not yet been drafted, but the intention is to give the board authority to lower the minimum it first fixes, hereby allowing it to deal with a prisoner in accordance with his post-commitment development.

Considering the policy implications involved when minimum sentences are utilized in a sentencing system, the New York commission points out that although a minimum sentence seems necessary in the case of a Class A felony, both to reassure the community and, in New York, to provide a viable alternative to capital punishment, in the case of less serious felonies the need for any minimum becomes more arguable. New York has provided for them, however, on the basis that a reasonable minimum fixed by the court at the time of sentence may be necessary in appropriate cases to prevent the disposition from deprecating the gravity of the offense and thus weakening the deterrent impact of the system as a whole.

#### **Alternative definite sentences for Class D or E felonies.**

New York has authorized the court to impose a definite sentence of one year or less when sentencing for a Class D or E felony when it is of the opinion that a sentence of imprisonment is necessary but an indeterminate sentence is unduly harsh. This is an adaptation of an existing New York law and commitment in these cases would be to a county facility rather than to the state department of correction. The commission notes that because of the lack of rehabilitative facilities in its county correctional institutions, it was reluctant to recommend retention of a definite sentence for any felony. Its conclusion was, however, that when viewed in conjunction with New York's provision for supervised conditional release from such county institutions and for establishing regional county institutions, a definite sentence for these felonies could prove useful.

#### **MPC**

The MPC provides for indeterminate sentences for felonies, as follows:

- a. 1st degree—minimum: 1-10, maximum—20 yrs. or life
- b. 2nd degree—minimum: 1-3, maximum—10 years.
- c. 3rd degree—minimum: 1-2, maximum— 5 years.

No minimum can be more than  $\frac{1}{2}$  the maximum; when the maximum is life, the minimum can be no longer than 10 years.

Under the MPC in imposing maximum sentences for felonies, the Court has discretion within the statutory limits set.

Also, under the MPC, in imposing minimum terms for felonies, the court has discretion, but apparently must set a minimum. As noted above, no minimum can be more than  $\frac{1}{2}$  maximum; and if the maximum is life, the minimum can be no more than 10 years.

#### **Recidivists.**

##### **Connecticut.**

Section 54-118 provides that where a person convicted of any crime for which imprisonment may be a term in the state prison has been before convicted of a crime for which he was imprisoned either in Connecticut's state prison or reformatory or any state prison or penitentiary for a term less than life, a state prison term with a maximum limit of double the term provided for the offense may be imposed. It is to be noted that a prior sentence to a federal prison is not included and that the court has complete discretion as to whether to impose the stronger penalty.

Where a person has twice before been convicted of the crime of theft, not punishable in the state prison, section 54-118 authorizes the court to sentence the offender to imprisonment in the state prison for not more than three years. Section 54-121 does not cover this instance since punishment in the state prison was not originally authorized.

Under section 54-121 the court is required, where a person sentenced to a state prison has twice before been convicted, sentenced and imprisoned in a state prison or penitentiary, to impose a maximum sentence of thirty years. Again the prior sentence may have been to a state prison other than Connecticut's but sentences to a federal prison are not included. No restriction is placed on the minimum term to be imposed, which is then governed by the general provision that it not be less than one year.

Section 54-118a, passed by the 1963 legislature, deals with the particular instance where a person has been convicted for the second or subsequent time of committing or attempting to commit one of certain specified crimes while armed. Additional consecutive sentences are prescribed for such offenses, the penalties increasing for each subsequent offense. The terms of imprisonment are indeterminate and both minimum and maximum terms are provided.

It will be noticed that section 54-121 also covers third and subsequent offenders and that to the extent that the penalties imposed under it are stronger than those required to be imposed under section 54-118a, the two sections will overlap. Many of the crimes specified carry heavy maximum sentences so that if, for example, in the case of a third offender, a sentence with a ten year maximum term were added to the highest maximum term required by the particular statute, a total sentence with

a maximum term exceeding the thirty years required to be set by section 54-121 would result. However, where the maximum term set for the particular offense is fairly short, there is no need for this provision for a third offender, since the thirty year maximum will more than cover the requirement set here.

#### **New York.**

To be classified as a persistent felony offender under the New York proposal a defendant must have been previously incarcerated for two separate felonies, the second of which was committed subsequent to incarceration for the first. No special sentence is provided for second offenders since the New York commission is of the opinion that the ordinary terms provide adequate latitude for sentencing them. A crime is not considered if the defendant was pardoned on the ground of innocence.

A previous felony conviction comprehends both conviction for a felony in New York and of a crime in any other jurisdiction. The test for the latter would be whether the offender was actually imprisoned under a sentence with a term of more than one year or a commuted death sentence. This, like the criteria set up in sections 54-118 and 54-121 of Connecticut's laws, might result in basing a persistent offender sentence on a prior out-of-state conviction which, if committed in New York, would be a misdemeanor or perhaps not even a crime. The commission's position is that there is nothing unjust or illogical in permitting the court to consider the prevailing norms in the jurisdiction where the act was committed and that the discretion given the court allows it to weigh the substance of the foreign conviction and consider all the circumstances.

The court is authorized, in its discretion, to impose the sentence of imprisonment for a Class A felony upon a persistent felony offender. Standards are set for the court's use and it is required to state the reasons for its decision on the record.

#### **MPC**

The MPC sets up an elaborate system of extended terms of sentences to deal with recidivists. It is summarized as follows:

##### **Felonies.**

##### **Sentences.**

- (a) 1st degree—min: not less than 5-10; max: life
- (b) 2nd degree—min; 1-5; max: 10-20
- (c) 3rd degree—min; 1-3; max: 5-10

##### **Criteria for imposing an extended term.**

(a) persistent offender—defendant is over 21, and has two previous felony convictions, or one felony and one misdemeanor, committed at separate times when he was over Juvenile Court age.

(b) professional criminal—defendant is over 21, the circumstances of the crime show he has been knowingly engaged in crime as a major source of livelihood, or has a substantial income not explained by non-criminal means.

(c) defendant is a dangerous, mentally abnormal person—provisions for psychiatric examination.

(d) multiple offender—

1. defendant is being sentenced for two or more felonies, or is under imprisonment for a felony and the sentences will run concurrently, or
2. defendant admits in open court the commission of one or more felonies, and asks that they be taken into account in sentencing, and
3. the longest sentence authorized, if made to run concurrently, would exceed the minimum and maximum of the extended term imposed.

**Misdemeanor and Petty Misdemeanor.  
Sentences.**

- (a) misdemeanor; minimum—not more than 1 year; maximum—not more than 3 years.
- (b) petty misdemeanor; minimum—not more than 6 months; maximum—not more than 2 years.

But there must be an institution available for this, which is also subject to the supervision of the Parole Board.

**Criteria.**

(a) persistent offender—defendant has been convicted of two previous crimes, committed at different times, when he was over Juvenile Court age.

(b) professional criminal—same as in felonies.

(c) defendant is a chronic alcoholic, narcotic addict, prostitute, or has an abnormal mental condition, and requires rehabilitative treatment. But, there must be an institution available for treatment.

(d) multiple offender

1. defendant being sentenced for a number of misdemeanors or petty misdemeanors, or is already under imprisonment for such, or admits in open court the commission of one or more of such crimes and asks that they be taken into account; and

2. maximum sentences authorized for the crimes, if made to run consecutively, would exceed the maximum of the extended term.

**Concurrent and Consecutive terms of imprisonment.**

**Connecticut.**

Under Connecticut law, even without statutory authority, the court has inherent power to make sentences consecutive in time. *Redway v. Walker*, 13 Conn. Supp. 164, 165 (1945) no error 132 Conn. 300 (1945). Section 54-121 regulates this power, requiring the court, when imposing consecutive sentence to the state prison for two or more separate offenses, to name no minimum term except under the first sentence. The several maximum terms are then to be construed as one continuous term of imprisonment.

The general rule in Connecticut is that in the absence of statute where a person has received two or more separate sentences to imprisonment in the same penal institution and the judgments contain no provision that they shall run consecutively, they will be held to run concurrently. This is also the case where a prisoner already serving a sentence receives a further sentence to the same institution. *Redway v. Walker*, 132 Conn. 300, 303-304 (1945).

#### **New York.**

Under the New York proposal the court has discretion to impose either a concurrent or consecutive sentence in any case where the sentences are for offenses committed through separate acts or commissions. Where the court has not specified how the sentences are to run, an indeterminate sentence will run concurrently with all other sentences and a definite sentence will run concurrently with a sentence imposed at the same time and consecutively as to any other sentence.

According to the commission the rationale behind this provision is that a consecutive sentence should be imposed only as a result of deliberate action and, when the court is aware of the prior sentence and yet does not feel strongly enough to specify the manner in which the sentences are to run, they should run concurrently. Here the court should be aware of prior sentences due to the probation report. In the case of a definite sentence, this rule was designed to place the burden on the defendant to draw the court's attention to other sentences and request a specification with respect to the present sentence.

Where two or more offenses were committed through a single act or commission or through an act or omission which in itself constituted one of the offenses and was also a material element of the other, and more than one sentence is imposed, the sentences must run concurrently. This is a restatement of a restriction in the present New York penal law as interpreted by the New York Court of Appeals.

The aggregate term of the allowable sentence is limited to one year, a relatively short term considering, again, the fact that definite sentences of imprisonment are made to county or regional correctional institutions and their use, in light of this fact, should be mainly a deterrent.

#### **MPC**

Sections 7.05-7.09 of the MPC are the comparable provisions, but they are too lengthy and complicated to summarize.

#### **Calculation of terms of imprisonment.**

##### **Connecticut.**

Generally, Connecticut laws contain no complete set of provisions regarding the calculation of terms of imprisonment.

In section 54-121, discussed, supra, provision is made for the imposition of consecutive indeterminate sentences to the state prison. Only one minimum may be imposed and maximum sentences are aggregated to form a continuous term. No restrictions are placed on the length of the maximum aggregate sentence which may be imposed and there is no provision stating exactly when the sentence is considered to begin. There is no provision covering the calculation of concurrent sentences.

Both in the case of sentences to the State Prison, (section 18-20) and the jails, (section 18-51) provision is made for the instance where the term of a prisoner expires on a Sunday or a legal holiday. When this occurs discharge is made on the last business day preceding.

**Good behavior time.** Provision is made for commutation of sentences

to the state prison (section 18-7) and jails (section 18-53) for good conduct and obedience to the rules. In addition a prisoner in the state prison may earn a meritorious time service award for exemplary conduct and meritorious achievement. In the case of a prisoner sentenced to the state prison such time may be lost by subsequent misconduct. No commutation is authorized for prison sentences of one year or less.

The authorized good behavior time is as follows:

#### State prison sentences.

More than one year and *not more than five years*. 60 days for each year and pro rata for part of a year. Sixth and *subsequent years* 90 days for each year and pro rata for each part of a year.

Meritorious time service award of 5 days per month in addition to the above.

#### Jail Sentences.

5 days for each month or 30 days when the sentence is not for less than 3 months or ninety days.

**Escape.** When a prisoner escapes from the state prison the time between his escape and recommitment is not computed as part of his term of imprisonment. (Section 18-18) The statutes contain no comparable provision for escape from the jails.

#### New York.

**Commencement of sentences.** Under the New York proposal both indeterminate and definite sentences begin when the defendant is received by the department of correction or the institution named in the commitment.

#### Indeterminate sentences.

##### Concurrent sentences.

**Minimum terms.** All minima are credited with time served under imprisonment on any of the sentences.

**Maximum terms.** All maximum terms merge and defendant serves the term with the longest unexpired time to run.

##### Consecutive sentences.

**Minimum terms.** All minima merge and defendant serves the term with the longest unexpired time to run. Consecutive minima, therefore, are eliminated and, in effect, all minima will run concurrently.

**Minimum terms.** All minima merge and defendant serves the term aggregate maximum term. The length of such aggregate maximum is then restricted to twenty years or, if one of the sentences was for the commission of a class B felony, to thirty years. In making the calculation life maxima are, of course, excluded, as are subsequently committed crimes.

The limits set do not affect the number or lengths of sentences which the court may set; they serve only as directions for calculating the average lengths of the sentences.

**Definite sentences.**

**Concurrent sentences.**

**Sentences to same institution.** All terms merge and the defendant serves the term which has the longest unexpired time to run.

**Sentences to different institutions.** The prisoner receives credit against the second sentence for time served under the first sentence subsequent to the date the second sentence is imposed. This effects the same result as if both commitments were to the same institution.

**Consecutive sentences.**

**Sentences to same institution.** Terms are added to arrive at an aggregate term which is limited to two years plus any term imposed for an offense committed while the person is under the sentences.

**Sentences to different institutions.** The aggregate sentences are computed and are subject to the same limitation as if they were to be served in the same institution.

**Credits against sentences.**

**Jail time.** Credit is applied toward either an indeterminate or definite sentence for any time spent by a person in custody before the commencement of the sentence and as a result either of the charge that culminated in such sentence or of a charge that resulted in a dismissal or acquittal when a warrant for commitment on the charge for which such person was convicted was lodged during the pendency of such custody. "Custody" is not limited to time actually spent in a jail but would also include, for example, time spent under arrest in a police station or barracks.

Credit is calculated from the date custody under the charge began to the date sentence begins but does not include any time credited against any previously imposed sentence. It is applied against a definite sentence and against both the maximum and minimum terms of an indefinite sentence but cannot be applied to reduce a minimum term to less than one year.

Where there are multiple sentences, credit is applied against each concurrent sentence and against the aggregate maximum term as well as against each minimum term imposed by the court.

**Good Behavior Time.**

**Indeterminate sentence.** A credit of not exceeding one-third of the maximum will be allowed against the maximum, but no time will be allowed against the minimum. It is thought that the allowance against the maximum will adequately serve the basic purpose of a good time allowance, to give the prisoner an incentive to lend his best efforts to the various institutional programs and will provide a mandatory parole term. Since the prisoner is working for parole while serving his minimum period, no good-behavior allowance is to be credited against it.

**Definite sentences.** A credit of not exceeding one-sixth of the term or aggregate term will be allowed against a definite sentence.

**Vacated sentences.** Credit is granted for time served under a vacated sentence when a new sentence is imposed in its stead.

**Escape.** The term of the sentence being served is interrupted by an escape. Credit against the interrupted period is allowed for any time spent in custody during such period if the custody was due to an arrest or surrender based on the escape or on another charge if the prisoner was denied admission to bail due to a warrant lodged against him because of the escape and was acquitted or dismissed on the other charge.

**Merger of certain definite and indeterminate sentences.**

**New York.**

Under this provision service of an indeterminate sentence will satisfy any definite sentence imposed for an offense committed prior to the time indeterminate sentence is imposed.

This provision was instituted to prevent the situation where persons are kept in a county correctional institution for a short time before being transferred to the state institutions, or where they are forced to serve a definite sentence in a county institution after being released from the state prison. In the former instance the state prison term (the maximum must be at least three years) is considered long enough to encompass any legitimate objectives that would have been served by the definite sentence and in the latter instance the offender, who has served a state prison sentence, is given a fresh start. Furthermore, the commission points out that most prison releases are on parole and a subsequent definite sentence would interfere with the parole program.

**Connecticut.**

The Connecticut statutes contain no comparable provisions.

**Fines.**

**Connecticut.**

Under Connecticut law fines are imposed by provisions usually set forth in the section defining the offense or in provisions covering specified categories of offenses, such as the violation of any provision of a chapter. In addition section 54-196 imposes a general penalty of not more than one hundred dollars for conviction of a violation of any provision of the general statutes for which no penalty is expressly provided.

**New York.**

**Felonies.** New York's policy is to impose a fine only when the offender has derived a pecuniary gain through the commission of the crime and to gear its amount to a multiple of this gain. Provision is made for calculating defendant's gain, considered to be his ultimate rather than his immediate gain, and the court is required to make an actual finding as to such amount. No fine may be used for a class A felony or as the sole sanction for any class B or narcotics felony. Corporations are covered in a separate section.

**Misdemeanors and violations.**

Specified fines are provided for misdemeanors, or the court may, as an alternative, apply the criterion of pecuniary gain in lieu of imposing a specific fine. Fines for unclassified misdemeanors have been left as they are, again because these misdemeanors have not been categorized and included in the proposed penal law. The staff notes point out that

this category serves a very useful purpose where fines are concerned. In New York, many of the misdemeanors classified outside the penal law involve business situations where high fines are appropriate and these fines may be continued without creating specific exceptions to the Penal Law.

A maximum fine is provided for all violations defined in the penal law and, again, the court is given the alternative of applying the criterion of pecuniary gain. Where violations are defined outside the Penal Law and an amount is specified, the amount controls, or if no fine is specified, the penal law applies.

Corporations are covered in a separate section.

#### **Corporations.**

The only penal sanction that can be used for a corporate offense is a fine. Maximum fines are provided for the various categories of offenses and corporate fines defined outside the penal law are left in the status quo. In either case the court may in its discretion impose a higher amount based on the corporation's gain from the commission of the offense to be determined in the manner set forth for calculating gain derived from the commission of a felony.

#### **MPC**

Section 6.03 of the MPC sets out the authorized fines. They are shown above.

#### **Young Adult Offenders.**

##### **Connecticut.**

There are special provisions for young adult offenders. Section 17-389 provides that if any male person between 16 and 21 is convicted in Superior Court (other than a life sentence offense), the court may sentence him to the State Reformatory for a definite or indefinite term. No such sentence, however, may be less than nine months or more than five years. The court may also order the sentence suspended after not less than 6 months.

Section 17-391 governs commitment to the State Reformatory from the Circuit Court, in any case where the maximum penalty for the offense is not more than a \$1,000 fine or 5 years imprisonment or both. The sentence to the Reformatory may be for not more than 2 years.

Section 17-397 provides for parole from the Reformatory by its board of directors.

##### **New York.**

Article 75 provides an alternative sentence, in the court's discretion, for an offender more than 16, less than 21 years old. The sentence shall be of unspecified duration, and shall terminate upon parole or service of four years (less time spent in jail prior to commencement of the sentence), whichever is sooner. The court may not, however, impose a reformatory sentence in the following four cases:

- (1) class A felony;
- (2) where the offender is sentenced for more than one crime and the

court imposes a term of imprisonment for any of the crimes;

(3) where the offender is subject to any undischarged indeterminate sentence of imprisonment;

(4) where the crime was committed during incarceration in or after parole or release from an institution under the department of correction. There are also provisions for multiple sentences and for parole.

#### MPC

Section 6.05 provides, in essence, that if a person, at the time of sentencing, is sixteen but less than twenty-two, and is convicted of a felony, he may be sentenced to a special term of imprisonment without a minimum and with a maximum of four years.

### 9. Comments on Burglary and Criminal Trespass.

#### Burglary.

**History and Rationale of Burglary.** The traditional common law definition of burglary was the breaking and entering the house of another in the nighttime with an intent to commit a felony. The Connecticut statute, section 53-86, incorporates this definition. *State v. Ward*, 43 Conn. 489 (1876). Historically, the statutory crime of burglary, and its various companion offenses, can probably be explained as an effort to compensate for defects of traditional attempt law. Making entry with a criminal intent a separate offense covered many cases which might not have otherwise met the "overt act" requirement of attempt. Thus, the moment when the law could intervene was moved back. See MPC Tent. Draft No. 11, P. 56 (1960). And since burglary was confined to nighttime intrusions, into dwellings, with felonious intent, the various forms of breaking and entering statutory crimes arose to cover the gaps.

It can be argued that, since our code will most likely modify the law of attempt, as do the Model Penal Code and the New York proposal, by moving the point of criminality well back into the area of preparation, the separate crime of burglary and breaking and entering is no longer justified and all that is needed is to make such intrusions an element of aggravation in the crime of theft. See MPC Tent. Draft No. 11, p. 57 (1960). But, as the Model Penal Code wisely points out, centuries of tradition cannot easily be discarded. The reform should be to narrow the offense to meet its original and basic rationale: protection against invasion of premises likely to terrorize occupants.

**Basic Definition.** The basic definition of the crime of burglary, which is implicit in the proposed article, is: an unlawful entry into or remaining in a building with intent to commit a crime therein. This definition is tailored to carry out the basic rationale of the crime. The three degrees of the crime differ only in terms of aggravating factors for which the basic rationale requires different treatment.

This basic definition serves many purposes. First, it does away with the necessity for a distinction between crimes labeled "burglary" and "breaking and entering," the reasons for which were largely historical rather than pragmatic. Second, it does away with the necessity of proving a "breaking," which has the desirable effect of abolishing artificial distinctions which had surrounded the concept of "breaking" and which had

been perpetuated without reason. For example, raising a closed window is breaking, but raising a partly open one is not. See MPC Tent. Draft No. 11, p. 58 (1960); Perkins, *Criminal Law* 151-155 (1957). Third, it does away with the necessity of proving intent to commit a *felony*; intent to commit any crime will suffice. The reason for this is that, in terms of the basic rationale of the crime, the intruder bent on committing a misdemeanor is as likely to instill terror on the part of the occupants of the building as the felonious intruder. Fourth, it does away with the "nighttime" requirement. Whether the intrusion is at night or not simply becomes one of the factors determining the degree of the crime. All these changes are justified by and directly related to the basic rationale of the crime: protection against invasion of premises likely to terrorize occupants.

**General Scheme of Burglary Sections.** The general scheme of the proposed burglary section is based on the New York proposal, with some modifications and refinements. Three degrees of burglary are created. They can be summarized as follows:

First degree—burglary accompanied by explosives, a deadly weapon or physical violence;

Second degree—burglary in a dwelling at night;

Third degree—burglary in any building at any time of day or night.

**Comments on Definitions.**

**"Building."** This definition is essentially the same as that used in the proposed article on Arson. Its purpose is to include those structures and vehicles which typically contain human beings for extended periods of time, in accordance with the basic rationale of the crime.

**"Dwelling."** This definition is taken from the New York proposal. See Proposed New York Penal Law, Sec. 145.00 (1964).

**"Night."** This definition is taken from the New York Proposal and the Model Penal Code. See Proposed New York Penal Law, Sec. 145.00 (1964); MPC Sec. 221 (Proposed Official Draft) (1962). Darkness facilitates commission of the offense, increases the alarm of the victim, and hampers identification of suspects. Such darkness occurs at some time during the hour following sunset. The present Connecticut law defines "night-time" as when there is not enough daylight to discern the features of another. *State v. Morris*, 47 Conn. 179 (1879). The proposed definition roughly pins the time period to the hour of actual darkness without requiring the jury to go through the artificial task of deciding whether or not it was dark enough to discern one's features.

**"Enter or remain unlawfully."** The purpose of this definition is to make clear that only the kind of entry or remaining which is likely to terrorize occupants is prohibited by the crime of burglary. Thus, when the building is, at the time, open to the public, or the actor is otherwise licensed or privileged to be there, the element of terror is missing and the requirement is not met. This does not mean, however, that an initial lawful entry followed by an unlawful remaining would be excused. For example, A enters an office building during business hours—a lawful entry since the building is open to the public—and remains, perhaps

hidden, after the building is closed, with intent to steal. A is guilty of burglary. This is the kind of situation which previously had to be covered by the judicial device of deciding that entry with illegal intent and breaking out satisfied the "breaking and entering" element. *State v. Ward*, 43 Conn. 489 (1876).

#### **Comments on Degrees of Burglary.**

**First Degree.** This is the most serious degree of the crime. It aims at the situation involving deadly weapons, explosives, or physical violence. The language concerning weapons or explosives is taken from the New York proposal, but the language concerning physical violence is taken from the Model Penal Code. The New York proposal requires that the actor "physically attacks" a person. Proposed New York Penal Law, Sec. 145.35 (1964). The Commission felt that this language was too restrictive and chose instead the Model Penal Code language, which includes purposely, knowingly or recklessly inflicting or attempting to inflict bodily injury on anyone.

**Second Degree.** This section aims at the situation involving a nighttime intrusion into a dwelling.

**Third Degree.** This section deals with all burglary situations not covered by first and second degrees.

**Affirmative Defense of Abandonment.** This section makes it an affirmative defense to prosecution for burglary that the building was abandoned. The reason for this is that, since the rationale of the crime is the protection of likely occupants from terror, the defendant should have the opportunity to show that, due to the abandonment of the premises, there was no likelihood of such terror. This does not mean, however, that an unlawful entry into an abandoned building would go unpunished. The actor might still be guilty of attempted theft.

**Multiple Convictions.** This section, which is taken from the Model Penal Code, bars conviction for both burglary and for the offense the actor intended to commit, except where the additional offense constitutes a major felony. The reason for this stems from the fact that every burglary is, by definition, an attempt to commit some other crime. Under the present law, some lower degrees of burglary or breaking and entering often carry heavier sentences than the crime which the actor was preparing to commit. Thus, breaking into a chicken coop to steal a chicken carries a four year sentence under section 53-76, while the actual theft of the chicken from the chicken coop door would carry only a \$100 fine or two year sentence under section 53-61. Thus, a prosecutor or court has the power to treat as burglary or breaking and entering behavior which is only artificially distinguishable from theft. This section protects against the possibility of such an abusive practice as imposing consecutive sentences for burglary with intent to steal and for the actual theft. Since the severe penalties for burglary are devised largely to provide aggravated penalties for crime committed by lawless intrusion, it is irrational to cumulate the penalties. When, however, the additional offense is a major felony (such as murder, rape, robbery, kidnapping, and other violent felonies), there is no injustice in allowing the judge to consider whether the serious offense was specially aggravated by the circumstances

of intrusion. See MPC Tent. Draft No. 11, p. 61 (1960).

**Possession of Burglar's Tools.** This section is taken largely from the New York proposal, with the sole addition of the element of manufacturing. It accomplishes the same purpose as the present section 53-72 in more concise and precise language.

**Criminal Disguise.** This section is taken from the present section 58-71 of the Connecticut General Statutes. It was the Commission's desire to retain this as a separate offense.

**Curing of Defects In and Basic Differences from Present Law.**

The proposal on burglary would cure the following four principal defects which now exist in the Connecticut law on burglary and breaking and entering:

(1) The lack of consistency among or rationality behind the various sentences. For example, section 53-73 provides a four year sentence for breaking and entering a dwelling, while section 53-74 provides a ten year sentence for breaking and entering a railroad car.

(2) Unnecessary and inconsistent specificity. For example, section 53-74 protects only railroad cars, commercial motor vehicles, tractors and semi-trailers; section 53-75 protects buildings, vessels, commercial vehicles, trucks or semi-tractors, schools and churches; and section 53-76 protects only buildings, vessels, motor vehicles, churches and schools.

(3) Incorporation of the common law definition of burglary. The crime of burglary is undefined by the statutes, and thus the statute incorporates the common-law definition. *State v. Ward*, 43 Conn. 489 (1876). The result of this is that, although there are no Connecticut cases specifically saying so, the artificial distinctions at common law surrounding the "breaking" requirement are perpetuated without reason, as noted above.

(4) The lower degrees of burglary or breaking and entering often carry heavier sentences than the crime which the actor, in perpetrating the break, was attempting to commit. For example, as noted above, breaking into a chicken coop to steal a chicken carries a four year sentence under section 53-76, while the actual theft of the chicken from the yard would carry only a \$100 fine or two year sentence under section 53-61.

The basic differences between the proposal and the present law are as follows. It covers in ten sections what the present statutes take thirteen sections to cover. Whereas the present law contains gross inconsistencies of penalties, the proposal creates three consistent grades of offense, depending on the seriousness of the conduct. Whereas the present law goes to great lengths to specify the types of premises protected, many of them unrelated to the rationale of the crime, the proposal defines clearly and inclusively the types of premises protected, and the definition is rationally drawn from the rationale of the crime. Whereas the present law does not define the crime of burglary, and thus incorporates the common law definition, the proposal defines the crime clearly and eliminates the troubles and unnecessary refinements and distinctions which the common law definition contains. Whereas the present law consists of a group of sections which are not rationally related to each other, except in that they all deal with the general area of breaking and entering, the proposal

consists of series of sections, rationally related, with distinctions drawn on the basis of the seriousness of the conduct involved.

**Disposition of Present Law.** The following chart illustrates the present Connecticut statutes dealing with burglary and breaking and entering, the anticipated disposition thereof, and the effect of that disposition.

<i>Section</i>	<i>Disposition</i>	<i>Effect</i>
58-68	to be repealed	conduct covered by proposal
53-69	to be repealed	conduct covered by proposal
53-70	to be repealed	conduct to be covered by article on inchoate crimes
53-71	to be repealed	conduct covered by proposal
53-72	to be repealed	conduct covered by proposal
53-73	to be repealed	conduct covered by proposal
53-74	to be repealed	conduct not covered by proposal
53-75	to be repealed	conduct covered by proposal only to extent that listed premises meet definition of "building"
53-76	to be repealed	conduct covered by proposal only to extent that listed premises meet definition of "building"
53-77	to be repealed	conduct to be covered by proposal on inchoate crimes
53-78	to be repealed	conduct covered by proposal
53-79	to be repealed	conduct covered by proposal

#### **Criminal Trespass**

**Rationale.** The basic rationale of the offense of criminal trespass is the protection of one's property from unwanted intrusion by others, under circumstances falling short of those which are likely to instill terror on the part of the occupants.

**Basic Definition.** The basic definition of the offense, which is taken largely from the Model Penal Code and the New York proposal, and which is implicit in the proposed draft, is: an entry into or remaining in certain premises, with knowledge that the actor is not licensed or privileged to do so. The three degrees of the offense differ only in terms of the types of premises and conduct involved.

**General Scheme of Criminal Trespass Sections.** The general scheme of the proposed criminal trespass sections is based on the New York proposal, with some modifications. Three degrees of criminal trespass are created. They can be summarized as follows:

First Degree—intrusion into a building.

Second Degree—intrusion into any premises in defiance of an order to leave, or not to enter, personally communicated to the actor by the owner or some other authorized person;

Third Degree—intrusion into premises which are posted, fenced or otherwise enclosed, or into certain state premises.

**Comments on Definitions.** The definitions of "building" and "dwelling" are the same as for the burglary sections, and the comments thereto are applicable as well.

### Comments on Degrees of Criminal Trespass.

**First Degree.** This is the most serious degree of the crime. It aims at the unlawful intrusion into a building. As is explained below, this section fills a glaring gap in the present Connecticut law, which does not penalize trespass into one's home, unless there is intent to commit a crime therein or unless it is in defiance of an order to leave. It is also expected that this offense will serve the same purpose as the present "breaking and entering without consent" section: a section to deal with cases where the prosecution may have difficulty proving intent to commit a crime.

**Second Degree.** This section aims at the situation where the actor enters or remains in premises in defiance of an order not to enter, or to leave, personally communicated to him by an authorized person. Two elements are important to note here: (1) any premises are protected by this section; (2) the order must be personally communicated to the actor.

**Third Degree.** This section, which is the least serious, aims at the intrusion into premises which are posted, fenced or otherwise enclosed in a manner designed to exclude intruders. It should be noted that unfenced and unenclosed open premises are not protected. It may be argued, as the New York proposal apparently does, that an intrusion into such premises, where the actor knows that he is not licensed or privileged to do so, is a wilful violation and should be punished. The Commission, however, rejected that argument and adopted the following line of reasoning. Where the actor damages the property of another on which he is trespassing, he is civilly liable and may also be guilty of criminal mischief. Similarly, where he trespasses in a building or on premises manifestly meant to exclude outsiders, the owner's interest in the privacy of his own property justifies criminal penalties. Where, however, the premises are open—such as a field or lawn—the offense to the owner is quite minor and technical, and the behavior not dangerous, and if the owner desires protection it is not too much to ask him to post or enclose his property. This section also covers intrusion into premises appurtenant to state institutions.

### Affirmative Defenses.

**Abandonment.** It is an affirmative defense to prosecution for criminal trespass that the building was abandoned. The reason for this is related to the rationale of the crime. The rationale is to protect one's property from unwanted intruders. Where, however, the building is truly abandoned—and the defendant has the burden of proof thereon—the "owner's" interest in the security of his property is also abandoned, and the actor's conduct does not come within the rationale of the crime. It may be argued that the notion of abandonment of a building, being real estate, is fanciful and unrealistic. There are two answers to this: (1) it is true that most of what we think of as buildings could never be truly abandoned, since they would still stand in someone's name and incur taxes, but certainly shacks and like structures can be truly abandoned; (2) the statutory definition of "building" includes many types of vehicles which can easily be abandoned.

**Premises Open to Public.** It is an affirmative defense to prosecution for criminal trespass that the premises were open to the public and that

the actor complied with all "lawful" conditions concerning access to the premises. The principal purpose of this provision is to bar criminal prosecution for presence in a place where the public is generally invited. The defense is not meant to sanction disorderly conduct, nor to preclude resort to civil remedies for trespass, including whatever privilege there may be to bar entry or eject. In the "sit-in" controversies, the provision would make it an explicit issue whether the conditions imposed on access were "lawful." This would leave such problems to the courts to work out on a case by case basis rather than to attempt to answer such difficult problems in advance. The conditions might be unlawful by virtue of federal law, statutory or common law requirements concerning public places, or for other reasons.

**Reasonable Belief.** This provision is taken largely from the Model Penal Code. It provides a defense where the actor reasonably believes that the owner, or another authorized person, would have licensed him to enter or remain, or where he otherwise reasonably believes he is licensed to do so. Its purpose is to relieve from criminal liability one who is, in a sense, an innocent intruder. For example, A knows that B owns certain premises, and A reasonably but mistakenly believes, through his relationship with B, that B would let him enter the premises if asked. In such a case, A is not the kind of wilful intruder that the criminal law contemplates, and should have the opportunity to prove his reasonable belief. Another example: A enters land formerly owned by B, who is his friend; unknown to A, B has sold his land to C, who does not know A. In such a case, A should have the opportunity to prove his reasonable belief that he was licensed to enter.

#### **Curing the Defects in and Basic Differences from Present Law.**

There are five principal defects in the present Connecticut law on criminal trespass, which would be cured by the proposal. An analysis of the defects follows.

The most significant and glaring defect is that nowhere does our law deal with the case of the person who sneaks into, or remains in, someone's building or premises under circumstances which fall short of showing an intent to commit a crime. Section 53-103, for example, which is the general, common trespass section, deals only with the person who enters or remains after having been told not to by the owner or by posted signs. Thus in the wide and shadowy area between the burglar who breaks and enters with intent to steal and the trespasser who defies an order to stay out or leave, the Connecticut criminal law does not operate. Strange as it may seem, therefore, while it would be an offense for a vagrant seeking warmth on a cold afternoon to conceal himself in the storehouse or office of a railroad company, it would not be an offense for the same vagrant on the same cold afternoon to curl up in the cellar, or indeed in the living room, of someone's home. Section 53-73 (Breaking and Entering Dwelling in the Daytime) requires a "breaking" and requires proof of intent to commit a crime therein. Section 53-71, which prohibits being "unlawfully in any dwellinghouse or other building," requires proof of intent to commit a crime and also that the offending presence be "in the night."

The other four defects are, as in other areas of the Connecticut law,

(1) excessive particularization, (2) inconsistency of penalties, (3) inconsistency of the criminal intent requirement, and (4) duplication. The following chart illustrates these defects.

<i>Section</i>	<i>Premises</i>	<i>Intent</i>	<i>Penalty</i>
53-100	railroad property	without right	\$50/30 days
53-101	street cars	wilfully and unlawfully	\$20/30 days
43-102	enclosed land used for storage of explosives	without permission	\$100/6 months
53-103	premises of another	without right	\$50
53-104	lands of another, trampling grain, grass or lawn	wilfully	\$7/30 days
53-105	cultivated or planted lands	with intent to retard growth	\$100/6 months
53-106	orchard, fruit garden, melon patch, vineyard, field or enclosure	without consent	\$100/1 year
53-107	premises of another, by domestic fowls	neglect	\$7
53-108	land of another	for purpose of hunting, fishing, gathering eggs, fruits, old metals, other junk, etc.	\$50/30 days
53-109	gate on land of another	wilfully or negligently	\$10-200/60 days
53-110	property of board of fisheries and game	trespass	\$100
53-47	land of state institutions	wilful trespass, or remaining after notice to leave	\$100/3 months

The basic differences between the proposal and the present law are as follows. It covers in four sections what the present statutes take twelve sections to cover. Whereas the present law contains gross inconsistencies of penalties, the proposal creates three grades of offense, depending on the type of property entered and on the quality of the conduct involved. Whereas the present law specifies at great length the various types of premises protected, the proposal creates three simple categories of premises. Whereas the present law sets out vague and inconsistent *mens rea* requirements, the proposal's *mens rea* requirements are clear and exact.

**Disposition of Present Law.** The following chart illustrates the present Connecticut statutes dealing with criminal trespass, the anticipated disposition thereof, and the effect of that disposition.

<i>Section</i>	<i>Disposition</i>	<i>Effect</i>
53-101	to be repealed	conduct not covered by proposal
53-102	to be repealed	conduct covered by proposal
53-103	to be repealed	conduct covered by proposal
53-104	to be repealed	conduct covered by proposal and by proposal on criminal mischief
53-105	to be repealed	conduct covered by proposal and by proposal on criminal mischief
53-106	to be repealed	conduct covered by proposal
53-107	to be repealed	conduct not covered by proposal
53-108	to be repealed	conduct partly covered by proposal
53-109	to be repealed	conduct not covered by proposal

10. Comparison of Connecticut Law, Model Penal Code and New York Proposal Regarding Burglary and Criminal Trespass.

Burglary and Breaking and Entering  
Connecticut.

Section 53-68 provides a sentence of not more than 20 years for the crime of "burglary." The statute does not define the crime, but incorporates the traditional common-law definition: breaking and entering the house of another in the nighttime with an intent to commit a felony. *State v. Ward*, 43 Conn. 489 (1876). The rationale behind the common-law crime of burglary is the protection against the terror of the nighttime intruder into one's dwelling. See MPC Tent. Draft No. 11, p. 57 (1960). In Connecticut it is "nighttime" when there is not enough daylight to discern the features of another. *State v. Morris*, 47 Conn. 179 (1879). Entering with intent to commit a felony and breaking out satisfies the "breaking and entering" element. *State v. Ward, supra*.

Section 53-69 deals with burglary aggravated by the element of personal violence. It provides a sentence of not more than 25 years for anyone who commits burglary and "in the perpetration thereof, uses any personal abuse, force or violence, or threatens or intimidates any person, or is so armed as clearly to indicate violent intentions."

Section 53-70 prohibits the attempt to commit burglary under either section 53-68 or 53-69. The essential elements of an attempt are (1) a specific intent to commit the crime charged, and (2) some overt act adapted and intended to effectuate that intent. *State v. Mazzadra*, 141 Conn. 731, 734 (1954) (construing section 54-198, the general "attempt" statute). The act must be more than mere preparation for committing the crime; it must have gone so far toward the perpetration of the crime that the crime would probably have been completed but for some extraneous intervention. *Id.*, at 736.

Section 53-71 defines four separate offenses, each of which must occur "in the night," and provides a sentence of not more than five years for each. The four are, in general language: (1) being armed with a dangerous weapon with intent to break or enter a dwelling or other building and to commit any crime therein; (2) possession, without lawful excuse, of certain named tools "or other instrument(s) of housebreaking" (the burden of proof as to "lawful excuse" being on the accused); (3) having one's face blackened or disguised with intent to commit a crime; (4) being unlawfully in a building with intent to commit any crime.

This section 53-71 should be viewed together with section 53-70 (attempt to commit burglary), for it broadens the area of criminality in several important aspects. First, it goes beyond the notion of attempt into the area of preparation to commit burglary. The behavior proscribed here would probably not meet the "overt act" requirement of attempt law. See *State v. Mazzadra, supra* (dissent). Second, whereas burglary (or the attempt to commit burglary) requires breaking and entering a "house," this section includes any other building. Third, whereas burglary requires the intent to commit a felony (which is any crime punishable by death or by imprisonment of more than one year, Conn. Gen.

Stat. sec. 1-1 (1958 revision)), this section includes the intent to commit any crime.

This section can be viewed as a kind of bridge between the law of burglary, which requires the elements of (1) nighttime, (2) a dwelling, and (3) intent to commit a felony, and the law of breaking and entering, which discards these elements and which is discussed below. That is, section 53-71 retains the burglary element of nighttime, but is not restricted to dwellings or to the intent to commit a felony.

Sections 53-72-53-79 (breaking and entering) are an effort to go beyond the restrictions of the definition of burglary and proscribe behavior which is similar to burglary and should be proscribed, but which does not meet any one or more of the traditional requirements of burglary. In general these sections do not require that the offense occur at night, that the building be a dwelling, and that the intended crime be a felony. Their rationale is two-fold: (1) protection against invasion of premises under circumstances likely to terrorize occupants, and (2) protection of property.

Section 53-73 is an expression of the first rationale. It provides a four-year sentence for anyone who, in the daytime, with intent to commit any crime therein, (1) breaks and enters any building or vessel of another used as a dwelling, or (2) breaks and enters any building (not necessarily used as a dwelling) of another, and thereby puts any person therein in "fear or dread." The focus here is on the terror of the occupant.

Section 53-73 provides a ten-year sentence for any person who breaks and enters a railroad car, commercial motor vehicle or trailer with intent to commit a crime therein. Here, the nature of the vehicle protected indicates that the rationale is the protection of property, rather than the protection against terror from invasion of premises. Section 53-75 prohibits breaking and entering, without permission, any building, vessel or commercial vehicle or trailer used for the custody of property, or any school or church, and provides misdemeanor penalties. Section 53-76 is the counterpart to section 53-75. It proscribes the same behavior, except that instead of breaking and entering "without permission", here the breaking and entering must be with intent to commit a crime therein, and the language "commercial vehicle, truck or semi-trailer" in section 53-75 is changed here to "motor vehicle", which could operate to exclude trailers.

Section 53-77 prohibits an attempt to violate section 53-76, and provides a ten-year sentence. Strangely, however, it does not mention attempts to violate any of the other breaking and entering sections. The effect of this omission is to leave the matter to section 54-198, which provides that, unless expressly provided, the attempt to commit any crime prohibited by statute carries the same penalty as the crime.

Section 53-78 provides a fifteen-year sentence for a violation of section 53-73 (breaking and entering a dwelling or thereby frightening someone therein—see above) or of section 53-76 (breaking and entering certain places with intent to commit a crime therein), where (1) the

violation is aggravated by personal violence or threats, or (2) the violator has possession of house-breaking instruments or explosives. Section 53-76 prohibits breaking and entering with intent to commit a crime therein, where explosives are used, and provides a thirty-year sentence.

Section 53-72 prohibits, in great detail, the manufacture and possession of burglar's tools.

There are glaring defects in these sections, which are noted briefly above, and which are discussed in more detail here.

One defect in these sections, like many of the sections in other areas of our criminal statutes, is the lack of consistency among or rationality behind the various sentences. For example, section 53-79 (breaking and entering involving explosives) provides a thirty-year sentence; section 53-78 (breaking and entering involving personal violence) provides a fifteen-year sentence. It is difficult to see why section 53-79 should be considered twice as reprehensible as section 53-78. Indeed, it is strongly arguable that the individual who breaks into one's house in the daytime and while there terrorizes or abuses the inhabitants, who would come under section 53-78, is much more dangerous than the safecracker, under section 53-79, who blows open the bank vault door, thereby endangering only himself.

Compare, also, section 53-73, which provides a four-year sentence for one who breaks and enters a dwelling, with section 53-74, which provides a ten-year sentence for one who breaks and enters a railroad car.

The converse of this irrational disparity of sentences is the equally irrational parity of sentences between sections 53-73 and 53-76. Section 53-76 punishes breaking and entering motor vehicles or places used for the custody of property, along with schools and churches, and provides a four-year sentence; section 53-73 punishes daytime breaking and entering dwellings, or other buildings, and thereby putting the inhabitants of the building "in fear or dread", and provides the same four-year sentence. It would seem that the entrance which frightens or the entrance into one's home should be subject to more severe sanctions than the entrance into a warehouse or automobile under section 53-76.

Another defect, and again one which we have seen before, is unnecessary and inconsistent specificity. For example, section 53-74 protects only railroad cars, commercial motor vehicles, tractors and semi-trailers; section 53-75 protects buildings, vessels, commercial vehicles, trucks or semi-tractors, schools and churches; section 53-76 protects only buildings, vessels, motor vehicles (apparently commercial or non-commercial), churches and schools.

A third defect is that the crime of burglary is undefined by the statutes, and thus incorporates the common-law definition. See *State v. Ward*, 43 Conn. 489 (1876). The result of this is that, although there are no Connecticut cases specifically saying so, the artificial distinctions at common law surrounding the "breaking" requirement are perpetu-

ated without reason. Thus, for example, as noted above, raising a closed window is breaking, but raising a partly open one is not. See MPC Tent. Draft, No. 11, p. 58 (1960); Perkins, *Criminal Law* 151-155 (1957). And these distinctions, of course, carry over to the "breaking and entering" offense. Furthermore, such a haphazardly defined offense impedes scientific knowledge of crime and its treatment, by making statistical studies which use burglary or breaking and entering as a category misleading and useless. See MPC Tent. Draft No. 11, p. 50 (1960).

A fourth defect arises from the fact that every burglary or breaking and entering is, by definition, an attempt to commit some other crime, and that even the lower degrees of burglary or breaking and entering often carry heavier sentences than the crime which the actor was preparing to commit. Thus, as noted above, breaking into a chicken coop to steal a chicken carries a four-year sentence under section 53-76, while the actual theft of the chicken from the yard would carry only a \$100 fine or two-year imprisonment or both, under section 53-61. Thus, the prosecutor or the court is able to treat as burglary or breaking and entering behavior which is only artificially distinguishable from theft. See MPC Tent. Draft No. 11, p. 55 (1960).

#### Model Penal Code

The basic structure of the MPC burglary sections is as follows: They define the crime of burglary as, in effect, entering a building with intent to commit a crime therein. Then they go on to provide that it carries a more severe sentence if (1) it is done in the dwelling of another at night, (2) the actor purposely, knowingly or recklessly inflicts or attempts to inflict bodily injury, or (3) the actor is armed with explosives or a deadly weapon. Several affirmative defenses are provided: (1) the premises are, at the time of entry, open to the public, or (2) the actor is licensed or privileged to enter, or (3) the dwelling was abandoned.

The definition of "occupied structure," coupled with the use of the word "building" makes clear that the statute aims at structures which are likely to contain persons, whether or not a person is actually present at the time.

The statute also bars multiple convictions for burglary and for the crime the actor intended to commit (or for an attempt thereto), except where the crime is a felony of the first or second degree (such as murder, aggravated rape, robbery, kidnapping, and other violent felonies).

Thus the Model Penal Code burglary provision differs in several basic respects from the present Connecticut law. First, the distinction between burglary and breaking and entering is abolished. It lives only in the fact that entrance to another's dwelling at night is an aggravating element. Second, the artificial requirement of a "breaking" is abolished. Third, the actor need only enter with the purpose of committing "a crime therein"; the intended crime need not be a felony. On the question of multiple convictions, the commission has been unable to find any Connecticut authority to indicate whether we now

permit or prohibit such convictions, but the likelihood is that they are now permitted, in line with the general weight of authority. See MPC Ten. Draft No. 11, p. 56 (1960), and *State v. Enanno*, 96 Conn. 420 (1921) (one can be convicted of both an attempt to commit a crime and the crime itself).

#### New York

The basic structure of the New York burglary sections is as follows: The basic crime of burglary is defined as unlawful entry or remaining in a building with intent to commit a crime therein. More severe degrees of burglary occur where certain aggravating factors are present, such as the building being a dwelling, or the entry being at night, or the actor being dangerously armed.

Like the Model Penal Code, the New York proposal abolishes the artificial "breaking" requirement, and abolishes the requirement that the actor intend to commit a "felony" in the building. He need only intend to commit a "crime therein". In terms of the rationale behind the crime of burglary, these reforms are wise and desirable. The rationale behind the crime of burglary is the protection against invasion of premises likely to terrorize occupants. It should make no difference, therefore, whether the actor invaded the premises by "breaking" or in some more stealthy manner. Likewise, it should make no difference if his intended crime is a misdemeanor or a felony. The criminally-bent invader is usually fearsome and terrible in either case.

Unlike the Model Penal Code, however, the New York proposal includes in burglary the one who remains unlawfully in the specified building. The Model Penal Code limits burglary to an unlawful entry and relegates the unlawful remaining to criminal trespass. Note, too, that in the Model Penal Code the remaining must be "surreptitious". There is no such specific requirement in the New York proposal.

Furthermore, the New York proposal does not prohibit multiple convictions, as does the Model Penal Code. Burglary is a second degree felony, carrying a maximum sentence of 10 years, where (1) it occurs in a dwelling at night, or (2) it involves an attempted or actual bodily injury to someone, or (3) the burglar is armed. Otherwise, burglary is a second degree felony, carrying a maximum sentence of 5 years. This would be, for example, where (1) it occurs in a dwelling during the daytime, or (2) in a building other than a dwelling, either during night or daytime, and (3) the actor is not armed and does not injure, or attempt to injure, anyone. Thus, as explained above, the only aggravating factors under the Model Penal Code are: (1) a nighttime intrusion into a dwelling, (2) bodily injury, and (3) dangerous arms. And each factor is deemed to be of equal aggravation. That is, any of these factors will raise the burglary to a second degree felony, no more, no less.

The grading scheme of the New York proposal, however, is more complex, and the sentences more severe than the MPC. There are four grades of burglary. The most serious is where the actor is armed or physically attacks someone. This carries a maximum sentence of 25 years. The next most serious is where the entry is into a dwelling at

night. This carries a maximum sentence of 15 years. The next most serious is where the entry is into a dwelling, but not at night. This carries a maximum sentence of 7 years. The least serious is where entry is in a building, but not a dwelling, whether at night or during the day. This carries a maximum sentence of 4 years. Thus, there are three aggravating factors, which are, in declining order of seriousness: (1) dangerous arms or physical attack, (2) a nighttime intrusion into a dwelling, and (3) a daytime intrusion into a dwelling.

The Commission substantially followed the New York grading scheme, except that we combined the two least serious degrees into one. The reason for this combination is that, unlike New York which has five classes of felonies (A through E), we propose four (A through D); and since we do not wish to make first degree burglary a class A felony (life sentence), and at the same time do not wish to make the least serious degree of burglary just a misdemeanor, it is necessary to have three degrees of burglary, which will range downward from class B through class D felonies.

The New York provision on burglar's tools prohibits the possession or manufacture of "burglar's tools" under circumstances evincing an intent to use or knowledge that some person intends to use them in the commission of a crime involving unlawful entry or safe-breaking. "Burglar's tools" are defined as "any tool, instrument or other thing adapted, designed or commonly used for advancing or facilitating offenses involving unlawful entry" or involving, in effect, safe-breaking.

No comparable section appears in the Model Penal Code Article on Burglary. However, a combination of sections 5.01 (2) (e) (Criminal Attempt) and 5.06 (1) (b) (Possessing Instruments of Crime) amounts to substantially the same thing as this section of the New York proposal. The New York proposal appears to be preferable because of its simplicity. The Commission has decided to adopt it.

This section differs in several important respects from the corresponding Connecticut statute 53-71 (Possession of Arms or Burglar's Tools in the Night).

First, section 53-71 only applies to nighttime behavior. Thus, daytime possession of burglar's tools with intent to use them would not be an offense under present Connecticut law. The nighttime requirement is obviously undesirable.

Second, section 53-71 prohibits possession of a "dangerous offensive weapon or instrument" with intent to break or enter. It is arguable that this separate crime of possession of a dangerous weapon under "criminal" circumstances should be treated separately, in the general article on possession of dangerous weapons. Both the Model Penal Code and the New York proposal follow this approach. See MPC sec. 5.06 (Proposed Official Draft 1962) and Proposed New York Code, Article 270 (1964).

Third, section 53-71 spells out, as a separate and specific offense, the possession of "any key, picklock, jimmy, jack or bit or other instru-

ment of house breaking", without lawful excuse, and the burden of proof as to lawful excuse is on the possessor. It is the Commission's opinion that this list of specific instruments would be superfluous in view of the general language adopted; and that the general language is more desirable. This leaves the important question, however, of burden of proof. Both the Model Penal Code and the New York proposal, in their corresponding provisions, place it on the prosecution, in line with the general principle that the prosecution must prove all the elements of a crime. The Commission agrees.

Fourth, section 53-71 spells out, as a separate and specific crime, being "unlawfully in any dwelling-house or other building, with intent to commit any crime". This becomes superfluous with the abolition of the "breaking" requirement and with the decision to mark criminal—either as burglary or criminal trespass—remaining unlawfully in a building with intent to commit a crime therein.

#### **Criminal Trespass Connecticut.**

Sections 53-100 through 53-111 deal with criminal trespass, and can be broken down into five types of trespass: (1) common trespass (section 53-100); (2) trespass on railroad or street car property (sections 53-100 and 53-101); (3) trespass on premises used for storage of explosives (section 53-102); (4) rural or agricultural trespass (sections 53-104–53-111); (5) trespass on lands appurtenant to state institutions (section 53-47).

Section 53-103, which we have called for purposes of this analysis "common trespass", prohibits entering or remaining "without right", upon the premises of another after having been forbidden to do so, either directly or by posted signs. Section 53-100 prohibits being, or driving a beast, upon certain specified property of railroads "without right". Section 53-101 prohibits being wilfully and unlawfully on parts of streetcars not intended for passengers. Section 53-102 prohibits entering, "without permission of the owner or persons in charge," enclosed land used for the storage of gunpowder or other explosives. It also authorizes citizen's arrest by the owner or person in charge. Section 53-104 prohibits "wilfully" entering "upon the lands of another and trampling down or injuring any growing grain, grass or lawn". Section 53-105 prohibits entering "any field, garden or land cultivated with grain, vegetables, fruit, any article of food or any substance used in the preparation of food", with intent to retard or injure their growth. Section 53-106 prohibits entering any "orchard, fruit garden, melon patch, vineyard, field or enclosure" where fruit or vegetables are cultivated, with intent to take or destroy anything therein, "without the consent of the owner or occupant". It also provides for a citizen's arrest by the owner, occupant, or anyone employed there. Section 53-107 provides that any owner of domestic fowls who allows them to trespass upon another's premises shall be civilly liable for damages, and if he fails to prevent a further trespass within six months after written notice, he shall be subject to a fine of not more than \$7. Section 53-108 prohibits entering the land of another without permission "for the purpose of hunting, trapping, fishing or taking or destroying the nests

or eggs of birds, bee hunting, gathering nuts, fruits or berries or gathering old metals or other junk, rags or bones or other like materials". It also provides for citizen's arrest and provides that possession of a gun, dog, ferret or fishing rod is *prima facie* evidence of intention to hunt or fish thereon. Section 53-109 prohibits "wilfully or negligently" letting down any bar on any fence barway without replacing it or opening any gate on any farm property and failing to close it. Section 53-110 prohibits "trespassing" (undefined) on "any fish hatchery or rearing station owned, operated or controlled by the state board of fisheries and game". Section 53-111 prohibits wilfully raising or lowering the water gate of a cranberry meadow. Section 53-47 prohibits wilfully trespassing on lands belonging to the state appurtenant to state institutions, or remaining thereon after notice to leave, and provides for arrest by officers of the state institutions.

#### Model Penal Code

The MPC provision on trespass is divided, in effect, into three sections, which for convenience can be labeled: (1) entering or remaining; (2) defiant trespassing; and (3) defenses to (1) and (2).

#### Entering or Remaining.

The offense defined by this section has three elements: (a) entrance into or surreptitiously remaining in (b) a building or occupied structure (c) with knowledge that the actor is not licensed or privileged to do so. Thus this section covers those cases where the actor enters a building unlawfully, but there is no evidence of his purpose to commit a crime therein. In such a case he would not be guilty of burglary because of the lack of criminal intent, but he would be guilty of criminal trespass. It also covers those cases where he enters with intent to commit a crime, but his original entry is lawful—e.g., entrance to an open store with intent of stealing—and he remains surreptitiously until after the store closes. In such a case he would not be guilty of burglary because he was licensed to enter, but he would be guilty of criminal trespass. This section also would cover the more mundane case of the vagrant who sneaks into the building simply looking for a warm place to sleep. If the offense under this section is committed in a dwelling (as opposed to any other kind of a building) and at night, it is a misdemeanor. Otherwise it is a petty misdemeanor. Thus the element of terror generated by the nighttime household intrusion aggravates the offense from a sentence of a maximum of thirty days (petty misdemeanor) to a maximum of one year (misdemeanor).

#### Defiant Trespassing.

This section provides that it is an offense to enter or remain in any place, knowing you are not licensed or privileged to do so, where notice against trespass has been given by actual communication, posting or fencing or other enclosure designed to exclude intruders. Note three basic differences between this section and section discussed immediately above. First, here there is no requirement that the person remain surreptitiously. An open and notorious remaining would suffice. Second, this section requires only that the entrance or remaining be in "any place", not necessarily a building or occupied structure. This would in-

clude a field, for example. Third, this section requires some notice that the actor's presence is unwanted. The rationale behind this requirement is that where a landowner wishes to exclude others from open land and to have the backing of the criminal law therefor, he should give notice. See MPC Tent. Draft No. 2, p. 132 (1954).

An offense under this section is a petty misdemeanor (maximum 30 days) if the offender defies an order to leave personally communicated to him. Otherwise it is a violation (non-criminal, fine only).

#### **Defenses.**

This section provides three affirmative defenses, which can be characterized as follows: (a) structure abandoned; (b) premises open to public; and (c) reasonable belief of license.

The first defense applies only to the offense characterized above as "entering or remaining". It provides that if the structure or building entered (or surreptitiously remained in) was abandoned, it is an affirmative defense.

The second defense is that the premises were open to members of the public and the actor complied with all "lawful" conditions imposed on access or remaining. The key word here is "lawful". Its effect is to make it explicitly an issue for the court whether those conditions are "lawful." They may be "unlawful" by virtue of common law, statute (state or federal), or the constitution (state or federal). This provision is most important, of course, in such cases as "sit-in" controversies, and it wisely does not attempt to decide the question, but leaves it to the courts to work out on a more flexible case-by-case basis.

The third defense is that the actor reasonably believed that the owner, or someone authorized to do so, would have licensed him to enter or remain. This seems to be a sensible provision to take care of cases of honest mistake. The Commission decided to adopt these defenses, with some changes in language.

#### **New York**

The basic offense of criminal trespass under the New York proposal occurs when one "knowingly enters or remains unlawfully" in or upon certain specified premises. This phraseology—"knowingly enters or remains unlawfully"—is somewhat ambiguous, in that it is unclear from a first reading whether "knowingly" modifies both "enters" and "remains", or only modifies "enters", and whether "unlawfully" modifies both "enters" and "remains" or only modifies "remains". Examination of the sections in light of the entire Article and its purposes indicate that both "knowingly" and "unlawfully" modify both "enters" and "remains". This ambiguity, however, could easily be eliminated by a change in the location of the words in the sentence. The use of the word "knowingly" however, raises the further problem of its meaning. It is unclear whether it means with knowledge that the actor is entering, or with knowledge that he is not licensed or privileged.

The definition of "enter or remains unlawfully" amounts essentially to the same as that in the Model Penal Code: entry or remaining when

the actor is not licensed or privileged to do so; and, in the case of premises open to the public, defiance of a "lawful" order not to enter or remain, personally communicated to him by the owner or an authorized person.

The grading of the offense of criminal trespass depends on the type of premises involved. There are three degrees of the offense.

Criminal trespass in the first degree is the most serious. It prohibits unlawful entry or remaining in a "dwelling." The penalty is no more than one year imprisonment.

Second degree is the next most serious. It prohibits unlawful entry or remaining in two separate situations: (1) in a building, whether or not a dwelling, or (2) upon real property which is fenced or otherwise enclosed in a manner designed to exclude intruders. The penalty is no more than three months imprisonment.

Third degree is the least serious. It prohibits unlawful entry or remaining "in or upon premises"—presumably not a building of any sort and not enclosed property. This offense is a "violation", with a maximum of fifteen days imprisonment.

The New York proposal differs in several basic respects from the Model Penal Code. The first difference to be noted involves the "remaining" requirement. The Model Penal Code requires that the remaining be "surreptitious". The New York proposal does not contain this requirement; the "remaining" can be open and notorious.

The second difference between the New York proposal and the Model Penal Code involves the basic grading structure. Both have in effect, three grades of the offense, but the grades differ, as the following chart illustrates.

**Declining Order  
of**

**Degree of  
Seriousness**

**New York Proposal**

**Model Penal Code**

I	dwelling	dwelling at night
II	building, or fenced or enclosed realty	building or defiance of personally communicated order
III	any premises	posted, fenced or enclosed place, or defiance of actually (but not personally) communicated order.

Thus, the Model Penal Code requires that the trespass into the "dwelling" be at night for it to be a specifically aggravating feature, whereas the New York proposal has no "nighttime" requirement.

Further, the Model Penal Code grades entry into posted, fenced or enclosed land as the least serious grade, and contains no provision where the premises are not a building and are not posted, fenced or enclosed, whereas the New York proposal grades entry into fenced or

enclosed land as the second most serious grade and does contain a provision—the least serious—where unfenced or unenclosed open premises are intruded upon. The argument for the New York proposal in prohibiting a knowing, unlawful entry to open premises, rests on the fact that a “knowing and unlawful” entry would require proof that the actor knew he was not licensed or privileged to enter and should therefore be punished for such a wilful violation of another’s premises. The argument for the Model Penal Code runs as follows: where the actor damages the property of another on which he is trespassing, he, of course, is civilly liable and may also be guilty of the crime of criminal mischief; similarly, where he trespasses in a building or on premises manifestly meant to exclude outsiders, the owner’s interest in the privacy of his own property justifies criminal penalties; where, however, the premises are open—such as a field or lawn—the offense to the owner is quite minor and technical, and the behavior not dangerous, and if the owner desires protection it is not too much to ask him to post or enclose his property.

Another difference between the New York proposal and the Model Penal Code is the way in which they treat the element of defiance of a personally communicated order to leave (or not to enter). The only significance of such an order under the New York proposal is where the premises involved are open to the public; in such a case the actor is deemed to be licensed or privileged unless he defies a “lawful” order personally communicated to him by the owner or his agent. Under the Model Penal Code, however, the function of such an order is simply to raise the offense of “defiant trespass” from a violation to a petty misdemeanor, regardless of whether the premises are public or private.

Another basic difference between the New York proposal and the Model Penal Code involves the use of the three affirmative defenses contained in the Model Penal Code. The first defense applies where the building intruded into is abandoned. The New York proposal contains no such defense. The second defense applies where the premises are open to the public and the actor complies “with all lawful conditions” imposed on entry or remaining. The substance of this defense is essentially the same as that contained in the definition of “enter or remain unlawfully” in the New York proposal. The difference lies in the allocation of the burden of proof. The Model Penal Code clearly places the burden on the defendant to prove that the premises were open to the public and that he complied with all “lawful” conditions. The New York proposal is unclear as to the burden of proof, but probably requires the prosecution to prove that the premises were not open to the public and, if they were, that the defendant defied a “lawful” order to leave personally communicated to him by an authorized person. The third defense applies where the actor reasonably believes that the owner would have licensed him to enter. The New York proposal contains no such defense.

## 11. Comments on Robbery

**History and Rationale of Robbery.** For as long as private property has been recognized, conduct intentionally designed to unlawfully deprive another of his property has been socially disapproved. As ordinarily

defined at common law, "robbery" is the felonious taking of goods or money from the person or presence of another by means of force or intimidation. See 77 CJS 446. Robbery appears to consist of a combination of larceny and actual or threatened use of physical force. The traditional common law robbery was a capital felony. Gradually, most legislatures eliminated the death penalty and introduced grading to restrict the imposition of the most severe sentences of imprisonment. The statutory definitions were frequently a substantial codification of the common law definition. The basic rationale of the prohibition against robbery is the protection against the terror of the forcible taking.

Robbery is not defined in the present Connecticut statutes. By case law, Connecticut has adopted the common law definition of robbery. Connecticut law, therefore, contains certain unrealistic limitations emanating from old common law principles, chief of which is the requirement that the property be taken from the person or in the presence of the owner or victim. This appears to exclude from the robbery ambit a variety of forcible thefts, such as the following: A forces V to telephone his wife and direct her to take money from V's safe and deliver it at an appointed time and place to A's agent. The Commission's proposal eliminates the common law "from the person and in the presence" requirements and expands the definition of robbery to cover the above-illustrated type of case and other similar forcible larcenies which are not presently classified as such owing to certain technical restrictions.

#### Basic Structure of Proposal.

The basic purpose of the proposal is two-fold: (1) to cure the glaring defects in the present Connecticut law, which are a lack of clarity and consistency in the *mens rea* elements of the crimes, and a lack of definition of the crime; and (2) to substitute therefor a rationale, cohesive and coherent article on robbery.

The proposed robbery article is based primarily on the New York Revised Penal Law, and partly on the Model Penal Code. Robbery is divided into three degrees. Among the factors given significance in the proposed grading are: actual infliction of serious physical injury, being armed with or threatening the use of a deadly weapon or dangerous instrument, and the presence of an accomplice. Each of the foregoing circumstances aggravates the simple robbery and raises it to a more serious degree.

This section on definition of robbery is essentially the same as the corresponding provision in the New York Revised Penal Law.

The proposed robbery article classifies the crime into three degrees. Robbery in the third degree is the basic robbery section. Certain factors aggravate the simple robbery and raise it to a more serious degree. Robbery in the second degree makes the presence of an accomplice an aggravating factor. The rationale is that the accomplice is equal to a person armed and therefore would generate a higher degree of fear in the victim. Robbery in the second degree is also aimed at circumstances where the actor or accomplice, although not armed with a deadly instrument, purports or represents to be so armed and threatens its use. For

example, the actor threatens to use a gun he holds in his hand; in reality the gun is only a toy pistol but the actor claims it is a real gun. Where the aggravating factors of robbery in the second degree are present, the degree applies not only to actions of the actor but also to actions of an accomplice.

Simple robbery is raised to robbery in the first degree on the basis of either of three aggravating factors: causing serious physical injury, being armed with a "deadly weapon" (i.e. a pistol), or being armed with and threatening the use of a "dangerous instrument" (i.e. a club). Therefore, bare possession of a "deadly weapon" is sufficient for the crime, whereas use or threatened use of a dangerous instrument actually possessed is required.

Where the aggravating factors of robbery in the first degree are present, the degree applies not only to the course of commission of the crime but also to immediate flight therefrom and applies not only to actions of the actor but also to actions of an accomplice.

**Effect on Present Connecticut Law.** The proposal would involve the repeal of the present robbery sections, which are 53-14, 53-28 and 53-67. The conduct covered by those sections would be essentially covered by the proposal, except that the part of 53-14 concerning maiming and disfiguring is covered by the proposed assault sections.

## **12. Comparison of Connecticut Law, Model Penal Code and New York Proposal Regarding Robbery.**

### **Connecticut.**

Section 53-67 is the basic robbery section. It provides "Any person who commits robbery shall be imprisoned not more than seven years." There are two other sections specifically referring to robbery. Section 53-14, designated "Robbery with Violence", provides that "Any person who commits robbery, and in perpetration thereof uses any personal abuse, force or violence, or is so armed as clearly to indicate violent intent shall be imprisoned for not more than twenty-five years." Section 53-28, designated "Assault with Intent to Rob", provides "Any person who, with actual violence, makes an assault upon another, with intent to rob him shall be imprisoned for not more than five years."

Connecticut statutes do not, therefore, define the term "robbery". The case of *State v. Velicka*, 143 Conn. 368 (1956) defines robbery as "a felonious and violent taking with intent to steal, of goods, monies, or other valuables from the person or out of the possession of another, against his will, by force or intimidation." Therefore, the statute must be read as incorporating the common law definition of robbery, which was theft of property from the person or in the presence of the victim by force or by putting him in fear either of immediately bodily injury or of certain other grievous harm. MPC Tent. Draft No. 11, p. 68 (1960).

The overall structure created by Sections 53-67, 53-14 and 53-28 is as follows: Section 53-67 involves (1) theft from a person or in his presence and (2) force or threat of immediate bodily harm. Section 53-14, since it refers to anyone committing "robbery", involves the

above two factors of "theft" and "force" but adds two other factors in the alternative: "and in the perpetration thereof uses any personal abuse, force or violence or is so armed as clearly to indicate violent intent."

The phrase "in perpetration thereof" is analyzed in *State v. Velicka, supra*. In that case a taking by threat was followed by striking the victim with an umbrella while in flight, which constituted violence "in perpetration" of a robbery. This case defines what is meant by "in perpetration of a robbery"; it is not essential that the act be done in order to further the accomplishment of the theft, but merely that the act be done as part of the continuous transaction or within the sequence of events directly connected with the robbery. The distinction, therefore, is between the force used by the robber in removing the property from the person or in his presence and the abuse and violence which is exercised "in perpetration" of the robbery. Therefore, the presence of abuse and violence aggravates a simple robbery and makes it robbery with violence under Section 53-14.

The language "so armed as clearly to indicate violent intent" is vague. The questions remain:

Should a person not armed but who claims to be armed and intimidates his victim by claiming to be armed be guilty of the same crime as an actually armed person?

Should a person who actually is armed but no one knows he is armed be guilty of the same crime as one who intimidates his victim by stating that he is armed?

The effect of this additional language referring to being armed, seems to be to include, under this crime of aggravated robbery, the situations where the robber is armed but the arms are never exhibited or employed. Thus where A who has a gun or knife concealed under his coat, robs B, who is unaware of the weapon, A is guilty under Section 53-14.

Section 53-28 is an attempt to cover situations where actual physical violence has been exercised by the intended robber but there was no actual taking of property and thus no completed robbery.

#### Model Penal Code

The MPC provides that a person is guilty of robbery if, "in the course of committing a theft," he does either of three things:

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

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

This article, therefore, is an extension of common law robbery where

force or intimidation employed subsequent to the taking as a means of escape would not have supported a charge of robbery. The rationale of this article seems to be that the thief's willingness to use force against those who would restrain him in flight strongly suggests that he would have employed it to effect the theft had there been need for it.

Also the phrase "attempt to commit a theft" is an extension of common law robbery where asportation was essential—the penalties for robbery were avoided if the crime was interrupted before the accused laid hold of the goods or if it developed that the victim had no property to hand over.

There are three possible defects in the MPC draft on robbery. One possible defect is the requirement that there be "serious bodily injury" inflicted on a victim. It is strongly arguable that what we should be concerned about is physical force exerted on the victim and not whether that force resulted in actual injury. For example, A comes up behind B, who is holding his briefcase, pushes B to the ground and quickly snatches B's briefcase. B has been pushed to the ground but is not injured. Under these circumstances, it is very likely that A would have to be acquitted of robbery since there was no serious bodily injury; no threat or fear; and no commission or threat to commit a first or second degree felony.

Another possible defect is the requirement that the threatened or feared element be "serious bodily injury". What we should be concerned with is the threat or fear of physical force, regardless of whether the threatened or feared force would result in serious injury. The actor, for example, it can be argued, who extracts money from his chosen timid victim by a threat of twisting his arm is just as dangerous and reprehensible as the actor who extracts money from his chosen less timid victim by a threat of breaking his arm.

The third possible defect is the use of term "in flight." It is submitted that this term is too vague and should be limited by such phraseology as "immediate flight".

#### New York

There are several basic differences between the New York proposal and the Model Penal Code proposal.

The first difference is that the New York Revised Penal Code requires not "injury" but "force or the threat thereof". This is probably preferable since the rationale of the prohibition against robbery is the protection against the terror of the forcible taking, which can be just as terrible even when the force does not result in injury.

The second difference is that the New York Revised Penal Law does not define the term "in the course of committing", whereas the Proposed Model Penal Code defines it as an attempt to commit theft or in flight after the attempt or commission. The Commission thinks that a definition of this phrase is essential.

The third difference is that the New York Penal Law in its grading

scheme makes the presence of an accomplice to robbery an aggravating factor.

The fourth difference is the use of the term "deadly weapon and dangerous instrument" in the New York Penal Law and the total absence of such language in the proposed Model Penal Code.

### **13. Comments on Larceny.**

#### **Introduction**

This article deals with offenses against property. The basic feature of this draft is the unification of the larceny offenses. The traditionally distinct crimes of larceny, embezzlement, obtaining by false pretenses, fraudulent conversion, extortion and issuance of bad checks are consolidated into one offense called larceny. Unification is desirable because it eliminates the distinctions between the old common law forms; it defines larceny broadly enough to cover all such offenses; and it facilitates the drafting of rational punishment provisions graded according to amount of property involved or other meaningful aspects of the offense rather than according to a technical classification the significance of which is chiefly historical. The proposed larceny article is based primarily on the New York Revised Penal Law, and partly on the Model Penal Code.

#### **Larceny; definition of terms**

This section is designated to clarify several terms employed in the definition of larceny and to permit briefer definition of the crime.

#### **Larceny; defined**

This section eliminates traditionally distinct crimes and consolidates them into one offense called "larceny".

Subdivision 1 sets forth the general definition of larceny.

Paragraph (b) of subdivision 2 punishes purposeful omission to take steps to restore property to a person entitled to have it by one who exercises control over it. Paragraph (c) stamps as larceny the acquisition of property through commission of the crime of "issuing a bad check". Paragraph (d) expands the scope of larceny to include the concept of extortion.

#### **Larceny; value of stolen property**

This section sets forth three criteria to establish value.

#### **Petit larceny, Grand larceny.**

Under the proposed article, larceny comprises petit larceny and three degrees of grand larceny. The punishment provisions are graded according to the amount of the property stolen or other meaningful aspects of the offense which warrant a specific punishment. For example, the intimidation aspect of extortion renders it a crime generally more serious than a theft of the same property by conventional larcenous means. Therefore, this is recognized in the grading or degree structure of larceny, where the degree of a larceny by extortion is determined not alone by the value of the property obtained but also by the fact of intimidation and the kind of threat employed.

#### **Receiving stolen property**

Consolidation of receiving with other forms of theft affords the same advantages as other aspects of the unification of the theft concept. It reduces the opportunity for technical defenses based upon legal distinctions between the closely related activities of stealing and receiving what is stolen. One who is found in possession of recently stolen goods may be either the thief or the receiver; but if the prosecution can prove the requisite thieving state of mind it makes little difference whether the jury infers that the defendant took directly from the owner or acquired from the thief. Consolidation also has a consequence favorable to the defense by making it impossible to convict of two offenses based on the same transaction.

#### **Theft of Services**

Since "services" are not "property", "theft" of a service would not ordinarily constitute larceny and if any such conduct is to be proscribed it must be by specific statute. This proposed section defines seven specific offenses, most involving theft or attempted theft of certain kinds of services.

#### **Missapplication of property**

The specific acts of loaning, leasing and encumbering do not ordinarily reach the stature of larceny because they do not necessarily entail an intent to "deprive" or "appropriate". Subdivision 2 exempts the defendant encumberer who undoes any possible damage by regaining possession of the property and restoring the situation to status quo ante without loss to the owner.

#### **Obtaining Money by False Pretenses**

This section substantially restates existing Title 53, Section 360 deleting that portion of the present statute referring to obtaining any valuable thing or performance by means of a check.

#### **False Promise**

This section expands the existing scope of larceny to encompass acquisitions of property through fraudulent promises made without any intention of performance. This section provides that non-performance of a promise means nothing in itself and that "fraudulent intent" must be established by evidence rendering the conclusion a "moral certainty".

#### **Criminal Impersonation**

This section prohibits the impersonation of public officers and private persons.

#### **Defrauding of Public Community by Officer**

This section substantially restates existing Title 53 of Section 364.

#### **Diversion from State of Benefit of Labor of Employees**

This section substantially restates existing Title 53 of Section 366.

#### **Issuing a bad check; definition of terms**

This section defines the terms necessary to constitute the crime of issuing a bad check.

### Issuing a Bad Check

This proposed offense is strictly a "bad check" crime, with a specific grading, regardless of the nature of the transaction involved. No mention is made here of larceny liability when property is obtained on the basis of the check. A check might be regarded as no more than the drawer's promise that the bank would pay. The bad check provision, in addition to eliminating the doubt as to the liability on false promises, eliminates the requirement of obtaining property by means of false pretense and, in the misdemeanor section, creates a presumption of knowledge that the check would not be paid under certain circumstances. It should be noted that, like present Connecticut law, there are two provisions dealing with bad checks—felony and misdemeanor.

### SUMMARY OF DISPOSITION OF PRESENT CONNECTICUT STATUTES IN CONNECTION WITH PROPOSED ARTICLE ON LARCENY

Repealed; conduct substantially covered by proposal

1. 53-56
2. 53-57
3. 53-58
4. 53-59
5. 53-61
6. 53-62 in regard to stealing of cattle, sheep or swine
7. 53-63
8. 53-64
9. 53-65
10. 53-354
11. 53-355
12. 53-357
13. 53-358
14. 53-539
15. 53-360 repealed in relation to checks or an order or draft on a third party
16. 53-361
17. 53-364
18. 53-366
19. 53-372
20. 53-373
21. 53-378

Repealed; No Comparable Crime Substituted

1. 53-60
2. 53-66

### 14. Comparison of Connecticut Law, Model Penal Code and New York Proposal Regarding Larceny.

#### Connecticut

Section 53-56 is the basic theft from the person statute. This section provides "any person who steals money, goods, chattels or choses in action from the person of another shall be imprisoned not more

than five years or fined not more than one thousand dollars or be both fined and imprisoned." The Connecticut statutes do not define the term theft. The case of *State v. Hanley*, 70 Conn. 265, 269 (1898) defines theft as "taking of property of another from the possession of the owner", with intent to defraud. Neither the Connecticut statutes nor Connecticut cases define the term "steal". Under common law, "steal" means "the felonious taking and carrying away of the personal goods of another." 32 Am. Jr. 886. Stealing has frequently been said to be synonymous with "larceny". 52 C.J.S. 781.

Larceny in the common law meaning of the term may be defined as the felonious taking by trespass and carrying away by any person of the goods or things personal of another from any place, without the latter's consent and with the felonious intent permanently to deprive the owner of his property and to convert it to the taker's own use or to the use of some person other than the owner. 32 Am. Jr. 883.

Therefore, theft is the commission of a larceny of the goods, money, chattels or choses in action from the person of another. A larceny aggravated by the taking from the person is specifically punishable under Section 53-56. This section aggravates larceny committed in circumstances which make it also an invasion of the right of personal security. The intent of this section appears to be to set forth a specific punishment for this type of crime and therefore deter its commission, but as it presently appears the section is inconsistent with its intent. For example, if D steals \$1,500.00 from the person of P, D, if found guilty, would be imprisoned for five years. Whereas, if D steals \$1,500.00 from any other place, D, if found guilty, would be imprisoned 20 years. It is also submitted that this statute lacks a grading system to relate the amount stolen with the punishment.

Section 53-57, 53-58, 53-59, 53-61 and 53-62 and 53-64 relate to specific articles that may be the subject of "theft".

Section 53-57 provides in part that any person who steals any motor vehicle shall for the first offense, be imprisoned not more than 15 years and for a subsequent offense not more than 20 years. This section should be distinguished from Section 14-229, using a motor vehicle without the owner's permission. Section 14-229 changes the common law rule on the subject of larceny with respect to motor vehicles by eliminating the requirement of felonious intent to deprive the owner of his property permanently. Under Section 14-229, the necessary intent is to deprive the owner of possession of his motor vehicle temporarily but without intent to steal it. Section 53-58 provides that any person who steals any bicycle, if its value exceeds twenty-five dollars, shall be imprisoned not more than one year. Section 53-59 provides that any person who steals any horse or mule shall be imprisoned not more than ten years. Section 53-60 provides that any person who wilfully takes and uses the horse, boat or bicycle of another without his permission shall be fined not more than \$50.00 or imprisoned not more than three months or both. This section is similar in scope to Section 14-229—using a motor vehicle without the owner's permission. Both sections eliminate the requirement of felonious intent and intent to

permanently deprive. Section 53-61 provides that any person who steals any poultry shall be fined not more than \$100.00 nor imprisoned not more than two years or both. Section 52-62 provides in part that any person who steals any cattle, sheep or swine shall be imprisoned not more than five years. Section 52-64 provides that any person who steals, counterfeits or embezzles passage tickets shall be defined not more than five hundred dollars or imprisoned not more than one year or both.

These sections are inconsistent among themselves and in relationship to Section 53-63, which is the general larceny statute. This inconsistency can be pointed out in the following example. Under Section 53-61, if D steals a chicken worth \$5.00 from X, D is liable to fine of not more than \$100.00 or imprisonment of not more than two years or both. Whereas, under Section 53-63, if D steals any goods the value of which does not exceed \$15.00, he shall be fined not more than \$25.00 or imprisoned not more than 30 days or both.

These sections dealing with particularized thefts of agricultural property can be seen as a relic of the days when Connecticut was primarily an agricultural state. The Commission thinks that there is little need for perpetuating such particularization.

Section 53-63 is the larceny and shoplifting statute. It provides:

(a) as to larceny—

1. If the value of the property stolen exceeds \$2,000 the actor shall be imprisoned not more than 20 years or fined not more than \$1,000 or both;

2. If the value of the property stolen exceeds \$250 but does not exceed \$2,000, the actor shall be imprisoned not more than 5 years or fined not more than \$500 or both;

3. If the value of the property stolen does not exceed \$250 but exceeds \$15, the actor shall be fined not more than \$200, or imprisoned no more than 6 months or both;

4. If the value of the property stolen does not exceed \$15, the actor shall be fined not more than \$25 or imprisoned not more than 30 days or both.

(b) as to shoplifting—

1. If the value of the goods, wares or merchandise exceeds \$2,000, the actor shall be imprisoned not more than 20 years or fined not more than \$1,000 or both;

2. If it exceeds \$50 but does not \$2,000, the actor shall be imprisoned not more than 5 years or fined not more than \$500 or both;

3. If it does not exceed \$50 but exceeds \$15, the actor shall be fined not more than \$200 or imprisoned not more than six months or both;

4. If it does not exceed \$15, the actor for the first offense shall be fined not more than \$100 or imprisoned not more than 60 days or both.

Paragraph (b) further provides that for a second offense or subsequent offense involving shoplifting of a value not in excess of \$50, the actor shall be fined not less than \$50 nor more than \$200 or imprisoned not less than 30 days nor more than one year or both.

This statute does not define the term larceny and therefore the court has adopted the common law definition of the term, which was the

felonious taking by trespass and carrying away by any person of the goods or things personal of another from any place, without the latter's consent and with the felonious intent permanently to deprive the owner of his property and to convert it to the taker's own use or to the use of some person other than the owner. 32 Am. Jr. 883.

The case of *State v. Banet*, 140 Conn. 118 (1953), states that to support a conviction of larceny, the evidence must be sufficient to establish the essential elements of the crime charged. These are:

1. Wrongful taking and carrying away of the personal property of another.
2. The existence of a felonious intent in the taker to deprive the owner of it permanently;
3. A lack of the consent of the owner.

The court in *State v. Sawyer*, 95 Conn. 34 (1920), interpreted felonious intent to mean no color of right or excuse for the act. Therefore, from the case law it appears that in order for a thing to be the subject of larceny, the first essential is that it be something which is capable of individual ownership; that the thing taken must be personal property as opposed to real property; that it must be a thing of value and must have a corporal existence, and that it must be taken from the possession of the owner into the possession of the thief and carried away by him with intent to keep permanently.

Section 53-63B, shoplifting, is the theft of goods displayed for sale. It is the taking and carrying away of a merchant's property with intent to permanently deprive him of possession. The intent to steal is inferred from the proof that the accused made an elaborate attempt to conceal the item on his person or that he carried it out of the store without offering payment.

The distinction in the penalties between larceny and shoplifting seems to be rather a difficult one to rationalize. For example, the penalty for shoplifting is greater in many cases than the penalty for larceny. If the merchandise shoplifted exceeds \$50.00 but does not exceed \$2,000.00, D would be imprisoned for not more than 5 years or fined not more than \$500.00; if the merchandise shoplifted exceeds \$15.00, D would be fined \$100.00 or imprisoned not more than 6 months. Whereas, if D commits a larceny and steals goods the value of which exceeds \$250.00 but does not exceed \$2,000.00, he would be imprisoned 5 years or fined not more than \$500.00; if the value of the goods does not exceed \$15.00, he would be fined not more than \$25.00 or imprisoned not more than 30 days.

The Commission thinks that shoplifting should not be treated as a greater crime than the ordinary case of larceny.

Section 53-65 refers to receiving stolen goods and provides that any person who receives and conceals any stolen goods or articles knowing them to be stolen shall be prosecuted and punished as a principal although the person who committed the theft is not convicted thereof.

The case of *State v. Newman*, 127 Conn. 398 (1940), states the essential elements of this offense as follows:

1. The property must have been stolen;
2. It must have been received by the accused with the knowledge that it was stolen;
3. It must have been concealed within the meaning of the law;
4. It must have been received and concealed by the accused with a felonious intent.

There appears to be a loophole in this statute under the following set of circumstances. If D receives the stolen goods without the knowledge that they are stolen, but subsequently has knowledge that they are stolen and at that time conceals the goods, he would not be guilty of receiving stolen goods under this particular statute.

Section 53-66 refers to the use of vehicles in aid of theft of agricultural products. Any person who knowingly uses, or permits to be used, any vehicle in the larceny of vegetable, fruit or other agricultural product, whether annexed to the realty or not, or who permits such vehicle to be used in the receiving or aiding in the concealing of any stolen vegetable, fruit or other agricultural product, knowing it to have been stolen, shall be imprisoned not more than three years or fined not more than five hundred dollars or both. According to this statute, if the actor steals an orange from a tree and there is a car involved, he would be guilty of a felony. It is submitted that such a crime does not warrant the penalty.

In conclusion, larceny is a generic term within the broad outlines of which there are many different offenses. The basic distinction between the different kinds of larceny is principally a matter of punishment to be inflicted. The punishment to be inflicted should be generally determined by the value of the property which is the subject of the larceny. The higher the value of the property, the greater should be the punishment.

The following chart illustrates the inconsistencies in the penalties as provided in the present Connecticut statutes:

SECTION	CRIME	PENALTY
53-56	Theft	Max. 5 years or \$1,000.00 or both
53-57	Steal motor vehicle or tampering with identification number	Max. 15 years—1st offense; 20 years subsequent offense
53-58	Steal bicycle	1 year
53-59	Steal horse or mule	Max. 10 years
53-60	Using horse, boat or bicycle	Max. 3 months or \$50.00 fine or both
53-61	Steal poultry	Max. 2 years or \$100.00 or both
53-62	Steal cattle, sheep or swine	Max. 5 years
53-63 (a)	Value of property stolen	Max. 20 years or fine \$1,000.00

Larceny	exceeds \$2,000.00	
	Value of property stolen exceeds \$250.00 but does not exceed \$2,000.00	Max. 5 years or fine \$500.00 or both
	Value of property stolen exceeds \$15.00 but does not exceed \$250.00	Max. 6 months or \$200.00 or both
	Value of property stolen does not exceed \$15.00	Max. 30 days or \$25.00 or both
53-63 (b)	Value of property stolen exceeds \$2,000.00	Max. 20 yrs. or \$1,000.00 or both
Shoplifting	Value of property stolen exceeds \$50.00 but does not exceed \$2,000.00	Max. 5 yrs. or \$500.00 or both
	Value of property stolen exceeds \$15.00 but does not exceed \$50.00	Max. 6 months or \$200.00 or both
	Value of property stolen does not exceed \$15.00	Max. 60 days or \$100.00 or both
53-64	Steal, counterfeit or embezzle passage ticket	Max. 1 yr. or \$500.00 or both
53-66	Use of vehicle in larceny of agricultural products	Max. 3 yrs. or \$500.00 or both

#### Model Penal Code

The basic feature of this draft is the unification of the theft offenses. The traditional distinct crimes of larceny, embezzlement, obtaining by false pretenses, fraudulent conversion, cheating, extortion, blackmail and robbery are consolidated into one offense called "theft".

Conduct denominated theft in this Article constitutes a single offense embracing the separate offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this Article, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of the Court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

Theft constitutes a felony of the third degree if the amount involved exceeds \$500.00, or if the property stolen is a firearm, automobile, or other motor-propelled vehicle, or in the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.

Theft not within the preceding paragraph constitutes a misdemeanor, except that if the property was not taken from the person or by threat, or if breach of fiduciary obligation, and the actor proves by a preponderance of the evidence that the amount involved was less than

\$50.00, the offense constitutes a petty misdemeanor.

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

The grading system also imposes set penalties for certain types of thefts. For example, theft from the person is made a misdemeanor by Paragraph (b) of subsection (2) even if the amount involved is less than \$50.00.

Section 223.1 (3) provides affirmative defenses:

(a) That the actor was unaware that the property or service was that of another; or

(b) That he acted under an honest claim of right to the property or services involved or that he had a right to acquire or dispose of it as he did; or

(c) That he took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

To be guilty of a theft, the actor must be aware that he is appropriating property and that it is the property of another. Also, he is not a thief if he mistakenly supposes that the owner has consented or that the law gives him the right to take the property without the consent of the owner.

Section 223.1 (4) dissolves the common law immunity of theft from a spouse. Under common law, there was immunity on the theory that prosecution undermines the unity of the family. The M.P.C. answers this by submitting that the theft itself and the desire of one spouse to prosecute the other indicates that the family unit has already been disrupted.

Section 223.2 entitled Theft by Unlawful Taking or Disposition provides:

(1) movable property—a person is guilty of theft if he takes, or exercises unlawful control over movable property of another with purpose to deprive him thereof.

(2) immovable property—a person is guilty of theft if he unlawfully transfers immovable property of another or conveys an interest therein with purpose to benefit himself or another not entitled thereto.

This section deals with the problem of appropriation of property without the owner's consent or authorization. The concern here is not only with a stranger acting by stealth but also with a person entrusted with the property as agent, bailee, trustee or fiduciary. Therefore, offenses which formerly fell into such categories as larceny, embezzlement and fraudulent conversion are encompassed under this section.

Subsection (2) refers to trustees, guardians or other persons em-

powered to dispose of immovable property of others and their misappropriation of said property.

Subsections (1) and (2) distinguish between movable and immovable property. Under the definition of property in subsection (2), real estate is included in reference to trustees, guardians or other persons empowered to dispose of property of others. This section subjects such persons to theft liability if they misappropriate the property.

Section 223.3. Theft by Deception. This section prohibits obtaining the property of another by deception. According to this section, a person deceives if he purposely:

- (a) creates or reinforces a first impression; or
- (b) prevents another from acquiring information which would affect his judgment of a transaction or fails to correct a first impression which the deceiver previously created or reinforced; or
- (c) which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
- (d) fails to disclose a known legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained.

Section 223.4 Theft by Extortion. Under this section, a person is guilty of theft if he obtains property of another by threatening to:

- (a) inflict bodily injury on anyone or commit any other criminal offense; or
- (b) accuse anyone of a criminal offense; or
- (c) expose any secret tending to subject any person to hatred, contempt or ridicule, or impair his credit or business repute; or
- (d) take or withhold action as an official, or cause an official to take or withhold action; or
- (e) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
- (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (g) inflict any other harm which would not benefit the actor.

This section deals with situations where *coercion* rather than deception is the method employed to make a victim transfer his property. Related offenses in present law are described as extortion and blackmail.

Section 223.5 Theft of Property Lost, Mislaid or Delivered by Mistake.

This section deals with theft of three types of property:

1. Lost
2. Mislaid
3. Delivered by mistake.

A person who comes into control of property of another that he knows has been lost, mislaid, or delivered by mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with purpose to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

Under this section, theft penalties are not imposed on persons who merely learn of the whereabouts of lost property but do not assume some control over it. A casual finder who handles a lost article in order to examine it would not be considered to have assumed control over said article.

At common law, lost property was property not intentionally deposited by the owner in a place where it was found. Therefore, lost property was no longer in the possession of the owner so that a fraudulent appropriation by the finder could not be larceny, since larceny required trespass against possession.

At common law, mislaid property was considered intentionally deposited by the owner who subsequently forgot where he put it. Therefore, it was considered that such property remained in the constructive possession of the owner. For example, a cab driver might be convicted of larceny of a passenger's pocketbook which was left in his cab.

The third type of property dealt with in this section is that which is delivered by mistake. For example, the actor accepts a \$100.00 bill knowing that D thinks he is handing over a \$10.00 bill. The question that arises under this particular subsection is how to distinguish between a theft of this type and certain tolerated sharp trade practices? For example, it would not be criminal to purchase another's property at a bargain price on a mere showing that the buyer was aware that seller was misinformed regarding the value of what he sold. M.P.C. Tent. Draft No. 2, P. 86.

Under the term "failure to make reasonable measures to restore", the finders are punished for failure to act rather than for an initial misappropriation. This section permits conviction even where the original taking was honest in the sense that the finder then intended to restore, but subsequently changed his mind. This section bars conviction where the finder acts with reasonable promptness to restore the property, even though he may have entertained fraudulent purpose at some time during his possession.

Section 223.6. Receiving Stolen Property. A person is guilty of theft if he receives, retains or disposes of movable property of another knowing that it has been stolen, or believing that it has been probably stolen, unless the property is received, retained or disposed with purpose to restore it to the owner. This section extends the concept of receiving to include cases of constructive possession. The essential idea is acquisition of control whether in the sense of physical dominion or of legal power to dispose.

Receiving, according to this section, means acquiring possession, control or title for lending on the security of the property.

The theory of liability under this section is that the receiver exercises unauthorized control over property of another with the purpose of applying or disposing of it permanently for the benefit of himself or another not entitled thereto. From a practical standpoint, it is important to punish receivers in order to discourage theft. The existence of

a "fence", i.e., a person who provides a market for stolen property, is an assurance of ability to realize the unlawful gain.

Subsection (2) proposes objective tests for establishing a presumption of the requisite knowledge that an article is stolen. These presumptions apply in a case of dealer who:

(a) is found in possession or control of property stolen from two or more persons on separate occasions; or

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

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

The Model Penal Code defines the term "dealer" as one in the business of buying or selling goods.

Section 223.7, designated Theft of Services, imposes liability on an actor who obtains services which he knows are available only for compensation by any means to avoid payment for the service. This section sets forth the specific types of services for which liability would be imposed as follows: labor, professional service, telephone or other public service, accommodations in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Refusal to pay or absconding without payment or offer to pay where compensation for service is ordinarily paid immediately upon the rendering of such service gives rise to a presumption that the service was obtained by deception as to intention to pay.

Under common law, it was no crime to induce a doctor or lawyer by false representations to render services since no property was obtained. Under the proposed M.P.C., professional service is included under the term "service". The proposed MPC also includes under the term "services" the dropping of slugs in coin telephones and the eluding of ticket-takers on a train.

Section two deals with the situation where services paid for by one person are diverted without his consent to the benefit of some other person not entitled. For example, A is general manager of X Company; B is owner of Y Company. Both A and B contract with Z Company to deliver yarn. Y Company has no facilities for spinning wool and all the wool is spun in plant of X Company, by A and B, who used for the purpose the machinery, the spinning facilities and the laborers of the X Company. The wool, when spun is shipped to Z Company and Z Company pays Y Company for the work.

Section 223.8 is entitled Theft by Failure to Make Required Disposition of Funds Received. This section provides that a person who obtains property upon agreement or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition. This section extends theft liability to a class of cases with which the courts have had difficulty because they seem to involve only breach of con-

tract rather than misappropriation of property belonging to the victim. For example, an employer has an arrangement with his employees pursuant to which he withholds part of their pay on the understanding that the money withheld will be used to pay certain obligations of the employee to a third person. The employer fails to pay, and uses the funds withheld for his own purposes.

This section provides further that in the case of a public official and others who are likely to be familiar with their legal obligations, a presumption of knowledge as well as a presumption that the actor used the missing funds as his own is established.

Section 223.9, designated Unauthorized Use of Automobile and other vehicles, imposes liability on persons who operate another's motor-propelled vehicles without consent of the owner. This section designates such acts as misdemeanors.

An affirmative defense is established if the actor reasonably believed that the owner would have consented to the operation had he known of it.

This proposal is directed mainly against the phenomenon of "joy riding", that is, taking someone else's automobile without permission, not meaning to keep it, but just for the pleasure of driving it.

#### **New York Proposal**

The New York Revised Penal Law has broadened the common law definition of larceny, so as to include within its scope the crimes previously known as embezzlement, false pretenses, acquiring lost property, issuing a bad check, false promise and extortion.

Under this statute the elements of the several offenses have not been changed but the distinctions between the offenses are not important in prosecution for larceny and it is not necessary to decide whether the offense committed was technically a larceny or embezzlement, since the accused may be convicted of larceny on proof of the commission of any of the acts denounced in the statute notwithstanding a different designation in the information. The Commission has rejected this procedural innovation because it would impose an undue burden on the defendant in making his defense.

The proposal further provides that one who obtained possession of property by theft or illegal means has a right of possession superior to that of one who takes, obtains or withholds it from him by larcenous means. Therefore, one could be convicted of the crime of larceny from a thief. Also, a joint or common owner of property is not deemed to have a right of possession thereto superior to that of any other joint or common owner. Thus there can be no larceny between joint owners; such a case is left to the civil law. And a person in lawful possession of property is deemed to have a right of possession superior to that of a person having only a security interest therein.

Certain affirmative defenses are set forth.

Appropriation under a claim of right made in good faith is an affirma-

tive defense to a charge of larceny by trespassing, taking or embezzlement. This section is similar to the claim of right defense under the MPC. It is reasonable to assert that an actor does not commit theft if he believes that he is the owner or is entitled to possession of the specific property taken.

It is an affirmative defense to the charge of extortion committed by instilling in a victim a fear that he or another person would be charged with a crime, when the defendant reasonably believes the threatened charge to be true and his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

There are several major differences between the Model Penal Code and the New York proposal.

The first difference is that the New York Revised Penal Law defines the various offenses which constitute larceny whereas under the Model Penal Code, the offenses are merely enumerated. It is submitted that the process of defining the terms constitutes a means of better understanding of the different offenses enumerated. It is further submitted that the mere enumeration of statutory crimes such as extortion and blackmail are inadequate.

The second apparent difference is the terminology of the offense of larceny of property lost, mislaid or delivered by mistake. The Model Penal Code includes in its definition the term "if with purpose to deprive the owner thereof . . . he fails to take reasonable measures to restore the property to a person entitled to have it". The New York Revised Penal Law states that "a person acquires lost property when he exercises a control over property of another . . . without taking reasonable measures to return such property to the owner".

The third apparent difference concerns larceny by extortion. The New York Revised Penal Law punishes the theft of property by a threat to cause physical injury to some person in the future. The Model Penal Code punishes the obtaining of property by a threat to inflict bodily injury on anyone. It is submitted that the New York provision is the more appropriate position in that it distinguishes between this type of larceny and robbery, which is the threatening of the immediate use of physical force upon another.

The fourth possible difference is the determination of the value of the property stolen. The New York Revised Penal Law establishes three criteria for establishing value:

- (a) Market value;
- (b) Value as to certain written instruments;
- (c) If value cannot be ascertained by (a) or (b), its value shall be deemed to be an amount less than \$250.00.

The Model Penal Code establishes value as the highest value by reasonable standard of the property or services which the actor stole or attempted to steal. The New York Revised Penal Law appears to have a more appropriate system of determining value.

## 15. Comments on Forgery and Related Offenses.

### Introduction

The proposed article on forgery affords a definition of the crime together with a rational grading system. The *mens rea* prescribed in this forgery proposal is "intent to defraud, deceive or injure." There is no need for a separate counterfeiting provision since this article covers acts which were previously termed "counterfeiting".

### Basic Structure of Proposed Article

The proposed forgery article is based primarily on the New York Revised Penal Law and partly on the Model Penal Code.

### Forgery; definition of terms

This section adopts a comprehensive definition in specifying what may be the subject of forgery.

"Written instrument" encompasses every kind of document and other item deemed susceptible of deceitful use in a "forgery" sense, the main requirement being that it be "capable of being used to the advantage or disadvantage of some person".

Distinctions are drawn between the terms "complete written instrument" and "incomplete written instrument". The key terms of this section are "falsely make", "falsely complete" and "falsely alter", which collectively constitute the crime of forgery.

### Forgery in the third degree

This section furnishes the basic offense termed "forgery." Uttering or possessing" with knowledge of the forgery is also punished by this section.

### Forgery in the second degree

The second grade or degree is fulfilled when the forged instrument falls into any of four specified classifications which affect a legal right, public records, written instruments officially used by a public office or prescriptions for drugs. "Narcotic drugs" as defined in the State Uniform Narcotic Act are specifically excluded from subsection 4 of this section.

### Forgery in the first degree.

This section is the highest degree in the forgery scale. Forgery in the first degree is committed when the forged instrument is money, stamps and comparable instruments, or stocks or other instruments representing an interest in or claim against an organization.

### Criminal Simulation

This section encompasses fraudulent misrepresentation and simulation of antiques, rare books and comparable matter. It separates the uttering or possessing of such objects from the making or altering of same.

### Forgery of Symbols of Value

This section is specifically excluded from the grading system and made a separate section with a penalty that should be equivalent to forgery in the third degree.

### Unlawfully Using Slugs

This section is aimed at persons who are in the business of providing slugs. The second degree is concerned with the person who deposits the slug and the maker of a slug.

#### Summary of Disposition of Present Connecticut Statutes In Connection With Proposed Article on Forgery.

Repealed: Covered by Forgery

53-346

53-348

53-352

53-353

Repealed: No Comparable Crime Substituted

53-349

53-350

### 16. Comparison of Connecticut Law, Model Penal Code and New York Proposal Regarding Forgery and Related Offenses.

#### Connecticut

Sec. 53-346 provides a sentence of not more than 5 years for the crime of forgery. This statute punishes the false making, altering, forging or counterfeiting of any document or the signature of any person, with intent to defraud another; it further punishes the uttering or publishing as true any false, altered, forged or counterfeited document or signature of any person with intent to defraud another.

At common law, the essential elements of the crime of forgery were:

1. A false making or other alteration of some document or instrument in writing;
2. A fraudulent intent;
3. The instrument must be apparently capable of effecting a fraud.

The essence of the offense is the making of a false writing with the intent that it shall be received as the act of another than the party signing it, i.e., the signature was not made by the hand of the person whose signature it purports to be and it was wrongfully made by another. It is immaterial whether the expected advantage from the forgery is to accrue to the accused or to another. Likewise, motive or an intent to profit by the forgery is not an essential element of the offense. 37 CJS #3, page 34.

Under the above statute, to constitute the crime of forgery, it is not necessary that anyone should have been injured or defrauded.

Under Connecticut statutes, the knowledge of the falsity of the instrument and the intent to defraud are of the very essence of the crime of forgery. For example, if A makes or alters an instrument in good faith with the honest belief in his authority to do so, he is not guilty of forgery.

Also, under Connecticut statutes, forgery cannot be committed by the making of a genuine instrument although the statements made therein are untrue.

Sec. 53-348 provides a sentence of not more than 5 years for the crime of counterfeiting. This statute contains an elaborate definition of the term counterfeiting. This crime is to be distinguished from forgery in that in counterfeiting there must be a resemblance to the coin or instrument counterfeited, while in forgery it is not essential that a forged instrument be perfect in its resemblance to the kind which it was intended to represent, but it is sufficient if it is calculated to deceive. 20 CJS #1, page 719. The intent in the counterfeiting statute is similar to intent in forgery, i.e., to defraud another.

Sec. 53-349 prohibits the advertising, sale of and dealing in counterfeit money. Sect. 53-350 prohibits the using of fictitious names in the sale of counterfeit money.

Sec. 53-352 prohibits the operation of automatic vending machines, slot machines or other receptacle designed to receive lawful coin of the U.S. by means of a slug or by any means, method or device not lawfully authorized by the owner; or the taking, obtaining or receiving from or in connection with any automatic vending machine or other receptacle any goods or other articles of value or the use or enjoyment of any transportation or of any telephone or of any musical instrument without depositing lawful coin to the amount required by the owner or lessee. This section further prohibits the manufacturing for sale, advertising for sale, selling, offering for sale or giving away of any slugs designed to be deposited in any automatic vending machine with intent or having cause to believe that such slug will be used to cheat or defraud the person entitled to have the contents.

Sec. 53-353 prohibits the manufacture for sale, advertising for sale, selling, or offering for sale or giving away any slugs or false or counterfeit token designed to be placed in the fare box with intent that such slug shall be used to defraud the common carrier.

#### **Model Penal Code**

Under the MPC a person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, he (a) alters any writing of another without his authority; or (b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or (c) alters any writing which he knows to be forged in a manner specified in Paragraphs (a) or (b). Therefore, under the MPC, the *mens rea* prescribed in forgery "is intent to defraud."

The MPC sets forth an additional basis for culpability than had existed under the tentative MPC, namely, "with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone." This is to make it clear that a forger commits an offense even though he does not defraud the person to whom he sells or passes the forged writings, as where the transferee takes with knowledge of the forgery for the purpose of passing the writings as authentic.

The term "writing" as defined in the MPC includes printing or any other method of recording information, money, coins tokens, stamps, seals, credit cards, badges, trademarks and other symbols of value, right, privilege or identification. The Model Penal Code's definition of the term "writing" appears to cover both the Connecticut forgery statute and the Connecticut counterfeiting statute.

The grading system of the MPC is scaled according to the "writing" which is forged. Forgery of government money or other instruments issued by the government is made forgery of the highest degree. Forgery of an instrument which affects a legal relationship is made forgery of the third degree. All other forgeries are termed misdemeanors.

#### **New York Proposal**

The New York proposal defines the necessary terms which constitute the crime of forgery. The term written instrument, the subject of forgery, is broadly defined. This term encompasses every kind of document and other items deemed susceptible of deceitful use in a "forgery" sense, the main requirement being that it be "capable of being used to the advantage or disadvantage of some person." Distinctions are set forth between a complete written instrument and an incomplete written instrument.

The key terms of forgery are "falsely make", "falsely complete" and "falsely alter", which collectively constitute the crime of forgery. One commits forgery by doing any of the following acts:

1. falsely make or draw a complete written instrument.
2. falsely make or draw an incomplete written instrument.
3. falsely complete an incomplete written instrument.
4. falsely alter a complete written instrument.
5. falsely alter an incomplete written instrument.

The grading system is scaled according to the type of writing forged. Forgery in the first degree covers money, stamps and securities. Forgery in the second degree is committed when the forged instrument falls into any of four specified classifications which include certain instruments which affect a legal right, public records, written instruments officially issued by a public office, articles designed for use as symbols of value usable in place of money for the purchase of property or services and prescriptions for drugs. Forgery in the third degree is committed when the forged instrument is money, stamps and comparable government instruments, or stocks or other instruments representing interest in or claim against an organization.

Another section refers to fraudulent misrepresentation and simulation of antiques and comparable matter, and substantially adopts a similar provision of the MPC.

"Unlawfully using slugs in the second degree" punishes the depositing, making, possessing or disposing of a slug with intent to defraud. "Unlawfully using slugs in the first degree" punishes the making, possessing or depositing of slugs with intent to defraud providing the value of the slugs exceeds \$100.00.

## 17. Comments on Assault and Related Offenses.

**Basic Structure.** This article is based primarily on the New York Revised Penal Law. Assault is divided into three degrees. In addition, there is the crime of Threatening, and two degrees of Reckless Endangerment.

**Assault in the third degree.** This is the basic assault section. It covers three types of conduct: intentionally causing physical injury to another; recklessly causing serious physical injury to another; and criminally negligently causing physical injury to another by means of a deadly weapon or dangerous instrument.

**Assault in the second degree.** This section covers five types of conduct: intentionally causing serious physical injury; intentionally causing or attempting to cause injury by means of a deadly weapon or dangerous instrument; causing physical injury to a police officer with intent to prevent him from performing his lawful duty; recklessly causing serious injury by means of a deadly weapon or dangerous instrument; and intentionally causing stupor, unconsciousness or other physical injury or impairment to another by administering a drug or other substance to him without his consent.

**Assault in the first degree.** This section, which is the most serious degree of assault, covers three types of conduct: intentionally causing serious physical injury to another by means of a deadly weapon or dangerous instrument; intentionally disfiguring or disabling another permanently (similar to our present maiming statute); recklessly creating a grave risk of death to another and thereby causing serious physical injury, under circumstances evincing an extreme indifference to human life. The New York proposal also included a kind of felony-assault concept, analagous to felony-murder, making it first degree assault where the actor intentionally or recklessly causes physical injury in the course of the commission of a felony. The Commission rejected this notion as unnecessary. Such conduct would probably aggravate the degree of felony involved anyway, and could always be considered by the court in imposing sentence.

**Threatening.** This section is a combination of the New York and Model Penal Code proposals. It covers three types of conduct: intentional physical threat of serious physical injury; threat to commit any crime of violence with intent to terrorize another; and threat to commit a crime of violence with intent to cause evacuation of a public transportation facility or otherwise to cause serious public inconvenience (e.g., a bomb scare).

**Reckless endangerment in the first and second degree.** These sections cover dangerous conduct which falls short of assault because of a lack of specific intent and because of a lack of actual injury taking place.

## 18. Comparison of Connecticut Law, New York Proposal and Model Penal Code Regarding Assault and Related Offenses.

### Connecticut

The Connecticut law covering offenses against the person by as-

sault and reckless conduct are numerous and well scattered throughout the Connecticut General Statutes. The first basic assault statute which we deal with is section 53-12, assault with intent to murder. The other two most important are 53-16, which is aggravated assault, and 53-174, which is breach of peace, and more particularly known with reference to this section as breach of peace by assault. There is a wide disparity in penalties for these offenses, despite the thin and perhaps indistinguishable line between them.

53-174, breach of peace by assault, is a catch-all statute which is by far the most widely used. The basic portion of the statute says only that any person who disturbs the peace by assaulting or striking another shall be subject to a \$500 fine or one year in jail or both. A serious fault in the existing statute is that the only criteria to differentiate between a simple breach of peace by assault and assault with intent to murder is the intent to murder. The difference between breach of peace by assault and aggravated assault is the weapon that was used.

Thus the statutes do not differentiate as to the damage inflicted by each type of assault, but only as to the intent or the weapon used. It is obvious that to prove an intent to murder would impose a severe burden on the state, and unless there was a weapon as prescribed in the statutes and case law, the only applicable charge might be breach of the peace. *State v. McGuire*, 84 Conn. 470, (1911), states that to constitute an assault with intent to murder there must be an assault with malice aforethought and with intent to kill.

This gap between breach of peace by assault, assault with intent to kill and assault with a dangerous weapon results in the fact that a person who uses a dangerous weapon for a limited and perhaps defensive purpose is subject to a five year prison sentence, while the person who beats a person senseless with his hands may be subject to only a misdemeanor charge of breach of the peace.

The other related offenses dealing with the subject of assault upon the person are 53-11 and 53-14. They are both intermingled with crimes which are covered under other headings, and are therefore not the subject of much litigation. Both clearly deal with the subject matter of an assault, and more properly belong under that heading. 53-11 deals with the question of malice aforethought and deals with particular parts of the body. The section reads as follows:

"Sec. 53-11. Homicide or injuries to person punishable by imprisonment for life. Any person who commits murder in the second degree, or who endangers the life of another by wilfully burning any building or vessel, or who, of malice aforethought, and by lying in wait, cuts out or disables the tongue of another, or puts out the eye or eyes of another, so that the person is thereby made blind, or cuts off all or any of the privy members of another, shall be imprisoned in the State Prison during his life."

53-14 is a statute which is rarely used in its relation to assault, and the reason therefor can clearly be seen by the use of the words "with intent to maim or disfigure him." The penalty called for in this statute

is a 25 year prison sentence, which once again illustrates the lack of coordination in the penalty provisions of these statutes. The severe problem here is that the statute calls for an intent to maim or disfigure. Once again the concern is with the accused's intent and acts rather than with the victim's condition as a result of the acts. These two statutes should be consolidated under one portion of our statutes dealing with the damage done rather than the means employed.

53-15, assault with acid or other burning substance, is a section which is obviously vague and yet with a curiously incongruous penalty in comparison with the above-mentioned provisions. It's vagueness is apparent by the use of the phrase "similar substance." This act has lagged behind in its applicability to modern day science. There are various substances, which may very well not be similar in any way to a vitriol, carbolic acid, but which can cause great personal harm to a person. Therefore this statute can only lead to great difficulties in its application and proof. The penalty, \$500 or two years, seems relatively minor when we consider the result to the victim which may occur. It is unrealistic for such a crime, which covers such serious conduct, to carry only a two year prison sentence as a maximum.

Section 53-17, wilful misconduct of railroad and motor vehicle operators, presents a problem of policy and of interpretation. The statute deals mainly with loss of life, but an unused portion of it covers a breaking of a limb by the gross negligence or wilful misconduct of a motor vehicle operator, or servant of railroad company. This is perhaps the major criminal statute dealing with actual negligent conduct, outside of the motor vehicle sections. The Connecticut courts have interpreted "gross negligence" to mean negligence of a materially greater degree than mere want of ordinary care and inattention, or carelessness of such character as to signify an indifference to the rights of other. *State v. Carty*, 120 Conn. 231 (1935). Wilful misconduct has been defined as intentional misconduct. As can be seen by these definitions the question of gross negligence and wilful misconduct are cumbersome and difficult to prove and enforce.

Section 53-18, wilful throwing or shooting at railway cars, is a statute which appears to be redundant. *State v. Pallanck*, 146 Conn. 527 (1959), holds that if a person fires a weapon capable of inflicting harm in the direction of another, it is an aggravated assault, a far more severe crime than the one in question. The other conduct in this statute, throwing, is certainly covered by our breach of peace statute, and is certainly not as pertinent as it was when the act was passed. This section surely can be covered by the other sections of our statutes.

Section 53-19, binding or administering drugs with criminal intent, is a statute which appears redundant insofar as it refers to robbery, as all of the acts referred to would constitute the violence required by section 53-14 in and of themselves. Each act otherwise consists of an assault and would be a separate crime in and of itself. The question is, wouldn't such an act merge with the crime which is intended to be committed, as in the case of robbery. For instance, in the crime of rape, there could be no separate violence or assault; in the crime of blackmail,

the threat of personal injury would be part of the blackmail itself. It would appear that such a statute is useless, and that the provisions dealing with such violence would be better used as a measure of aggravation of crimes in other categories.

Section 53-20, cruelty to persons, is a statute which appears to be twofold and separable in every sense. The portion of this statute which deals with cruelty to children under 16 years of age would appear to belong in another section which deals with the family and the duties thereunder. The portion of this section dealing with persons in general might be omitted entirely as it appears to be one belonging under other sections and headings. More specifically, the acts of torturing or tormenting are included in either the aggravated assault or breach of peace sections. The acts of punishment and deprivation of food, care and clothing should be included in a section dealing with the relationships of the parties. This would be the section to which the enforcement agencies of the state would be more apt to look to find such a crime. By relationship of the parties we mean the statute which would make them liable to supply such necessities of life. Thus, portions of this statute are repetitive and other portions properly belong in other sections having specifically to do with families, children, labor, and school supervision.

Section 53-207, carrying weapons with intent to assault, is once again a redundant section. It refers to and defines weapons which are dangerous, and the crime is carrying these weapons with an intent to assault. The penalty is a five year prison sentence. This crime should be considered in conjunction with 53-206, carrying and sale of dangerous weapons, and aggravated assault. It would appear that the display or use of such a weapon in violation of 53-174 would in actuality constitute an aggravated assault. The mere possession of such a weapon would constitute a violation of this section and call for a 3 year prison sentence. It would appear that these two sections might better be combined and in part eliminated. The portion involving an intent to assault would appear to be covered under other section of the law. 53-206 is a section which should be covered under another area entirely, possession of dangerous weapons. It should not be part of the assault provisions.

#### Model Penal Code

The MPC article provides for only two types of assault: simple and aggravated. In previous drafts the crime was referred to as bodily injury. This definition was changed as the word assault is more familiar.

The article provides for:

- (a) both an attempt to cause or to knowingly cause bodily injury to be a simple assault;
- (b) negligently causing a bodily injury to another with a deadly weapon to be a simple assault;
- (c) attempting by physical menace to put another in fear of imminent serious bodily harm to be a simple assault.

Aggravated assault provides also two sections:

- (a) attempting or causing serious bodily injury knowingly or recklessly.

(b) attempting to, or knowingly causing bodily injury to another with a dangerous weapon.

The related offenses are also covered. One section deals with the question of recklessly endangering a person to the risk of death or serious bodily injury. The other section deals with the specific problem of threats. This section covers a multitude of possible dangers, for which our present statutes do not appear to have adequate restrictions. It also includes dangers caused by a reckless disregard of the risk of causing such terror or inconvenience.

Under this article simple assault is a misdemeanor (one year in jail) unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor (less than one year).

Aggravated assault under (a) is a 2nd degree felony (1-10 years) and under (b) is a 3rd degree felony (1-5 years).

Recklessly endangering another person is a misdemeanor (1 year).

One basic fault that appears in the Model Code is the rather limited graduation of the crime. Under this section the most serious crime would be that of an (a) section aggravated assault, the maximum sentence of which is 10 years. It would also appear that the assault with intent to murder is not a crime which carries an additional penalty. In this line we must also consider that the code does not take into account the problem of the state of the victim. Section (b) of the aggravated assault crime would seem to be the most serious crime in the code involving the use of a dangerous weapon. When we consider the severe damage which may be inflicted by such a weapon, it would seem that a more serious degree of this crime may be called for. Whereas our present Connecticut statutes would seem to be too severe, the gradations in the code would appear too moderate.

#### **New York Proposal**

This New York article provides for three degrees of assault, with an increasing penalty for each degree. Assault in the third degree includes the following:

1. An intent to cause physical injury to another person which causes such injury to said person or to a third person.
2. recklessly causing physical injury.
3. with criminal negligence, causing physical injury to another by means of a deadly weapon or a motor vehicle or a vessel equipped for propulsion by mechanical means.

Assault in the second degree differentiates between "physical injury" and "serious physical injury." These terms are defined as follows: physical injury means pain of a substantial nature or any illness or impairment of physical condition; serious physical injury means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. It is therefore obvious that such wording creates two different degrees of the crime, which degrees are differentiated by the amount of harm done

to the victim, rather than solely by the means employed. Assault in the second degree also states that "any physical injury when caused by a deadly weapon shall be such an assault." Here although the degree of harm is the same as is assault in the third degree, the means used elevates the crime to that of the second degree.

This section further provides for physical impairment or injury caused through the administration of a drug or other substance. Such a section would appear to create a new crime in Connecticut, and would be a beneficial change.

Section 4 of Assault in the 2nd degree is a refinement of the more serious charge of assault in the first degree. It's basic rationale would appear to be that it is a lesser charge which depends on a lack of aggravating circumstances in the actions of the accused. The fifth section has to do with serious physical injury to another by reckless conduct.

Assault in the first degree is the most serious of the assault crimes. Subdivision 1 covers the situation of serious physical injury with an intent to kill another person. This section is very close to our statutory crime of assault with intent to murder.

The second subdivision deals with disfigurement of the person and with destruction of a member of the body. It would appear that so grievous a crime rightly belongs in this section.

Section 3 calls for a reckless conduct, plus the circumstances evincing a "depraved" indifference to human life. The words "depraved indifference" are not defined. This section would appear to be applicable to the most severe cases involving reckless conduct.

The fourth subdivision of this section is analogous to the felony-murder role, only here murder isn't necessary, but only serious physical injury in both an attempt to or commission of a felony. This section also includes reckless conduct.

Another section creates the crime of menacing. It should be noted that the menace is only involved with fear of imminent serious physical injury. It does not define the word menace, but its basic rationale would appear to be that of threats of physical injury which are capable of being carried out.

Other sections deal with a new crime of reckless endangerment. One section deals only with reckless conduct which places another in danger of serious physical injury. Another deals with a depraved indifference and reckless conduct which places another in danger of death.

Another section deals with another new crime, which covers the situation of a person intentionally causing or aiding another person in an attempt to commit suicide. Presently we have no criminal statute in Connecticut covering suicide or the attempt. This crime might cover the situation whereby the accused provides either the means or the weapon knowing its intended use.

There are several noteworthy differences between the New York proposal and the MPC.

The first difference is the use of the word "attempt" in the Code, which is eliminated by the Penal Law and made a separate section. Another and very obvious difference is the greater number of degrees in the New York Law as compared with the Code. There are three degrees compared to only two in the Code.

Furthermore, the MPC does not emphasize the condition of the victim as does New York law. The rationale behind the New York approach seems to be that the victim's condition is the best evidence of the criminal act of the accused. Furthermore, the Code does not use the word "depraved," but substitutes the word "extreme" in conjunction with indifference in reckless conduct. In the crime of menacing, the New York law is much more restrictive than the Model Penal Code. The New York law demands imminent physical danger, while the Code only requires the threat of a crime of violence and the terror on the part of the victim. The rationale here would be that the terror in the victim is the feeling which the law must try to protect against. A final difference is that the Model Code has the sections dealing with suicide included under the homicide section rather than the assault section.

#### **Effect of Proposal on Present Connecticut law**

The following sections would be affected by the proposal on assault and related offenses:

- 53-11: repealed, except as to second degree murder portion
- 53-12: repealed
- 53-14: repealed, except as to robbery with violence portion
- 53-15: repealed
- 53-16: repealed
- 53-17: repealed; substance partially retained
- 53-18: repealed
- 53-19: repealed
- 53-20: repealed; part transferred to other sections
- 53-174: repealed as to breach of peace by assaulting or striking
- 53-207: to be covered by other provisions

**19. Comments on Homicide.** This Article, which is based partly on the New York Revised Penal Law, partly on the Model Penal Code and partly on existing Connecticut law, contains several marked departures from existing homicide law in Connecticut, chiefly in the area of murder, discussed below. It should be noted that it does not deal with the question of penalty, substantively or procedurally. That is, the Commission has not yet considered the question of abolition of capital punishment nor the question of the split trial.

**Homicide defined.** This section defines homicide simply as conduct causing the death of a person. "Person" means a human being who has been born alive. Thus, the entire question of illegal abortion is removed from the homicide area, and will be considered separately. The New York proposal included certain abortifacient acts in its homicide article, but the Commission rejected this approach in favor of the Model

Penal Code approach, which is to treat abortion separately.

**Criminally negligent homicide.** This section introduces a concept which has only a limited counterpart in existing law. It deals with homicide caused by "criminal negligence," which is a degree of negligence greater than ordinary civil negligence but less than the wantonness and recklessness required of involuntary manslaughter. See *State v. DiLorenzo*, 138 Conn. 281 (1951). Criminal negligence will be defined as, in summary, a failure to perceive a substantial and unjustifiable risk, of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. See New York Revised Penal Law, section 15.05. The only counterpart to this in our present law is the area covered by sections 14-218 (negligent homicide with a motor vehicle), and 53-17 (misconduct with a motor vehicle). Thus, seriously negligent conduct not involving a motor vehicle and not involving sufficient culpability to constitute manslaughter is not covered. Hence, for example, the necessity to enact a special statute dealing with death resulting from abandoning refrigerators without taking precautions against a child getting trapped inside. The Commission thinks that this proposal would have covered such cases, and is necessary to cover the myriad of kinds of seriously negligent conduct which could result in death in the future.

It should be noted that this section specifically does not deal with negligent homicide involving a motor vehicle. This is dealt with by the following section.

**Misconduct with a motor vehicle.** This section is based largely on the existing section 53-17, with two exceptions. First, the archaic and unnecessary references to electric railways and railroads are eliminated. Motor vehicle is defined earlier in the Code broadly enough to cover all such vehicles. Second, the standard of "criminal negligence" has replaced the present "gross or wilful misconduct or . . . gross negligence," to make the standard of culpability consistent with the previous section.

It may be argued that, given the criminally negligent homicide section, this section is unnecessary. The Commission thinks, however, that it is desirable to retain a separate section for motor vehicle cases, principally because of their prevalence. The Commission also recommends retention of section 14-218, which is a misdemeanor offense and which requires only the civil standard of negligence to be proved, although of course, the burden of proof required is that of the criminal law.

**Manslaughter in the second degree.** This section covers two types of homicide: recklessly causing the death of another; and intentionally causing or aiding another person to commit suicide.

The first part may be viewed as a kind of involuntary manslaughter. Present Connecticut law does not distinguish, in terms of authorized penalty, between voluntary and involuntary manslaughter. The Commission thinks that the differing kinds of conduct between the two justifies different treatment. Recklessly is, or will be, defined, in short, as conscious disregard of a substantial and unjustifiable risk, constitut-

ing a gross deviation from reasonable conduct. Thus it is one step further towards culpability than criminal negligence.

The second part, causing or aiding a suicide, is aimed at such situations as aiding, out of feelings of sympathy, the suicide of one inflicted with a painful and incurable disease. While such conduct is blameworthy, the possible mitigating circumstances justify its treatment as manslaughter, rather than murder. It should be noted, however, that causing a suicide by force, duress or deception is treated as murder.

**Manslaughter in the first degree.** This section covers three types of conduct. The first may be viewed as voluntary manslaughter: causing the death of another, where the actor's intent was not to kill but was to cause serious physical injury. The second covers the cases which would be murder but for the presence of extreme emotional disturbance; the "heat of passion" cases, for example. The third is aimed at reckless conduct coupled with "an extreme indifference to human life," which causes death. Thus, this is one step further towards culpability than the reckless conduct of second degree manslaughter.

**Murder.** This section, which is based partly on the New York Revised Penal law and partly on the Model Penal Code, embodies perhaps the most striking change from present law in the homicide area. Murder consists of but one degree. This change is consistent with the New York proposal, the Model Penal Code, and the recently revised Illinois and Wisconsin penal codes.

Subdivision 1 defines the basic crime as intentional killing, making no mention of malice, premeditation or deliberation. If those words clearly denoted planning or preparation there might be validity to the distinction drawn between intentional homicides of a premeditated and unpremeditated character. The inherent difficulty of precise definition has produced judicial construction which necessarily goes beyond such a formulation. "Time is not important as long as there is time to form the intent." *State v. Zukauskas*, 132 Conn. 450 (1945). See also New York Revised Penal Law, Commission Staff Notes, p. 338. Under this inevitable formulation—inevitable because of the impossibility of a definition based upon length of time—the determination of premeditation frequently amounts to an exercise in semantics, and a jury's decision of a matter of life and death turns upon an issue which is, at best, vague and confusing and which has troubled judges and attorneys throughout legal history. See New York Revised Penal Law, Commission Staff Notes, p. 338. For these reasons the Commission has decided to recommend elimination of the elements of malice, premeditation and deliberation and predicate homicidal intent alone as the *mens rea* for murder.

Murder also includes causing the suicide of another by force, duress or deception, with the requisite homicidal intent. This limitation, taken together with the corresponding manslaughter provisions, is designed to differentiate between the more sympathetic cases, such as suicide pacts, assistance rendered to one tortured by a painful disease, and the like, and cases where the actor causes or aids a suicide by aggressive or devious means and for purely selfish motives.

The excepting clause in paragraph (a) excludes from murder those intentional killings which are reduced to first degree manslaughter by virtue of the actor's "extreme emotional disturbance."

The provision at the end of the section concerning the admissibility of evidence of mental disease, mental defect or other mental abnormality on the question of intent, is designed to ensure that any relevant psychiatric testimony as to the defendant's state of mind will be available to the jury. This provision is not meant, however, to replace the defense of insanity. The Commission has not yet decided on its recommendations for changes, if any, as to the insanity defense.

Subdivision two deals with the felony-murder doctrine, and is taken verbatim from the New York Revised Penal Law. The list of felonies included in double parentheses, which are taken from the New York proposal, are merely tentative. The basic principle is to include those felonies which themselves involve danger to the person. It should be noted that the offense embraces immediate flight from the felony, and is limited to the death of one not a participant in the crime. The Commission considered adding a provision to the effect that the homicidal act be inherently dangerous to human life, but rejected this in favor of a list of dangerous felonies only, principally because of the serious difficulty of precisely formulating such a limitation.

The very limited special defense, which is taken from the New York proposal, is aimed at the rare case in which the defendant would be able to persuade a jury (and he has the burden of proof thereon) that he not only had nothing to do with the killing itself but was unarmed and had no idea that any of his confederates was armed or intended to engage in dangerous conduct. Of course, this defense would not insulate him from liability for the underlying felony.

#### **20. Comparison of Connecticut Law, Model Penal Code and New York Proposal Regarding Homicide.**

##### **Connecticut**

The Connecticut law on homicide is covered by very few sections and is fairly concise. The statutes are brief and leave the problem of defenses and interpretation to the courts.

Section 53-9 deals essentially with degrees of murder and the differentiation thereof as to the facts necessary to constitute first degree murder. It states, without defining murder or homicide, that "all murder perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or committed in perpetrating or in attempting to perpetrate any arson, rape, robbery or burglary or injury to any person or property by means of any explosive compound shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree." The statute further goes on to deal with procedural provisions.

Section 53-10 is considered to be the penalty provision, but in fact adds to the crime of first degree murder, by including the offense of causing "the death of another by wilfully planning any obstruction upon any railroad or by loosening, taking up or removing any part of the

super structure of such railroad or by wilfully burning any building or vessel." It goes on to discuss penalties and the means employed for the imposition of said penalties.

It is notable that nowhere in the Connecticut Statutes does there appear a definition of what actually constitutes murder. The Connecticut courts have stated that the sections dealing with murder have not changed the common-law definition of murder, but only provide a more severe penalty where certain features, such as premeditation, are present. The common law definition of murder is the unlawful killing of one human being by another with malice aforethought. *State v. Jancowitz*, 128 Conn. 40, 44 (1941); *State v. McGuire*, 84 Conn. 470, 481 (1911).

Both first and second degree murder are basically distinguished from other acts of homicide by the use of malice aforethought. This term has been defined as follows. "This malice aforethought is the characteristic work of all murder as distinguished from the lesser offense of manslaughter which lacks it. It does not simply mean hatred or specific animosity, but extends to and embraces generally the spirit or state of mind with which one approaches and commits a given act. It may of course be discoverable in a specific, deliberate intent to kill, but it may also be inferred or implied from circumstances which show a wanton and depressed spirit, a mind bent on mischief and evil without regard to consequences. Malice in this sense includes all those states of mind in which a homicide is committed without legal justification, extenuation or excuse" *State v. Feltovic*, 110 Conn. 303, 307 (1929).

It is therefore obvious that by statute Connecticut has simply declared the common law and specified first degree murder to be wilful, deliberate and premeditated, and also codified the common-law felony murder rule. To attempt in the scope of this work to fully define what is premeditation is too time consuming, but the Connecticut courts have ruled that there need only be time enough to form a specific intent to kill. *State v. Zukuaskas*, 132 Conn. 450 (1945).

The courts define intent as "mind enough and will enough on the part of the perpetrator to form a specific intent to choose his course upon consideration and especially to form his purpose and put it into action, and mind enough and will-power enough and reasoning power enough to plan and arrive at the specific design and intent to kill and to carry out the plan." *State v. Donahue*, 141 Conn. 656: (1954), *State v. Dortch*, 139 Conn. 317 323 (1952).

The next portion of the statute points out that a killing which occurs in the committing of certain crimes shall be murder in the first degree. Under the traditional common law rule, any person who causes the death of another while in the course of committing or attempting to commit a crime which is a felony, shall be guilty of the crime of murder. In Connecticut only the specific crimes set out in 53-9 make the crime murder in the first degree. *State v. Taborsky* 139 Conn. 475 (1953). Homicide in the course of other felonies would be second degree murder. Section 53-9 goes on to say that even if a person pleads guilty to the crime of murder in the first degree a panel of three judges shall decide what degree it shall be.

It appears, then, that section 53-9 sets up the degrees of the common law crime of murder, while section 53-10 sets up the penalties and the machinery for deciding the penalties. A fairly recent change in the statute leaves the question of penalty up to the jury which decides the case.

Section 53-11 sets out the penalty of imprisonment for life for second degree murder without actually defining second degree murder. As we have seen, murder in the second degree requires malice, but not the deliberation or premeditation of the crime of murder in the first degree.

Section 53-13 of the Connecticut Statutes creates the crime of manslaughter, but provides no definition of manslaughter. The distinction between murder and manslaughter is the presence of malice in murder and its absence in manslaughter. *State v. Johnson*, 139 Conn. 89 (1952). The penalty of manslaughter is a fine of not more than \$1,000 or not more than 15 years imprisonment, or both.

Therefore manslaughter is the taking of the life of another without malice. There are two types of common law manslaughter, namely voluntary and involuntary. Voluntary manslaughter lacks malice because it occurs in the heat of passion or hot blood, with provocation or in the heat of combat. *State v. Rosa*, 87 Conn. 585 (1913). Involuntary manslaughter is the causing of the death of another by culpable negligence with a wanton and reckless disregard of another's safety. *State v. DiLorenzo*, 138 Conn. 281 (1951); *State v. Campbell*, 82 Conn. 671 (1910). This type of negligence does not have to be limited to the use of a motor vehicle, and the cases cover all types of negligent conduct on the part of a defendant.

Section 53-17 is the crime of misconduct with a motor vehicle or railroad or electric railway car, causing the death of another. It is somewhat similar to the crime of manslaughter except that it specifically charges that a person who causes loss of life as a result of his operation while intoxicated, or his gross or wilful misconduct or gross negligence, shall be guilty of this crime. It may be argued that this statute and the manslaughter statute are overlapping as they both cover the same type of conduct. The penalty for this offense is a fine of not more than \$1,000, or not more than 10 years, or both.

Gross negligence has been defined as negligence of a materially greater degree than mere want of ordinary care or inattention, or carelessness or such character as to signify an indifference to the rights of others. *State v. Carty*, 120 Conn. 231 (1935). Wilful misconduct is intentional misconduct. *Menzie v. Kalmonowitz*, 107 Conn. 197 (1928).

The last section on homicide to be considered is Negligent Homicide—Section 14-218 of the Connecticut General Statutes. This is a section dealing specifically with motor vehicle offenses. It provides that any person who in consequence of the negligent operation of a motor vehicle upon the highway causes the loss of any human life, shall be fined not more than \$500, or imprisoned not more than 6 months. It is notable that this section carries by far the smallest penalty of any of the sections so far considered, and is a misdemeanor. Thus elements of this crime are (1) death of a human being (2) by instrumentality of motor vehicle

(3) operated by one in a negligent manner. *State v. Berkowitz*, 1 Conn. Cir. 439 (1962). This crime seems only to involve the simple civil type of negligence, and so is a lesser crime than wilful misconduct, but such negligence must be proved beyond a reasonable doubt—thus differentiating it somewhat from civil negligence.

#### Model Penal Code

The Model Penal Code initially provides certain definitions of first note; it defines a human being as a person who has been born alive. Thus it eliminates the possibility of a conviction of a person for killing an unborn child.

The article is entitled "criminal homicide" and covers murder, manslaughter and negligent homicide. The murder section eliminates the use of the phrase "malice aforethought," and says only that criminal homicide is murder when it is committed purposely or knowingly. It adds a section calling it murder when it is committed recklessly and under circumstances manifesting extreme indifference to the value of human life. Rather than use the wording of the felony-murder rules, it states that recklessness is presumed if the person is involved in certain crimes—robbery, rape or deviate sexual intercourse by force, arson, burglary, kidnapping or felonious escape.

This section also does not differentiate as to which crime might call for the death penalty, but refers to a separate section which sets forth certain criteria and methods for ascertaining the penalty. The section is simple and to the point. Its basic difference from the present Connecticut law is that there is only one degree of murder, and the penalty depends not upon the degree, but on the facts of each case.

Another section of the code deals with the crime of manslaughter. It provides that criminal homicide is manslaughter when committed recklessly or is a homicide which would otherwise be murder except that it was committed under the influence of extreme mental or emotional distress for which there is a reasonable explanation or excuse.

Another section covers the crime of Negligent Homicide, and provides that homicide is negligent homicide when it is committed negligently. Negligence here, however, is more than civil negligence. This article of the code also contains a section on causing or aiding suicide as criminal homicide. This is an area which the Connecticut law does not cover. The crime is defined as purposely causing another to commit suicide by force, duress or deception. Subsection (2) defines an independent offense: purposely aiding or soliciting another to commit suicide. The grading of this offense depends on whether or not the conduct caused a suicide or attempted suicide.

#### New York Proposal

The New York law is different from both Connecticut and the Model Penal Code. First of all it includes the crimes of abortion under the murder section. It defines homicide as conduct which causes the death of a person or an unborn child which is conceived for more than 24 weeks. The law in Connecticut makes it a crime to cause the death of an unborn infant that is viable.

The homicide crimes in the New York Penal law are: criminally negligent homicide, two degrees of manslaughter, and murder. The section on criminally negligent homicide states simply that one is guilty of this crime when through criminal negligence he causes the death of another. Criminal negligence is defined as a gross deviation from the standard of care that a reasonable person would observe in a given situation.

Manslaughter is divided into two degrees. Manslaughter in the second degree provides that there are three ways in which a person may be found guilty in causing the death of another: reckless behavior; an abortifacient act causing death of the female; and intentionally aiding or causing another person to commit suicide.

The concept of the criminal abortion causing death is not a new one, but in Connecticut as the law now exists, the state would probably proceed with the charge of murder in the second degree based on the felony murder rule.

Another section deals with the crime of manslaughter in the first degree. There are three ways of committing this crime. First, an intent to cause serious physical injury, which results in the death of a person, not necessarily the intended party. Second, when one intentionally causes the death of another under the influence of extreme emotional disturbance. In this connection, the statute further points out that the state does not have the burden of proving that the accused was under such extreme emotional disturbance. Third, if the accused commits an abortifacient act on a person pregnant for more than 24 weeks, which causes her death.

The most serious crime is murder. There are three ways of committing murder, but there are no degrees of murder. The first section provides only that the party who, with intent to cause the death of another person, causes the death of such person or a third person, is guilty of murder. However, it is an affirmative defense to murder (but to no other charge) that the defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, and the reasonableness is to be determined from his viewpoint under the circumstances as he believed them to be; or that the defendant's conduct consisted of causing or aiding, without duress or deception, a suicide. Thus either of these two affirmative defenses—emotional disturbance or causing suicide—act not as complete defenses to prosecution but merely as reducing defenses, in that they serve to reduce the crime from murder to manslaughter.

It should be noted that nowhere in this section are the words malice aforethought, premeditation or deliberation used. It also seems pertinent that neither the MPC nor the New York Penal law deal with two degrees of murder.

The second basis for the charge of murder is that the party evincing a depraved indifference to human life, recklessly engages in conduct which creates a grave risk of death to another person, and causes his death. Here again, as in the Model Penal Code, the drafters of this penal law have used reckless conduct to constitute what has traditionally been an intentional crime.

The third section of the crime of murder codifies what is the felony-murder rule. It lists the crimes of robbery, burglary, kidnapping, arson, rape in the first degree, sodomy in the first degree, sexual abuse, and escape as being the crimes which constitute the felony. Although this list seems at first glance to be extensive the Commission has not yet decided whether or not it is complete enough.

An affirmative defense is provided, however, by which the defendant can escape the vicarious liability of this felony murder rule. He must show that all four of the following requirements are satisfied: (a) he did not commit, solicit, request, command, importune, cause or aid the commission of the homicidal act; (b) he was not armed with a deadly weapon or dangerous instrument; (c) he had no reasonable ground to believe that any other participant was so armed; and (d) he had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury. Like the MPC, this New York felony murder rule is limited to the situation in which someone other than one of the participants in the crime is killed.

**Effect of Proposal on Present Connecticut law.**

The following sections would be affected by the proposal on homicide.

53-9: repealed

53-10: repealed

53-11: repealed

53-12: repealed

53-13: repealed

53-17: repealed

**21. Comments on Sex Offenders.**

**General Background, Basic Principles and Rationales.** It is helpful to an understanding of this Article to note the problems with which it is not concerned. It does not purport to deal with birth control, illegal abortion, prostitution and related offenses. Nor does it purport to deal with the questions of offenses against the family, such as adultery (section 52-218), bigamy (section 53-221), abandonment of spouse (section 53-222), or incest (section 53-223); nor with problems of public sexual conduct which may offend the sensibilities of other, such as indecent exposure (section 53-220). All these are or will be dealt with in other Articles concerned with their particular problems.

The Commission has decided to adopt the basic principle that sexual activity in private, whether heterosexual or homosexual, between consenting, competent adults, not involving corruption of the young by older persons, is no business of the criminal law, and should be left to the domestic relations court and to the concern of the spiritual authorities. To put it another way, there should be excluded from the criminal law all sexual practices not involving force, adult corruption of the young, or public offense. This principle lies behind the corresponding provisions on sex offenses in the Model Penal Code (see MPC Tent. Draft No. 4, p. 277) and, to a great extent, the New York Revised Penal Law upon which much of the draft is based. It finds limited expression in the recent Illinois revision and has been endorsed by church and lay officials alike.

Great Britain has recently enacted a similar statute, dealing with homosexuality. See *Time*, December 30, 1966.

The Commission emphasizes that its position should in no way be regarded as moral condonation or approval of certain sexual activity which is now criminally prohibited; rather, its position is that for sound reasons of public policy these questions are better dealt with by authorities—spiritual, medical, judicial, etc.—other than those involved in criminal law-enforcement.

The reasons which lie behind the principle adopted may be summarized as follows: (1) such sexual activity presents no harm to the interests of the community that is not adequately dealt with by other areas of the law—e.g. divorce laws; (2) scientific studies by responsible professional people—e.g. Kinsey—demonstrate clearly that such activity is condoned and engaged in by a significantly high percentage of the population; (3) the present criminal sanctions are substantially unenforced, at least in relation to what the available statistics tell us is the high percentage of “offenders”; (4) what enforcement there is permits capricious selection of very few cases for prosecution and serves the interests of the blackmailer; (5) the threat of criminal sanction probably deters some from obtaining needed psychiatric or other help for their emotional problems; (6) any individual is entitled to protection against state interference in his personal affairs when he is not hurting others; (7) in terms of the practicalities of police administration, since funds and personnel are so limited they could be put to more effective and important work elsewhere.

The proposal presented is concerned principally with prohibiting non-consensual sexual activity between parties not married to each other, and, even where they may be actual consent, situations in which one party may be under the control of the other because of factors of youth, age disparity, mental, emotional or physical limitations, or other factors. At the same time the proposal attempts to draw rational distinction between degrees of blameworthiness based on varying age disparities and degrees and kinds of lack of consent, and also attempts to define special affirmative defenses to cover cases in which blameworthiness may be reduced or eliminated.

**Definitions.** The definitions are taken, almost verbatim, from the New York Revised Penal Law. One important element involved in them is that they make clear that the offenses do not apply to persons married to each other. While as a practical matter prosecutions based on sexual activity between spouses are not and would not be brought, and would be constitutionally suspect (see *Griswold v. Connecticut*, 381 U.S. 479 (1965)), as a matter of drafting and of the moral integrity of the law this should be made clear. For the most part the definitions are self-explanatory. Therefore, only those warranting explanation are dealt with herein.

**Deviate sexual intercourse.** This phrase specifically defines the sexual acts which it covers, and is intended to replace the archaic and ambiguous terms of “carnal copulation, carnal knowledge and indecent assault.”

**Mentally defective.** This phrase is aimed at the person mentally incapable of appraising his conduct. Its significance is that such a person is deemed incapable of consent. It is intended to replace the present terms of "idiot and imbecile."

**Mentally incapacitated.** This phrase is aimed at the person who temporarily cannot appraise or control his conduct because of the influence of some narcotic or intoxicating substance, or some act (such as hypnosis), administered to him without his consent. It is aimed at the person rendered incapable either unwittingly or by compulsion. Like "mentally defective" its significance is that such a person is deemed incapable of consent.

**Forcible compulsion.** This phrase is aimed at the situation in which the victim is forced to comply, either by "physical force that overcomes earnest resistance" or by threat of immediate harm to the victim or a third party. It embodies an attempt to draw a distinction between the situation where the lack of consent results from such force or threat and where it results from other less serious factors.

**Lack of Consent.** This section makes clear that lack of consent, either actual or constructive, is an element of each sex offense. The age of sixteen is retained as the age of consent. Incapacity to consent (or constructive lack of consent) results from being less than sixteen, mentally defective, mentally incapacitated or physically helpless. Where the offense charged is sexual abuse, which involves sexual contact other than sexual intercourse or deviate sexual intercourse, lack of consent results from any circumstance in which the victim does not acquiesce. Thus, where the actor in a crowded place fondles the unwitting victim, it is clear that there is no consent, even though there may have been no resistance.

**Affirmative Defenses.** This section sets out three affirmative defenses which, in the Commission's opinion, sufficiently negate blameworthiness as to justify excluding the actor's conduct from criminal sanction. It should be noted that the defendant would have the burden of proving these defenses by a preponderance of the evidence.

**Lack of knowledge.** This defense, which is taken from the New York provision, applies where the victim's lack of consent is based solely on his being mentally defective, mentally incapacitated or physically helpless, and the defendant did not know of such fact or condition. The Commission considers this situation within the general rule requiring criminal intent for the commission of a crime. It is meant to cover situations, for example, in which patients at mental hospitals or institutions, who are trained to work in the community and to function normally, may engage in sexual intercourse with a defendant who does not know of this background and who innocently believes that the willing "victim" is consenting; or situations in which the victim has been rendered "mentally incapacitated," perhaps by a narcotic, unbeknown to the defendant.

**Reasonable mistake of age.** Like the lack of knowledge defense, this defense is aimed at a situation in which the defendant may not have the requisite *mens rea* because he reasonably believed the facts to be other

than what they were. It provides, in effect, that where criminality depends on the alleged victim's age being less than fourteen or sixteen, it is a defense that the defendant reasonably believed the age to be fourteen or sixteen or more. The California court has recently adopted this principle by judicial decision. See *People v. Hernandez*, 61 Cal. 2d 529 (1964). The Model Penal Code also recommends it where the critical age is eleven; however, the Commission feels that at such an age the harm to the victim is likely to be so great that it outweighs any possible mistake made by the actor.

There are two principal related reasons for this defense. The first is, as stated above, that it is in effect a mistake which negates the actor's culpability as to *mens rea*. The second is the realization that present day standards of dress and appearance make such mistakes all the more likely.

**Spouse relationships.** Since the definitions applicable to this Article make clear that it does not apply to parties married to each other, the question arises as to parties not legally married to each other but living together as man and wife. The Commission recommends that these parties be treated, for purposes of the sexual criminal laws, the same as married persons. The rationale for this recommendation is that the same elements of privacy, consent and intimacy of relationship are likely to be present here as in the marriage situation. Furthermore, among some cultural and ethnic groups this a tolerated practice. See, e.g., Oscar Lewis, *La Vida*, Random House (1966). This recommendation is in accord with the position taken by the Model Penal Code. The Commission emphasizes, again, that its recommendation should not be taken as encouragement or condonation of such practices; rather, that the criminal law is an inappropriate mechanism with which to deal with them.

A principal problem is the drafting of such a provision. The Model Penal Code uses the language "living together as man and wife." The Commission thinks that the language is too vague to be useful. The language the Commission has tentatively adopted is taken largely from New Jersey law, which recognizes common law marriages entered into before 1939. See *Jackson v. Jackson*, 94 N.J.Eq. 233 (1922). *Franzen v. Equitable Life Assurance Society of the United States*, 130 N.J.L. 457 (1943); N.J. Stats., Tit. 37, C. 1, sec. 10. It is meant to convey a continuing status of cohabitation as man and wife.

**Corroboration.** This section, which is taken from the New York law, requires that except as to the offense of third degree sexual abuse (discussed below), some corroboration of the alleged victim's testimony is necessary to conviction. This does not mean that there must be an eyewitness. The corroboration may be circumstantial. This provision would change present Connecticut law, which does not require corroboration but which, in the absence of corroboration, requires the fact-finder to weigh the credibility of the complainant with care, particularly if there are improbabilities suggested by the complainant's story or substantial controverting evidence. *State v. Zimnoruk*, 128 Conn. 124 (1941). The Commission's recommendation would take this rule one step further in the same direction. The reason for the exception is that that offense is one in which corroboration is likely to be impossible to obtain.

**Prompt complaint.** This section requires that any complaint of an offense under this Article must be made within three months of its occurrence, or, where the victim is under sixteen or incompetent to complain, within three months after a parent, guardian or other person specially interested in the victim learns of the offense. The purpose of this provision is to guard against stale claims in situations where blackmail is a possibility and where evidence may be difficult to obtain after passage of time.

**Sexual misconduct in the first degree.** This offense is aimed at situations in which there is consent but the actor is in a supervisory or custodial position *vis a vis* the victim. For example, the other person is the actor's ward or under his general supervision; or the other person is in legal custody or under commitment to a hospital and the actor has supervisory or disciplinary authority over him. This provision is taken largely from the Model Penal Code.

**Sexual misconduct in the second degree.** This section deals with non-consensual sexual intercourse and deviate sexual intercourse, and with sexual conduct with an animal or dead body. Non-consensual means, by reference to the section defining lack of consent, forcible compulsion, age of less than sixteen, mental defectiveness, mental incapacity or physical helplessness. It may be argued that sexual conduct with an animal or dead body, in private, should not be included, since it is probably a symptom of severe emotional disorder and should be treated, not punished. The Commission was impressed with this argument and included this conduct only because an examination of the civil commitment statutes left it very doubtful whether it would be covered therein, even on an emergency basis. The Commission recommends, however, that this question be further considered in connection with the examination of those statutes.

**Rape in the first degree.** This section deals with sexual intercourse in three cases. First, where it is by forcible compulsion. This is the traditional rape situation. Note that an affirmative defense is provided, however, where the female had previously consensually engaged in sexual intercourse with the actor. This defense, if sustained, would not eliminate criminality entirely; it would merely reduce the offense from first degree to second degree. The rationale for this defense is that where the parties had previously engaged in intercourse by consent, there is not the same sense of violation as when they had not, and so the offender should be treated differently. Furthermore, the actor is more likely, in such a situation, to believe that the present resistance is feigned. Finally where there is a forcible rape, evidence of prior consent may be relied on by the defendant to show present consent; thus the defense may tend to relieve the jury of the difficult decision of deciding guilt on first degree, which will undoubtedly be a very high degree of felony, if they can then fall back on a conviction of second degree. The other two cases covered by this section are self-explanatory: where the victim is physically helpless, and where she is less than eleven years old.

**Rape in the second degree.** This section deals with sexual intercourse in two cases. First, where there is forcible compulsion. This is identical

to first degree rape, except that prior consensual intercourse is no defense. Thus, in a case of forcible rape, the State's Attorney has the option of charging first or second degree. Second, where the male is eighteen years old or more and the female is less than fourteen—in such a case, consent would be no defense. This provision is part of the Commission's attempt to differentiate between degrees of severity based on relative age disparities, where there is actual consent.

*Rape in the third degree.* This section deals with sexual intercourse in two cases: first, where the female is incapable of consent by reason of some factor other than being under sixteen—i.e., mentally defective, mentally incapacitated or physically helpless; second where the male is twenty-one or more and the female is less than sixteen.

**Deviate sexual intercourse: first, second and third degrees.**

These sections parallel exactly the rape sections. The only difference is that rape deals with sexual intercourse, and these deal with deviate sexual intercourse, as defined.

*Sexual abuse in the first degree.* This section deals with subjecting another person to sexual contact in three cases, which cases are parallel to those of first degree rape. They are where there is forcible compulsion, where the victim is physically helpless and where the victim is less than eleven years old.

*Sexual abuse in the second degree.* This section deals with non-consensual sexual contact when the victim is incapable of consent because of mental incapacity or mental defectiveness, or where the victim is less than fourteen years old.

*Sexual abuse in the third degree.* This section deals with nonconsensual sexual contact. The affirmative defense, however, has the effect of excluding from criminality the situation where the victim's lack of consent is based solely on being fifteen years old and the actor is less than five years older. Thus, in a situation in which the victim is fifteen and the actor is nineteen or younger, and there was actual consent, the affirmative defense would apply.

*Venereal examination.* This section is taken directly from the present Connecticut statute, requiring a venereal examination of anyone charged with any of these offenses.

*Effect on Present Law.* The proposal would involve the repeal of the following sections: 53-216, 53-217, 53-219, 53-224, 53-225, 53-228, 53-239, 53-240 and 53-241. Only 53-241 (venereal examination) would be essentially the same under the proposal. Section 53-239 (assault with intent to commit rape) would be covered by the attempt section to be drafted.

## **22. Comparison of Connecticut Law Model Penal Code and New York Proposal Regarding Sex Offenses.**

### **Connecticut.**

The present Connecticut statutes affected by this Article can be divided into two general categories. The first such category concerns prohibitions against certain kinds of sexual behavior, regardless of the element of

consent or the privacy in which the act is performed, and regardless of the ages and relationship of the participants. These sections are 53-216 (Bestiality and Sodomy), 53-217 (Indecent Assault) and 53-219 (Fornication or lascivious carriage). These sections may be viewed as a strictly moral penal code, regulating with penal sanctions the sexual behavior of the actors, but not aimed at protecting the interests of any third parties or, at least directly, the interests of the community as a whole. They may be referred to as "per se sexual offenses."

The second category concerns prohibitions against forcible sexual intercourse and against certain kinds of sexual behavior for the protection of the young or incapable. These sections are 53-224 (Seduction of minor female), 53-225 (Carnal knowledge of or by imbecile or feeble-minded person), 53-228 (Rape including "statutory rape") and 53-240 (Assault with intent to carnally know female child).

Section 53-241 provides for venereal examination of persons accused of any of these, and certain other crimes.

**Section 53-216. Bestiality and Sodomy.** This section provides a maximum 30 year prison sentence for any person "who has carnal copulation with any beast, or who has carnal knowledge of any man, against the order of nature, unless forced or under fifteen years of age." This section presents many serious problems, both of drafting and policy.

As to the portion concerning "carnal copulation with any beast," it can be argued that behavior of this kind must be a symptom of a severe emotional disorder, and that, accordingly, what the actor needs is not imprisonment but medical treatment.

The phrase "carnal knowledge of any man, against the order of nature" is left undefined, and is dangerously vague. Is it restricted to connection per anum between two males, which was the original common law definition of sodomy? Or does it include fellatio (contact between mouth and penis)? For a summary of the varying phrases used by different states in this area, the various judicial interpretations thereof, and the resultant difficulty of ascertaining what acts are or are not prohibited, see Vol. 13, No. 3. *UCLA Law Rev.*, 659-662.

The reference to carnal knowledge of any "man" causes some problem. It would appear that this would include the act of fellatio performed by a male upon another male or by a female upon a male. But the distinctions apparently drawn, throughout sections 53-216-53-220, between "person" and "man" would seem to indicate, at least arguably so, that it does not include cunilingus, either performed by a male upon a female or a female upon a female. Thus male homosexual activity would be prohibited, but not female, and fellatio would be prohibited, but not cunilingus.

The only restriction in the statute as to age is that it does not apply to one under the age of fifteen.

Perhaps the most serious objection to this section is that, at least on its face, it makes no exception for the case where the actors are married to each other. Thus, theoretically at least, the statute could be violated

by a wife with her husband in the privacy of their own bedroom. The recent U.S. Supreme Court decision of *Griswold v. Connecticut*, 381 U.S. 479 (1965), which invalidated our so-called birth control statute, as far as married persons are concerned, casts serious doubt on the constitutionality of this section, at least as far as married persons are concerned, and perhaps farther. That case recognized that there is a zone of marital privacy emanating from the Bill of Rights which is constitutionally protected.

The section applies to the conduct of consenting, competent, unmarried adults, carried on in private. It can be argued, as does the Model Penal Code, that such conduct is no business of the criminal law. The Commission has accepted this line of reasoning, as is more fully explained above.

**Section 53-217. Indecent Assault.** This section provides a maximum 10 year sentence for any person "who commits an indecent assault upon another person," and it specifically provides that it is no defense that the person "assaulted consents to the act of violence or to the act of indecency." This section presents many problems which are similar to those presented by the bestiality and sodomy section. They are as follows.

The statute does not define an "indecent assault," and the cases do not help a great deal. *State v. Chicorelli*, 129 Conn. 601 (1943) says that "assault" does not have its technical, civil-law meaning of an offer or threat of violence, but was intended to include the "indecent" touching of the body of another. What is "indecent," however, is left delicately unsaid. Apparently, it means sexually.

The statute on its face makes no exception for people married to each other, although it is difficult to conceive of any prosecutor, State's attorney or judge countenancing a prosecution against a man for touching his wife.

The statute specifically excludes consent as a defense. Thus, read in its broadest application, it could apply to any sexual touching, regardless of the age of the participants or the privacy of the geographical location where it takes place.

**Section 53-219. Fornication or lascivious carriage.** This section provides a sentence of six months or a fine of \$100, or both, for any person "who is guilty of fornication or lascivious carriage or behavior." "Lascivious" means conduct which is wanton, lewd, and lustful, and tending to produce voluptuous emotions. *Zeiner v. Zeiner*, 120 Conn. 161 (1935). It does not apply, however, to homosexual behavior. *State v. Fenster*, 2 Conn. Cir. 184 (1964). Like sections 53-216 and 53-217, this section has the following defects.

The definition of the prohibited activity is so wide and vague that it can be construed to prohibit just about any sexual activity, even on very little evidence. See *State v. Bell*, 1 Conn. Cir. Ct. 421 (1962).

It applies regardless of age, consent and place of the participants.

**Section 53-224. Seduction of minor female.** This section provides a five year sentence or \$1,000 fine, or both, for "any person who seduces

and commits fornication with a minor female, or who entices or takes her away from her parent, guardian, or residence, for such purpose or for the purpose of concubinage." This section presents many serious problems.

Its language is so broad that it would even apply to a twenty year old male taking a twenty year old female out on a date with seduction in mind (not an uncommon occurrence). It makes no reference to the relative ages of the parties—e.g. the male could be seventeen or eighteen, and the female twenty. Apparently the word "seduce" is equivalent to fornication. See *State v. Bierce*, 27 Conn. 319 (1858). Thus the statute is repetitive.

It in effect raises the age of consent from sixteen (in section 53-238, the rape section) to twenty-one. Thus consent apparently would be no defense. Indeed, *State v. Bierce, supra*, teaches that it is no defense that the seduction was accomplished by a promise of marriage made in good faith and which the defendant was afterwards prevented from performing by the girl's improper conduct.

**Section 53-225. Carnal knowledge of or by imbecile or feeble-minded person.** This section provides a three year sentence for any man who carnally knows any woman under the age of 45 who is an imbecile or feeble-minded, or for any woman under 45 who consents to be carnally known by any man who is an imbecile or feeble-minded. It is obviously for the protection of the mentally incompetent against sexual exploitation. It is difficult, however, to see the reason for the 45 year age cut-off date. Furthermore, the language "imbecile or feeble-minded" is archaic and may be too restrictive.

**Section 53-238. Rape.** This section provides a thirty year sentence for "any person who commits the crime of rape upon any female." There are other provisions dealing with females under the age of sixteen; these are dealt with below. The statute incorporates the common law definition of rape, which is penetration, however slight, without consent. Section 53-239 provides a 10 year sentence for any person who, with actual violence, assaults a female with intent to commit a rape. The latter two sentences of this section provide that any person who carnally knows a female under age 16 shall be guilty of rape, and specifically provide that a female under 16 shall be deemed incapable of consenting to an act of intercourse. This provision raises several problems, as follows.

It makes no distinction where the male himself may be under sixteen, or perhaps near sixteen.

It makes no distinction where the female may appear or act much older than her years, and may be more physically and emotionally mature than many other fifteen year olds.

The choice of sixteen as the age of consent in a rape case may be unrealistically high, in view of the fact that many girls achieve puberty before then, and that many fifteen years olds today are, or at least appear to be, more mature and sexually aware than fifteen year olds of years ago. The Commission considered this argument seriously, and decided to retain sixteen as the general age of consent; however, where the

various defined age disparities are not present, consensual intercourse with an under sixteen year old will no longer be rape, but will be sexual misconduct of the second degree.

Section 53-240 provides a 10 year sentence for any person who makes an assault upon the body of a female under 16, with intent to carnally know and abuse her.

#### **Model Penal Code.**

**Rape.** The MPC defines rape as sexual intercourse by a male with a female not his wife under the following conditions:

(a) compulsion by force or threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

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

(c) the female is unconscious; or

(d) the female is less than 10 years old.

If in the course of the rape the actor inflicts serious bodily injury upon anyone, or if the victim was not a voluntary social companion of the actor at the time of the crime and had not previously permitted him sexual liberties, it is a first degree felony. Otherwise it is a second degree felony.

Sexual intercourse includes "intercourse per os or per anum," and only slight penetration is required.

The provision makes clear that the victim must not be the actor's wife. This includes a woman living as a man's wife, regardless of the legal status of their relationship; however, if the man and wife are living apart under a decree of judicial separation, she is not his wife for these purposes.

Paragraph (d) puts the age of consent for rape at 10. The reasons for this choice are set out at pp. 251-252 of Tent. Draft No. 4. In general they are that puberty is the period when a girl arrives at physical capacity to engage in intercourse, although she may not be capable of fully comprehending the social, psychological emotional and even physical significance of sexuality; that although 12 is the commonest age for the onset of puberty, it seems wise to go beyond the modal age, and it is known that significant numbers of girls enter sexual awakening as early as the tenth year; and that sex relations with pre-puberty children is a symptom of a mental aberration called pedophilia, or sexual attraction to children. See Tent. Draft No. 4, p. 252, n. 131. The Commission thinks 10 is too low an age for any kind of consent. In this connection, it should be noted that the MPC deals with the ages of 10-16 in section 213.3, Corruption of Minors and Seduction, a third degree felony.

**Gross Sexual Imposition.** This MPC section may be viewed as a lesser form of rape. It provides third degree felony sanctions for intercourse by a male with a female not his wife under the following conditions:

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

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

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

It may be argued that none of the provisions of this section cover the situation where the female is physically powerless to resist and does not consent. For example, A, without threat or force, engages in intercourse with B, who is an invalid completely powerless to resist and does not consent. The comments to the MPC Proposed Final Draft (p. 143) suggest that paragraph (a) covers this case, but this seems questionable.

**Deviate Sexual Intercourse By Force or Imposition.** This section is patterned after the foregoing Rape and Related Offenses section. Deviate sexual intercourse is defined as sexual intercourse "per os or per anum" between human beings who are not husband and wife, and any form of sexual intercourse with an animal.

Subsection (1) provides second degree felony sanctions for anyone who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, under the same four conditions as are spelled out in subsection (1) of Rape.

Subsection (2) provides third degree felony sanctions for anyone who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, under the same three conditions as are spelled out in subsection (2) of Gross Sexual Imposition.

This section deals with "deviate" sex practices imposed on others, either by force or because the other is unable to make a real choice as to whether to submit. Note that it does not cover these practices where the parties consent, or where even the sodomist engaging in sexual activity with an animal does so under no compulsion from another person.

It may be argued that this section duplicates a portion of the rape section in the following way. Rape, which must be between male and female, includes intercourse per os or per anum. This section is restricted (except as to the provision concerning animals) to intercourse per os or per anum. Thus forceful intercourse per os or per anum between a male and female would be covered by both rape and this section.

It may further be argued that the delicacy of the provision's reference to "per os" leaves unclear whether it covers cunilingus. Is this sexual "intercourse"? A forceful argument can be made that the statute's reference to "intercourse per os or per anum" contemplates only practices involving penetration by a penis. This would be a serious shortcoming, since it would exclude the actor who forcefully requires a woman to submit to cunilingus. For this reason the Commission rejected this Latinism for the clearer and more precise New York language.

**Corruption of Minors and Seduction.** This section prohibits sexual intercourse by a male with a female not his wife, and deviate sexual

intercourse, under the following conditions:

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

(b) the other person is under 21 and the actor is his guardian or someone responsible for his welfare; or

(c) the other person is in legal custody or retained in an institution and the actor has supervisory or disciplinary authority; or

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

Paragraph (a), which concerns the case where the other person is under 16 and the actor at least 4 years older, recognizes that there is a significant difference between intercourse between a young girl and older man (and vice-versa) and intercourse between a girl and boy of comparable ages. In the former case there is more likely to be an element of seduction and imposition of the will of the older person on the choice of the younger.

Paragraphs (b) and (c) are aimed at exploitation of a person by one who is in a position of authority.

Paragraph (d) concerns inducement by a false promise of marriage. Note that this paragraph makes no mention of the ages of the participants. The Commission thinks that this provision is unwise because if the parties are in such a close relationship that a promise of marriage is the inducement, there were very likely other causative factors involved in the submission by the female. Furthermore, such a provision could be an invitation to blackmail or spite complaints by jilted females. Finally, it may be argued that, in the case of two competent adults involved in such a relationship that promises of marriage are made, believed and relied on, the rule of caveat emptor should apply at least for purposes of criminal prosecution, since the female had the choice of refusing until the promise was performed.

**Sexual Assault.** This is a general, catch-all section prohibiting non-consensual sexual contact. Sexual contact is defined as "any touching of the sexual or other intimate parts of the person by another for the purpose of arousing or gratifying sexual desire of either party." A person is prohibited from subjecting another person, not his spouse, to sexual contact, under misdemeanor penalty, under any of the following eight conditions:

(1) he knows the contact is offensive to the other person; or

(2) he knows the other person suffers from a mental disease or defect which makes him or her incapable of appraising his or her conduct; or

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

(4) the other person is under 10; or

(5) he has substantially impaired the other's powers to appraise his or her conduct by administering drugs, intoxicants, etc.;

(6) the other person is under 16 and the actor is at least 4 years older;

or

(7) the other person is under 21 and the actor is his guardian or is otherwise responsible for his welfare; or

(8) the other person is in legal custody or in an institution and the actor has supervisory or disciplinary authority over him.

**General Provisions.** This section provides certain general rules applicable to the offenses defined by Article 213. They are summarized as follows:

**Mistake as to age.** Where the criminality depends on a child's being under 10, mistake of age is no defense. Where criminality depends on another age, a reasonable belief that the child was over the critical age is a defense.

**Spouse relationships.** The spouse relationship includes persons living together as man and wife; but does not include spouses living apart under a decree of judicial separation.

**Sexually promiscuous complainants.** It is a defense to the offense of *corruption of minor and seduction*, and to paragraphs (6), (7) and (8) of *Sexual Assault* that the alleged victim had, prior to the time of the offense charged, engaged promiscuously in sexual relation with others. The Commission rejected this provision.

**Prompt complaint.** This paragraph requires complaint to public authority within 3 months of the alleged offense as a condition of prosecution.

**Testimony of complainant.** This paragraph requires corroboration of the victim's testimony in any felony prosecution, and provides for certain precautionary charges to the jury.

#### **New York.**

There are several major differences between the New York and MPC proposals, which are summarized as follows:

**Common law marriage status.** The MPC considers two people as spouses if they are living together as such. New York has no such provisions.

**Defense of promiscuity.** The MPC provides, in certain cases, a defense if the female victim was, prior to the alleged offense, sexually promiscuous. New York has no such provisions.

**Consensual Sodomy.** The MPC has no provision comparable to New York's consensual sodomy which penalizes deviate sexual intercourse, even in private between consenting adults.

**Age differentials.** New York sets out four critical age periods: less than eleven; less than fourteen; less than seventeen; and seventeen to twenty-one. The MPC sets out three: less than ten; less than sixteen; and sixteen to twenty-one. Furthermore, the MPC differentiates on the basis of whether the age differential is at least four years. New York says five years.

**Persons in Supervisory or Custodial capacities.** The MPC has special provisions where the actor is in a supervisory or custodial capacity in relation to the victim. New York has no such provisions.

**Dead bodies and animals.** New York punishes sexual intercourse with dead bodies or animals. The MPC does so only where the actor forces the victim to do so.

**Physical helplessness.** New York provides for imputed lack of consent where the victim is "physically unable to communicate unwillingness to act." The MPC has no such precise provision. It considered using language of "physically powerless to resist," but rejected it because taken literally it could have condemned any intercourse with such a woman, even with her consent.

**Administering Intoxicants, etc.** Under the MPC, the prosecution would have to show that the substances were administered without the victim's knowledge and for the purpose of preventing resistance. Under New York, lack of consent need only be shown.

**Reasonable Mistake as to age.** Under the MPC, a reasonable belief that the victim was over the critical age (except where the critical age is ten) is an affirmative defense. New York has no such provision.

**Prompt Complaint.** The MPC has a prompt complaint requirement. New York does not.

3.

**[Proposed] Bill No. 7182**  
**“An Act Concerning the Adoption of a Penal Code”**  
**Introduced January 30, 1969.**

STATE OF CONNECTICUT.

Bill No. 7182

Page 1 of 1

Introduced by Rep. Ferrazzella - 51st Dist. Date \_\_\_\_\_

Ref. to Committee on Judiciary

General Assembly,

January Session, A. D., 1963.

AN ACT CONCERNING THE ADOPTION OF A PENAL CODE.

~~AS PASSED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE GENERAL ASSEMBLY~~

STATEMENT OF PURPOSE: To provide that the recommendations of the commission on the revision of the criminal statutes, embodied in the "Penal Code" proposed by said commission be adopted.

4.

**Committee Bill No. 7182**  
**“An Act Concerning Revision and**  
**Codification of the Substantive Criminal Law”**

## STATE OF CONNECTICUT,

Comm  
Bill No. 17182

Page 1 of 109

Introduced by

Date

Ref. to Committee on

Judiciary

General Assembly,

January Session, A. D. 1969

AN ACT CONCERNING REVISION AND CODIFICATION OF THE SUBSTANTIVE  
CRIMINAL LAW.

Be it enacted by the Senate and House of Representatives in General Assembly convened.

## CHAPTER \_\_\_\_\_ THE PENAL CODE

## ARTICLE I. GENERAL PROVISIONS

Sec. 1. Title and effective date.

This chapter shall be known as the "Penal Code." Its effective date shall be October 1, 1971.

Sec. 2. General purposes.

The general purposes of the provisions of this chapter are:

1. to proscribe conduct which unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;
2. to give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
3. to define the act or omission and the accompanying mental state which constitute each offense;
4. to differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties therefor; and
5. to insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, and their confinement when required in the interests of public protection.

Sec. 3. Application of chapter to offenses committed before and after enactment.

1. The provisions of this chapter shall apply to and govern the construction and punishment of any offense defined in this chapter and committed after the effective date thereof, as well as the construction and application of any defense to a prosecution for such an offense.

2. Unless otherwise expressly provided, or unless the context otherwise requires, the provisions of this chapter shall govern the construction of and punishment for any offense defined outside of this chapter and committed after the effective date thereof, as well as the construction and application of any defense to prosecution for such an offense.

3. The provisions of this chapter do not apply to or govern the construction or punishment of any offense committed prior to the effective date of this chapter, or the construction or application of any defense to a prosecution for such an offense. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this chapter had not been enacted.

Sec. 4. Definitions.

Except where different meanings are expressly specified, the following terms in this chapter have the following meanings:

1. "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.
2. "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.
3. "Physical injury" means impairment of physical condition or substantial pain.
4. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and

protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

5. "Deadly physical force" means physical force which can be reasonably expected to cause death or serious physical injury.

6. "Deadly weapon" means any loaded weapon from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles.

7. "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury, and includes a "vehicle" as that term is defined in this section.

8. "Vehicle" means a "motor vehicle" as defined in Title 14, Chapter 246, any aircraft, or any vessel equipped for propulsion by mechanical means or sail.

9. "Intentionally." A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct.

10. "Knowingly." A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.

11. "Recklessly." A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts reck.

12. "Criminal negligence." A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

ARTICLE 2. PRINCIPLES OF CRIMINAL LIABILITY, PARTIES TO OFFENSES AND LIABILITY THROUGH ACCESSORIAL CONDUCT, AND DEFENSES

Sec. 5. Saving clause with respect to principles of criminal liability.

The enactment of the provisions of this Article shall not be construed as precluding any court from recognizing other principles of criminal liability and other defenses not inconsistent with said provisions.

Sec. 6. Construction of statutes with respect to culpability requirements.

When the commission of an offense defined in this chapter, or some element of an offense, requires a particular culpable mental state, such mental state is ordinarily designated in the statute defining the offense by use of the terms "intentionally", "knowingly", "recklessly" or "criminal negligence", or by use of terms, such as "with intent to defraud" and "knowing it to be false", describing a specific kind of intent or knowledge. When one and only one of such terms appears in a statute defining an offense, it is presumed to apply to every element of the offense, unless an intent to limit its application clearly appears.

Sec. 7. Effect of ignorance or mistake upon liability.

1. A person is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief

of fact, unless:

- (a) such factual mistake negatives the culpable mental state required for the commission of an offense; or
- (b) the statute defining the offense or a statute related thereto expressly provides that such factual mistake constitutes a defense or exemption; or
- (c) such factual mistake is of a kind that supports a defense of justification.

2. A person is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless (a) the law provides that the state of mind established by such mistaken belief constitutes a defense, or unless (b) such mistaken belief is founded upon an official statement of law contained in (1) a statute or other enactment, or (2) an administrative order or grant of permission, or (3) a judicial decision of a state or federal court, or (4) an interpretation of the statute or law relating to the offense, officially made or issued by a public servant, agency or body legally charged or empowered with the responsibility or privilege of administering, enforcing or interpreting such statute or law.

Sec. 8. Effect of intoxication upon liability.

1. Intoxication is not, as such, a defense to a criminal charge; but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

2. When recklessness or criminal negligence is an element of the crime charged, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he not been intoxicated, such unawareness is immaterial.

3. In this section, "intoxication" means a substantial disturbance of mental or physical capacities resulting from the introduction of substances into the body.

Sec. 9. Criminal liability for conduct of another.

When one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct, and such other person may be prosecuted and punished as if he were the principal offender.

Sec. 10. Criminal liability for conduct of another; no defense.

In any prosecution for an offense in which the criminal liability of the defendant is based upon the conduct of another person pursuant to section 9, it is no defense that:

1. such other person is not guilty of the offense in question owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of the offense in question; or

2. such other person has not been prosecuted for or convicted of any offense based upon the conduct in question, or has previously been acquitted thereof, or has legal immunity from prosecution therefor; or

3. the offense in question, as defined, can be committed only by a particular class or classes of persons, and the defendant, not belonging to such class or classes, is for that reason legally incapable of committing the offense in an individual capacity.

Sec. 11. Criminal liability for conduct of another; affirmative defense.

1. In any prosecution in which the criminal liability of the defendant is based upon the conduct of another person pursuant to section 9, it is an affirmative defense that the defendant terminated his complicity prior to the commission of the offense under circumstances:

- (a) wholly depriving it of effectiveness in the commission of the offense, and
- (b) manifesting a complete and voluntary renunciation of his criminal purpose.

2. For purposes of this section, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

Sec. 12. Criminal liability of an individual for corporate conduct.

A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.

Sec. 13. Defenses; burden of proof.

1. When a "defense", other than an "affirmative defense", is raised at a trial, the State has the burden of disproving such defense beyond a reasonable doubt.

2. When a defense declared to be an "affirmative defense" is raised at a trial, the defendant has the burden of establishing such defense by a preponderance of the evidence.

Sec. 14. Mental disease or defect.

1. In any prosecution for an offense, it is a defense that the defendant, at the time of the proscribed conduct, as a result of mental disease or defect lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

2. As used in this section, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

Sec. 15. Duress.

1. In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist.

2. The affirmative defense of duress as defined in subsection 1 of this section is not available when a person intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

Sec. 16. Entrapment.

In any prosecution for an offense, it is a defense that the defendant engaged in the proscribed conduct because he was induced to do so by a public servant, or by a person acting in cooperation with a public servant, for the purpose of institution of criminal prosecution against the defendant, and that the defendant did not contemplate and would not otherwise have engaged in said conduct.

Sec. 17. Justification; a defense.

In any prosecution for an offense, justification, as defined in sections 16 through 24, is a defense.

Sec. 18. Justification; generally.

Unless inconsistent with the ensuing provisions of this article defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when such conduct is required or authorized by a provision of law or by a judicial decree. Among the kinds of such provisions and decrees are (a) laws defining duties and functions of public servants, (b) laws defining duties of private citizens to assist public servants in the performance of certain of their functions, (c) laws governing the execution of legal process, (d) laws governing the military services and the conduct of war, and (e) judgments and orders of competent courts.

Sec. 19. Justification; use of physical force generally.

The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

1. A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person, and a teacher or other person entrusted with the care and supervision of a minor for a special purpose, may use physical force, but not deadly physical force, upon such minor or incompetent person when and to the extent that he reasonably believes it necessary to maintain discipline or to promote the welfare of such minor or incompetent person.
2. An authorized official of a correctional institution or facility may, in order to maintain order and discipline, use such physical force as is authorized by the rules and regulations of the Department of Correction.
3. A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his direction, may use physical force when and to the extent that he rea-

sonably believes it necessary to maintain order, but he may use deadly physical force only when he reasonably believes it necessary to prevent death or serious physical injury.

4. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force upon such person to the extent that he reasonably believes it necessary to thwart such result.

5. A duly licensed physician, or a person acting under his direction, may use physical force for the purpose of administering a recognized form of treatment which he reasonably believes to be adapted to promoting the physical or mental health of the patient if (a) the treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent, guardian or other person entrusted with his care and supervision, or (b) the treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

Sec. 20. Justification; use of physical force in defense of a person.

1. Except as provided in subsections 2 and 3 of this section, a person is justified in using physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force, and he may use a degree of force when he reasonably believes to be necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (a) using or about to use unlawful deadly physical force, or (b) inflicting or about to inflict great bodily harm.

2. Notwithstanding the provisions of subsection 1 of this section, a person is not justified in using deadly force upon another person if he knows that he can avoid the necessity of using such force with complete safety (a) by retreating, except that the actor is not required to retreat (i) if he is in his dwelling or place of work and was not the initial aggressor, or (ii) if he is a peace officer or a private person assisting him at his direction, and was acting pursuant to section 24, or (b) by surrendering possession of property to a person asserting a claim of right thereto, or (c) by complying with a demand that he abstain from performing an act which he is not obliged to perform.

3. Notwithstanding the provisions of subsection 1 of this section, a person is not justified in using physical force if (a) with intent to cause physical injury or death to another person, he provoked the use of unlawful physical force by such other person, or (b) he was the initial aggressor, except that his use of physical force upon another person under such circumstances is justifiable if he withdraws from the encounter and effectively communicates to such other person his intent to do so, but the latter notwithstanding continues or threatens the use of unlawful physical force, or (c) the physical force involved was the product of a combat by agreement not specifically authorized by law.

Sec. 21. Justification; use of physical force in defense of premises.

A person in possession or control of premises, or a person who is licensed or privileged to be thereon, is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of a criminal trespass by such other person in or upon such premises; but he may use deadly physical force under

such circumstances only (a) in defense of a person as prescribed in section 20, or (b) when he reasonably believes it necessary to prevent what he reasonably believes to be an attempt by the trespasser to commit arson, or (c) to the extent that and not earlier in time than he reasonably believes it necessary to prevent or terminate what he reasonably believes to be an unlawful entry by force into his dwelling as defined in section 110 or place of work, and for the sole purpose of said prevention or termination.

Sec. 22. Justification; use of physical force in defense of property.

A person is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be an attempt by such other person to commit larceny or criminal mischief involving property, or when and to the extent he reasonably believes it necessary to regain property which he reasonably believes to have been acquired by larceny within a reasonable time prior to the use of said force; but he may use deadly physical force under such circumstances only in defense of person as prescribed in section 20.

Sec. 23. Justification; use of physical force in resisting arrest.

A person is not justified in using physical force to resist an arrest by a peace officer, whether said arrest is legal or illegal. For purposes of this section and of section 24, "peace officer" means members of the State Police Department, an organized local police department, county detectives, sheriffs, deputy sheriffs and guards employed in a correctional institution or facility.

Sec. 24. Justification; use of physical force in making an arrest or in preventing an escape.

1. Except as provided in subsection 2 of this section, a peace officer is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary:

- (a) to effect an arrest or to prevent the escape from custody of a person whom he reasonably believes to have committed an offense, unless he knows that the arrest is unauthorized; or
- (b) to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

2. A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection 1 of this section only when he reasonably believes that such is necessary:

- (a) to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) to effect an arrest or to prevent the escape from custody of a person whom he reasonably believes has committed or attempted to commit a felony.

3. For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of physical force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is

justified in using the physical force prescribed in subsections 1 and 2 of this section unless the warrant is invalid and is known by such officer to be invalid.

Except as provided in subsection 4 of this section, a person who has been directed by a peace officer to assist such peace officer to effect an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he reasonably believes such to be necessary to carry out such peace officer's direction.

4. A person who has been directed to assist a peace officer under circumstances specified in subsection 3 of this section may use deadly physical force to effect an arrest or to prevent an escape from custody only when:

- (a) he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) he is directed or authorized by such peace officer to use deadly physical force and does not know that, if such happens to be the case, the peace officer himself is not authorized to use deadly physical force under the circumstances.

5. A private person acting on his own account is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he reasonably believes to have committed an offense and who in fact has committed such offense; but he is justified in using deadly physical force for such purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

6. A guard or other peace officer employed in a correctional institution or facility is justified in using physical force, including deadly physical force, when and to the extent that he reasonably believes it necessary to prevent the escape of a prisoner from such correctional institution or facility.

ARTICLE 3. DEFINITIONS AND CLASSIFICATION OF OFFENSES.

Sec. 25. Classification of offenses.

1. **Offense.** The term "offense" means a breach of any law of this state, local law or ordinance of a political subdivision of this state, other than one that defines a motor vehicle violation, for which a sentence to a term of imprisonment or to a fine is authorized upon conviction thereof an offense is either a crime or a violation.

2. **Crime.** The term "crime" comprises felonies and misdemeanors.

3. **Violation.** Every offense which is not a crime is a "violation." Conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

4. Notwithstanding the provisions of subsection 1 of this section, the provisions of Article 4 (Authorized Disposition of Offenders), Article 5 (Sentence of Probation, Conditional Discharge and Unconditional Discharge) and Article 6 (Sentences of Imprisonment) shall be applicable to motor vehicle violations.

Sec. 26. Felony; definition, classification and designation.

1. **Definition.** An offense is a felony if a person convicted thereof may be sentenced to a term of imprisonment which is in excess of one year.

2. **Classifications.** Felonies are classified, for the purpose of sentence, into five categories as follows:

(a) Class A felonies:

- (b) Class B misdemeanors;
- (c) Class C misdemeanors; and
- (d) unclassified misdemeanors.

3. Designation. The particular classification of each misdemeanor defined in this chapter is expressly designated in the section or article defining it. Any offense defined outside this chapter which, by virtue of an expressly specified sentence, is within the definition set forth in subsection 1 of this section shall be deemed an unclassified misdemeanor.

Sec. 28. Violation; definition and designation.

1. Definition. An offense is a violation if the only sentence authorized for conviction thereof is a fine.

2. Designation. Every violation defined in this chapter is expressly designated as such. Any offense defined outside this chapter which is not expressly designated a violation shall be deemed a violation if, notwithstanding any other express designation, it is within the definition set forth in subsection 1 of this section.

ARTICLE 4. AUTHORIZED DISPOSITION OF OFFENDERS.

Sec. 29. Authorized dispositions.

1. In general. Every person convicted of an offense shall be sentenced in accordance with this Article.

2. When a person is convicted of an offense, the sentence of the court shall be as follows:

- (a) a term of imprisonment; or
- (b) a reformatory sentence authorized by sections 17-389 and 17-391; or
- (c) a fine; or
- (d) both imprisonment and a fine; or
- (e) both imprisonment, with the execution of said sentence of imprisonment suspended, entirely or after a period

set by the court, and

- 1. a period of probation; or
- 2. a period of conditional discharge; or

(f) both imprisonment, with the execution of said sentence of imprisonment suspended, entirely or after a period set by the court, and a fine and

- 1. a period of probation, or
- 2. a period of conditional discharge; or

(g) both a fine and a reformatory sentence; or

(h) a sentence of unconditional discharge.

3. Revocable dispositions, in that such sentence shall be deemed a tentative one to the extent that it may be altered or revoked in accordance with that article, but for all other purposes it shall be deemed to be a final judgment of conviction.

ARTICLE 5. SENTENCES OF PROBATION, CONDITIONAL DISCHARGE AND UNCONDITIONAL DISCHARGE.

Sec. 36. Sentences of probation and conditional discharge.

1. Criteria for sentence of probation. The court may sentence a person to a period of probation upon conviction of any crime other than a class A felony if the court, having regard to the nature and circumstances of the crime and to the history, character and condition of the defendant, is of the opinion that:

- (a) present or extended institutional confinement of the defendant is not necessary for the protection of the public;
- (b) the defendant is in need of guidance, training or assistance which, in his case, can be effectively administered through probation supervision; and
- (c) such disposition is not inconsistent with the ends of justice.

2. Criteria for sentence of conditional discharge. The court may impose a sentence of conditional discharge for an

offense, other than a class A felony, if the court, having regard to the nature and circumstances of the offense and to the history, character and condition of the defendant, is of the opinion that:

- (a) present or extended institutional confinement of the defendant is not necessary for the protection of the public; and
- (b) probation supervision is not appropriate.

3. Sentence. When the court imposes a sentence of conditional discharge the defendant shall be released with respect to the conviction for which the sentence is imposed but shall be subject, during the period of conditional discharge, to such conditions as the court may determine. The court shall impose the period of conditional discharge authorized by subsection 4 of this section and shall specify, in accordance with section 31, the conditions to be complied with. When a person is sentenced to a period of probation, the court shall impose the period authorized by subsection 4 of this section, and may impose any conditions authorized by section 31. When a person is sentenced to a period of probation, he is thereby placed under the supervision of the probation commission.

4. Periods of probation or conditional discharge. Unless terminated sooner, the period of probation or conditional discharge shall be as follows:

- (a) for a felony, not more than five years;
- (b) for a class A misdemeanor, not more than three years;
- (c) for a class B misdemeanor, not more than two years;
- (d) for a class C misdemeanor, not more than one year; and
- (e) for an unclassified misdemeanor, the period of probation shall be not more than two years if the authorized sentence of imprisonment is in excess of three months, otherwise the period of probation shall be not more than one year.

- (f) for failure to provide subsistence for dependents, a determinate or indeterminate period.

5. One year review. When a person has been on probation for a longer period than one year, the probation officer shall, as soon as is convenient after the expiration of one year's probation, call the matter to the attention of the sentencing court or judge with a recommendation as to the advisability of the continuance of probation. The person on probation shall be given reasonable notice of this action and shall be entitled to be heard by the court or judge with respect thereto.

Sec. 31. Conditions of probation and conditional discharge.

1. When imposing sentence of probation or conditional discharge, the court may, as a condition of the sentence, require that the defendant:

- (a) work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;
- (b) undergo available medical or psychiatric treatment and remain in a specified institution, when required for that purpose;
- (c) support his dependents and meet other family obligations;
- (d) make restitution of the fruits of his offense or make reparation, in an amount he can afford to pay, for the loss or damage caused thereby. When restitution or reparation is a condition of the sentence the court may fix the amount thereof and the manner of performance;
- (e) If a minor, (i) reside with his parents or in a suitable foster home, (ii) attend school, and (iii) contribute to his own support in any home or foster home;

- (f) post a bond or other security for the performance of any or all conditions imposed;
- (g) refrain from violating any criminal law of the United States, the State of Connecticut or any other state;
- (h) satisfy any other conditions reasonably related to his rehabilitation.

The court shall cause a copy of any such order to be delivered to the defendant and to the probation officer, if any.

2. When a defendant has been sentenced to a period of probation, the probation commission, or probation officer, may require that the defendant comply with any or all conditions which the court could have imposed under subsection 1 of this section and which are not inconsistent with any condition actually imposed by the court.

3. At any time during the period of probation or conditional release, after hearing and for good cause shown, the court may modify or enlarge the conditions, whether originally imposed by the court under this section or otherwise, and may extend the period, provided that the original period with any extensions thereof shall not exceed the periods authorized by section 30. The court shall cause a copy of any such order to be delivered to the defendant and to the probation officer, if any.

Sec. 32. Calculation of periods of probation and of conditional discharge.

1. A period of probation or conditional discharge commences on the day it is imposed, except that, where it is preceded by a sentence of imprisonment with execution suspended after a period of imprisonment set by the court, it commences on the day the defendant is released from said imprisonment. Multiple periods, whether imposed at the same or different times, shall run concurrently.

2. Issuance of a warrant or notice to appear for violation pursuant to section 33 shall interrupt the period of the sentence as of the date of such issuance until a final determination as to the violation has been made by the court.

3. In any case where a person who is under a sentence of probation or of conditional discharge is also under an indeterminate sentence of imprisonment, or a reformatory sentence, imposed for some other offense by a court of this state, the service of the sentence of imprisonment shall satisfy the sentence of probation or of conditional discharge unless the sentence of probation or of conditional discharge is revoked prior to the next to occur of parole under, or satisfaction of, the sentence of imprisonment. Provided, however, that the service of an indeterminate or reformatory sentence of imprisonment shall not satisfy a sentence of probation if the sentence or probation was imposed at a time when the sentence of imprisonment had a year or less to run.

Sec. 33. Violation of probation or conditional discharge.

1. Arrest. At any time during the period of probation or conditional discharge, the court or any judge thereof may issue a warrant for the arrest of a defendant for violation of any of the conditions of probation or conditional discharge, or may issue a notice to appear to answer to a charge of such violation, which notice shall be personally served upon the defendant. Any such warrant shall authorize all officers named therein to return the defendant to the custody of the court or to any suitable detention facility designated by the court. Any probation officer may arrest any defendant on probation without a warrant or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of the probation officer, violated the conditions of his probation. Such written statement, de-

livered with the defendant by the arresting officer to the official in charge of any correctional center or other place of detention, shall be sufficient warrant for the detention of the defendant. After making such an arrest, such probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime shall be applicable to any defendant arrested under the provisions of this section. Upon such arrest and detention, the probation officer shall immediately so notify the court or any judge thereof. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charges.

2. Hearing. At this hearing the defendant shall be informed of the manner in which he is alleged to have violated the conditions of his probation or conditional discharge, shall be advised by the court that he has the right to retain counsel and, if indigent, shall be entitled to the services of the public defender, and shall have the right to cross-examine witnesses and to present evidence in his own behalf.

3. If such violation is established, the court may continue or revoke the sentence of probation or conditional release or modify or enlarge the conditions, and, if said sentence is revoked, require the defendant to serve the sentence imposed or any lesser sentence. No such revocation shall be ordered, however, except upon consideration of the whole record and except if such violation is established by reliable and probative evidence.

Sec. 34. Termination of probation or conditional discharge.

The court or sentencing judge may at any time during the period of probation or conditional discharge, after hearing and for good cause shown, terminate probation or conditional discharge and discharge the defendant.

Sec. 35. Sentence of unconditional discharge.

1. Criteria. The court may impose a sentence of unconditional discharge in any case where it is authorized to impose a sentence of conditional discharge under section 30, if the court is of the opinion that no proper purpose would be served by imposing any condition upon the defendant's release.

2. Sentence. When the court imposes a sentence of unconditional discharge, the defendant shall be released with respect to the conviction for which the sentence is imposed without imprisonment, probation supervision or conditions. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

ARTICLE 6. SENTENCES OF IMPRISONMENT.

Sec. 36. Indeterminate sentence of imprisonment for felony.

1. Indeterminate sentence. A sentence of imprisonment for a felony shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subsection 2 of this section and the minimum period of imprisonment shall be as provided in subsection 3 of this section.

2. Maximum term of sentence. The maximum term of an indeterminate sentence shall be fixed as follows:

- (a) for a class A felony, the term shall be life imprisonment unless a sentence of death is imposed in accordance with section 48.
- (b) for a class B felony, the term shall be fixed by the court, and shall not exceed fifteen years;
- (c) for a class C felony, the term shall be fixed by the court, and shall not exceed ten years;
- (d) for a class D felony, the term shall be fixed by the court, and shall not exceed five years; and

- (e) for an unclassified felony, the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law that defines the crime.

3. Minimum period of imprisonment. The minimum period of imprisonment under an indeterminate sentence shall be at least one year and shall be fixed as follows:

- (a) in the case of a class A felony, the minimum period shall be fixed by the court and specified in the sentence. Such minimum sentence shall not be less than one nor more than ten years;
- (b) where the sentence is for a class B, C or D felony and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that the ends of justice and best interests of the public require that the court fix a minimum period of imprisonment, the court may fix the minimum. In such event, the minimum period shall be specified in the sentence and shall not be more than one-half of the maximum term imposed, except where the maximum is less than three years.

Sec. 37. Alternative definite sentence for class C or D felony.

Notwithstanding the provisions of section 36, when a person is sentenced for a class C or D felony and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less.

Sec. 38. Sentence of imprisonment for misdemeanors.

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year.

2. Class B misdemeanor. A sentence of imprisonment for a class B misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed six months.

3. Class C misdemeanor. A sentence of imprisonment for a class C misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed three months.

4. Unclassified misdemeanor. A sentence for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law that defines the crime.

Sec. 39. Concurrent and consecutive terms of imprisonment.

1. When multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and to the undischarged term or terms in such manner as the court directs at the time of sentence. The court shall state whether the respective maxima and minima shall run concurrently or consecutively with respect to each other, and shall state in conclusion the effective sentence imposed. When a person is sentenced to the State Prison for two or more separate offenses and the term of imprisonment for a second or further

term is ordered to begin at the expiration of the first and each succeeding terms of sentence named in the warrant of commitment, the court imposing such sentences may name no minimum term of imprisonment except under the first sentence, and in such case the several maximum terms shall, for the purpose of this section and of sections 54-125 to 54-131, inclusive, be construed as one continuous term of imprisonment.

Sec. 40. Commencement and calculation of terms of imprisonment.

1. Indeterminate sentences. An indeterminate sentence of imprisonment commences when the prisoner is received in the institution to which he was sentenced.

2. Definite sentences. A definite sentence of imprisonment commences when the prisoner is received in the custody to which he was sentenced. Where a person is under more than one definite sentence, the sentences shall be calculated as follows:

(a) If the sentences run concurrently, the terms merge in and are satisfied by discharge of the term which has the longest term to run;

(b) If the sentences run consecutively, the terms are added to arrive at an aggregate term and are satisfied by discharge of such aggregate term, or by service of one year imprisonment plus any term imposed for an offense committed while the person is under sentence, whichever is less.

3. Time served under vacated sentence. When a sentence of imprisonment that has been imposed on a person is vacated and a new sentence is imposed on such a person for the same offense or for an offense based on the same act, the new sentence shall be calculated as if it had commenced at the time the vacated sentence commenced, and all time served under or credited against the vacated sentence shall be credited against the new sentence.

4. Escape. When a person who is serving a sentence of imprisonment escapes from custody, the escape shall interrupt

the sentence and such interruption shall continue until the return of the person to the institution in which the sentence was being served.

Sec. 41. Reduction of definite sentence.

At any time during the period of a definite sentence, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or the defendant discharged on probation or conditional discharge for a period not to exceed that to which he could have been originally sentenced.

Sec. 42. Sentence of imprisonment for persistent offender.

1. Persistent dangerous felony offender; definition.

A persistent dangerous felony offender is a person who

(a) stands convicted of manslaughter, arson, rape, robbery in the first or second degree, kidnapping, or assault in the first degree; and

(b) has been, at separate times prior to the commission of the present crime, two or more times convicted of and imprisoned, under a sentence to a term of imprisonment of more than one year or of death in the state prison or state reformatory in this state or in any other state prison or penitentiary for the following crimes:

(i) the crimes enumerated in paragraph (a) of this subsection 1, the crime of murder, or an attempt to commit any of said crimes or murder; or

(ii) prior to the effective date of this Penal Code, in this state: the crimes enumerated in sections 53-9, 53-10, 53-11, 53-12, 53-13, 53-14, 53-15, 53-16, 53-19, 53-21, 53-69, 53-78, 53-79, 53-80, 53-82, 53-83, 53-86, 53-238, 53-239, assault with intent to kill under section 53-117, or an attempt to commit any of said crimes; or

(iii) in any other state: any crimes the essential elements of which are substantially the same as any of those crimes

enumerated in paragraph (a) or subparagraph (ii) of this subsection 1.

2. Persistent felony offender; definition. A persistent felony offender is a person who

(a) stands convicted of a felony; and

(b) has been, at separate times prior to the commission of the present felony, two or more times convicted of and imprisoned under an imposed term of more than one year or of death, in the state prison or state reformatory in this state or in any other state prison or penitentiary for a crime. This subsection 2 shall not apply, however, where the present conviction is for a crime enumerated in paragraph (a) of subsection 1 and either of the two prior convictions were for crimes other than those enumerated in subsection 1.

3. Persistent larceny offender; definition. A persistent larceny offender is a person who

(a) stands convicted of larceny in the second degree or lower degree; and

(b) has been, at separate times prior to the commission of the present larceny, twice convicted of the crime of larceny.

4. Affirmative defense. It is an affirmative defense to the charge of being a persistent offender under this section that

(a) as to any of the prior convictions on which the state is relying the defendant was pardoned on the ground of innocence, and

(b) without that conviction, the defendant was not two or more times convicted and imprisoned as required by this section.

5. Authorized sentence of persistent dangerous felony offender. When any person has been found to be a persistent dangerous felony offender, and when the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest, the court, in lieu

of imposing the sentence of imprisonment authorized by section 36 for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by that section for a class A felony.

6. Authorized sentence for persistent felony offender. When any person has been found to be a persistent felony offender, and when the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration will best serve the public interest, the court in lieu of imposing the sentence of imprisonment authorized by section 36 for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by that section for the next higher degree of felony.

7. Authorized sentence for persistent larceny offenders. When any person has been found to be a persistent larceny offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration will best serve the public interest, the court, in lieu of imposing the sentence authorized by section 36 for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by that section for a class D felony.

Sec. 43. Fines for felonies.

1. Class A or B felony. A sentence to pay a fine for a class A or B felony shall be a sentence to pay an amount, fixed by the court, not exceeding ten thousand dollars.

2. Class C or D felony. A sentence to pay a fine for a class C or D felony shall be a sentence to pay an amount, fixed by the court, not exceeding five thousand dollars.

3. Unclassified felony. A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, in accordance with the fine specified in the law that defines the crime.

Sec. 44. Fines for misdemeanors.

1. Class A or B misdemeanor. A sentence to pay a fine for a class A or B misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding one thousand dollars.

2. Class C misdemeanor. A sentence to pay a fine for a class C misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars.

3. Unclassified misdemeanor. A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, in accordance with the fine specified in the law that defines the crime.

Sec. 45. Fine for violation.

A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars. In the case of a violation defined outside this chapter, if the amount of the fine is expressly specified in the law that defines the offense, the amount of the fine shall be fixed in accordance with that law.

Sec. 46. Alternative fine.

If a person has gained money or property through the commission of any felony, misdemeanor or violation, then upon conviction thereof the court, in lieu of imposing the fine authorized for the offense under one of the above sections may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In such case the court shall make a finding as to the amount of the defendant's gain from the offense, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the term "gain" means the amount of money or the value of property derived.

## ARTICLE 7. PENALTY FOR MURDER

Sec. 47. Murder; punishment; plea of guilty.

1. Murder is punishable as a class A felony unless the death sentence is imposed as provided by section 48.
2. Where the court and the State's Attorney consent, a person indicted for murder may plead guilty thereto, in which case the court shall sentence him as for a class A felony.
3. If a person indicted for murder waives his right to a jury trial and elects to be tried by a court, the court shall be composed of the judge presiding at the session and two other judges to be designated by the chief justice of the supreme court, and such judges, or a majority of them, shall determine the question of guilt or innocence and shall, as provided in section 48, render judgment and impose sentence.
4. The court or jury before which any person indicted for murder is tried may find him guilty of homicide in a lesser degree than that charged.

Sec. 48. Murder; proceeding to determine sentence; appeal.

1. When a defendant has been found guilty of murder, there shall thereupon be further proceedings before the court or jury on the issue of penalty. Such proceedings shall be conducted before the court or jury which found the defendant guilty unless the court for good cause discharges that jury and impanels a new jury for that purpose. In these proceedings, evidence may be presented as to any matter that the court deems relevant to sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any such evidence which the court deems to have probative force may be received, regardless of its admissibility under the exclusionary rules of evidence. The State's Attorney and the defendant and his counsel

shall be permitted to present argument for or against sentence of death.

2. The court or jury, as the case may be, shall then retire to consider the penalty. If the jury report unanimous agreement and recommend the imposition of the class A felony sentence, the court shall discharge the jury and shall impose such sentence. If the jury report unanimous agreement and recommend the imposition of the sentence of death, the court may or may not accept said recommendation and shall discharge the jury and shall impose either the sentence for a class A felony or the sentence of death.

3. If the jury is unable to reach a unanimous verdict on the issue of penalty, the court shall dismiss the jury and either impose the sentence for a class A felony or shall order a new jury impanelled to try the issue of penalty.

4. On an appeal by the defendant where the judgment is of death, the supreme court, if it finds substantial error only in the sentencing proceeding, may set aside the sentence of death and remand the case to the trial court, in which event the trial court shall impose the sentence for a class A felony.

ARTICLE 8. PROCEDURE UPON ACQUITTAL ON GROUNDS OF MENTAL DISEASE OR DEFECT.

Sec. 49. Procedure upon acquittal on grounds of mental disease or defect.

1. (a) When any person charged with an offense is acquitted on the grounds of mental disease or defect, the court shall order such person to be temporarily confined in any of the state hospitals for mental illness for a reasonable time, not to exceed 90 days, for an examination to determine his mental condition; except that, if the court can determine, on the basis of the evidence already before it, that such person is not mentally ill to the extent that his release would constitute a danger to himself or others, the court may order his immediate release, either unconditionally or conditionally pursuant to subsection 5(b).

(b) The person to be examined shall be informed that, in addition to the examination provided for in subsection 1 (a), he has a right to be examined during said confinement by a psychiatrist of his own choice.

(c) Within 60 days of the confinement pursuant to subsection 1 (a), the superintendent of such hospital and the retained psychiatrist, if there be one, shall file reports with the court setting forth their findings and conclusions as to whether such person is mentally ill to the extent that his release would constitute a danger to himself or others. Copies of said reports shall be delivered to the State's Attorney or prosecutor and to counsel for said person.

(d) Upon receipt of said reports, the court shall promptly schedule a hearing. If the court determines that the preponderance of the evidence at the hearing establishes that he is mentally ill to the extent that his release would constitute a danger to himself or others, the court shall confine such person in a suitable hospital or other treatment facility.

2. (a) Whenever a person is committed for confinement pursuant to subsection 1 (d), his confinement shall continue until he is no longer mentally ill to the extent that his release would constitute a danger to himself or others; provided, however, that the total period of confinement, except as provided in subsection 4, shall not exceed a maximum term which shall be fixed by the court at the time of confinement, which maximum term shall not exceed the maximum sentence which could have been imposed if the person had been convicted of the offense. In the case where the offense was a class A felony, said maximum term shall be 25 years.

3. (a) Upon certification by the superintendent of the hospital or institution that, in his opinion, such person is no longer mentally ill to the extent that his release would constitute a danger to himself or others, the court may order the release of the person confined at the expiration of thirty days from the time such certificate was filed.

(b) At the time said certificate is filed with the court, a copy shall be served on the State's Attorney or prosecutor who may request a hearing as to whether said person should be released. At such hearing, evidence of mental condition may be submitted. The confined person shall be released unless the State establishes by a preponderance of the evidence that such person is, at the time of hearing, mentally ill to the extent that his release would constitute a danger to himself or others.

(c) The superintendent shall, during said confinement, submit to the court at least every six months a written report with respect to the mental condition of said person. Copies of said report shall be served upon the State's Attorney or prosecutor and upon counsel for the confined person. The court, upon its own motion or at the request of the parties, may at any time hold a hearing to determine whether said person should be released prior to the expiration of the maximum period, in accordance with the standards set forth in subsection 3 (b); provided, however, that such a hearing shall be held at least every five years.

4. At the expiration of said maximum term the superintendent of such hospital or institution shall, if the person is still confined there, release him, unless the following procedure for an order of continued confinement has been instituted. At any time within 90 days prior to said expiration, the State's Attorney for the county or the chief prosecutor for the circuit in which the person was tried may petition the court for an order of further confinement on the grounds that release of the person would constitute a danger to life or person. The court shall thereupon hold a prompt hearing, after due notice to the person confined. In this hearing the state shall have the burden of proving by a preponderance of the evidence that the person's continued confinement is warranted because he is mentally ill to the extent that his release would constitute a danger to life

or person. If the court so finds, the court shall order the continued confinement of the person until his release would not constitute a danger to life or person; provided, however, that the provisions of subsections 3 and 5 shall be applicable to persons so confined.

5. (a) In each of the hearings provided for in the foregoing subsections the mentally ill person shall have a right to be present, to be represented by counsel and to present evidence. If he fails or refuses to obtain counsel, the court shall appoint counsel to represent him. Said person may call a psychiatrist to examine him and testify at any of these hearings. The participation of such psychiatrist shall be at the confined person's expense unless he is financially unable to retain one, in which case the court shall assist him in obtaining a psychiatrist's services at the expense of the state. (b) The court may order that said person be released under such conditions and supervision as the court deems appropriate to his situation.

6. If any person is confined hereunder, other than temporary confinement authorized by subsection 1, and said person has estate, the court may appoint an overseer for such person, who shall forthwith make an application to the probate court of competent jurisdiction for the appointment of a conservator of the estate of said person.

7. The expense of confinement, support and treatment of any person confined hereunder shall be computed and paid for in accordance with the provisions of section 17-205a and Chapter 308.

8. In lieu of confinement to any state hospital or treatment facility hereunder, the court may allow some person, who posts sufficient bond to the state, to confine the person in such manner as the court orders.

## ARTICLE 9. INCHOATE OFFENSES.

Sec. 50 Conspiracy.

A person is guilty of conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy.

Sec. 51. Affirmative defense; conspiracy.

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

Sec. 52. Criminal attempt.

1. A person is guilty of an attempt to commit a crime if, acting with the kind of mental culpability otherwise required for commission of the crime he:

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

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

2. Conduct shall not be held to constitute a substantial step under subsection 1 (b) of this section unless it is strongly corroborative of the actor's criminal purpose. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

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

(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(c) reconnoitering the place contemplated for the commission of the crime;

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

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

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

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

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

#### Sec. 53. Renunciation.

For purposes of this article, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct

until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

Sec. 54. Grading of criminal attempt and conspiracy.

Except as otherwise provided in this section, attempt and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or is an object of the conspiracy. An attempt or conspiracy to commit a class A felony is a class B felony.

Sec. 55. Multiple convictions.

A person may be convicted of both

- (a) attempt or conspiracy, and
- (b) the completed crime so attempted or committed in pursuance of such conspiracy; provided, however, that if he is so convicted he may be sentenced only for the completed crime.

ARTICLE 10. HOMICIDE.

Sec. 56. Homicide defined.

Homicide means conduct which causes the death of a person. "Person," when referred to the victim of a homicide, means a human being who has been born alive.

Sec. 57. Criminally negligent homicide.

A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person. This section does not apply, however, where the defendant caused said death by a motor vehicle.

Criminally negligent homicide is a class A misdemeanor.

Sec. 58. Misconduct with a motor vehicle.

A person is guilty of misconduct with a motor vehicle when, with criminal negligence in the operation of a motor vehicle or in consequence of his intoxication while operating a motor vehicle, he causes the death of another person.

Misconduct with a motor vehicle is a class B felony.

Sec. 59. Manslaughter in the second degree.

A person is guilty of manslaughter in the second degree when:

1. He recklessly causes the death of another person; or
2. He intentionally causes or aids another person to commit

suicide.

Manslaughter in the second degree is a class C felony.

Sec. 60. Manslaughter in the first degree.

A person is guilty of manslaughter in the first degree when:

1. With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or

2. With intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance, as defined in paragraph (a) of subsection 1 of section 61. The fact that a suicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subsection; or

3. Under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person.

Manslaughter in the first degree is a class B felony.

Sec. 61. Murder.

A person is guilty of murder when:

1. With intent to cause the death of another person, he causes the death of such person or of a third person or causes a suicide by force, duress or deception; except that it, in any prosecution under this subsection, is an affirmative defense that:

(a) the defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believes them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime; or

2. Acting either alone or with one or more persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, deviate sexual intercourse in the first degree, sexual abuse in the first degree, escape in the first degree, or escape in the second degree and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants, except that in any prosecution under this subsection, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

Evidence that the defendant suffered from a mental disease, mental defect or other mental abnormality is admissible, in a prosecution under subsection 1 of this section, on the question of whether the defendant acted with intent to cause the death of another person.

Murder is punishable as a class A felony unless the death penalty is imposed as provided by section 48.

ARTICLE 11. ASSAULT AND RELATED OFFENSES.

Sec. 62. Assault in the first degree.

A person is guilty of assault in the first degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or
3. Under circumstances evincing an extreme indifference to human life he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person.

Assault in the first degree is a class B felony.

Sec. 63. Assault in the second degree.

A person is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or
2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
3. With intent to prevent a peace officer from performing a lawful duty, he causes physical injury to such peace officer; or



4. He recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

5. For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the same.

Assault in the second degree is a class D felony.

Sec. 64. Assault in the third degree.

A person is guilty of assault in the third degree when:

1. With intent to cause physical injury to another person, he causes such injury to such person or to a third person; or

2. He recklessly causes serious physical injury to another person; or

3. With criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a class A misdemeanor.

Sec. 65. Threatening.

A person is guilty of threatening when, by physical threat, he intentionally places or attempts to place another person in fear of imminent serious physical injury, or when he threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.

Threatening is a class A misdemeanor.

Sec. 66. Reckless endangerment in the first degree.

A person is guilty of reckless endangerment in the first degree when, under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of serious physical injury to another person.

Reckless endangerment in the first degree is a class A misdemeanor.

Sec. 67. Reckless endangerment in the second degree.

A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of physical injury to another person.

Reckless endangerment in the second degree is a class B misdemeanor.

## ARTICLE 12. SEX OFFENSES.

Sec. 68. Definitions.

The following definitions are applicable to this article:

1. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight. Its meaning is limited to persons not married to each other.

2. "Deviate sexual intercourse" means (a) sexual contact between persons not married to each other consisting of contact between penis and the anus, the mouth and the penis, or the mouth and the vulva, or (b) any form of sexual conduct with an animal or dead body.

3. "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party.

4. "Female" means any female person who is not married to the actor.

5. "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.

6. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or owing to any other act committed upon him without his consent.

7. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

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

Sec. 59. Lack of consent.

1. Lack of consent results from:

- (a) forcible compulsion; or
- (b) incapacity to consent; or
- (c) where the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

2. A person is deemed incapable of consent when he is:

- (a) less than sixteen years old; or
- (b) mentally defective; or
- (c) mentally incapacitated; or
- (d) physically helpless.

Sec. 70. Affirmative defenses.

1. Lack of knowledge. In any prosecution for an offense under this article in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally defective, mentally incapacitated or physically helpless, it is an



affirmative defense that the defendant, at the time he engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

2. Reasonable mistake of age. In any prosecution for an offense under this article in which the criminality of the actor's conduct depends on the alleged victim's age being below a critical age other than eleven, it is an affirmative defense to such offense that the actor reasonably believed the alleged victim to be above the critical age.

3. Spouse relationships. In any prosecution for an offense under this article it is an affirmative defense that the defendant and alleged victim were, at the time of the alleged offense, living together by mutual consent in a relationship of cohabitation as man and wife, regardless of the legal status of their relationship.

Sec. 71. Corroboration.

A person shall not be convicted of any offense defined in this article, or of an attempt to commit the same, solely on the uncorroborated testimony of the alleged victim. Corroboration may be circumstantial. This section shall not apply to the offense of sexual abuse in the third degree, nor to the offenses of prostitution, patronizing a prostitute, promoting prostitution or permitting prostitution.

Sec. 72. Prompt complaint.

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



Sec. 73. Sexual misconduct in the first degree.

A person is guilty of sexual misconduct in the first degree when:

1. He has sexual intercourse with another person, or engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse, and

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

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

Sexual misconduct in the first degree is a class D felony.

Sec. 74. Sexual misconduct in the second degree.

A person is guilty of sexual misconduct in the second degree when:

1. Being a male, he engages in sexual intercourse with a female without her consent; or

2. He engages in deviate sexual intercourse with another person without the latter's consent; or

3. He engages in sexual conduct with an animal or dead body.

Sexual misconduct in the second degree is a class A misdemeanor.

Sec. 75. Rape in the first degree.

A male is guilty of rape in the first degree when he engages in sexual intercourse with a female:

1. By forcible compulsion; but it is an affirmative defense to prosecution under this subsection 1 that the female had previously consensually engaged in sexual intercourse with the actor; or

2. Who is incapable of consent by reason of being physically helpless; or



3. Who is less than eleven years of age.  
Rape in the first degree is a class B felony.

Sec. 76. Rape in the second degree.

A male is guilty of rape in the second degree when he engages in sexual intercourse with a female:

1. By forcible compulsion; or
2. When he is eighteen years old or more and the female is less than fourteen years old.

Rape in the second degree is a class C felony.

Sec. 77. Rape in the third degree.

A male is guilty of rape in the third degree when:

1. He engages in sexual intercourse with a female who is incapable of consent by reason of some factor other than being less than sixteen years old; or
2. Being twenty-one years old or more, he engages in sexual intercourse with a female less than sixteen years old.

Rape in the third degree is a class D felony.

Sec. 78. Deviate sexual intercourse in the first degree.

A person is guilty of deviate sexual intercourse in the first degree when he engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse:

1. By forcible compulsion; but it is an affirmative defense to prosecution under this subsection 1, that the other person had previously consensually engaged in deviate sexual intercourse with the actor; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old.

Deviate sexual intercourse in the first degree is a class B felony.

Sec. 79. Deviate sexual intercourse in the second degree.

A person is guilty of deviate sexual intercourse in the second degree when he engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse:

1. By forcible compulsion; or
2. When he is eighteen years old or more and the other person is less than fourteen years old.

Deviate sexual intercourse in the second degree is a class C felony.

\* Sec. 80. Deviate sexual intercourse in the third degree.

A person is guilty of deviate sexual intercourse in the third degree when he engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse, and

1. The other person is incapable of consent by reason of some factor other than being less than sixteen years old; or
2. He is twenty-one years old or more and the other person is less than sixteen years old.

Deviate sexual intercourse in the third degree is a class D felony.

Sec. 81. Sexual abuse in the first degree.

A person is guilty of sexual abuse in the first degree when he subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than eleven years old.

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

Sec. 82. Sexual abuse in the second degree.

A person is guilty of sexual abuse in the second degree when he subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than sixteen years old; or
2. Less than fourteen years old.

Sexual abuse in the second degree is a class D felony.

Sec. 83. Sexual abuse in the third degree.

A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that:

1. Such other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen years old, and
2. Such other person was more than fourteen years old, and
3. The defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class A misdemeanor.

Sec. 84. Prostitution.

A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

Prostitution is a class A misdemeanor.

Sec. 85. Patronizing a prostitute.

A person is guilty of patronizing a prostitute when:

1. Pursuant to a prior understanding, he pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him; or

2. He pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him; or

3. He solicits or requests another person to engage in sexual conduct with him in return for a fee.

Patronizing a prostitute is a class A misdemeanor.

Sec. 86. Prostitution and patronizing a prostitute; no defense.

In any prosecution for prostitution or patronizing a prostitute, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated or solicited is immaterial, and it is no defense that:

1. Such persons were of the same sex; or
2. The person who received, agreed to receive or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was a female.

Sec. 87. Promoting prostitution; definition of terms.

The following definitions are applicable to this article:

1. "Advance prostitution." A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.

2. "Profit from prostitution." A person "profits from prostitution" when, acting other than as a prostitute receiving

compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.

Sec. 88. Promoting prostitution in the third degree.

A person is guilty of promoting prostitution in the third degree when he knowingly advances or profits from prostitution.

Promoting prostitution in the third degree is a class D felony.

Sec. 89. Promoting prostitution in the second degree.

A person is guilty of promoting prostitution in the second degree when he knowingly:

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes; or

2. Advances or profits from prostitution of a person less than nineteen years old.

Promoting prostitution in the second degree is a class C felony.

Sec. 90. Promoting prostitution in the first degree.

A person is guilty of promoting prostitution in the first degree when he knowingly:

1. Advances prostitution by compelling a person by force or intimidation to engage in prostitution, or profits from coercive conduct by another; or

2. Advances or profits from prostitution of a person less than sixteen years old.

Promoting prostitution in the first degree is a class A felony.

Sec. 91. Permitting prostitution.

A person is guilty of permitting prostitution when, having possession or control of premises which he knows are being used for prostitution purposes, he fails to make reasonable effort to halt or abate such use.

Permitting prostitution is a class A misdemeanor.

Sec. 92. Venereal examination.

The court before which is pending any case involving a violation of any provision of this article may, before final disposition of such case, order the examination of the accused person to determine whether or not he is suffering from any venereal disease, unless the court from which such case has been bound over has ordered the examination of the accused person for such purpose, in which event the court to which such bindover is taken may determine that a further examination is unnecessary. A report of the result of such examination shall be filed with the state department of health on a form supplied by it. If such examination discloses the presence of venereal disease, the court may make such order with reference to the continuance of the case or detention, treatment or other disposition of such person as the public health and welfare require. Such examination shall be conducted at the expense of the state department of health. Any person who fails to comply with any order of any court under the provisions of this section shall be guilty of a class C misdemeanor.

## ARTICLE 13. KIDNAPPING AND RELATED OFFENSES.

Sec. 93. Unlawful imprisonment, kidnapping and custodial interference; definition of terms.

The following definitions are applicable to this article:

1. "Restrain" means to restrict a person's movements intentionally and unlawfully in such a manner as to interfere

substantially with his liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in a place to which he has been moved, without consent. As used herein "without consent" includes, without limitation, (a) deception, and (b) any means whatever, including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and the parent guardian or other person or institution having lawful control or custody of him has not acquiesced in the movement or confinement.

2. "Abduct" means to restrain a person with intent to prevent his liberation by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use physical force or intimidation. Whether or not the victim is in a place where he is not likely to be found is to be determined by reference to his ordinary and usual circumstances.

3. "Relative" means a parent, ancestor, brother, sister, uncle or aunt.

Sec. 94. Kidnapping in the first degree.

A person is guilty of kidnapping in the first degree when he abducts another person and when:

1. His intent is to compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct, or to refrain from engaging in particular conduct; or
2. He restrains the person abducted with intent to:
  - (a) inflict physical injury upon him or violate or abuse him sexually; or
  - (b) accomplish or advance the commission of a felony; or
  - (c) terrorize him or a third person; or
  - (d) interfere with the performance of a government function; or

3. The person abducted dies during the abduction or before he is able to return or to be returned to safety. Such death shall be presumed, in a case where such person was less than sixteen years old or an incompetent person at the time of the abduction, from evidence that his parents, guardians or other lawful custodians did not see or hear from him following the termination of the abduction and prior to trial and received no reliable information during such period persuasively indicating that he was alive. In all other cases, such death shall be presumed from evidence that a person whom the person abducted would have been extremely likely to visit or communicate with during the specified period were he alive and free to do so did not see or hear from him during such period and received no reliable information during such period persuasively indicating that he was alive.

Sec. 95. Kidnapping in the first degree; punishment; plea of guilty.

1. Kidnapping in the first degree is punishable as a class A felony unless the death sentence is imposed as provided by section 48.

2. When the court and the state's attorney consent, a person indicted for kidnapping in the first degree may plead guilty thereto, in which case the court shall sentence him as for a class A felony.

3. When a defendant has been found guilty after trial of kidnapping in the first degree, the court shall discharge the jury if there be one, and shall sentence the defendant as for a class A felony if it is satisfied (a) that the person kidnapped has been voluntarily returned alive or voluntarily released alive under circumstances enabling him to return to safety without substantial risk of death, or (b) that the sentence of death is not warranted because of substantial mitigating circumstances.

Sec. 96. Kidnapping in the first degree; proceeding to determine sentence; appeal.

1. When a defendant has been found guilty after trial of kidnapping in the first degree, unless the court sentences the defendant as for a class A felony as provided in subsection 2 or 3 of section 95, it shall thereupon conduct a proceeding to determine whether the defendant should be sentenced as for a class A felony or to death. Such proceeding shall be conducted in the manner prescribed in section 48 for determination of the penalty for murder, and all the provisions of said section 48 relating to procedure and to determination and imposition of sentence, appeal, remand and resentence are here applicable.

Sec. 97. Kidnapping in the second degree.

A person is guilty of kidnapping in the second degree when he abducts another person.

Kidnapping in the second degree is a class B felony.

Sec. 98. Unlawful imprisonment in the first degree.

A person is guilty of unlawful imprisonment in the first degree when he restrains another person under circumstances which expose the latter to a substantial risk of physical injury.

Unlawful imprisonment in the first degree is a class D felony.

Sec. 99. Unlawful imprisonment in the second degree.

A person is guilty of unlawful imprisonment in the second degree when he restrains another person.

Unlawful imprisonment in the second degree is a class A misdemeanor.

Sec. 100. Custodial interference in the first degree.

A person is guilty of custodial interference in the first degree when he commits the crime of custodial interference in the second degree (a) under circumstances which expose the person

taken or enticed from lawful custody to a risk that his safety will be endangered or his health materially impaired, or (b) and he takes or entices the child or person out of this state.

Custodial interference in the first degree is a class D felony.

Sec. 101. Custodial interference in the second degree.

A person is guilty of custodial interference in the second degree when:

1. Being a relative of a child less than sixteen years old, intending to hold such child permanently or for a protracted period, and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; or

2. Knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution.

Custodial interference in the second degree is a class A misdemeanor.

Sec. 102. Substitution of children.

A person is guilty of substitution of children when, having been temporarily entrusted with a child less than one year old and intending to deceive a parent, guardian or other lawful custodian of such child, he substitutes, produces or returns to such parent, guardian or custodian a child other than the one entrusted.

Substitution of children is a class D felony.

ARTICLE 14. ABORTION AND RELATED OFFENSES.

Sec. 103. Definitions.

"Abortion" as used in this article means the termination of the pregnancy of a woman by means other than live birth with the intention to terminate said pregnancy by said means.

Sec. 104. Justified abortion.

a) A duly licensed physician or surgeon is authorized to perform, aid, assist or attempt an abortion only if each of the following requirements is met:

1. The abortion takes place in a hospital accredited by the Joint Commission on Accreditation of Hospitals.

2. The abortion is approved in advance by a committee consisting of not less than three members of the medical staff of the hospital. Said advance approval is not necessary if the physician or surgeon performing the abortion certifies to the committee within 24 hours thereafter that an emergency existed endangering the life of the woman, and that said emergency required immediate action in order to preserve the life of the woman.

3. Except as provided in the second sentence of paragraph 2 of this section, the committee finds that one or more of the following conditions exist:

(a) the abortion is necessary to preserve the life of the woman.

(b) the pregnancy resulted from rape or incest.

(c) the woman, at the time of conception, was less than seventeen years old, unmarried, and is unmarried at the time of the abortion.

4. Except in the case of an abortion justified on the grounds that it is necessary to preserve the life of the woman, the woman was:

(a) in the case of an abortion justified under paragraph 3(b) of this section, a resident of this state at the time of the rape or incest; or

(b) in the case of an abortion justified under paragraph 3(c) of this section, a resident of this state at the time of conception.

5. The woman requests the abortion; except that:
- (a) if the woman is less than 14 years old, her parent or guardian must request the abortion; and
  - (b) if the woman is 14 years old or more, both she and her parent or guardian must request the abortion; and
  - (c) if the woman is incompetent, the conservator of her person must request the abortion.

6. The abortion is not performed after the 20th week of pregnancy, except in the case of an abortion justified on the ground that it is necessary to preserve the life of the woman.

b) . The hospital committee shall not approve the performance of an abortion on the ground that the pregnancy resulted from rape or incest except in accordance with the following procedure:

1. Upon receipt of an application for an abortion on the ground that the pregnancy resulted from rape or incest, the committee shall immediately notify the State's Attorney of the county in which the alleged rape or incest occurred, except as hereinafter provided, of the application, and transmit to the State's Attorney the affidavit of the applicant attesting to the facts establishing the alleged rape or incest. If the alleged rape or incest occurred outside this state but the applicant at that time was a resident of this state, the committee shall so notify and transmit to the State's Attorney of the county in which the hospital is located. If the State's Attorney informs the committee that there is probable cause to believe that the pregnancy resulted from a rape or incest, the committee may approve the abortion. If, within fifteen days after the committee has notified the State's Attorney of the application, the committee does not receive a reply from the State's Attorney, it may approve the abortion. If the State's Attorney informs the committee that there is no probable cause to believe the alleged offense did occur, the committee shall not approve the

abortion, except as hereinafter provided.

2. If the State's Attorney informs the committee that there is no probable cause to believe the alleged offense did occur, the person who applied for the abortion may petition the Superior Court for the county in which the alleged rape or incest occurred, or in a case in which the alleged rape or incest occurred outside this state the county in which the hospital is located, to determine whether the pregnancy resulted from rape or incest. Hearing on the petition shall be set for a date no later than one week after the date of filing of the petition.

The State's Attorney shall file an affidavit with the court stating the reasons for his conclusion that the alleged offense did not occur, and this affidavit shall be received in evidence. The State's Attorney may appear at the hearing to offer further evidence or to examine witnesses.

If the court finds that it has been proved, by a preponderance of the evidence, that the pregnancy resulted from a rape or incest, it shall issue an order so declaring, and the committee may approve the abortion. Any hearing granted under this section may, in the court's discretion, be held in camera. The testimony, findings, conclusions or determinations of the court in a proceeding under this section shall be inadmissible as evidence in any other action or proceeding, except that the testimony of any witness in a proceeding under this section shall be admissible as evidence in any prosecution of that witness for perjury. Nothing herein shall be construed to prevent the appearance of any witness who testified in a proceeding under this section, or to prevent the introduction of any evidence that may have been introduced in a proceeding under this section, in any other action or proceeding. "State's Attorney" as used herein shall include an Assistant State's Attorney.

c) Nothing in this section shall require any hospital to admit any patient for the purpose of performing an abortion or to

establish a committee as defined in this section; nor shall any hospital be liable for its failure or refusal to participate in any such procedures, provided that the hospital informs the patient of its election not to participate. Any person who is a member of or associated with the medical staff of, or any employee of, a hospital in which a justified abortion has been authorized may refuse, in writing to the hospital, to participate in any way in such procedure; and that person shall not be liable, nor subject to any disciplinary action, for such refusal.

Sec. 105. Illegal abortion.

Any person who performs an abortion on another person, other than a justified abortion as defined in section 104, is guilty of illegal abortion.

Illegal abortion is a class C felony.

Sec. 106. Illegal self-abortion.

Any person who performs or submits to an abortion on herself, other than a justified abortion as defined in section 104, is guilty of illegal self-abortion.

Illegal self-abortion is a class A misdemeanor.

Sec. 107. Illegal abortion; manslaughter.

Any person who performs an illegal abortion which results in the death of the woman is guilty of manslaughter in the first degree.

Sec. 108. Issuing abortifacient articles.

A person is guilty of issuing abortifacient articles when he manufactures, sells, offers to sell, advertises, possesses with intent to sell or advertise, or delivers any instrument, article, medicine, drug or substance with intent that the same be used to perform an illegal abortion or illegal self-abortion.

Issuing abortifacient articles is a class B felony.

Sec. 109. Concealment of delivery.

Any person who intentionally conceals the delivery of any child, whether said child was delivered alive or dead, is guilty of concealment of delivery.

Concealment of delivery is a class A misdemeanor.

ARTICLE 15. BURGLARY, CRIMINAL TRESPASS, ARSON,  
CRIMINAL MISCHIEF AND RELATED OFFENSES.Sec. 110. Definitions.

The following definitions are applicable to this article:

1. "Building" in addition to its ordinary meaning, includes any watercraft, aircraft, trailer, sleeping car, or other structure or vehicle, adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not occupied by the actor is, in addition to being a part of such building, a separate building.

2. "Dwelling" means a building which is usually occupied by a person lodging therein at night, whether or not a person is actually present.

3. "Night" means the period between thirty minutes after sunset and thirty minutes before sunrise.

The following definition is applicable only to the sections on burglary.

1. "Enter or remain unlawfully." A person "enters or remains unlawfully" in or upon premises when the premises, at the time of such entry or remaining, are not open to the public and when the actor is not otherwise licensed or privileged to do so.

Sec. 111. Burglary in the first degree.

A person is guilty of burglary in the first degree when he enters or remains unlawfully in a building with intent to commit a crime therein and when:

1. he is armed with explosives or a deadly weapon; or
2. in the course of committing the offense, he intentionally, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone.

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

Burglary in the first degree is a class B felony.

Sec. 112. Burglary in the second degree.

A person is guilty of burglary in the second degree when he enters or remains unlawfully in a dwelling at night with intent to commit a crime therein.

Burglary in the second degree is a class C felony.

Sec. 113. Burglary in the third degree.

A person is guilty of burglary in the third degree when he enters or remains unlawfully in a building with intent to commit a crime therein.

Burglary in the third degree is a class D felony.

Sec. 114. Affirmative defense.

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

Sec. 115. Multiple convictions.

A person may not be convicted both for burglary and for the offense which it was his intent to commit after the burglarious entry or remaining unless the additional offense constitutes a felony.

Sec. 116. Manufacture or possession of burglar's tools.

A person is guilty of manufacturing or possession of burglar's

tools when he manufactures or has in his possession any tool, instrument or other thing adapted, designed or commonly used for advancing or facilitating offenses involving unlawful entry into premises, or offenses involving forcible breaking of safes or other containers or depositories of property, under circumstances manifesting an intent to use or knowledge that some person intends to use the same in the commission of an offense of such character.

Manufacture or possession of burglar's tools is a class A misdemeanor.

Sec. 117. Criminal trespass in the first degree.

A person is guilty of criminal trespass in the first degree when, knowing that he is not licensed or privileged to do so, he enters or remains in a building or any other premises in defiance of an order to leave or not to enter personally communicated to him by the owner of the premises or other authorized person.

Criminal trespass in the first degree is a class A misdemeanor.

Sec. 118. Criminal trespass in the second degree.

A person is guilty of criminal trespass in the second degree when, knowing that he is not licensed or privileged to do so, he enters or remains in a building.

Criminal trespass in the second degree is a class B misdemeanor.

Sec. 119. Criminal trespass in the third degree.

A person is guilty of criminal trespass in the third degree when, knowing that he is not licensed or privileged to do so, he enters or remains in premises which are posted in a manner prescribed by law or reasonably likely to come to the attention of intruders, or fenced or otherwise enclosed in a

manner designed to exclude intruders, or which belong to the state and are appurtenant to any state institution.

Criminal trespass in the third degree is a class C misdemeanor.

**Sec. 120. Affirmative defenses.**

It is an affirmative defense to prosecution for criminal trespass that:

1. the building involved in the offense was abandoned; or
2. the premises were at the time of the entry or remaining open to the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or
3. the actor reasonably believed that the owner of the premises, or a person empowered to license access thereto, would have licensed him to enter or remain, or that he was licensed to do so.

**Sec. 121. Arson in the first degree.**

A person is guilty of arson in the first degree if, with intent to destroy or damage a building, he starts a fire or causes an explosion, and

1. at the time, another person is present in such building or is so close to such building as to be in substantially the same danger as a person in such building would be, and
2. the actor is either aware that a person is present in or close to such building, or his conduct manifests an indifference as to whether a person is present in or close to such building.

Arson in the first degree is a class B felony.

**Sec. 122. Arson in the second degree.**

A person is guilty of arson in the second degree if he starts a fire or causes an explosion

1. with intent to destroy or damage a building
  - (a) of another, or
  - (b) whether his own or another's, to collect insurance for such loss, and
2. such act subjects another person to a substantial risk of bodily injury or another building to a substantial risk of destruction or damage.

Arson in the second degree is a class C felony.

Sec. 123. Arson in the third degree.

A person is guilty of arson in the third degree if he recklessly causes destruction or damage to a building of another by intentionally starting a fire or causing an explosion.

Arson in the third degree is a class D felony.

Sec. 124. Reckless burning.

A person is guilty of reckless burning if he intentionally starts a fire or causes an explosion, whether on his own property or another's, and thereby recklessly places a building of another in danger of destruction or damage.

Reckless burning is a class A misdemeanor.

Sec. 125. Criminal mischief in the first degree.

A person is guilty of criminal mischief in the first degree when:

1. with intent to cause damage to tangible property of another and having no reasonable ground to believe that he has a right to do so, he damages tangible property of another in an amount exceeding one thousand five hundred dollars, or
2. with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that he has a right to do so, he damages or tampers

with tangible property of a common carrier, gas, electric, waterworks, telephone or telegraph company, or any other public utility or mode of public transportation, power or communication, and thereby causes an interruption or impairment of service rendered to the public.

Criminal mischief in the first degree is a class D felony.

Sec. 126. Criminal mischief in the second degree.

A person is guilty of criminal mischief in the second degree when:

1. with intent to cause damage to tangible property of another and having no reasonable ground to believe that he has a right to do so, he damages tangible property of another in an amount exceeding two hundred fifty dollars, or

2. with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that he has a right to do so, he damages or tampers with tangible property of a common carrier, gas, electric, waterworks, telephone or telegraph company, or any other public utility or mode of public transportation, power or communication, and thereby causes a risk of interruption or impairment of service rendered to the public.

Criminal mischief in the second degree is class A misdemeanor.

Sec. 127. Criminal mischief in the third degree.

A person is guilty of criminal mischief in the third degree when, having no reasonable ground to believe that he has a right to do so, he

1. intentionally or recklessly

(a) damages tangible property of another, or

(b) tampers with tangible property of another to be placed in danger of damage; or

2. damages tangible property of another by negligence in

the employment of or causing of fire, explosives, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage.

Criminal mischief in the third degree is a class B misdemeanor.

ARTICLE 16. LARCENY, ROBBERY AND RELATED OFFENSES.

Sec. 128. Definitions.

The following definitions are applicable to this article:

1. "Property" means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits or other equipment shall be deemed a rendition of a service path than a sale or delivery of property.
2. "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.
3. "Deprive." To "deprive" another of property means (a) to withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him, or (b) to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.
4. "Appropriate." To "appropriate" property of another to oneself or a third person means (a) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to

acquire the major portion of its economic value or benefit, or  
(b) to dispose of the property for the benefit of oneself or a  
third person.

5. "Owner." When property is taken, obtained or withheld  
by one person from another person, an "owner" thereof means any  
person who has a right to possession thereof superior to that  
of the taker, obtainer or withholder.

A person who has obtained possession of property by theft  
or other illegal means shall be deemed to have a right of  
possession superior to that of a person who takes, obtains or  
withholds it from him by larcenous means.

A joint or common owner of property shall not be deemed to  
have a right of possession thereto superior to that of any other  
joint or common owner thereof.

In the absence of a specific agreement to the contrary, a  
person in lawful possession of property shall be deemed to have  
a right of possession superior to that of a person having only a  
security interest therein, even if legal title lies with the  
holder of the security interest pursuant to a conditional sale  
contract or other security agreement.

Sec. 129. Larceny; defined.

1. A person steals property and commits larceny when, with  
intent to deprive another of property or to appropriate the  
same to himself or a third person, he wrongfully takes, obtains  
or withholds such property from an owner thereof.

2. Larceny includes a wrongful taking, obtaining or with-  
holding of another's property, with the intent prescribed in sub-  
section 1 of this section, committed in any of the following ways:

(a) by embezzlement. A person commits embezzlement when  
he wrongfully appropriates property of another to himself or  
to another which was in his care or custody.

(b) by obtaining property by false pretenses. A person obtains property by false pretenses when he, by any false token, pretense or device, obtains from another any property, with intent to defraud him or any other person.

(c) by obtaining property by false promise.

A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct. In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed.

(d) by acquiring property lost, mislaid or delivered by mistake.

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

(e) by extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or a third person by means of instilling in him a fear

that, if the property is not so delivered, the actor or another will:

- (i) cause physical injury to some person in the future; or
- (ii) cause damage to property; or
- (iii) engage in other conduct constituting a crime; or
- (iv) accuse some person of a crime or cause criminal charges to be instituted against him; or

(v) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(vi) cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or

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

(viii) use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(ix) inflict any other harm which would not benefit the actor.

(f) by committing the crime of defrauding of public community by officer. Any officer or agent of any public community is guilty of defrauding of public community by officer, who, with intent to prejudice it, appropriates its property to the use of any person or draws any order upon its treasury or presents or aids in procuring to be allowed any fraudulent claim against such community. For purposes of this section said order or claim shall be deemed to be property.

(g) by committing the crime of theft of services as defined in section 130.

Sec. 130. Theft of services.

The following definitions are applicable to this section.

1. "Service" includes, but is not limited to, labor, professional service, public utility and transportation service, the supplying of hotel accommodations, restaurant services, entertainment, and the supplying of equipment for use.

2. "Credit card" means any instrument, whether known as a credit card, credit plate, charge plate, or by any other name, which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

A person is guilty of theft of services when:

1. With intent to defraud, he obtains or attempts to obtain a service, or induces or attempts to induce the supplier of rendered service to agree to payment therefor on a credit basis, by the use of a credit card which he knows to be stolen, forged, revoked, cancelled, unauthorized or in any way invalid for the purpose; or

2. With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids or attempts to avoid such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false; or

3. With intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor or to avoid payment of the lawful charge for such transportation service which has been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or



Sec. 131. Value of stolen property or services.

For the purposes of this article, the value of property or services shall be ascertained as follows:

1. Except as otherwise specified in this section, value means the market value of the property or services at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property or services within a reasonable time after the crime.

2. Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

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

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

3. When the value of property or services cannot be satisfactorily ascertained pursuant to the standards set forth in subsections 1 and 2 of this section, its value shall be deemed to be an amount less than fifty dollars.

Amounts included in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

Sec. 132. Larceny in the first degree.

A person is guilty of larceny in the first degree when he steals property and when:

1. the property regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will (a) cause physical injury to some person in the future, or (b) cause damage to property, or (c) use or abuse his position as a public servant by engaging in conduct within or related to his official duties or by failing or refusing to perform an official duty, in such a manner as to affect some person adversely, or
2. the value of the property exceeds two thousand dollars.

Larceny in the first degree is a class D felony.

Sec. 133. Larceny in the second degree.

A person is guilty of larceny in the second degree when he steals property and when the value of the property exceeds five hundred dollars.

Larceny in the second degree is a class A misdemeanor.

Sec. 134. Larceny in the third degree.

A person is guilty of larceny in the third degree when he steals property and when:

1. The value of the property exceeds fifty dollars; or
2. The property consists of a public record, writing or instrument kept, held or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of a sample, culture, microorganism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a secret scientific or technical process, invention or formula or any phase or part thereof. A process, invention or formula is "secret" when it is not, and is not

intended to be, available to anyone other than the owner thereof or selected persons having access thereto for limited purposes with his consent, and when it accords or may accord the owner an advantage over competitors or other persons who do not have knowledge or the benefit thereof; or

4. The property, regardless of its nature and value, is taken from the person of another; or

5. The property, regardless of its nature and value, is obtained by extortion.

Larceny in the third degree is a class B misdemeanor.

Sec. 135. Larceny in the fourth degree.

A person is guilty of larceny in the fourth degree when he steals property.

Larceny in the fourth degree is a class C misdemeanor.

Sec. 136. Receiving stolen property.

A person is guilty of larceny by receiving stolen property if he receives, retains, or disposes of stolen property knowing that it has probably been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending or the security of the property.

Larceny by receiving stolen property is a class B felony, unless the value of the property is less than three hundred dollars, in which case it is a class A misdemeanor.

Sec. 137. Diversion from state of benefit of labor of employees.

Any person who fraudulently procures or attempts to procure, for himself or another, from any employee of the state or any department thereof, the benefit of any labor which the state or any department thereof is entitled to receive from such employee during his hours of employment or fraudulently aids or assists in

procuring or attempting to procure the benefit of any such labor shall be guilty of diversion from the state of benefit of labor of employees.

Diversion from the state of benefit of labor of employees is a class A misdemeanor.

Sec. 138. Issuing a bad check; definition.

The following definitions are applicable to this section.

1. "Check" means any check, draft or similar sight order for the payment of money which is not post-dated with respect to the time of utterance.

2. "Drawer" of a check means a person whose name appears thereon as the primary obligor, whether the actual signature be that of himself or of a person purportedly authorized to draw the check in his behalf.

3. "Representative drawer" means a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor.

4. "Utter." A person "utters" a check when, as a drawer or representative drawer thereof, he delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to such check. One who draws a check with intent that it be so delivered is deemed to have uttered it if the delivery occurs.

5. "Pass." A person "passes" a check when, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and uttered by another, he delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect thereto.

6. "Funds" means money or credit.

7. "Insufficient funds." A drawer has "insufficient funds" with a drawee to cover a check when he has no funds or account whatever, or funds in an amount less than that of the check; and

a check dishonored for "no account" shall also be deemed to have been dishonored for "insufficient funds."

8. "Credit." "Credit" means an arrangement or understanding with such bank or depository for the payment of such check, draft or order in full on presentation.

A person is guilty of issuing a bad check when:

1. As a drawer or representative drawer, he utters a check knowing that he or his principal, as the case may be, does not then have sufficient funds with the drawee to cover it, and (a) he intends or believes at the time of utterance that payment will be refused by the drawee upon presentation, and (b) payment is refused by the drawee upon presentation; or

2. He passes a check knowing that the drawer thereof does not then have sufficient funds with the drawee to cover it, and (a) he intends or believes at the time the check is passed that payment will be refused by the drawee upon presentation, and (b) payment is refused by the drawee upon presentation.

For the purposes of this section, an issuer is presumed know that the check or order (other than a post-dated check or order) would not be paid, if:

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

(b) payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue and the issuer failed to make good within 9 days after receiving notice of that refusal.

Issuing a bad check is a class A misdemeanor.

Sec. 139. Misapplication of property.

1. A person is guilty of misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that the same will be returned to the owner at a future time, he loans, leases, pledges, pawns or otherwise encumbers

such property without the consent of the owner thereof in such manner as to create a risk that the owner will not be able to recover it or will suffer pecuniary loss.

2. In any prosecution under this section, it is a defense that, at the time the prosecution was commenced, (a) the defendant had recovered possession of the property, unencumbered as a result of the unlawful disposition, and (b) the owner had suffered no material economic loss as a result of the unlawful disposition.

Misapplication of property is a class A misdemeanor.

Sec. 149. Criminal impersonation.

A person is guilty of criminal impersonation when he:

1. Impersonates another and does an act in such assumed character with intent to obtain a benefit or to injure or defraud another; or

2. Pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit or to injure or defraud another; or

3. Pretends to be a public servant, or wears or displays without authority any uniform or badge by which such public servant is lawfully distinguished, with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

Criminal impersonation is a class B misdemeanor.

Sec. 151. Unlawfully concealing a will.

A person is guilty of unlawfully concealing a will, when, with intent to defraud, he conceals, secretes, suppresses, mutilates, or destroys a will, codicil or other testamentary instrument.

Unlawfully concealing a will is a class A misdemeanor.

Sec. 142. False entry by officer or agent of public community.

Any officer or agent of any public community is guilty of false entry by officer or agent of public community who makes any intentionally false entry on its books.

False entry by officer or agent of public community is a class A misdemeanor.

Sec. 143. Robbery; definition.

Robbery is forcible stealing. A person forcibly steals property and commits robbery when in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of:

1. preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or
2. compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.

Sec. 144. Robbery in the first degree.

A person is guilty of robbery in the first degree when he forcibly steals property and when in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:

1. causes serious physical injury to any person who is not a participant in the crime; or
  2. is armed with a deadly weapon or dangerous instrument.
- Robbery in the first degree is a class B felony.

Sec. 145. Robbery in the second degree.

A person is guilty of robbery in the second degree when he forcibly steals property and when:

1. he is aided by another person actually present; or

2. he or another participant in the crime threatens the use of what purports to be or what he represents by his words or conduct to be a deadly weapon or a dangerous instrument.

Robbery in the second degree is a class C felony.

Sec. 146. Robbery in the third degree.

A person is guilty of robbery in the third degree when he forcibly steals property.

Robbery in the third degree is a class C felony.

ARTICLE 17. FORGERY AND RELATED OFFENSES.

Sec. 147. Definitions.

The following definitions are applicable to this article:

1. "Written instrument" means any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

2. "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof. An endorsement, attestation, acknowledgment or other similar signature or statement is deemed both a complete written instrument in itself and a part of the main instrument in which it is contained or to which it attaches.

3. "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

4. "Falsely make." A person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but

which is not such either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof.

5. "Falsely complete." A person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

6. "Falsely alter." A person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

7. "Forged instrument" means a written instrument which has been falsely made, completed or altered.

Sec. 148. Forgery in the first degree.

A person is guilty of forgery in the first degree when, with intent to defraud, deceive or injure another, he falsely makes, completes, or alters a written instrument or utters or possesses any written instrument which he knows to be forged, which is or purports to be, or which is calculated to become or represent if completed:

1. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality; or

2. Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property.

Forgery in the first degree is a class D felony.

Sec. 149. Forgery in the second degree.

A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument or utters or possesses any written instrument which he knows to be forged, which is or purports to be, or which is calculated to become or represents if completed:

1. A deed, will, codicil, contract, assigned, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or

2. A public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or

3. A written instrument officially issued or created by a public office, public servant or governmental instrumentality; or

4. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

"Drugs" as defined in this section includes all drugs except narcotic drugs or controlled drugs as defined in Section 19-443.

Forgery in the second degree is a class A misdemeanor.

Sec. 150. Forgery in the third degree.

A person is guilty of forgery in the third degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument, or alters or possesses any written instrument which he knows to be forged.

Forgery in the third degree is a class B misdemeanor.

Sec. 151. Criminal simulation.

A person is guilty of criminal simulation when:

1. With intent to defraud, he makes or alters any object in such manner that it appears to have an antiquity, rarity, source or authorship which it does not in fact possess; or
2. With knowledge of its true character and with intent to defraud, he utters or possesses an object so simulated.

Criminal simulation is a class A misdemeanor.

Sec. 152. Forgery of symbols of value.

A person is guilty of forgery of symbols of value when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument or utters or possesses any written instrument which he knows to be forged, which is or purports to be, or which is calculated to become or represent if completed part of an issue of tokens, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services.

Forgery of symbols of value is a class A misdemeanor.

Sec. 153. Unlawfully using slugs; definition of terms.

The following definitions are applicable to sections 154 and 155.

1. "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle designed (a) to receive a coin or bill or token made for the purpose, and (b) in return for the insertion or deposit thereof, automatically to offer, to provide, to assist in providing or to permit the acquisition of some property or some service.

2. "Slug" means an object or article which, by virtue of its size, shape or any other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill or token.

3. "Value" of a slug means the value of the coin, bill or token for which it is capable of being substituted.

Sec. 154. Unlawfully using slugs in the second degree.

A person is guilty of unlawfully using slugs in the second degree when:

1. With intent to defraud the owner of a coin machine, he inserts or deposits a slug in such machine; or

2. He makes, possesses or disposes of a slug with intent to enable a person to insert or deposit it in a coin machine.

Unlawfully using slugs in the second degree is a class C misdemeanor.

Sec. 155. Unlawfully using slugs in the first degree.

A person is guilty of unlawfully using slugs in the first degree when he makes, possesses or disposes of slugs with intent to enable a person to insert or deposit them in a coin machine, and the value of such slugs exceeds one hundred dollars.

Unlawfully using slugs in the first degree is a class B misdemeanor.

ARTICLE 18. BRIBERY, OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE, AND RELATED OFFENSES.

Sec. 156. Definitions. For purposes of this article:

1. An "official proceeding" is any proceeding held or which may be held before any legislative, judicial, administrative or other agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner or notary or other person taking evidence in connection with any proceeding.

2. "Benefit" means gain or advantage, or anything regarded by the beneficiary as a gain or advantage, including benefit to any person or entity in whose welfare he is interested.

3. "Public Servant" is any officer or employee of government, elected or appointed, and any person participating as advisor, consultant or otherwise in performing a governmental function.

4. "Government" includes any branch, subdivision or agency of the state or any locality within it.

5. "Labor official" means any duly appointed or elected representative of a labor organization or any duly appointed or elected trustee or representative of an employee welfare trust fund.

6. "Witness" is any person summoned, or who may be summoned, to give testimony in an official proceeding.

7. "Juror" is any person who has been drawn or summoned to serve or act as a juror in any court.

8. "Physical evidence" means any article, object, document, record or other thing of physical substance which is or is about to be produced or used as evidence in an official proceeding.

Sec. 157. Bribery.

A person is guilty of bribery if he offers, confers or agrees to confer upon a public servant any benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant.

Bribery is a class D felony.

Sec. 158. Bribe receiving.

A public servant is guilty of bribe receiving if he solicits, accepts or agrees to accept from another any benefit as consideration for his decision, opinion, recommendation, vote or other exercise of discretion.

Bribe receiving is a class D felony.

Sec. 159. Bribery of a witness.

A person is guilty of bribery of a witness if he offers, confers or agrees to confer upon a witness any benefit to influence the testimony or conduct of such witness in, or in relation to, an official proceeding.

Bribery of a witness is a class D felony.

Sec. 160. Bribe receiving by a witness.

A witness is guilty of bribe receiving, by a witness if he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his testimony or conduct in, or in relation to, any official proceeding.

Bribe receiving by a witness is a class D felony.

Sec. 161. Tampering with a witness.

A person is guilty of tampering with a witness if, believing that an official proceeding is pending or about to be instituted, he induces or attempts to induce a witness to testify falsely, withhold testimony, elude legal process summoning him to testify or absent himself from any official proceeding.

Tampering with a witness is a class D felony.

Sec. 162. Bribery of a juror.

A person is guilty of bribery of a juror if he offers, confers or agrees to confer upon a juror any benefit as consideration for the juror's decision or vote.

Bribery of a juror is a class D felony.

Sec. 163. Bribe receiving by a juror.

A juror is guilty of bribe receiving by a juror if he solicits, accepts or agrees to accept from another any benefit as consideration for his decision or vote.

Bribe receiving by a juror is a class D felony.

Sec. 164. Tampering with a juror.

A person is guilty of tampering with a juror if he influences any juror in relation to any official proceeding to or for which such juror has been drawn, summoned or sworn.

Tampering with a juror is a class D felony.

Sec. 165. Tampering with or fabricating physical evidence.

A person is guilty of tampering with or fabricating physical evidence if, believing that an official proceeding is pending, or about to be instituted, he:

1. alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such proceeding; or
2. makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such official proceeding.

Tampering with or fabricating physical evidence is a class D felony.

Sec. 166. Perjury.

A person is guilty of perjury, if, in any official proceeding, he intentionally, under oath, makes a false statement, swears, affirms or testifies falsely, to a material statement which he does not believe to be true.

Perjury is a class D felony.

Sec. 167. False statement.

A person is guilty of false statement when he intentionally makes a false written statement under oath or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable, which he does not believe to be true and which statement is intended to mislead a public servant in the performance of his official function.

False statement is a class A misdemeanor.

Sec. 162. Bribery of a labor official.

A person is guilty of bribery of a labor official if he offers, confers or agrees to confer upon a labor official any benefit with intent to influence him in respect to any of his acts, decisions or duties as such labor official.

Bribery of a labor official is a class D felony.

Sec. 163. Bribe receiving by a labor official.

A labor official is guilty of bribe receiving by a labor official if he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence him in respect to any of his acts, decisions or duties as such labor official.

Bribe receiving by a labor official is a class D felony.

Sec. 170. Commercial bribery.

A person is guilty of commercial bribery when he confers, or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs.

Commercial bribery is a class A misdemeanor.

Sec. 171. Receiving a commercial bribe.

An employee, agent or fiduciary is guilty of receiving a commercial bribe when, without consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer or principal's affairs.

Receiving a commercial bribe is a class A misdemeanor.

Sec. 172. Rigging.

1. A person is guilty of rigging if, with intent to prevent a publicly exhibited sporting or other contest from being conducted in accordance with the rules and usages purporting to govern it, he:

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

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

Rigging is a class B felony.

Sec. 173. Soliciting or accepting benefit for rigging.

A person is guilty of soliciting or accepting benefit for rigging if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under subsection 172.

Soliciting or accepting benefit for rigging is a class A misdemeanor.

Sec. 174. Participation in rigged contest.

A person is guilty of participation in a rigged contest if he knowingly engages in, sponsors, produces, judges or otherwise participates in a publicly exhibited sporting or other contest knowing that the contest is not being conducted in compliance ~~with~~ the rules and usages purporting to govern it, by reason of conduct which would be criminal under this section.

Participation in a rigged contest is a class A misdemeanor.

Sec. 175. Hindering prosecution; definition.

As used in sections 176 and 177, a person "renders criminal assistance" when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom he knows or believes has committed a felony

or is being sought by law enforcement officials for the commission of a felony, or with intent to assist a person in profiting or benefiting from the commission of a felony, he:

1. harbors or conceals such person; or
2. warns such person of impending discovery or apprehension; or
3. provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
4. prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or
5. suppresses, by an act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or
6. aids such person to protect or expeditiously profit from an advantage derived from such crime.

Sec. 176. Hindering prosecution in the first degree.

A person is guilty of hindering prosecution in the first degree when he renders criminal assistance to a person who has committed a class A or class B felony.

Hindering prosecution in the first degree is a class B felony.

Sec. 177. Hindering prosecution in the second degree.

A person is guilty of hindering prosecution in the second degree when he renders criminal assistance to a person who has committed a class C or class D felony.

Hindering prosecution in the second degree is a class D felony.

ARTICLE 19. ESCAPE AND RELATED OFFENSES.

Sec. 178. Escape; definitions. For purposes of sections 179 and 181.

1. Correctional institution means the State Prison, the State Prison for Women, the Correctional Centers, the Connecticut Reformatory and any other correctional facility established by the Commissioner of Correction.

2. Custody means restraint by a public servant pursuant to an authorized arrest or an order of court.

Sec. 179. Escape from a correctional institution.

A person is guilty of escape from a correctional institution if he escapes from a correctional institution.

Escape from a correctional institution is a class C felony.

Sec. 180. Escape from custody.

A person is guilty of escape from custody if he escapes from custody. If a person has been arrested for, charged with or convicted of a felony, escape from such custody is a class B felony. Otherwise, escape from custody is a class A misdemeanor.

Sec. 181. Escape while at work.

A person who escapes from any correctional institution while employed at work outside such correctional institution, is guilty of escape while at work.

Escape while at work is a class D felony.

Sec. 182. Failure to appear; first degree.

Any person who, while charged with the commission of a felony and while out on bail or released under other procedure of law, willfully fails to appear when legally called according to the terms of his bail bond or promise to appear is guilty of failure to appear in the first degree.

Failure to appear in the first degree is a class D felony.

Sec. 183. Failure to appear; second degree.

Any person who, while charged with the commission of a misdemeanor and while out on bail or released under other procedure of law willfully fails to appear when legally called according to the terms of his bail bond or promise to appear is guilty of failure to appear in the second degree.

Failure to appear in the second degree is a class A misdemeanor.

Sec. 184. Conveying of unauthorized items into a penal or correctional institution or to inmate outside institution, or possession by an inmate of a correctional institution.

Any person not authorized by law who conveys or passes, or causes to be conveyed or passed, into any correctional institution or the grounds or buildings thereof, or to any inmate of such an institution who is outside the premises thereof and known to the person so conveying or passing or causing such conveying or passing to be such an inmate, who receives or possesses any narcotic or hypnotic drug, any intoxicating liquors, any firearm, weapon or explosive of any kind, or any rope, ladder or other instrument or device for use in making, attempting or aiding an escape, shall be guilty of a class D felony. The unauthorized conveying, passing or possession of any rope or ladder or other instrument or device, adapted for use in making or aiding an escape, into any such institution or the grounds or buildings thereof, shall be presumptive evidence that it was so conveyed, passed or possessed for such use. Any person not authorized by law who conveys into any such institution, any letter or other missive which is intended for any person confined therein, or who conveys from within the enclosure to the outside of such institution any letter or other missive written or given by any person confined therein, shall be guilty of a class A misdemeanor.

## ARTICLE 20. RIOT AND RELATED OFFENSES.

Sec. 185. Riot in the first degree.

A person is guilty of riot in the first degree when (a) simultaneously with six or more other persons he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm, and (b) in the course of and as a result of such conduct, a person other than one of the participants suffers physical injury or substantial property damage occurs.

Riot in the first degree is a class A misdemeanor.

Sec. 186. Riot in the second degree.

A person is guilty of riot in the second degree when, simultaneously with two or more other persons, he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm.

Riot in the second degree is a class B misdemeanor.

Sec. 187. Unlawful assembly.

A person is guilty of unlawful assembly when he assembles with two or more other persons for the purpose of engaging in conduct constituting the crime of riot, or when, being present at an assembly which either has or develops such a purpose, he remains there with intent to advance that purpose.

Unlawful assembly is a class B misdemeanor.

Sec. 188. Inciting to riot.

A person is guilty of inciting to riot when he advocates, urges or organizes six or more persons to engage in tumultuous and violent conduct of a kind likely to create public alarm.

Inciting to riot is a class A misdemeanor.

Sec. 189. Criminal advocacy.

A person is guilty of criminal advocacy when (a) he advocates the overthrow of the existing form of government of this state or any subdivision thereof by imminent dangerous action, or (b) with knowledge of its contents, he publishes, sells or distributes any document which advocates such imminent dangerous action.

Criminal advocacy is a class D felony.

Sec. 190. Falsely reporting an incident.

A person is guilty of falsely reporting an incident when, knowing the information reported, conveyed or circulated to be false or baseless, he:

1. initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime catastrophe or emergency under circumstances in which it is likely that public alarm or inconvenience will result; or

2. reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion or other catastrophe or emergency which did not in fact occur or does not in fact exist; or

3. gratuitously reports to a law enforcement officer or agency (a) the alleged occurrence of an offense or incident which did not in fact occur; or (b) an allegedly impending occurrence of an offense or incident which in fact is not about to occur; or (c) false information relating to an actual offense or incident or to the alleged implication of some person therein.

Falsely reporting an incident is a class B misdemeanor.

ARTICLE 21. BREACH OF PEACE, DISORDERLY  
CONDUCT AND HARASSMENT.Sec. 191. Breach of Peace.

A person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. he engages in fighting or in violent, tumultuous or threatening behavior, in a public place; or
  2. he assaults or strikes another; or
  3. he threatens to commit any crime against another person or his property; or
  4. he publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter concerning any person; or
  5. in a public place, he uses abusive or obscene language or makes an obscene gesture; or
  6. he creates a public, hazardous or physically offensive condition by any act which he is not licensed or privileged to do.
- Breach of peace is a class B misdemeanor.

Sec. 192. Disorderly Conduct.

A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. he engages in fighting or in violent, tumultuous or threatening behavior; or
2. by offensive or disorderly conduct, he annoys or interferes with another person; or
3. he makes unreasonable noise; or
4. without lawful authority, he disturbs any lawful assembly or meeting of persons; or

5. he obstructs vehicular or pedestrian traffic; or
6. he congregates with other persons in a public place and refuses to comply with a reasonable official request or order to disperse.

Disorderly conduct is a class C misdemeanor.

Sec. 193. Harassment.

A person is guilty of harassment when:

1. by telephone, he addresses another in or uses indecent or obscene language; or
2. with intent to harass, annoy or alarm another person, he communicates with a person, anonymously or otherwise by telephone, mail or any other form of written communication, in a manner likely to cause annoyance or alarm; or;
3. with intent to harass, annoy or alarm another person, he makes a telephone call, whether or not a conversation ensues, in a manner likely to cause annoyance or alarm.

For purposes of this section such offense may be deemed to have been committed either at the place where the telephone call was made, or at the place where it was received. The court may order any person convicted under this section to be examined by one or more psychiatrists.

Harassment is a class C misdemeanor.

ARTICLE 22. INTOXICATION, LOITERING IN OR  
ABOUT SCHOOL GROUNDS AND PUBLIC INDECENCY.

Sec. 194. Intoxication.

1. A person is guilty of intoxication when he is under the influence of alcohol, narcotic drug or controlled drug as defined in section 19-443, or other substance, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

2. The court in its discretion may commit to the custody and control of the Department of Mental Health or to any appropriate facility within that department for not less than thirty (30) days nor more than twelve (12) months, or until discharged within that period by the Commissioner of Mental Health:

(a) any person charged under this section who requests such commitment, if the court finds that there is reasonable ground to believe such a person is an alcoholic. If such request is granted before conviction, the criminal proceeding shall be dismissed.

(b) any person found guilty under this section who has been convicted previously, under this section or under section 53-246, at least twice in the last preceding six months or four times in the last preceding year.

3. The defendant shall be advised of his rights under subsection 2 hereof by the court before being put to plea.

4. Notwithstanding the provisions of subsection 1 hereof, in lieu of arrest, a police officer in his discretion may escort an intoxicated person to a civil facility for the care of alcoholics.

Intoxication is a class C misdemeanor.

Sec. 195. Loitering in or about school grounds.

A person is guilty of loitering on school grounds when he loiters or remains in or about a school building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or any other license or privilege to be there.

Loitering in or about school grounds is a class C misdemeanor.

Sec. 196. Public indecency.

Any person who performs any of the following acts in a public place is guilty of public indecency:

1. An act of sexual intercourse; or,
2. An act of deviate sexual conduct; or,
3. A lewd exposure of the body with intent to arouse or to satisfy the sexual desire of the person; or,
4. A lewd fondling or caress of the body of another person.

Public place, for the purposes of this section, means any place where the conduct may reasonably be expected to be viewed by others.

Public indecency is a class B misdemeanor.

ARTICLE 23. EAVESDROPPING AND TAMPERING WITH PRIVATE COMMUNICATIONS.

Sec. 197. Eavesdropping; definition of terms.

The following definitions are applicable to this article:

1. "Wiretapping" means the intentional overhearing or recording of a telephonic or telegraphic communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any instrument, device or equipment. The normal operation of a telephone or telegraph corporation and the normal use of the services and facilities furnished by such corporation pursuant to its tariffs shall not be deemed "wiretapping."

2. "Mechanical overhearing of a conversation" means the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment.

3. "Unlawfully" means not specifically authorized by law. This article does not apply to wiretapping by criminal law enforcement officials in the lawful execution of their duties.

and does not affect the admissibility of evidence in any proceedings other than a prosecution for eavesdropping or tampering with private communications.

Sec. 198. Tampering with private communications.

A person is guilty of tampering with private communications when:

1. Knowing that he does not have the consent of the sender or receiver, he obtains from an employee, officer or representative of a telephone or telegraph corporation, by connivance, deception, intimidation or in any other manner, information with respect to the contents or nature of a telephonic or telegraphic communication; or

2. Knowing that he does not have the consent of the sender or receiver, and being an employee, officer or representative of a telephone or telegraph corporation, he knowingly divulges to another person the contents or nature of a telephonic or telegraphic communication.

Tampering with private communications is a class A misdemeanor.

Sec. 199. Eavesdropping.

A person is guilty of eavesdropping when he unlawfully engages in wiretapping or mechanical overhearing of a conversation.

Eavesdropping is a class D felony.

ARTICLE 24. BIGAMY AND INCEST

Sec. 200. Bigamy.

Any person is guilty of bigamy who marries or purports to marry another person in this state if either is lawfully married; or so marries or purports to marry another person in any other state or country in violation of the laws thereof, and knowingly

cohabits and lives with such other person in this state as husband and wife.

It is an affirmative defense to the charge of bigamy that at the time of the subsequent marriage or purported marriage:

1. the actor reasonably believes, based on persuasive and reliable information, that the prior spouse is dead; or
2. a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage and the actor does not know that judgment to be invalid; or
3. the single person does not know that the other is legally married.

Bigamy is a class D felony.

Sec. 201. Incest.

A person is guilty of incest when he marries or engages in sexual intercourse with a person whom he knows to be related to him within any of the degree of kindred specified in section 46-1.

Incest is a class D felony.

ARTICLE 25. COERCION

Sec. 202. Coercion.

1. A person is guilty of coercion when he compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

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

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

2. Criminal coercion is a class A misdemeanor unless the threat is to commit a felony, in which case the offense is a class D felony.

#### ARTICLE 26. OBSCENITY AND RELATED OFFENSES.

##### Sec. 203. Obscenity; definitions of terms.

The following definitions are applicable to sections 203 through 220.

1. "Obscene." Any material or performance is "obscene" if (a) considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism, (b) it goes substantially beyond customary limits of candor in describing or representing such matters, and (c) it is utterly without redeeming social value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

2. "Obscene as to minors." Any material or performance is "obscene as to minors" if its predominant appeal is to interest in audity, sex, excretion, sadism, masochism, lust, or perversion for persons under the age of eighteen years. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

3. "Material" means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.

4. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

5. "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, advertise, produce, direct or participate in.

#### Sec. 204. Obscenity.

A person is guilty of obscenity when, knowing its content and character, he promotes, or possesses with intent to promote, any obscene material or performance.

Obscenity is a class B misdemeanor.

#### Sec. 205. Obscenity; defense.

In any prosecution for obscenity, it is an affirmative defense that the persons to whom allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, or governmental justification for possession or viewing the same.

#### Sec. 206. Obscenity as to minors.

A person is guilty of obscenity as to minors when he knowingly promotes, or possesses with intent to promote, any material

or performance obscene as to minors.

For the purposes of this section, "knowingly" shall mean having knowledge of the character and content of the material or performance or failure to exercise reasonable inspection which would disclose the character and content of the material or production.

Obscenity as to minors is a class A misdemeanor.

Sec. 207. Disseminating indecent comic books.

A person is guilty of disseminating indecent comic books when he publishes or distributes for resale any book, pamphlet or magazine consisting of narrative material in pictorial form, colored or uncolored, and commonly known as comic books, which are devoted to or principally made up of pictures of accounts of physical torture or brutality, horror or terror.

Disseminating indecent comic books is a class A misdemeanor.

Sec. 208. Failing to identify a comic book publication.

1. Any person who publishes or prints any book, pamphlet or magazine consisting of narrative material in pictorial form, colored or uncolored, and commonly known as comic books, shall have the name and address of such publisher or printer imprinted on such book, pamphlet or magazine.

2. A person is guilty of failing to identify a comic book publication when he violates any duty prescribed in subsection one of this section.

Failing to identify a comic book publication is a violation.

Sec. 209. Injunction against promoting obscene material or performance.

An injunction may be granted against the promoting of any material or performance that is obscene or obscene as to minors or the possessing with intent to promote any such material.

Sec. 210. Institution of action for adjudication of obscenity.

Whenever any prosecuting attorney of the circuit court has reasonable cause to believe that any person is knowingly promoting any material or performance that is obscene or obscene as to minors, he shall institute an action for an adjudication of the obscenity of such material or performance. Such action shall commence with the filing of an application for an injunction with a judge of the circuit court for the circuit wherein is located such material or performance. The complaint shall (a) be directed against the promoting of the material or performance; (b) designate as defendants and list the names and addresses, if known, of its promoters, or any person possessing it with intent to promote it; (c) allege its obscene nature; (d) seek an adjudication that is obscene or obscene as to minors and an injunction against any promoting or possessing with intent to promote; (e) seek its surrender, seizure, destruction or termination.

Sec. 211. Presentation of material; finding of probable cause; time for trial and decision.

The prosecuting attorney, at the time of presenting the complaint and application to the court, shall also present the material or a witness or other evidence describing or depicting the performance. If after examination the court finds no probable cause to believe such material or performance obscene or obscene as to minors, the court shall then proceed as in other applications for an injunction. The person, sought to be enjoined shall be entitled to a trial of the issues, commencing within one day after the close of all pleadings, and any decision by the court shall be rendered within two days of the conclusion of the trial.

Sec. 212. Third party may be made a party.

On or before the date set for trial, any person who promotes, or who possesses with intent to promote, the material or performance complained of in the application for an injunction may file

an appearance and be made a party to the proceedings.

Sec. 213. Jury trial.

Every person appearing shall be entitled, upon request, to a trial by jury at the criminal sessions of such court and the court may order a trial of any issue to the jury.

Sec. 214. Evidence.

At the trial, all parties shall be permitted to submit evidence, including the testimony of experts, pertaining but not limited to the following: (a) the elements or standards specified in the definitions of obscene and obscene as to minors; (b) the artistic, literary, scientific, educational or governmental merits of the material or performance; (c) the intent and knowledge of any defendant.

Sec. 215. Judgment.

If the court or jury, as the case may be, finds the material or performance not to be obscene or obscene as to minors, the court shall enter judgment accordingly. If the court or jury, as the case may be, finds the material or performance to be obscene or obscene as to minors, the court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof: (a) enter an injunction against any defendant prohibiting him from promoting or possessing such material or performance, under such conditions and within such time as the court may order; (b) direct any resident defendant to dispose of all such material in his possession or under his control under such conditions and within such time as the court may order; or (c) if any defendant fails fully to comply with the judgment or order of the court, direct the state police or any organized local police department to seize and destroy all such material in the possession or under the control of such defendant wherever the same may be found within their jurisdiction.

Sec. 216. Injunction and restraining order.

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance and shall describe in reasonable detail the obscene material or performance, and the promoting or possessing sought to be restrained, and is binding only upon the defendants to the action, their officers, agents, servants and employees and upon those persons in active concert or participating by contract or arrangement with them, who receive actual notice of the order by personal service or otherwise.

Sec. 217. Service of process on nonresidents.

Every nonresident person, whether acting personally or by an agent, salesman, employee, officer or another, who promotes material or a performance that is obscene or obscene as to minors in this state and shall be deemed to have appointed the secretary of the state as his attorney and to have agreed that any process in any action arising under sections 208 through 216, inclusive, brought against or naming such nonresident as a defendant, may be served upon said secretary and shall have the same validity as if served upon such nonresident personally. Such process shall be served by the officer to whom the same is directed upon said secretary by leaving with or at the office of said secretary a true and attested copy thereof and by sending to the defendant, by registered or certified mail, postage prepaid, a like true and attested copy with an endorsement thereon of the service upon said secretary addressed to such defendant at his last known address. The secretary of the state shall keep a record of each such process and the day and hour of service.

Sec. 218. Extradition.

In all cases in which a court has entered its judgment pursuant to sections 209 through 216, inclusive, that the material or performance in question is obscene or obscene as to minors, and a charge of a violation of the injunction or restraining order is thereafter brought against a person who, being a defendant to such judgment, cannot be found in this state, the governor, or anyone performing the functions of governor by authority of a law of this state, shall unless such person has appealed from such judgment and such appeal is not finally determined, demand his extradition from the executive authority of the state in which such person may be found, pursuant to the laws of this state.

Sec. 219. Penalties.

Any defendant, or any officer, agent, servant or employee of such defendant, or any person in active concert or participation by contract or arrangement with such defendant, who receives actual notice, by personal service or otherwise, of any injunction or restraining order entered pursuant to sections 209 through 216, inclusive, and who disobeys any of the provisions thereof shall be fined not more than one thousand dollars or imprisoned not more than two years or both.

Sec. 220. Levy of fine against property.

Any fine against any person under any of sections 209 through 216, inclusive, may be levied against any of his real property, personal property, tangible or intangible, choses in action or property of any kind or nature, including debts owing to him, which may be situated or found in this state.

Sec. 221. Section 54-40 of the General Statutes is amended by adding subsection (d) thereto as follows:

(d) The following notwithstanding, at the time of any commitment under subsection (c) hereof, the court shall set a maximum period of commitment, which maximum shall not exceed the maximum sentence which could have been imposed for the offense for which the accused is awaiting trial. To said maximum period of commitment there shall be credited the number of days spent by the accused in jail or other confinement prior to said commitment under subsection (c) hereof. In the case of a class A felony, the maximum period shall be twenty-five years. During the period of confinement the superintendent of the hospital or institution shall, at least every six months, issue a written report to the court stating his opinion of the mental condition of the accused. This report shall be filed with the clerk of the court and shall cease copies to be delivered as in subsection (a).

Sec. 222. The following sections are hereby repealed:

53-1, 53-2, 53-3, 53-4, 53-5, 53-6, 53-7, 53-8, 53-9,  
53-10, 53-11, 53-12, 53-13, 53-14, 53-15, 53-16, 53-17,  
53-18, 53-19, 53-24, 53-26, 53-27, 53-28, 53-29, 53-30,  
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**Connecticut Legislative Histories**

**Landmark Series**

**1969 Public Act No. 828,  
Volume Two**

**Hartford, Connecticut State Library,  
Law & Legislative Reference Unit,  
2005.**

**Legislative History  
of  
“An Act Concerning Revision and Codification  
of the Substantive Criminal Law.  
This act shall be known as the  
Penal Code”**

**Public Act 69-828  
1969 House Bill No. 7182**

**Volume Two**

Hartford, Connecticut State Library, Law & Legislative Reference Unit,  
2005.

Compiled from the following  
Connecticut General Assembly documents  
on deposit in the  
Law & Legislative Reference Unit of Connecticut State Library

**13 Senate Proceedings, Part 7, 1969 Session, pp. 3507, 3519-3547.**

**13 House of Representatives Proceedings, Parts 2 and 11, 1969  
Session, pp. 961-967, 5033-5063.**

**Connecticut. Joint Standing Committee Hearings,  
Judiciary and Governmental Functions, Part 1, 1969 Session,  
pp. 1-35, 254-258.**

*with*

items from  
the Permanent Bill File Archive  
of the Bill Room at Connecticut State Library  
and  
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at Connecticut State Library

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3. [Proposed] Bill No. 7182, "An Act Concerning the Adoption of a Penal Code". Introduced January 30, 1969.
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**5.**

**Transcript of House floor debate, March 20, 1969**  
*[Editor's note: The House was discussing a different bill when Rep. Carrozzella remarked that House Bill 7182 would cover the situation.]*

**13 House of Representatives Proceedings,  
Part 2, 1969 Session,  
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Thursday, March 20, 1969

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the prosecutor involved in the case would obviously have his option to charge the more serious offense, so that in a case of simple assault, as you put simple assault, this statute could then apply, and a man can get up to five years for a relatively innocuous act. If it were assault with intent to kill, then he can get up to thirty years under the existing statutes. But I do think there is an area here, since we are exploring the bill on the floor, I think there is an area that the gentleman from the 81st, if I may call upon him, there is an area that we may perhaps explore right on the floor to make the bill a little more clear, and that is how the bill relates to the proposed changes in the criminal statutes. I think this may help to answer the question of the gentleman from the 40th. So if I may defer to the gentleman from the 81st.

THE SPEAKER:

Does the gentleman from the 81st care to respond?

MR. CARROZZELLA: (81st)

Mr. Speaker, through you, I would say that the proposed criminal revision, a copy of which I have in my hand, incidentally it is House Bill 7182 - I think very definitely would cover the situation which this bill is designed to cover. However, I would point out that this bill, if adopted by this House, would not go into effect until October 1, 1971, so that I would think that the purpose of this bill is a stop-gap measure which would take effect now for the interim period. The 1971 Legislature, I think, would then repeal this bill because it is covered in

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the Criminal Code. And in further response to Representative Mayer's question, certainly if a person assaulted a man in a jail with intent to kill, he could be prosecuted under the existing statutes for assault with intent to kill. This only creates another offense whereby the punishment can be more severe than if prosecuted under the breach of peace statute for instance, or prosecuted under the more serious offense, because this does not repeal that statute.

THE SPEAKER:

Will you remark further? The gentleman from the 163rd.

MR. CAMP: (163rd)

Mr. Speaker, would the gentleman from the 81st answer a question please, through you. The question is for the benefit of real estate lawyers. I seem to have a recollection that an assault was a threat or a battery. Is that correct? Or is "assault and battery" used synonymously in our statutes?

THE SPEAKER:

Does the gentleman from the 81st care to respond?

MR. CARROZZELLA: (81st)

Of course, very basically, Mr. Speaker, an assault is an act with intent to cause physical injury. You have to have an intent to cause injury. Now it is true the penalty is up to five years. This does not mean a minimum of five years. It is up to five years. And depending upon what has happened, the facts of the case would determine the penalty, if I make myself clear.

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THE SPEAKER:

The gentleman from the 163rd.

MR. CAMP: (163rd)

I don't think I quite got my question across. Does this assault involve the threat of an injury, the extent of an injury, or is it an absolute injury, the infliction or the touching? I think that is the way we used to speak of it. If it is, I am wondering if the law should not include "battery" as well as "assault".

THE SPEAKER:

Will the gentleman from the 81st indicate whether our statutes on assault also include the contents of battery?

MR. CARROZZELLA: (81st)

Of course it does, Mr. Speaker. I think our legal decisions which do include assault and battery are one and the same in effect.

THE SPEAKER:

Are there further questions? The gentleman from the 118th?

MR. AJELLO: (118th)

Mr. Speaker, I don't have a question, but I would like to speak in support of the bill, and only to point out that what we are doing here really is to help the guards in our correctional institutions. If I can hark back to my military experience again, no one who has not dealt extensively with prisoners can appreciate the mentality or the mystique of the jail guard,

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and this will have an effect, I would think, based on my own experience. I was not a prisoner, but I worked with them every day. That was right after bow and arrow practice. If I can get into that situation, the mere fact that this is available as an instrument of punishment will, I think, tend to make these people more respectful of the guards. The guards' duties are highly hazardous, and I think we are doing something for them, and something that will help to attract people and keep people in our correctional system where we have difficulty with personnel.

THE SPEAKER:

Are there any more jail house lawyers who would like to talk?

MR. SARASIN: (95th) I think I should sit down again.

THE SPEAKER:

The Representative from the 95th.

MR. SARASIN: (95th)

I don't wish to disagree with the distinguished Friar Tuck from the 118th, but I would like to suggest that I think the present statutes that we have certainly cover the situation. We are only taking care, or setting up a special class of persons. You can hit one individual, or strike on individual, and possibly be subject to the breach of peace by assault statute, but if he happens to be a guard in a correctional institution, you are subject to a higher penalty. I don't think we need this at this time, and if new revisions are going to take care of it later, I would think that would be early enough.

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THE SPEAKER:

Are there further comments? If not, the question is on acceptance and passage. The gentleman from the 40th.

MR. MAYER: (40th)

Mr. Speaker, just to make this statement for the record, I firmly believe that somewhere in the not too distant future, some smart lawyer will use this particular piece of legislation we are about to enact to get a client off from a penalty of assault with intent to murder of some prison guard. This is very specific. I think it can be used by the legal profession to get a man off. I don't believe this being more recent legislation, - crazier things than this have happened in the legal profession and in our courts today - and I am afraid if we put this on the books that is just what is going to happen. Somebody is going to get off with a lesser penalty than he would under our present statute.

THE SPEAKER:

Will you remark further? The Representative from the 37th.

MR. KING: (37th)

I don't pretend to be an expert on criminal law, but I think I have watched Perry Mason enough to agree with the gentleman from the 40th, that this creates an ambiguity, and I don't have any doubt that there will be very serious attempts to use this statute should they both be allowed to exist on the books, so as to get the person who is doing the assaulting off on a less serious offense. I think it is a very serious matter and

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I believe that we should not vote for this bill.

THE SPEAKER:

Will you remark further? The gentleman from the 145th.

MR. BARD: (145th)

Mr. Speaker, I also have practiced criminal law, but it seems to me more and more inmates are becoming more and more self-acknowledged lawyers. I think it might be the better part of discretion to hold on this bill and examine it a bit more. This "assault" - the way it is set out in this bill - I think it is a little too sketchy, and I would hat to think that some fellow who is sitting in a jail right now takes a look at this thing and feels he has an opportunity to go after this guard he has hated for two or three years, and take his chance of not getting more than five years. I think that the time saved now might indeed protect these guards rather than provide open season on them. And therefore I would move that the gentleman presenting the bill would agree that we hold it, and perhaps the Judiciary Committee, or the committee which brought out the bill, take another look at it.

THE SPEAKER:

What is your motion, sir?

MR. BARD: (145th)

I make a motion that we recommit the bill.

THE SPEAKER:

The motion is on recommital. Is there debate? The gentleman from the 118th.

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MR. AJELLO: (118th)

Well, Mr. Speaker, there seems to be a genuine concern. I would suggest that we pass it temporarily at this point, discuss it with the chairman with a view toward perhaps either some correction, or some clearer understanding, or reference to the Judiciary Committee which might want to do some work on it.

MR. BARD: (145th)

I withdraw the motion.

THE SPEAKER:

The question now is on passing the item temporarily or passing it retaining. The gentleman from the 118th.

MR. AJELLO: (118th)

I would rather pass it temporarily until we see what we can do with it Mr. Speaker.

THE SPEAKER:

Is there objection? Hearing none, it is so ordered.

THE CLERK:

Calendar No. 145. Senate Bill No. 29. An Act concerning the Sending and Disposition of Unsolicited Merchandise. Favorable report of the Committee on General Law. File 21.

MR. AJELLO: (118th)

Mr. Speaker, may Calendar No. 145, Senate Bill No. 29 be passed retaining its place on the calendar?

THE SPEAKER:

Is there objection? Hearing none, it is so ordered.

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**Transcript of Public Hearing, March 25, 1969,  
conducted by the  
Judiciary and Governmental Functions Committee**

**Connecticut. Joint Standing Committee Hearings.  
Judiciary and Governmental Functions,  
Part 1, 1969 Session,  
pp. 1-35.**

JUDICIARY AND GOVERNMENTAL FUNCTIONS

TUESDAY

MARCH 25, 1969

Senator John J. Pickett, presiding  
Representative John Carrozzella, presiding

Members: Senators: Caplan, Fauliso, Barry, Jackson, Barlow, Jr., Caldwell, Lyddy, Hull, Finney, Lupton  
Representatives: Strada, Morris, Willard, Healey, Merly, Lowden, Leary, Gillies, Green, Klebanoff, Oliver, Kelly, Ritter, Neiditz, Bard, Bingham, Brinckerhoff, Crouch, McCarthy, Sarasin, Stevens, Sullivan

Rep. Carrozzella: For the members of the public that are here, the hearing is scheduled for ten for legislators but none are here. The hearing for the public is at eleven. In the meantime, any people who wish to testify, we have speaker's lists located in the back on the desks so if you will kindly call those and we will call from the speaker's lists only. So if you wish to testify, would you sign the speaker's list in the back.

COMM. 7182 AN ACT CONCERNING REVISION AND CODIFICATION OF THE SUBSTANTIVE CRIMINAL LAW.

Rep. Carrozzella: We are going to call the public hearing to order. This is the hearing on the revision and codification of the substantive criminal code of the state of Connecticut. Now once again, for the members of the public, I want you to understand that we will call from the speaker's list. If you intend to testify you should sign the speaker's lists which are located in the back of the room and we will call from those lists only. We would appreciate it if in signing this, if you're speaking for an organization, if you would list that organization as well on the list.

Now I wish further to call your attention to the note that appeared in the Bulletin that no testimony will be taken today with respect to the abortion section of this code. Any such testimony will be taken at our hearing which will be held on Monday, March 31st concerning that topic. The first hour was supposedly allocated to legislators. There is one legislator that wishes to speak and I would call upon him, the chair would recognize him first.

Rep. Collins: Thank you, Mr. Chairman. My name is Francis J. Collins. I'm the Representative from the 165th District.

I was privileged to serve over the last two years on the committee, the commission to revise the criminal statutes as the Republican House member and I well know that the chairman was also a member of that distinguished body which included some of the finest people that I've had the pleasure of dealing with. As the chairman

well knows, many days were spent, many viewpoints considered, many votes taken on the subjects covered by this code,

I would endorse this code in toto with one exception and this is the matter that I would like to bring to the attention of the committee. In the area of sexual crimes, the commission has indicated, and it was by a split vote, to abolish the crime of adultery. I do believe that this represents a significant change in the policy of the state of Connecticut toward what I consider to be the basic unit of our society, that is the preservation of the family life. So I would ask the committee if they would give their strong support and possibly before this bill comes out of committee to include the crime adultery instead of abolishing it as proposed by the code. I would end on the note that I think it's significant that the intercollegiate legislature, the mock legislature, which met here two weeks ago and took up various matters including the revision of sexual crimes decided to leave in the crime of adultery and the crime of prostitution. In the revision of the code, we have left in the crime of prostitution but we have eliminated the crime of adultery. I think maybe we can take a small idea from our younger sex and leave in the crime of adultery in the criminal code.

Rep. Carrozzella: How about the crime of lascivious carriage?

Rep. Collins: I think that should be omitted. If anybody has any questions?

Rep. Carrozzella: Are there any other legislators here who wish to speak?

If not, then the chair will recognize the distinguished executive director of the criminal code who served with diligence for the last six years and who, I think, has done a masterful job in compiling this code and I think that would set the tone of the hearing. Mr. Borden.

For the other members of the public, before beginning your speech before the committee, would you identify yourself and if not, spell your name so that the secretary can have it and also give the organization for which you are speaking, if any.

Mr. Borden: For the record, I'm David Borden. I'm the Executive Director of the commission to revise the criminal statutes which has been working since the 1963 General Assembly and we have now submitted our bill which is Bill No. 7182. I might add that I am here wearing two hats today. I am also a member of the Connecticut Bar Association's Committee on the Administration of Criminal Justice and the Chairman of the committee, Attorney Jack Zeldes of Bridgeport, has asked me to represent to the committee, to this committee, that the Bar Association Criminal Justice Committee has considered this proposed code in general without going over every single section in detail and approves it and urges it's adoption.

I'd like to give a general summary, as much as possible of this code, its purposes, its background and the principal major changes provided by the code. The general purpose of the whole code is to create a rational, coherent, cohesive substantive criminal law in the state of Connecticut. As many of the committee members know, the criminal law in Connecticut has never been compiled into a code, it's a series of random and often contradictory patchwork criminal sections, many of which bear little relation to each other, many of which are overlapping, contradictory and have in the commission's judgment irrationally dispirited sentences. What this code does is creates a rational, coherent substantive law. It does not deal with the procedural problems except in certain instances where they are naturally incident to the substantive problems that the commission was considering.

In effect, it would repeal about eighty-five percent or ninety percent of the present Title 53 of the Connecticut General Statutes. It's effective date is October 1, 1971. Now this is a long time off and there are two principal reasons for this. This is a major change in the criminal law. If it's enacted, the interested groups and individuals, the people who are going to have to work under this code, the prosecutors, the police, the defense bar, the law enforcement officials, will need time to educate themselves and to find out what's in this code. That's one reason.

The second reason is that this will allow an additional legislative session before actual effective date of the code so that the interested groups who have not thus far come forward with their proposals and their recommendations will be able to come back into the 1971 session and argue for changes before it becomes effective. We recognize the realities of the situation that, although we have tried to disseminate the code as much as possible, it's completion was somewhat delayed and everything that's in it may not be fully known to all the people who are interested in it. This will give another legislative session to deal with it. This is similar to what New York did when they revised their code. The legislature did not enact it in New York. They adopted it for study and gave a two year effective date, giving another legislative session for the interested groups to come in and talk about it.

Now one portion of the code that's rather important and provides some major changes in our present criminal law is the early sections on the principles of criminal liability and defenses. This portion of the code puts in statutory form what has never really been in statutory form in the state of Connecticut before. It articulates the principles of criminal liability. It articulates the defenses. Now this covers such things as the effect of ignorance or mistake of the law, the effect of intoxication, the justified use of force and when

you talk about the justified use of force, you're talking about the right to use deadly force in defense of the person, in defense of the premises! In this portion, we have created a new concept called an affirmative defense! Under criminal law now, a defense is something recognized by the law and the burden of proof is on the prosecution to, in effect, disprove the defense! We have carved out certain areas where new rights are given to the defendant and have created the concept of an affirmative defense in which if the defendant wishes to raise the affirmative defense, he has a civil burden of proof. For example, in the area of the sex crimes, there is an affirmative defense of reasonable mistake of age but the burden is on the defendant to prove by a preponderance of the evidence his defense!

Another change involved in this area of the principles of criminal liability and defenses is the right to resist an illegal arrest. There was a great debate in the commission on this particular point! The commission has decided, in effect, to change the present Connecticut common law which states that a person has the right to resist an illegal arrest and declares that if the arrest is made, force cannot be used to resist it. The challenge to the arrest must be made later in a court of law. The reasoning behind this provision is that the right to resist an illegal arrest in effect simply invites violence and that this rule of postpone or eliminate the violence and allow the determination of the legality of the arrest to be made in court.

The code provides for a classification of felonies and misdemeanors. This is a whole new concept in the criminal law. Under the present law, every crime has its own penalty. This code breaks felonies down into four categories: a, b, c, d felonies and something called an unclassified felony and misdemeanors down into a, b, c misdemeanors and unclassified misdemeanors and I'll get to the unclassified offenses in a moment. But each classification of felony carries its maximum, and in some case, a minimum sentences. For example, a class a felony carries a maximum sentence of life and a minimum sentence as fixed by the court of anywhere from one to ten years. A class b felony has a maximum sentence of fifteen years and a minimum sentence fixed by the court of no more than one-half the maximum. A class c felony has a maximum of ten years and a minimum sentence of no more than one-half the maximum and a class d felony has a maximum sentence of five years with a minimum sentence accordingly of no more than one-half the maximum. As to a b, c or d felony, in other words those not carrying life, the court may fix no minimum in which case the statutory minimum of one year would be applicable. The court has the option in effect in these felonies of not fixing a minimum.

The misdemeanors carry definite sentences, three categories of misdemeanors: a, b, and c. The a misdemeanors carry a maximum of one year; b misdemeanor of six months; c misdemeanor of three months.

The unclassified felonies and unclassified misdemeanors are a category to take into account those myriad of offenses outside this code that this commission has not dealt with. Throughout all the statutes, there are regulatory crimes, there are literally hundreds of crimes not within the area of the traditional criminal law that this code does not affect. But the code's provision on sentencing do affect those provisions and they are the unclassified misdemeanors and felonies are brought in effect into the code for the purpose of sentencing.

Now in the area of sentencing, the commission has done two things new. Well, there are three types of probation in effect created by this code. There is what we know as probation now. There's what's known as conditional discharge, and this is a new concept. Conditional discharge is a conditional release of the defendant but without probation supervision. It's for those cases where the court feels that some jurisdictional hold should be held on the defendant but the court does not feel that it is necessary to burden a probation officer and the probation department with monthly or weekly visits. In effect, the defendant is released under certain conditions and if he violates them, and the violation comes to light in some manner or other, then the original sentence can be imposed. Unconditional discharge is simply a new name for an old concept that was misnamed to begin with. Lawyers on the commission are well aware, I'm sure, of the situation where the defendant is given a sentence, execution suspended, no probation. Now for all practical purposes, this means that the defendant is released completely. The court loses its jurisdiction over him and he's a free man. But it sounds like something is being imposed. It really isn't. What we've done is simply said what the court means and created a category of unconditional discharge. The defendant may be convicted, it's a judgment of conviction and the sentence is unconditional discharge, he is released but his conviction goes on his record. It's in effect the same thing as the present system of sentence, execution suspended and no probation.

The commission has entered the procedural field somewhat on the question of a violation of probation or conditional discharge and created some procedural safeguards, including right to counsel, right to present evidence and cross-examine witnesses and a standard for violation of probation. Right now, there is no standard written into the law and the code provides for standard which is upon consideration of the whole record and established by reliable and appropriate evidence. Now this language is taken from the Federal Administrative Procedure Act and there is a body of case law interpreting it so it means that the court is not completely unfettered. There

is some standard by which the court can guide itself in deciding whether to revoke probation or not.

The area of capital punishment has been retained with one change and this is, well to go back a moment. The split-trial concept where there's a trial on the issue of guilt or innocence and then a separate trial on the question of penalty has been retained but if the jury comes in with a sentence of death, that is only a recommendation and the judge, the sentencing court, can overrule it. If the jury comes in with a sentence of life on the second trial, that is the sentence but there is in effect a second bite at the apple on the death sentence. The final decision must be made by the court in that instance.

There is a new procedure to be followed upon the acquittal of the defendant upon the grounds of mental disease or defect, requiring psychiatric hearings, psychiatric evidence, right to counsel, a separate hearing on the question of whether there should be confinement, periodic reports to the court and a limitation on the period to which a defendant acquitted can be confined in the mental hospital. The limitation being the maximum sentence that could have been imposed for the crime that he could have been convicted of unless at a later point the state comes in and proves that he is dangerous to life or person.

In the area of homicide, there are some rather significant changes. The two degrees of murder are eliminated by this code. There will be one degree of murder. The concepts of premeditation and malice are eliminated. The definition of the victim is a human being born alive. In effect the whole question of abortion is dealt with by the abortion section, which I won't discuss today because I understand that there is a separate hearing on that and it is my understanding that the commission, the committee, is not considering that. But for purposes of homicide, the victim must be a live person, not a quickened fetus, for example. As I said, there is one degree of murder and the criminal intent required is the intent to cause death. This means that there is no longer, there will be no longer the concepts of premeditation and malice. The felony murder rule is retained, however.

There are two degrees of manslaughter which correspond roughly to what is now voluntary and involuntary manslaughter under present law.

The area of assault, the assault crimes are divided into three degrees and they take into account not only the means used in the assault but the effect on the victim. Under present law there is a gap between breach of peace by assault and aggravated assault, whereas if a dangerous weapon is not used, there could be a very serious effect on the victim but the prosecution is limited there to a breach of peace by assault

charge which is a misdemeanor even though it may be a very vicious assault even though no dangerous weapon is used. This gap is filled.

There is a new offense called threatening which takes into account the bomb scare situation and a new offense called reckless endangerment which takes into account something less than the assault situation.

In the area of the sex offenses, the commission decided to adopt the basic principal which was formulated by the American Law Institute that sexual conduct, heterosexual or homosexual between consenting adults, in private, not involving the corruption of the young or commercialization, should be no business of the criminal law. This means the elimination of such offenses as lascivious carriage, fornication, seduction, indecent assault with consent is concerned, adultery. The age of consent is retained at sixteen but there are degrees of offense drawn, distinctions drawn between conduct between people of relatively the same age and people of more widely varying ages.

There are two new offenses created in the area of the right to privacy. These are eavesdropping and tampering with private communication. Eavesdropping is wiretapping or an intentional mechanical overhearing, a recording of a conversation without the consent of at least one of the parties and this would be a criminal offense. Now this does not affect, and there's a specific exemption in this definition, it does not affect cases of law enforcement officials. This commission has not dealt with the question of court orders or court authorized wiretap. If the commission is continued to complete its work on the procedural code, that particular question will be dealt with then. This is strictly a private crime. This does not deal with the question of law enforcement. Tampering with private communications is the-- it involves the situation of obtaining without consent of one of the parties information from a telephone or telegraphic company the nature of contents of any particular conversation.

In the area of obscenity, the commission has rewritten the obscenity statute to take into account the relevant Supreme Court decision and has created the concept of obscenity as to minors, minors being in this case someone under eighteen years old. This particular concept has been upheld recently by the Supreme Court as a variable obscenity concept and the commission has adopted it.

I think that's a pretty fair summary of what takes up 107 pages of the statutes and I would be glad to answer any questions that you may have.

Rep. Carrozzella: Any questions of the committee?

Rep. Bard of the 145th. In sections 76 and 77, there seem to be some

gaps there in terms of ages. For instance, a male under twenty-one, it states in section 77, a male under twenty-one engaging in sexual intercourse with a female fifteen or over, what about that?

Mr. Borden: What would that come under? Is that your question? Under twenty-one and a female fifteen?

Rep. Bard: Yes.

Mr. Borden: Well, if he were over eighteen, if he were nineteen and she were fifteen, that would come under, in effect it would come under sexual misconduct in the second degree which would be section 74 because it doesn't come under section 76 or 77 but it says that: Being a male, he engages in sexual intercourse with a female without her consent, well if she's under sixteen, she isn't capable of giving consent and so it would be an offense but it would not be rape. It would be a misdemeanor.

Rep. Bard: It would not be rape though?

Mr. Borden: It would not be rape, it would be the other offense under Section 74.

Rep. Brinckerhoff, 161st: Pursuing that a little further and if she were sixteen and he were under twenty-one--

Mr. Borden: If she were sixteen and he were under twenty-one, it would be no offense at all, assuming the other factors involved, if he were not her guardian or her in his custody or something like that.

Rep. Bard: May I ask, was this discussed? Was this age lapse here, was this discussed at the, I mean the reason it was decided these particular ages. It would seem to be in many cases the age of, when young adults first become interested in this type of thing.

Mr. Borden: The whole question of where you draw the line in ages was discussed at great length as my recollection in the commission meetings and these sections were being debated and drafted. Now the, why a particular age was picked as opposed to another, it's difficult to say why it was eighteen instead of nineteen or seventeen. I really can't say except that this was the concensus of the commission as to where to draw the line. Some of the ages, age categories, were taken from the New York revision and some from the Model Penal Code enacted by the American Law Institute. Some of them are variations of those. It's difficult for me to answer your question any more specifically than that except to say that they were focused on specifically and decided.

Rep. Carrozzella: Any other questions of the committee? Mr. Borden, I would assume that you will be available to us in the event that we ask you to come in and help us work some of those problem areas out?

Mr. Borden: At any time.

Sen. Barry, 4th District: Mr. Chairman, Senator Barry. You've referred to defenses and the different requirements upon the defendant for raising his defense, proving it and in one case in the affirmative defenses he has the burden of establishing a defense as in a civil case and in other than affirmative defenses, it's up to the state to disprove it by reasonable doubt.

Mr. Borden: That's correct.

Sen. Barry: Now is there any way in here, are these delineated as to, for example, what is other than an affirmative defense?

Mr. Borden: Well, some of them are grouped together in the article on criminal, principles of criminal liability and defense which I believe is Article II. Some of them are there. The rest are sprinkled throughout the code in the sense that where there is an offense and the commission decided to create a defense or affirmative defense to that particular offense, it's written right into that particular section or article. For example, some of the defenses and affirmative defenses are right in the article on sex offenses. The ones in the Article II which is the general provision on the principles of criminal liability and defense, those are generally applicable throughout the code. And the ones that are not generally applicable are written into the particular offenses in the particular sections.

Sen. Barry: That's not my question. Are there any that are not either specifically in each section or in that Article II which would come within the meaning of Section 5 on page 4? That saving clause, are there--

Mr. Borden: There is nothing drafted that comes within section 5. Section 5 in effect is a specific direction to the court that we don't intend to occupy the field here, that if someone raises a defense not recognized by Article II, that the court on its own, as it has traditionally, can recognize it.

Sen. Barry: And in that case, what would be your burden of proof, would it fall under--

Mr. Borden: Well I would suspect that the court there would make it the traditional burden of proof, leaving it on the state to disprove in effect beyond a reasonable doubt.

Sen. Barry: Thank you.

Rep. Carrozzella: Other questions? Thank you very much, Mr. Borden.

The chair at this time would like to recognize the distinguished gentlemen from Bridgeport, the former Speaker of the House, Robert J. Testo. Mr. Testo served as chairman of the commission to revise the criminal statutes of our state from its inception which is for the past six years. And the chair would note that the proposed code is before us today because of his guidance and direction together with his unselfish dedication to public service. Mr. Testo.

Mr. Testo; Thank you, Mr. Chairman, members of the committee. Thank you for your kind words, Rep. Carrozzella. I'm happy that you were able to ask the questions of Mr. Borden and I hope that you won't ask them of me but I'll try to answer them for you. This man was our draftsman. He was our executive director. He did pretty near everything that was asked of him plus more. I just have a brief statement to say and that is, as you know, this state's criminal law have never been codified and the commission to revise the criminal laws of the state was originated by a Special Act of the legislature of 1963. The commission, and I thank you Mr. Carrozzella for the words that you gave me, the entire commission worked diligently and was with superb dedication. It was a pleasure and I was proud to serve as its chairman and we had assistance on this commission of legislators, some of you are members of this committee, law professors, public defenders and state's attorneys. After the first four years of only legislators and law professors, the commission thought that it would be better to bring in, and public defenders, that it would be better to bring in others who are dealing with the criminal law and it was because of our concern we took in two state's attorneys, State Attorney LeBel from this district and then we had Arnold Marshall from New Haven and he was succeeded by John Evans the present Chief Prosecutor of the circuit court who gave us the balance that we were looking for in the commission.

As I said, my remarks will be brief. Dave is the draftsman and the mechanic, professional mechanic, so to speak.

We are submitting to the legislature, through this committee, a revised, simplified body of substantive laws relating to crimes and offenses in this state. In short, the commission's major assignment was to revise in thorough going fashion the criminal statutes of this state. In carrying out this assignment it was determined naturally to concentrate on our statutes of crime. This task was conceived by the commission to be more than one of reorganization, clarification and minor substantive change, but as one calling for re-examination of many fundamental principles and concepts of the criminal law. Particular stress was therefore placed upon the study of such

major areas as classification of offenses, the sentencing structure, the law of homicide and its punitive features, the defense of insanity and the development of general provisions which would crystallize important criminal law doctrines of general application. In its attempt to find modern and enlightened approaches in these and other fields, the commission and its staff examined the penal codes of other jurisdictions, as Mr. Borden told you. We used the American Law Institute Model Penal Code and the Penal Code of other states and we looked at quite frequently the Penal Code of New York State. We studied available literature, we consulted with people who have specialized knowledge and experience and we held many meetings both for controversial and non-controversial problems and we conducted several public hearings in our state which I would say was very poorly attended. Now we had a public hearing in New Haven and we had a public hearing in Hartford. Invitations were sent to many of the people who deal with the criminal laws and they were not well attended, not as well attended as we expected.

So the commission's primary efforts were aimed at the production of the new penal law which explains the package that we're presenting to you today. Certain important and controversial changes are presented herein. There's no question about it. Because of their controversial nature the commission is fully aware that your committee or the General Assembly may well want to deal with them separately. If this is the case, then as chairman of this commission I would suggest that either you or the General Assembly do the cutting. We are of the opinion that we are giving you a good package. We are aware and alerted to the fact that if there are items here that you don't like then you should do the cutting here or, as I say, let the Assembly do it. These controversial changes are by no means the only areas wherein significant changes of substance were considered and ultimately proposed. Examination of this revision will disclose basic changes in the laws relating to homicide, assault, burglary, arson, larceny, forgery and many other offenses.

In considering the organization of this revised work, the commission decided to place specific offenses into categories because our criminal statutes today, as you know, are burdened with laws which have become obsolete, unconstitutional or duplicative of other provisions of law; statutes which are procedural, administrative, regulatory or civil in nature and statutes of an extremely narrow or highly specialized character. The commission did not consider any of the aforementioned classes of offenses and stripped itself to the basic material, the penal law, thus making it considerably more amenable to the kind of revision contemplated.

The commission feels and I state that it has accomplished

fully the task which was assigned to it. It is looking forward to the task of revising the criminal procedure of this state, a bill which your committee will also be asked to consider.

On behalf of the commission, I respectfully ask your committee to bring out this bill favorably because it is sorely needed by the people of this state, particularly by those whose work brings them in contact with our criminal laws.

Rep. Carrozzella: Any questions of the committee? Thank you very much, Mr. Testo.

For the benefit of the public, I would like to call your attention again to the fact that we are now going to call speakers from the speaker's lists which are in the back of the room. If you intend to speak on this bill, would you please register your name in the back together with your organization and we'll call from the list.

Calling now from the first list, the Rev. Charles Pendleton.

Rev. Pendleton: Mr. Chairman, Honorable Members of the Committee, I am Charles Pendleton and I work with groups of people from varied racial and economic backgrounds. I'm employed by the Connecticut Commission for Religion in Action.

I am very sorry that we must dissent and express non-support of greatly needed reform in our criminal code and raise a question about process. There are thousands and thousands of people who go through circuit court each year who are poor. This law that is proposed and will govern them as well as us should be decided by them as well as by us. Part of our protest is that lawyers and legislators who have special skills and knowledge about the majesty of the law and who are needed by society are not the sole owners of the law. The law belongs to us too and the law belongs to the very poor people. The very philosophy upon which a judge can sit at a bench and decide a case in law is that the laws are social contract made among the people by which they give up certain of their individual liberties in order to have a social setting that is harmonious. But this doesn't happen with our poor people and so I want to say for them and with them that there are many laws proposed here which are good but there are many laws here which will hurt poor people in our state.

The breach of peace law under which they now live is very vague and is a kind of vacuum cleaner by which any kind of protest and dissent can be picked up. The new proposed breach of peace law is not much better. It's a little less vague but it's not sharp enough to protect people who are poor. Disorderly conduct accounts for a great number of

cases of people who begin criminal records in this state and that also is vague.

I'm disturbed about the use of incipient offenses and the emphasis on intent to commit as though there was some kind of crime of thinking as well as crime of acting in this code. There's a lot of latitude for judges which is necessary and good but we see in here also a lot of latitude for prosecutors. Bills like criminal advocacy, the threatening bill that was mentioned here, these I see as laws which are going to be reflected on very ordinary people at almost ordinary crimes.

We are concerned about the riot definition. Seven people will now constitute a riot. Three people will constitute a riot in the second degree. And the definitions of those riots make it possible for even kids who go to a church social function and are having a good time to be arrested if they annoy somebody. There are many definitions in the code. One that is particularly disturbing is the definition of person. Person is a human being, but person is also a corporation. Now I know that's standard in codes all through the country but as long as the rights of a person, the privileges and the dignity of persons are given to corporations by law, then persons who are poor seem to be diminished by that definition. And with all the definitions, there is no definition of violence. There should be a definition of violence because that word has been used here today. People who are poor have to be protected against the use of the word because people who are poor are always treated with violence. They're treated by violence in housing and in jobs and in any social contact they make and they're treated with a great deal of violence in their confrontation with police.

There should be some defense for people who are poor against false arrest. Now the protections that are built in here for police, are protections that I don't think that they need. It's difficult, exceedingly difficult, in this state to sue anybody for false arrest but false arrest can damage reputations and there should be some provision in here for a cost of defense when a person is falsely arrested. I was with three Spanish speaking yesterday who were arrested by a policeman who is punitive toward Puerto Rican people. Now they went out and hired a lawyer. The cost of that hiring of the lawyer will never come back to them. The court isn't going to say, we're sorry that this cop did something wrong to you. They can't even write it off as an income tax deduction and I believe that any kind of code that is made up here should be made up with many more protections in it for people who are poor.

Gentlemen thank you very much for the privilege of saying this.

Rep. Carrozzella: Just a minute, there are some questions of the committee.

Rep. Strada from Stamford: You made a reference to riot in the second degree with respect to three people. I just wanted to point out to you that the rest of the definition certainly precludes a Sunday School class. It states that: with two or more other persons he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm. So certainly with the rest of the definition even though there are only three people, it's a serious offense.

Rev. Pendleton: Would it be courteous to make a reply to that?

Rep. Strada: I wish you would.

Rev. Pendleton: Thank you. Gentlemen, society is always alarmed by people who are poor, alarmed of what are called riots and are called civil turmoil. Alarmed enough so that we put a heck of a lot of money into armaments and weaponry. That's one point. The second is that tumultuous is a very vague word. We could leap with joy at a political rally and that's tumultuous. It's the kind of word that's too vague and as I said before, I think that violence is too vague. I'm afraid, with great respect to you, Rep. Strada, that this is dangerous law.

Rep. Carrozzella: Any questions of the committee? Attorney John R. Williams.

Mr. Williams: Attorney John R. Williams of Simsbury. I am here today representing the thousands of Connecticut citizens who are members of the Caucus of Connecticut Democrats where I have the honor to serve as chairman of the Committee on Justice and Law Enforcement. We are here to support and urge your support that caution of the reforms recommended by the Commission to Revise the Criminal Statutes with regard to what we usually call morals cases.

It seems to us that the single most fundamental principle upon which any truly free society must be based is what Justice Brandeis described more than forty years ago as the right to be left alone, the most comprehensive of rights and the right most valued by civilized society. It is the principle that government has no right to interfere with the activities of any citizen, whatever those activities may be, so long as that citizen harms nobody other than himself. It is, in short, the right to privacy.

Simply stated, the proposed new criminal code would remove criminal sanctions from the private sexual acts of consenting adults. This is in accordance with the recommendations of the American Law Institute and as you know has been enacted in some states already.

At a time when our police resources are being stretched almost to the breaking point, when men and funds are too limited, as we all know too limited, to provide the kind and quality of police protection all of the citizens of our state need, we think that it's tragic to waste these resources in policing people's private lives. Just purely in terms of the men and the money involved, we cannot afford to have our policemen wasting their time peeping into the windows of motels and parked cars. I might add that forcing the police to engage in this kind of work is an insult to the police.

Now many people have the mistaken idea I think that the reforms proposed in this area primarily would work to the benefit of sick people in our society such as homosexuals and so forth. But interestingly enough, these laws and I particularly have in mind such laws, for example the one prohibiting the medieval crime of lascivious carriage, these laws are enforced most commonly in two strictly heterosexual situations. The first of these is on the complaint of any outraged spouse who elects to use the police department rather than a private detective in order to gather evidence for use in a divorce action. And the second situation is as a means of penalizing interracial dating.

And that this is the case is common knowledge among attorneys who practice regularly in the circuit courts and as a fact it can be confirmed by anybody who wishes to spend some time watching the proceedings there. With regard to the first example cited, that of the misuse of police by prospective divorce plaintiffs, I think it's sufficient to note both the obvious waste of public resources and its perversion of the proper function of law enforcement. We feel that this is an area which is more appropriately dealt with by--in the divorce courts and through the use of private detectives.

With regard to the second example, it is time for somebody to discuss publically a situation which is widely known to exist but is rarely talked about and that is the selective enforcement of certain laws on the basis of the personal prejudices of law enforcement officials. And as the Commission points out in its report, no laws lend themselves so readily to selective enforcement as do those laws which attempt to legislate morality.

Of the many prosecutions in the State of Connecticut every year for the crime of being in manifest danger of falling into habits of vice, when was the last time the state prosecuted the daughter of a white middle class family? Can it be that only poor girls and black girls are tempted by sin in Connecticut?

Considering the proportionately infinitesimal incidence of interracial dating in our society, how are we to explain otherwise the relatively large percentage of lascivious carriage prosecutions which involve men and women who are not of the same race?

The candid answer, which many will not accept but which the evidence of our own eyes nevertheless confirms, is that these laws are in many cases being used as clubs to enforce the personal hatreds and bigotries of a minority, I think it's a small minority, of our law enforcement officials.

The many archaic and uncivilized laws which would be abolished by this code are morally wrong no matter how they are enforced. But experience has demonstrated that laws that are as vague and as impossible to enforce across-the-board as these laws are will inevitably be enforced, and are now being enforced, in a manner which bears no relationship to the concept of equal justice before the law or even to the intent of those who originally wrote the laws.

The Caucus of Connecticut Democrats urges this committee and it urges the General Assembly to enact these reforms this year and put the matter of morality where it belongs, in the hands of physicians, the clergymen and the divorce courts.

Sen. Barry: Mr. Williams, do you have documentation of this, that the circuit court incidence of cases is higher, for example in lascivious carriage cases involving non-whites?

Mr. Williams: Senator Barry, there is no statistical studies done so far as I can determine in this area. If I might relate a personal experience, I am as you can see a very young and new attorney and within the last year I appeared for the first time before the circuit court in our state and happened at that particular day to witness a lascivious carriage prosecution and was very surprised to see it. And I turned to an attorney next to me, an attorney of many years experience and whom I did not know and I expressed general feelings of surprize and outrage and this sort of thing and he said, well there's really nothing to worry about because as we all know, this law is only enforced where a wife or a husband complains that their spouse is running around or of course in a case where you've got an interracial situation. And I might say that my own personal experience would tend to bear this out and in conversations I've had with a number of other attorneys, I find that this seems to be the general experience. But for statistics, no sir, I don't have them.

Sen. Barry: Can I ask you, was this in an urban circuit?

Mr. Williams: Yes, it was.

Sen. Barry: It was not in anything outside of Hartford? Thank you.

Rep. Carrozzella: Any other questions? The chair will call on Donald R. Holtman.

Mr. Holtman: Mr. Chairman, Honored Members of the Committee, my name is Donald R. Holtman from Simsbury. I appear before you as chairman of the Connecticut Civil Liberties Union. On behalf of that organization, I wish to address myself to those portions of the proposed code dealing with sexual crimes.

The Connecticut Civil Liberties Union fully supports those proposed revisions in this state's criminal laws which will do away with criminal sanctions for the private sexual conduct of willing adults. It does so out of the firm conviction that such conduct is not a proper interest or concern of the state, that the state should not promulgate and enforce standards which are substantially moral only. It would take this position even in the absence of the many independently persuasive reasons which have been advanced for these revisions, reasons which in part have convinced courts and legislatures in Great Britain, New York, Illinois and California to make salutary changes in their laws in this area to a greater or lesser extent. The many sound reasons which are advanced for the changes here proposed are succinctly set forth in Draft No. 4 of the Model Penal Code as follows:

"No harm to the secular interests of the community is involved in atypical sex practice in private between consenting adult partners. This area of private morals is the distinctive concern of spiritual authorities. It has been so recognized in a recent report by a group of Anglican clergy, with medical and legal advisors, calling upon the British Government to re-examine its harsh sodomy law... As in the case of illicit heterosexual relations, existing law is substantially unenforced, and there is no prospect of real enforcement except against cases of violence, corruption of minors and public solicitation. Statutes that go beyond that permit capricious selection of a very few cases for prosecution and serve primarily the interest of blackmailers. Existence of the criminal threat probably deters some people from seeking psychiatric or other assistance for their emotional problems; certainly conviction and imprisonment are not conducive to cures. Further, there is the fundamental question of the protection to which every individual is entitled against state interference in his personal affairs when he is not hurting others. Lastly, the practicalities of police administration must be considered. Funds and personnel for police work are limited, and it would appear to be poor policy to use them to any extent in this area when large numbers of atrocious crimes

remain unsolved. Even the necessary utilization of police in cases involving minors or public solicitation raises special problems of police morale, because of the entrapment practices that enforcement seems to require and the temptation to bribery and extortion." That from a comment to the Model Penal Code,

The Connecticut Civil Liberties Union, notwithstanding its recognition of the commendable enlightenment and scholarship of the commission, displayed in its recommendations to you, has serious reservations about two aspects of the commission's report dealing with sexual crime. One of these is the proposed retention of criminal sanctions for engaging in sexual conduct with animals or dead bodies. The commission in its comments, acknowledges that this sort of deviant behavior is likely most a symptom of severe emotional disorder and should be treated and not punished. It recommended continuation of criminal sanction for this sort of conduct apparently on the ground that no adequate program for medical or psychiatric treatment is provided elsewhere in the statutes. The Connecticut Civil Liberties Union believes that, in no event, should conduct which is basically a manifestation of illness, conduct which harms no one but the actor, conduct which the threat of criminal penalties cannot reasonably be expected to deter and conduct which the imposition of criminal penalties will only exacerbate, in no event should such conduct be a basis for criminal prosecution. The absence of suitable provision for treatment of this deviation may justify continuing study of the problem. It does not, in our view, justify criminal sanction.

A second reservation of the Connecticut Civil Liberties Union about the commission's otherwise wholly commendable report in this area is the exception we must take to the statement of the commission in its comment on the various defenses it proposes to the effect that "the defendant would have the burden of proving these defenses by a preponderance of the evidence." We believe the adoption of such an approach would be a dangerous departure from the well established requirement that the state as accuser must prove the guilt of an accused beyond all reasonable doubt, the corollary to the presumption of innocence. The defendant should have no burden of proof in his own prosecution. That such an approach may be constitutionally impermissible in any event is strongly suggested by the case of *Johnson v. Bennett*, decided in the U.S. Supreme Court on December 16, 1968 dealing with a similar approach to an alibi defense under Iowa law.

With the exception then of these two reservations only, we lend our support freely to the commission's recommendations regarding sexual crimes and urge their adoption.

Rep. Carrozzella: Thank you. Any questions?

Rep. Stevens from Milford: Just one question. Do your remarks concerning the abolition of the sexual crimes relate to the crime of adultery also?

Mr. Holtman: They do, sir. We feel that the divorce laws, the divorce courts are the place to handle that particular sort of conduct.

Rep. Stevens: Thank you.

Rep. Carrozzella: Any more questions? The chair would remind those members of the public that have come in late that there is a speaker's list from which we are calling and if you wish to testify, you should register in the back of the room on the speaker's list. Mrs. Otto Kirchmeier?

Mrs. Kirchmeier: Honorable members of the committee, in looking at the Congressional Record of March 20th, I notice there was a statement that said, nice people have rights too and I understand your attempt to bring out these rights under this new code. However, I'd like to remind you that nice people include Puerto Ricans, blacks, students and whites. These groups too should have been asked to go over the proposed code. I sent my eighteen year old son over here yesterday to get a copy of the code and all we were given was a one page. I obtained the book I now have this morning at ten o'clock, and I would say that anytime a member of the public cannot have a copy of the bill that you're working on, I don't think you ought to be voting on it. People should be selected from a cross-section of the community to sit down with members of this committee and amend the bill where necessary. In many respects, it's a very good bill but in the areas that I am familiar with where youth are going to be accused of rioting in Article 20, Section 183, riot in the first degree, seven persons would constitute a riot if substantial property damage results or if someone other than the seven gathered are injured.

I am the mother of seven children and most of them are pretty grown now. They range in age from 24 to 10 and believe me, you could have a riot declared in my backyard at any cookout during the summer and I don't go along with this bill at all and I don't think you really want to either.

Now rioting in the second degree, section 186, is defined as tumultuous and violent conduct by three or more people creating a grave risk of causing public alarm. And I'm not familiar with 187 and 188 yet because I've just gotten this bill and I haven't had the privilege of really reading it. But there again, if you take the teen centers throughout the state and in my town, in Enfield, we have the largest in New England and we serve eleven hundred kids in a week, it isn't unusual to have five hundred at a Friday night dance, eleven hundred when the Wild Weeds come. My daughter is with me today and they're working on a coffee house that will house three hundred children in one location. I think that this law on riots is so loosely written that should they drop a case of soda or perhaps knock over a plant or an ashtray or something like that, the cop with the wrong approach to the kids could really throw them in the jug for rioting and I really--I'm very upset with this section of the law and I wish it was amended.

Also, on your law on insanity, I can't quote the section, but I have seen it here, I wish you wouldn't make the mistake of the '67 General Assembly which only confused that law further. Doctors and attorneys should be sitting down and studying the insanity law. It's very poorly written and you haven't improved it in this code one single bit. Now there is a good place where you can use the talent of the legal and the medical professions to sit down and come up with a definition of insanity that will work in our court.

You're probably wondering why I'm hammering away at courts. I'm a member of the Court Watchers of Connecticut and we have sat in district 12, I mean circuit 12, circuit 13 and circuit 14 and superior courts in Connecticut. I would hope that you would spend some time in court watching, and see how the people are affected by the laws that you pass. They affect every single one of us and particularly our children. More and more of our youth are being brought into court on the breach of the peace and under this code, we have not included breach of the peace. In sitting in the Morgan Street court, 14, for two weeks last summer, there were seven of us acting as court watchers and fifty percent of the people who were brought in in those two weeks, and we have statistics to show this to you, were brought in on charges of breach of the peace. So this is a very important area of the code and it's again a place where people should sit down, the public should sit down with members of this committee and go over it with you. We're the people who will be sent to jail and fined.

Once again, speaking as a white mother, we the white majority are making and enforcing the laws that minority groups and some of our children now find it difficult to live with. I

don't think we should confuse them any further. I think that you should wait, that you should listen and you should make the changes during a summer workshop period. You have until 1971 when this law would then take effect and I think you should use that time to get as many members of the community in this state involved in going over some of the areas of this particular code.

Now as I said before, I think most police are decent but I think that there are some that are just itching for a bill like this. Until we rid ourselves of those particular police officers, I don't think we can enforce this entire bill and I wouldn't want you to approve it until it's studied further, both by the police and by the public. I think the abortion law section is terrific and I know you don't want anything said here but I hope that you'll retain it. As Mr. Borden said, time is needed to educate the police and he hopes that you'll wait until '71. But to work now and bring in the people is the thing that I want you to do.

Also, the Menninger Foundation officials have gone on record of disapproving the American method of sentencing offenders and I would like to see the information from the Menninger Foundation applied to this bill before it's enacted.

Once again I remind you that if you do sit in circuit courts throughout the state, you'll find that most of our people are brought in on charges of breach of the peace and I hope that you would pay particular attention to that section of the bill.

Thank you very much.

Rep. Carrozzella: Thank you. Any questions?

Rep. Neiditz, 12th District: Mrs. Kirchmeier, I just want to direct a question regarding section 14, mental disease or defect which substantially follows the statute as passed in the '67 session. Is it your opinion that the previous court judge making law was preferable to this?

Mrs. Kirchmeier: No, it's as bad as this.

Rep. Neiditz: Well, would you suggest, is there any other form that you would suggest to this committee?

Mrs. Kirchmeier: I talked to several attorneys who are working with their clients now and they are trying to prove insanity and find out if this is basically the McNaughton law which basically goes back to an old English law dated 1584 or thereabouts. And this is no improvement. I've asked doctors and psychiatrists, you know, how you define mental illness and the terms in this law do not take social behavior as a form. You

know the way this is written a guy can go out, live a normal life and happen to kill four people one day but he's still sane by Connecticut law and that's a bad law.

Rep. Neiditz: Well, I don't want to argue with you, you're neither a lawyer nor a psychiatrist.

Mrs. Kirchmeier: No, I'm not. I'm just giving you my opinion.

Rep. Neiditz: You have to have psychiatric as well as legal testimony and this section 14 is the model penal code approach of the American Law Institute.

Mrs. Kirchmeier: I realize that but there is still more work that has to be done on it.

Rep. Neiditz: Well then, this commission, as you may well know, has been studying these matters since 1963 and I'm sure that any of the lawyers and psychiatrists whom you've discussed these things with would be--should give whatever information they may have to the committee.

Mrs. Kirchmeier: I've asked each of them to write your committee a letter.

Rep. Neiditz: Thank you.

Rep. Carrozzella: Questions?

Rep. Strada: There seems to be some concern about the section, Article 20, section 186 and others with respect to riots and I just wonder--you seem to leave an inference by stating that whenever there are more than three, three or more kids that are assembled at a dance that the police can come in and just arbitrarily make an arrest. I wonder whether or not you've read the language that you omitted in testifying. Under 186, which calls for violent conduct, which calls for intentionally and recklessly causing or creating a grave risk --did you read these, did you understand these?

Mrs. Kirchmeier: Yes, sir, I did and I agree with the minister who spoke before me that you should define violent because that's really up to the interpretation and the police officer coming in--

Rep. Strada: I beg your pardon, that would be up to the court, you see. The court will define whether it's violent conduct or not and a court--

Mrs. Kirchmeier: Once you get to court and after you're arrested. Right?

Rep. Strada: I won't get into an argument. Thank you very much.

Rep. Bingham: Mrs. Kirchmeier, have you kept any statistics on the breach of the peace?

Mrs. Kirchmeier: Yes.

Rep. Bingham: Could you submit those to the committee?

Mrs. Kirchmeier: I'll see that you get them, yes.

Rep. Bingham: Thank you very much.

Rep. Carrozzella: Thank you. Arthur L. Johnson?

Mr. Johnson: Mr. Chairman, distinguished members of the committee, I certainly want to commend this commission for the two years of effort. I think it's something that we've seen necessary in Connecticut. There's no doubt about it that there are many problems that have to be resolved.

I do want to say, however, that I would be quite concerned if our substantive law outruns our procedural changes and I want to again urge you as a committee to immediately bring this committee into action. For example, we have a 1971 date here. Shall we contemplate a 1973 date for procedural changes when we know and really by inference this is what many of the people who have testified are concerned about. It's not really how the law is codified to the extent. It's how it's handled, how it's practiced, how the judges understand it. I think that we have a great deal of evidence that we have asked Chief Justice Cotter and Judge Daly to do more with the judges in the matter of human relations. We know the whole circuit court picture so I'm simply urging for you at this time to really consider the fact that in the absence of real procedural change, we have problems.

Now I again want to reaffirm the position taken by previous speakers concerning the public and its participation. I think we know that today and since 1964 we have been seeing a greater public participation in all the events which govern their lives and if this is the trend, I think to...in the face of this trend now and in the future would be a mistake. I think there are people who are very much concerned with it, court watchers and others who are quite involved with the matter and I urge you to have the commission consider broadening its membership, not only to look for testimony but in the inner circle. I think you will find that we can rely on the judgment of people who do not have the expertise of the people that you have on the commission who are so necessary.

Now, I've heard the various discussions. I would like to simply call your attention and certainly it takes a man of the law of great expertise to go through all of this, but

I have one section which I've looked at that bothers me somewhat because it relates to a whole series of attitudes affecting schools. Section 22, I mean Article 22, Section 195, the only reference we now have to loitering, and I'm pleased to see that so much of the statute has been changed, the only thing we now have relating to loitering is considering loitering about school grounds. Now this is a narrow definition. I understand that loitering altogether has been taken out. Now if you will recognize the fact that there are many opportunities for abuse in this area, I'm simply suggesting that you look at it and that loitering ought to be taken out altogether if its trespass or if there's something else to be looked at, then that should be invoked but as it now occurs, we find teenage youngsters customarily going from school to school playing, place to place and I think this places an opportunity for power on such people as janitors who may be disturbed about it.

Now on the matter of riot and its drafting, I think that the commission probably recognizes that it had a drafting problem in dealing with the word "riot". We are caught up in the context of today and the problems that we are faced everywhere and I think that they attempted to handle that matter in terms of the present day thinking. I would feel that if we put this on the statute as it--on the books as it now stands or as we contemplate it for 1971, that we may in fact be causing a disservice to the public generally. I believe that there are new definitions. I'm not prepared to say what they should be but I'm certainly aware that the matters that we have dealt with as a commission, our investigation of these matters will indicate that many people get caught up into circumstances. This, for example, doesn't handle the matter of provocation. You know most of our disturbances in the riot report and the commission's report and the Kerner report all show that many times it involves an arresting officer and then the contagion and the excitement that ensued. Therefore if that occurred and we have nothing which handles the whole question of the arresting officer where we can pick up three to five to seven people, I think we are involving ourselves in a matter that may cause serious disservice to the people who will be faced with this kind of a charge.

Now finally I want to say again that while we talk about affirmative defense and new rights to the defendant, that immediately we've got to plug one gap. There are no new rights to the poor, to the black or white poor, that are of any value to him without--with our present system. So I know I am digressing from the responsibility of this particular committee at this time but you are the Judiciary Committee. I think you ought to be looking at whatever new bill is necessary for the public defender. In the absence

of something immediate in relation to the public defender, our substantive law rights are of no value. When the public defender as of now, and I think your Judiciary Committee could by administrative direction through Chief Justice Daly do something about one flagrant abuse and that is when the public defender has to meet his clients in the hallway, has to see a person and tell them to plead guilty five minutes before their case is heard and I know this to be a fact, then you have no real rights. So I suggest to you that on the way to procedural changes, you've got some things that you can do immediately to make the substantive laws work more.

I do believe that we have known breach of the peace to be a catch-all and maybe there is a tightening up here but I do want to commend the commission once again for at least putting it in some form that we can recognize. Certainly one of the most serious and flagrant abuses of the breach of the peace law is that of the policeman whose peace seems to have been breached at three o'clock in the morning and I can document that, and the arrest is made. I think that we have at least begun to codify some things that are necessary.

Thank you very much.

Rep. Strada: Mr. Johnson, concerning section 195, loitering in or about school grounds, it says: A person is guilty of loitering on school grounds when he loiters or remains in or about a school building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or any other license or privilege to be there. And I just wanted to point out to you, sir, having been a member of the commission also that the motivation behind this particular statute is to attack the problem of dope pushers that loiter and hang around the school grounds. It's not trespassing, its public property. This is the motivation and this is the problem that we are trying to attack with this particular statute.

Mr. Johnson: Well then if that's what you're trying to do with it, then it certainly ought to come out. It very definitely ought to come out if that's the motivation for this particular statute because I don't think that's the way you will reach that problem and I think it is subject to all the abuses which I now see. For example, you have in some of our schools, Rep. Strada, and believe me, as far as the dope etcetera, I think we've got some very long ways to go on that, but right now we have in our schools people who police halls, who have jobs with this kind of responsibility who get concerned not about dope pushers but they get concerned about other teenagers who come. We get lots of things that happen and I think that these, while our motivation is good, once the law is enacted its application belongs to everybody and anybody who sees fit to use it. They will not go behind this law and I'm sure the courts will not go behind it if we arrest a youngster or three

youngsters for loitering on our school grounds on the basis of this. You have excluded the loitering concept altogether and I suggest that it needs to be excluded here. I think you have to reach dope peddlers in many other ways and certainly if you arrest a man for dope peddling and he's arrested on loitering and you look here, I think you even claim that he's loitering, you look here it's only a class C misdemeanor, you really haven't done anything, you see, except possibly cause a problem that would be unnecessary. Most of our problems in our court with our teenagers come from things that happen in and around the schools and unfortunately it happens this way. But I think there are abuses that can occur, that's what I'm suggesting sir.

Rep. Strada: I don't know that I understand who you are concerned about. Are you concerned about the children that are there at the hours? They certainly would not be loitering under this statute. They have a reason to be there if they attend school.

Mr. Johnson: But they are there after hours. For example, I am concerned about, oh they are there after hours. They are on the grounds. You have now recreational facilities in the schools. Right? And kids are let out. They don't always leave, they don't hurry. They have the right to be there according to the janitor's definition who now says I'm closing up, get going. And so they stand on the school grounds. They are by definition of this statute loitering, as I understand it. Now, Rep. Strada, I am not a lawyer and certainly if there are lawyers who have taken other positions, I would be pleased to know it.

Rep. Sarasin, 95th District: Mr. Johnson, you've mentioned in your last comments that you have people policing the halls and so forth in the schools which in itself is rather disgraceful. I would assume also that one possibility under this provision of the code would be to prevent the unlawful assembly, if I may use that term in quotes, of students who don't, or children and teenagers who don't belong in the school during school hours, not necessarily dope pushers but kids who are there that shouldn't be there. They are certainly not contributing anything.

Mr. Johnson: No, they're not, I would assume, but I would think sir that we now have ways of taking care of much of that through this policing provision. I think that where the dangers would really come, really as I see it, is in much of the after school hours, in many of the things--you know kids do congregate, they do assemble. And maybe they unlawfully assemble.

Rep. Sarasin: Well that perhaps is a bad phrase but this is getting to people, teenagers essentially I would assume, who do not have a license to be there, shouldn't be there. Now is there anything

wrong in asking them to not be there and if they insist on staying there, then to arrest them under a provision of this type?

Mr. Johnson: Your question to me is, is there anything wrong in arresting them under the statute of loitering as it's now interpreted, as you now have it constructed here. And I simply say that if loitering, if you saw fit to take loitering out of all other public things, I think that it also ought to come out of this particular area. I think this is a kind of policing function that is subject to abuse. Now, you know, I can't argue it any further than that. I think that we have other recourse and I think we do have arrests. I think reaching the dope peddler may be something else you do but I have no answer for it than that.

Rep. Oliver: Just for the purposes of computing you and the committee I might refer tying together section 195 with sections 117, 118, 119, criminal trespass, it's quite possible that someone could be prosecuted under 119 for criminal trespass in the third degree for being or remaining on school grounds, the only thing that seems to be missing is the question of knowledge...enter on the part of the person charged and this might be a consideration that's bothering you.

Mr. Johnson: Well, you don't expect a response from me. I think that's directed to the committee. My suggestion was that the commission again review this and if the motivation was simply to reach dope peddlers, I don't think you'd do it this way and my concern probably stems more from ignorance of the law than from the fact of what you can do with it in terms of the parade of youngsters I now see coming from our school area to the court to get records, which records follow them. Maybe there is a whole new way to handle youth and that you are not even recognizing here.

Rep. Carrozzella: Thank you very much, Mr. Johnson. Attorney Karanian?

Mr. Karanian: Mr. Chairman, Members of the Committee, I'm Attorney Charles G. Karanian. Actually I appear here on behalf of the Connecticut Council and the National Council on Crime and Delinquency. As you are probably aware of, the Connecticut Council on National Crime and Delinquency is very much interested in the codification of the penal code, the criminal law, of the state of Connecticut. It has also been very much interested in the institutional system we have here, the rehabilitation of those who have been convicted of crime and the whole system and the manner in which people are treated after they have been arrested.

Now, I think the commission and the committee who has prepared the penal code deserves a lot of credit. I think much work has been done on it. Connecticut has had the penal

code coming for some time now and I think it's a very important step.

There are some things, of course, none of the citizens of Connecticut would ever agree upon everything one hundred percent. I think many parts of the code are good. I would like to have the opportunity though on behalf of Ralph Schmidt who is the Director of the Connecticut Council, the National Council has prepared a model sentencing act. I don't know if Mr. Borden has had the opportunity--this commission has had the opportunity of having the model sentencing act that we have prepared and using it as a guide for themselves. I know and we're familiar with the American Law Institute Model Penal Code which is the one in looking through the penal code portions of the American Law Institute the penal code has been incorporated and many good parts of it also.

I feel that there are some sections that can be corrected, however, and prior to this hearing I had the opportunity to speak to the chairman and he informed me that, of course, much of this is substantive and the procedural part will follow. And I would like the opportunity then for the Council to submit to the body at a later date, not today, we don't have it available today, but the Model Sentencing Act and basically it deals with the sentencing portion of the code, section 36 and some of the parts thereafter. And it is our thought here that there is not enough flexibility in certain sections of the code and that some of the sentences that are contained in the code are a little harsh and a little stiff and I feel that there should be a little more flexibility, that some of the minimum sentences of the code provides should be dropped and there should be no minimum sentence as such, that the sentencing judges in hearing the charges, pre-sentence reports and all the information that they have at their disposal at that time should be able to sentence a person. But I think there should be no minimum sentence as such. Because actually we are concerned with a number of things, and that is the rehabilitation of a person after they have been convicted of a crime. If a person has committed a crime, the state has the problem of taking into consideration what can we do for this person and rehabilitate him and the parole system, as such, has been set up and we are interested in this set-up also. Once the person has been committed to an institution, a correctional institution, they are also working toward rehabilitation. Some of the sentences in this code are stiff to the point where parole would be impossible for an indefinite period and actually for the crime committed, would work a hardship on all those concerned.

Now, I've heard other people, and I'd like to say myself personally, speak in opposition to certain areas here. I

think the committee as such has done a good job in codifying the code and I think it has done it in taking into consideration all areas, that is not one class or a certain distinct class or aimed it at any distinct class but taking in the rights of all the individuals, the citizens as a whole. And I think we should have more positive thinking rather than negative thinking and that people themselves should be more concerned, not with what we're taking the rights away from individuals but seeing that these individuals are behaving.

Thank you.

Rep. Carrozzella: Thank you. Judge Daly?

Judge Daly: Good morning, Honorable Chairman and Members of the Judiciary Committee. John J. Daly, Circuit Court. I was not my intention to make any remarks this morning. I only had the benefit of reading this act once but in looking it over, may I point out to you gentlemen in section 194, it provides that an intoxication is a class C misdemeanor. Now as I read section 38, a class C misdemeanor would provide for a penalty not to exceed three months. This would mean then that anybody charged with this would automatically, if the law stays, be entitled to a jury trial. Now this is something at least that I bring to your attention that as you know now, being found intoxicated has a maximum of \$20.00 or thirty days and does not permit one to have a jury trial. So if this were the change, then you'd be in a position that you might possibly have ten thousand to fifteen thousand claims for the jury so I at least bring it to your attention. Thank you very much.

Rep. Carrozzella: Mr. Parakilas?

Mr. Parakilas: Mr. Chairman, Honorable Members of the Judiciary Committee, Attorney James C. Parakilas representing the Hartford County Bar Association.

I come here today to make some comments about the proposed penal code more on the basis of asking for a little time. For some reason or other and I have just come into my position as President of the Bar about a week and a half or two ago and I have just had the opportunity of knowing and seeing the penal code in the last few days. Now if I say anything here this morning that sounds as though we're not prepared to do anything, it's no reflection on the legislature or the committee or the commission that has prepared this penal code. At this time I wish to commend the legislature and the committee and the commission for doing this long awaited and needed piece of legislation.

However, I trust that you realize that it is a far reaching and different code than we now have. I would say that in a cursory reading of the law, the proposed law, that it is

more on the general basis, that is the offenses and the procedures, than our present statutes so that we are in a position in studying this law, we have to compare what we have known to be the criminal law on the more specific basis than this now is. And, therefore, we have to examine every aspect of it.

Now, I would like to also say this, that this law obviously was conceived and written and presented by a commission who, as was stated here this morning, have the benefit of consulting with a great many people. However in making these comments on behalf of the Bar Association I would like to say that about a small percentage, like about five percent, of the Bar represents the prosecution part of the law and we in the Bar Association say represent about ninety-five percent of those who do defense work so that we would like, if possible, to have a little more time to study this particular code and have an opportunity to make some comments about it. What form it will take, I can't tell you right now. I haven't had the opportunity to meet with anybody in our association to be able to tell you this is the stand we are going to take or this is the procedure we'd like to use. However, I stand before you this morning asking you to consider giving our Bar Association, and I'm not sure if anybody else has any opinions about this thing--

Sen. Pickett: I apologize for interrupting. We haven't announced it yet. I will at this time for your purposes. The sub-committee of this committee will be working on this bill and the sub-committee consists of Senator Barry, who is a member of the Hartford County Bar, so you do have that opportunity to talk to Dave as you see fit, and Representative Caplan of New Haven so that you will have someone in your own area to work with who will be co-chairmen of the sub-committee working on this, namely Senator Barry.

Mr. Parakilas: In other words, Senator Pickett, you're saying that the legislature will not be acting on this particular for some days or weeks to come, a week or ten days. Well, may I just make a few more comments about the code itself?

In looking at the different sections of the code and I inquired about this, there is not what they call a saving clause in this law. Now, going back to my law school days when one of our professors noted that Ohio back in the early 30's passed a code, a criminal code, and abolished all the previous crimes. To their consternation they had discovered they forgot to put the crime of rape in their code and they had a time trying to get that back into the legislature. So that I ask if there isn't already something in here and I may have missed it, that constitutes a saving clause that in the event, because the code itself is so general, that a saving clause be

inserted in the code that relates back to the common law so that if anything was omitted at least it will be referred to the common law and, therefore, subject to prosecution. And if there isn't one, it can be remedied at the same time you have the common law on the books instead of abolishing the entire common law.

Unofficially and on a personal basis, I would like to make one more comment about the so-called sex crimes. I know that there's been a great deal done in other countries and a great deal of comment and a great deal of controversy about this subject in this country but I do want to say that although there is one opinion and I concur with a great many--a great deal of that as to the crimes which are personal performed in private that may not be the entire concern of the public or of the law in prosecuting such conduct. I do make an exception of the crime of adultery. I know comments have been made here to the effect that the divorce law takes care of that aspect of it. I do not concur with this viewpoint. I think that the activity of two married people being together and affecting entire families is a very bad thing for our society. I don't think that we need any situations where we are militating against the institution of a family. I think that if people who are married have families chose to violate the sanctity of the family in the marriage, I think that that should be a crime and forcable. Instead of abolishing the crime, I think that we ought to implement it. I think that the position taken by the so-called women's portion of the Bar with respect that not only should it be a crime for a married woman but it should also be a crime for a married man to commit adultery. I say this on a personal basis, I don't have the concurrence of the Bar Association on this but I do want to strongly urge you not to eliminate this crime because I believe that we need it more now than we ever did before.

And one more thing I would like to say, Mr. Chairman, and that is in promulgating, in making this code the law, I would ask that somebody devise a built-in index for the code. I think this is very important not only for lawyers but for other people who want to study the act. I think you're familiar perhaps with, most lawyers are, with the difficulty we have in looking at an index and trying to find things in the law and you're familiar with the situation where you are looking for a section of the motor vehicle in the index and it refers to motor vehicles and you look in motor vehicles and it refers you back to theft and then where are you? You're at a dead-end. And I would suggest to the committee that somebody devise a built-in index to this code to make it easier for people to find the different parts of the code.

I thank you very much for your attention.

Rep. Carrozzella: Thank you very much, Mr. Parakilas. Mr. Murphy?

Mr. Murphy: Mr. Chairman and Members of the Committee, I have been acting as co-chairman of the Committee on Criminal Administration of the Hartford County Bar and I think Mr. Parakilas' comments covered most of anything that is necessary for me to say. We have not had our new committee chairman appointed yet but I'm sure that I can speak for them in saying that we would like to--

Rep. Carrozzella: Excuse me, would you please identify yourself for the secretary?

Mr. Murphy: I thought I did that. My name is J. Read Murphy of Hartford.

We would like to offer to your committees and particularly in conjunction with Senator Barry our help in analyzing this document for you to see if there is anything with the kind of experience that our lawyers have both in defense and in the prosecuting side to perhaps improve upon this. I would say this to you: that the very authorship of this bill recommends itself very strongly to me. I don't want to take any more of your time with a lot of comments on this but I would make a couple of general observations by way of the kind of thing, I think, our committee could do for you.

I'm not that familiar with the subject of entrapment covered in section 16 but I suspect that it's been pretty thoroughly aired out by the committee, nevertheless somewhere in there I see a potential problem because I know that as an ex-assistant state's attorney that one of the chief methods of prosecuting the pusher of dope was a method which was not legal entrapment but it certainly was an inducive to sell these narcotics to him.

I wanted to comment briefly and personally and not on behalf of the Bar Association certainly that I disapprove of the abolition of the adultery statute although it certainly needs cleaning up the way it is. I think we have a monogamous society and I think it's wrong to delete that and thereby in effect legislate its legality either morally or otherwise.

On the question of burglary, it's nice to see that finally clarified through all the nonsense we've been through for years trying to determine whether somebody got into a house or out of it before the sun rose or before there was enough light to stick him in jail or in prison on a two year mandatory sentence or whether it was breaking and entering with

criminal intent or what he was doing. This type of pedantics was something that should have gone years ago.

My one concrete comment is on section 136 on the receiving stolen property and it strikes me that that is a statute, and this is the kind of thing our committee could help you gentlemen with, but my own personal view of that is that it isn't severe enough. The receiver to the eyes of the state's attorneys I am sure is the evil man in the criminal hierarchy. Without the receiver the average type of petty crime and indeed the average type of major crime against property is almost impossible, I might say that prosecuting receivers is well nigh impossible to but when you get him, you like to put him away for a long period of time.

My offer stands. Thank you.

Rep. Carrozzella: Thank you very much. Sargeant Roach?

Sgt. Roach: Good morning, gentlemen. Sargeant Roach of the Guilford Police Department. On behalf of my brother officers and several other police officers along the shore line area, I would like to urge that this revision be adopted for the most part pertaining to violent crimes, crimes of sexual activity, especially in the more minor areas like lascivious carriage. We are finding problems enforcing these laws because the courts take a lenient view of them for the most part, people themselves feel it's not wrong to be so involved and in the long run we end up with a serious crime as the result of such activity.

I just had a chance to look at the section 7182 this morning and I find that there is one chapter in there regarding justification for a defense. This in itself is good for the police officers to know just where they stand nowadays. We get involved with circumstances involving resisting arrest. We don't know just what rights we have as police officers and we take a right we think we have, we find out later on that we're the big bad men of this business and we've got to step down a little bit and at least this way now, we've got something to look at.

For the most part, gentlemen, we urge that you would adopt these revisions that have been recommended. I know the committees have worked diligently on them for several years now and I know it is nothing that is being rushed through. There may be loopholes in it, like Judge Daly just mentioned about this intoxication charge being a set-up for a jury trial, this would certainly give a great problem in court. I've served as liason officer now to the 8th circuit from Guilford for over two years. I've had experience watching all the activities in court. I

urge that the courts would tend to get more tough on some of these repeat offenders. They are a great problem in this world...and if we don't do something about stopping it, we're going to be in trouble.

Thank you, gentlemen.

Rep. Carrozzella: Thank you, sir. Mr. Pendleton?

Mr. Pendleton: The name is Pendleton, the same as the minister's. He's my father.

I'd like to speak in particular reference to the comments made by Representative Strada concerning Article 20, sections 185 and 186 and a few other sections. I think that Representative Strada and perhaps this whole committee is overlooking some things in speaking this way about these sections and in even recommending that these sections be adopted as stands. I know this because I, myself, in a different state, when I was living in New York state, have been arrested on a very similar law because I asked a policeman in a loud voice to stop standing on a young woman's stomach and beating her with a billyclub. Now I think that I can testify quite honestly that what happens whether or not a person is arrested justly is that that person is damaged from the report in the press of his arrest and he's damaged on job applications and as you probably already know, this law is most dangerous to poor people and black people, Puerto Rican people and what happens is that these people are the very people to whom jobs are most important. Jobs are not simply a means of getting money but they are a means of keeping together a family situation where the husband might otherwise have to leave. He can't support his family. In many white communities and middle class communities you don't even have to consider these problems and I think that it's time this committee recognizes the fact that despite the fact that most policeman are good policemen, there are very dangerous policemen on the street and that they endanger the lives of poor people and black people and students and a lot of people who are considered alarming or violent in character. These are words again that haven't been well defined but are very dangerous to us. This is represented in the way that we are denied jobs because of an arrest record.

As I say, I was arrested in New York on a charge similar to this and that next weekend I was denied a job because I had an arrest record. So this thing affects us whether it's just or not and I think you have to start to write in here laws for some protection for the people against poor police practices. You realize from the papers and what's going on or you should realize by now that there are such things happening in America and I think it's time that we wake up and recognize them.

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Now I would also like to speak about this thing about loitering in schools. I realize that, you know, some of you think that something like passing out leaflets just outside of school properties or on sidewalks should be prosecuted under this. But that means that you're stifling dissent. That means that what you're doing is you're putting in a law which contradicts the constitution. You're saying well, this country can have dissent as we chose dissent to exist, only the dissent which we agree upon. But that doesn't necessarily mean in the arresting officers eyes constitutional dissent. It doesn't necessarily mean lawful dissent. You see what happens is that you are at a demonstration and you get spotted and in the situation in New York when two weeks later I was coming to pick up some of our friends with the mothers of several young women and young men who were going to rehearse a play and when we arrived on the scene they were being beaten by policemen and when I got there, I asked the policeman in a loud voice to step off of the woman's stomach and stop beating her and one of the policemen recognized me and said, I recognize him, get him, simply because I had been in a demonstration. Now I think that it's time that you put some safeguards into these laws for the poor people and black people because you haven't encountered poor police practices doesn't mean that they don't exist. And if you're going to encourage respect of law, and if you're going to encourage law and order, you have to get at the communities that you think there's disrespect of law and order in and those communities are the poor communities. And if you're going to get at them and solve these problems, what you have to do is write laws which are respectable to people, to people first because governments are instituted to protect the rights of men first and so I want to see coming out of committees like this, laws that protect the rights of men. And if you can't do that, then you can't inspire respect within any communities within the state for law and order.

Thank you very much.

Rep. Carrozzella: Thank you, sir.

That concludes the speaker's list and we'll adjourn the hearing. Thank you all.

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**Transcript of Public Hearing, April 8, 1969,  
conducted by the  
Judiciary and Governmental Functions Committee**

**Connecticut. Joint Standing Committee Hearings.  
Judiciary and Governmental Functions,  
Part 1, 1969 Session,  
pp. 254-258.**

TUESDAY

JUDICIARY AND GOVERNMENTAL FUNCTIONS

APRIL 8, 1969

Sen. John F. Pickett, presiding  
Rep. John Carrozzella, presiding

Members: Senators: Caplan, Fauliso, Barry, Jackson, Barlow, Jr., Caldwell, Lyddy, Hull, Finney, Lutpon  
Representatives: Strada, Morris, Willard, Healey, Merly, Lowden, Leary, Gillies, Green, Klebanoff, Oliver, Kelly, Ritter, Neiditz, Bard, Bingham, Brinckerhoff, Crouch, McCarthy, Sarasin, Stevens, Sullivan

Rep. Carrozzella: I must apologize for being a little late this morning, but we had some other matters that we had to take care of. I would call the attention of the public that we are going to call the speakers from the speaker's list which is in the back of the room. All you need do is sign the list and refer to the bill that you wish to speak in favor of and your organization, if you are going to speak for any.

Now, of course, the hearing has been scheduled from ten to eleven for legislators and I would like now to recognize Sen. Stanley.

Sen. Stanley: Mr. Chairman, members of the committee, thank you for recognizing me so bright and early in the morning. My name is State Senator William B. Stanley from the 19th District and the bill I would like to speak to is my bill S.B. 1150 dealing with the dissemination of indecent material to children. I have prepared nothing by way of presentation to the committee except some evidence that I would like to leave with you and I can think of a lot of subjects I'd rather talk about than obscenity but I want it clearly understood right from the beginning that I am dealing with obscenity only as it relates to children and I'm not trying to pass judgment on whether or not the adult population should be entitled to view it, own it, show it, sell it. But I do believe our children are something special, and that the next generation is going to depend in a large part on our ability to bring these young people up properly.

(HB 7182)

Now in our society there are certain limitations that we recognize with minors. We do not let them drive until they're sixteen, they can't get married until they're eighteen, they can't vote, at least at the moment, until they're twenty-one. And I think that we have a great deal of evidence that the greatest teacher of children is the visual film or presentation--geography books, history books are all fully illustrated, indicating that we can make a lasting impression on young minds if we illustrate.

TUESDAY

JUDICIARY AND GOVERNMENTAL FUNCTIONS

APRIL 8, 1969

Now in our society recently there has been a flood of pornography and the effect on the adult population, I'm not sure that there is any profound effects but on children, I think it's undeniably true that young children are shocked when they see pornography and today, it isn't only pornography, it's all the perversions. And I wonder how many young people are being destroyed because their first exposure to this unknown at their age, sex, is not presented to them as something beautiful but something dirty and so, today, when I give you this evidence, I would like the members of the committee, not to look at this material as you would as an adult but to consider how wonderful you'd feel if you came home and found your kids with this stuff. Because most of the material I have was taken from children by the police and I'm not even sure that they were constitutionally right in taking this material.

I'll make a brief statement if I can with respect to the act. Sections 1, 2 and 3 of this bill are patterned very closely after the New York statute which is subject, which were subject to the United States Supreme Court decision in the Ginsberg vs. New York and that decided in 1968. The Supreme Court did not rule specifically on the constitutionality of this particular statute but it did find that a state can adopt legislation in this area, holding that a state has an independent interest in the well-being of its youth and that the power of a state to control and conduct children or what children receive or what they see, that this is beyond the scope of authority they might have over adults. Now, they also conclude that certain of our statutes, or the statement concludes that certain of the statutes now on the books, for example 53-244 which this is intended to replace, may not even be constitutional as it exists on our books today. What I am proposing is constitutional. It perhaps satisfies most of the requirements, if not all of the requirements for appeal and the separation of material that would be for adults and would be for children. There will be many people who will speak to this so let me be brief.

And I would point out one other item that I would like to present in evidence from the Hartford Times, an article that was printed on January 19th that dealt with censorship in Sweden. And if I could appeal to you, in Sweden where there is no censorship, they still maintain that children must be protected so that in Sweden, with no censorship whatever, they do control what children under eighteen can see. And you can't get any more liberal than they are in Sweden. But they still recognize the obligation in Sweden to young people.

Now, I'm sure the other people before you today will tell of things that are coming through the mail. I am going to leave certain of these things with you that we have limited control over, just so that you might know full well how far they're going. And I would very much like to point out today part of

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problem that we have in our society is that it is possible to go to a Walt Disney moviewith the kids, because I did it, double feature Walt Disney movie and at half time, they run the previews of coming attractions and if you see the previews of coming attractions for the motions pictures, like the Killing of Sister George, you don't have to see the picture because they take every bit that is provocative and jam it into a ten minute leader. So what do you tell your child when you're sitting in a drive-in theatre and you went to see the Best of Walt Disney, and the previews of coming attractions and your little nine year old says, daddy, what's that man doing, he's getting undressed. What do you say? Well, it's happening and some of these movies that you hear now, that are receiving such great notoriety, The Killing of Sister George, are Mikey Mouse, they're kidstuff compared to some of the things that they are producing, some of the theatres that are dealing particularly with this.

I have a book entitled "Shocker" and it is a shocker and you can smile, when you read it assume that your kids were seeing the movie that's illustrated here. There's nothing left to the imagination and it's appearing, on screen, in Connecticut. Adults may see it. I don't, as an individual and as a parent, think that children should. I also would like to leave a book with you to show you how far they are going, "The Love-In", fully illustrated, \$2.00. There's nothing left to the imagination. It's all in here for two bucks and it's available to kids. Now another one that I have and a fellow made a presentation of this, I won't even open it and I won't mention the name of it, it's available on newsstands and it says very proudly across the front that there's nothing obscene as determined by the Supreme Court of this country in this publication. There are dirty, rotten jokes, every four letter word you can think of, there is complete nudity but there is nothing obscene, gentlemen. If the adult population want to read it, this is one thing. I don't want my children to read it until they have grown at least to the age where they can understand that this exploitation of sex is to make a quick buck. And I wonder how many children are going to have twisted minds because somebody wanted to make a dollar.

Now we have certain obligations in this legislature. The State of New York has already passed a law that is before you and this bill that I have before you is a rugged bill. Somebody said jokingly, it's obscene. You make the statutes obscene. I say it's a bad commentary on our society when conditions have gotten so bad that we have to specify what is obscene for the protection of our children. I would like to leave these so that the members can look them over in their leisure.

Here is a very decent publication that's available in Connecticut, "The East Village" and you should read this and you can make appointments for every perversion that's in the books. I don't know that it should be available to kids.

Now let me wrap it up and wrap it up just this way. There are many

257 who say it isn't as bad as you say and I'm sure that years ago, the threat of narcotics was put off as something not very important. But you know, narcotics and obscenity as it relates to children, they're not too different. Kids can get hooked, they see a little, they want to see a little more. They have young inquisitive minds. They've never seen sex and they want to see it. There's nothing the matter with being inquisitive. There is something the matter when the adult society profits from the inquisitive nature of children.

Now, the material that I would also leave with you are two books that were taken from a fourteen year old boy by the Norwich Police Department and Chief Robert Smith, in a letter which I will also give to the committee, points out that they took them from the child, the child wouldn't say where he got them. But I think they go far beyond anything that I would consider decent and if the adults want them, I'm not going to pass judgment on that. I don't think that a fourteen year old boy should have had them. And then, a pack of playing cards and I think they're worse than anything you've seen. I was a Marine and I thought I'd seen just about everything. I hadn't seen everything. These cards were taken in a toy store. Now I'm not going to say that the man was selling these kids cards because I can't prove it and I'm not going to say that when a dog scratches, that he's got fleas because I can't prove that either. But I don't know why a merchant would have obscene cards in a toy store unless it was to sell them. I think they got 300 packs of them, something of that nature.

So, I would appeal to this committee in your wisdom to consider that the question before you is not obscenity, it is whether or not we should take reasonable precautions to protect our children from obscenity until they are old enough to cope with it. And as I opened, let me end. They don't drive until they are sixteen, they can't get married until they are eighteen and at the moment, they can't vote until they are twenty-one. But obscenity at any age. And we in this legislature and throughout the country are fighting for pollution of air and the pollution of water then gentlemen, I say to you, this is the pollution of young minds and if there should be an order of priority over water and air, I would take young, human minds. I hope that the committee will act favorably. I know the language in the bill is unfortunately strong but in order to stop this, I know of no other way. It is constitutional and I would plead with you for the sake of the kids and for parents, to act favorably on S.B. 1150. Thank you very much.

Rep. Carrozzella: Senator, you know that there is a criminal code that is pending before us and there is a section in that criminal code that has to do with this very topic. Would you do us the courtesy of looking at that part of the code and possibly integrating the ideas in your bill with that so that we can pass that with the entire code?

TUESDAY

JUDICIARY AND GOVERNMENTAL FUNCTIONS

APRIL 8, 1969

Sen. Stanley: I would. I would be very happy to. Let me ask the Chairman this question. If in fact it is determined at some later date that the bill before you today in its entirety is of necessity, has to be embodied, would the committee be willing to embody the language in the bill?

Rep. Carrozzella: Well I don't know that but I think I would like you to look at what the Criminal Commission has put in in so far as obscenity is concerned and see how that compares with your bill and let us know your comments on that because there is pending a criminal code.

Sen. Stanley: Mr. Chairman, I will be happy to do that. Can I leave this material with you?

Rep. Carrozzella: Yes. H.B. 7182 is the bill.

Sen. Stanley: H.B. 7182? I'll get it from Senator Pickett.

Sen. Hull: Chairman Carrozzella, would you take possession of the material please? It will be in good hands.

Sen. Pickett: Does that publication, East Village, does that have anything to do with Norwich?

Sen. Hull: Let the record show the full name is The East Village Other, You left off the last word.

Sen. Pickett: Getting back seriously to Sen. Barnes, followed by Mr. McKinney.

Sen. Barnes: Mr. Chairman, members of the committee, I'm Wallace Barnes, Republican from Farmington, Senate Minority Leader. I'm here to appear in favor of S.B. 60 and S.B. 229, introduced by Sen. Hull and offer support on behalf of the Republican members of the Senate for these two very important measures.

I won't go into any great detail because I'm sure that in your executive session, you will hear very eloquent arguments from Senator Hull relative to the importance of these matters. S.B. 60 provides for immunity for witnesses who cooperate with the prosecution authorities. S.B. 229 provides for a limited electronic surveillance under court order under very tightly controlled conditions. It's our view that these two measures protect the right of the individual adequately and at the same time give law enforcement officials the tools which they need to do the job that needs to be done. They were listed as two vitally necessary bills in the Governor's Committee on Gambling and I quote very briefly to you in closing from the fourth report dated September 9, 1968 which says as follows: "Many people these days are saying they support law and order. Talk is cheap. In the area of organized gambling, support for law and order means support

8.

**File No. 1447**  
**Substitute for House Bill No. 7182**  
**“An Act Concerning Revision and Codification of the**  
**Substantive Criminal Law”**  
**May 27, 1969**

State of Connecticut  
House of Representatives

The seal of the State of Connecticut House of Representatives is positioned between the words "State of Connecticut" and "House of Representatives". It features a shield with a ship (the USS \*Minesweeper\*) and a banner below it with the Latin motto "QUI TRANSTULIT SUSTINET".

House of Representatives, May 27, 1969. The Committee on Judiciary and Governmental Functions reported through Rep. Carrozzella of the 81st District, Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING REVISION AND CODIFICATION  
OF THE SUBSTANTIVE CRIMINAL LAW.

*Be it enacted by the Senate and House of Representatives in  
General Assembly convened:*

1 SECTION 1. This act shall be known as the "Penal Code."

1 SEC. 2. The provisions of this act shall apply to any offense  
2 defined in this act or the general statutes, unless otherwise  
3 expressly provided or unless the context otherwise requires,  
4 and committed on or after October 1, 1971, and to any defense  
5 to prosecution for such an offense.

1 SEC. 3. Except where different meanings are expressly  
2 specified, the following terms have the following meanings  
3 when used in this act: (1) "Person" means a human being,  
4 and where appropriate, a public or private corporation, an  
5 unincorporated association, a partnership, a government or  
6 a governmental instrumentality; (2) "possess" means to have  
7 physical possession or otherwise to exercise dominion or con-  
8 trol over tangible property; (3) "physical injury" means im-  
9 pairment of physical condition or substantial pain; (4) "seri-  
10 ous physical injury" means physical injury which creates a  
11 substantial risk of death, or which causes serious disfigure-  
12 ment, serious impairment of health or serious loss or impair-  
13 ment of the function of any bodily organ; (5) "deadly physical  
14 force" means physical force which can be reasonably expected  
15 to cause death or serious physical injury; (6) "deadly weapon"  
16 means any loaded weapon from which a shot may be dis-  
17 charged, or a switchblade knife, gravity knife, billy, black-  
18 jack, bludgeon, or metal knuckles; (7) "dangerous instrument"  
19 means any instrument, article or substance which, under the  
20 circumstances in which it is used or attempted or threatened  
21 to be used, is capable of causing death or serious physical

22 injury, and includes a "vehicle" as that term is defined in this  
 23 section; (8) "vehicle" means a "motor vehicle" as defined in  
 24 section 14-1 of the general statutes, any aircraft, or any vessel  
 25 equipped for propulsion by mechanical means or sail; (9) a  
 26 person acts "intentionally" with respect to a result or to con-  
 27 duct described by a statute defining an offense when his  
 28 conscious objective is to cause such result or to engage in  
 29 such conduct; (10) a person acts "knowingly" with respect  
 30 to conduct or to a circumstance described by a statute de-  
 31 fining an offense when he is aware that his conduct is of  
 32 such nature or that such circumstance exists; (11) a person  
 33 acts "recklessly" with respect to a result or to a circumstance  
 34 described by a statute defining an offense when he is aware  
 35 of and consciously disregards a substantial and unjustifiable  
 36 risk that such result will occur or that such circumstance  
 37 exists. The risk must be of such nature and degree that dis-  
 38 regarding it constitutes a gross deviation from the standard of  
 39 conduct that a reasonable person would observe in the situa-  
 40 tion; (12) a person acts with "criminal negligence" with respect  
 41 to a result or to a circumstance described by a statute defining  
 42 an offense when he fails to perceive a substantial and unjust-  
 43 ifiable risk that such result will occur or that such circum-  
 44 stance exists. The risk must be of such nature and degree that  
 45 the failure to perceive it constitutes a gross deviation from  
 46 the standard of care that a reasonable person would observe  
 47 in the situation.

1 SEC. 4. The provisions of this act shall not be construed as  
 2 precluding any court from recognizing other principles of crim-  
 3 inal liability or other defenses not inconsistent with such provi-  
 4 sions.

1 SEC. 5. When the commission of an offense defined in this  
 2 chapter, or some element of an offense, requires a particular  
 3 mental state, such mental state is ordinarily designated in the  
 4 statute defining the offense by use of the terms "intentionally",  
 5 "knowingly", "recklessly" or "criminal negligence", or by use of  
 6 terms, such as "with intent to defraud" and "knowing it to be  
 7 false", describing a specific kind of intent or knowledge. When  
 8 one and only one of such terms appears in a statute defining an  
 9 offense, it is presumed to apply to every element of the offense.  
 10 unless an intent to limit its application clearly appears.

1 SEC. 6. (a) A person shall not be relieved of criminal li-  
 2 bility for conduct because he engages in such conduct under a  
 3 mistaken belief of fact, unless. (1) Such factual mistake negates  
 4 the mental state required for the commission of an offense; or  
 5 (2) the statute defining the offense or a statute related thereto  
 6 expressly provides that such factual mistake constitutes a de-  
 7 fense or exemption; or (3) such factual mistake is of a kind  
 8 that supports a defense of justification.

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1 (b) A person shall not be relieved of criminal liability for  
2 conduct because he engages in such conduct under a mistaken  
3 belief that it does not, as a matter of law, constitute an offense,  
4 unless (1) the law provides that the state of mind established  
5 by such mistaken belief constitutes a defense, or unless (2)  
6 such mistaken belief is founded upon an official statement of  
7 law contained in a statute or other enactment, an administrative  
8 order or grant of permission, a judicial decision of a state or  
9 federal court, or an interpretation of the statute or law relating  
10 to the offense, officially made or issued by a public servant,  
11 agency or body legally charged or empowered with the respon-  
12 sibility or privilege of administering, enforcing or interpreting  
13 such statute or law.

1 SEC. 7. Intoxication shall not be a defense to a criminal  
2 charge, but in any prosecution for an offense evidence of in-  
3 toxication of the defendant may be offered by the defendant  
4 whenever it is relevant to negate an element of the crime  
5 charged, provided when recklessness or criminal negligence is  
6 an element of the crime charged, if the actor, due to self-in-  
7 duced intoxication, is unaware of or disregards or fails to per-  
8 ceive a risk which he would have been aware of had he not  
9 been intoxicated, such awareness, disregard or failure to per-  
10 ceive shall be immaterial. As used in this section, "intoxication"  
11 means a substantial disturbance of mental or physical capacities  
12 resulting from the introduction of substances into the body.

1 SEC. 8. A person, acting with the mental state required for  
2 commission of an offense, who solicits, requests, commands, im-  
3 portunes or intentionally aids another person to engage in con-  
4 duct which constitutes an offense shall be criminally liable for  
5 such conduct.

1 SEC. 9. In any prosecution for an offense in which the  
2 criminal liability of the defendant is based upon the conduct  
3 of another person under section 8 of this act it shall not be a  
4 defense that: (1) Such other person is not guilty of the offense  
5 in question because of lack of criminal responsibility or legal  
6 capacity or awareness of the criminal nature of the conduct in  
7 question or of the defendant's criminal purpose or because of  
8 other factors precluding the mental state required for the com-  
9 mission of the offense in question; or (2) such other person has  
10 not been prosecuted for or convicted of any offense based upon  
11 the conduct in question, or has been acquitted thereof, or has  
12 legal immunity from prosecution therefor; or (3) the offense in  
13 question, as defined, can be committed only by a particular  
14 class or classes of persons, and the defendant, not belonging to  
15 such class or classes, is for that reason legally incapable of com-  
16 mitting the offense in an individual capacity.

1 SEC. 10. (a) In any prosecution in which the criminal li-  
2 ability of the defendant is based upon the conduct of another

3 person under section 8 of this act, it shall be an affirmative de- 6  
4 fense that the defendant terminated his complicity prior to the 7  
5 commission of the offense under circumstances: (1) Wholly 1  
6 depriving it of effectiveness in the commission of the offense, 2  
7 and (2) manifesting a complete and voluntary renunciation of 3  
8 his criminal purpose. 4

1 (b) For purposes of this section, renunciation of crimina- 2  
2 purpose is not voluntary if it is motivated, in whole or in part 3  
3 by circumstances, not present or apparent at the inception of 4  
4 the actor's course of conduct, which increase the probability of 5  
5 detection or apprehension or which make more difficult the 6  
6 accomplishment of the criminal purpose. Renunciation is not 7  
7 complete if it is motivated by a decision to postpone the crimi- 8  
8 nal conduct until a more advantageous time or to transfer the 9  
9 criminal effort to another but similar objective or victim. 10

1 SEC. 11. A person shall be criminally liable for conduct con- 11  
2 stituting an offense which he performs or causes to be per- 1  
3 formed in the name of or in behalf of a corporation to the same 2  
4 extent as if such conduct were performed in his own name or 3  
5 behalf. 1

1 SEC. 12. (a) When a defense other than an affirmative de- 2  
2 fense, is raised at a trial, the state shall have the burden of dis- 3  
3 proving such defense beyond a reasonable doubt. 4

1 (b) When a defense declared to be an affirmative defense 5  
2 is raised at a trial, the defendant shall have the burden of es- 6  
3 tablishing such defense by a preponderance of the evidence. 7

1 SEC. 13. In any prosecution for an offense, it shall be a de- 1  
2 fense that the defendant, at the time of the proscribed conduct, 2  
3 as a result of mental disease or defect lacked substantial ca- 3  
4 pacity either to appreciate the wrongfulness of his conduct or 4  
5 to conform his conduct to the requirements of law. As used in 1  
6 this section, the terms mental disease or defect do not include 2  
7 an abnormality manifested only by repeated criminal or other- 3  
8 wise anti-social conduct. 4

1 SEC. 14. In any prosecution for an offense, it shall be a de- 5  
2 fense that the defendant engaged in the proscribed conduct 6  
3 because he was coerced by the use or threatened imminent 1  
4 use of physical force upon him or a third person, which force 2  
5 or threatened force a person of reasonable firmness in his situ- 3  
6 ation would have been unable to resist. The defense of duress 4  
7 as defined in this section shall not be available to a person wh- 5  
8 intentionally or recklessly places himself in a situation in which 1  
9 it is probable that he will be subjected to duress. 2

1 SEC. 15. In any prosecution for an offense, it shall be a de- 3  
2 fense that the defendant engaged in the proscribed conduct 4  
3 because he was induced to do so by a public servant, or by a 5  
4 person acting in cooperation with a public servant, for the pur- 6  
5 pose of institution of criminal prosecution against the defend- 7

6 and that the defendant did not contemplate and would  
7 otherwise have engaged in said conduct.

1 SEC. 16. In any prosecution for an offense, justification, as  
2 defined in sections 17 to 24, inclusive, of this act shall be a  
3 defense.

1 SEC. 17. Unless inconsistent with any provision of this act  
2 defining justifiable use of physical force, or with any other pro-  
3 vision of law, conduct which would otherwise constitute an  
4 offense is justifiable when such conduct is required or author-  
5 ized by a provision of law or by a judicial decree, including  
6 but not limited to (a) laws defining duties and functions of  
7 public servants, (b) laws defining duties of private citizens to  
8 assist public servants in the performance of certain of their  
9 functions, (c) laws governing the execution of legal process,  
10 (d) laws governing the military services and the conduct of  
11 war, and (e) judgments and orders of courts.

1 SEC. 18. The use of physical force upon another person  
2 which would otherwise constitute an offense is justifiable and  
3 not criminal under any of the following circumstances:

1 (1) A parent, guardian, teacher or other person entrusted  
2 with the care and supervision of a minor or an incompetent  
3 person may use physical force, but not deadly physical force,  
4 upon such minor or incompetent person when and to the ex-  
5 tent that he reasonably believes it is necessary to maintain dis-  
6 cipline or to promote the welfare of such minor or incompetent  
7 person.

1 (2) An authorized official of a correctional institution or  
2 facility may, in order to maintain order and discipline, use such  
3 physical force as is reasonable and authorized by the rules and  
4 regulations of the Department of Correction.

1 (3) A person responsible for the maintenance of order in a  
2 common carrier of passengers, or a person acting under his  
3 direction, may use physical force when and to the extent that  
4 he reasonably believes it is necessary to maintain order, but he  
5 may use deadly physical force only when he reasonably be-  
6 lieves it is necessary to prevent death or serious physical injury.

1 (4) A person acting under a reasonable belief that another  
2 person is about to commit suicide or to inflict serious physical  
3 injury upon himself may use physical force upon such person  
4 to the extent that he reasonably believes it is necessary to  
5 thwart such result.

1 (5) A duly licensed physician, or a person acting under his  
2 direction, may use physical force for the purpose of adminis-  
3 tering a recognized form of treatment which he reasonably be-  
4 lieves to be adapted to promoting the physical or mental health  
5 of the patient, provided the treatment (a) is administered with  
6 the consent of the patient or, if the patient is a minor or an in-  
7 competent person, with the consent of his parent, guardian or

8 other person entrusted with his care and supervision, or (b) is  
 9 administered in an emergency when the physician reasonably  
 10 believes that no one competent to consent can be consulted  
 11 and that a reasonable person, wishing to safeguard the welfare  
 12 of the patient, would consent.

1 SEC. 19. (a) Except as provided in subsections (b) and  
 2 (c) a person is justified in using physical force upon another  
 3 person to defend himself or a third person from what he rea-  
 4 sonably believes to be the use or imminent use of physical  
 5 force, and he may use such degree of force which he reason-  
 6 ably believes to be necessary for such purpose; except that  
 7 deadly physical force may not be used unless the actor reason-  
 8 ably believes that such other person is (1) using or about to  
 9 use deadly physical force, or (2) inflicting or about to inflict  
 10 great bodily harm.

1 (b) Notwithstanding the provisions of subsection (a), a  
 2 person is not justified in using deadly physical force upon an-  
 3 other person if he knows that he can avoid the necessity of  
 4 using such force with complete safety (1) by retreating, except  
 5 that the actor shall not be required to retreat if he is in his  
 6 dwelling, as defined in section 101 of this act, or place of work  
 7 and was not the initial aggressor, or if he is a peace officer or  
 8 a private person assisting such peace officer at his direction,  
 9 and acting pursuant to section 23 of this act, or (2) by sur-  
 10 rendering possession of property to a person asserting a claim  
 11 of right thereto, or (3) by complying with a demand that he  
 12 abstain from performing an act which he is not obliged to per-  
 13 form.

1 (c) Notwithstanding the provisions of subsection (a), a  
 2 person is not justified in using physical force when (1) with  
 3 intent to cause physical injury or death to another person, he  
 4 provokes the use of physical force by such other person, or (2)  
 5 he is the initial aggressor, except that his use of physical force  
 6 upon another person under such circumstances is justifiable if  
 7 he withdraws from the encounter and effectively communicates  
 8 to such other person his intent to do so, but such other person  
 9 notwithstanding continues or threatens the use of physical  
 10 force, or (3) the physical force involved was the product of a  
 11 combat by agreement not specifically authorized by law.

1 SEC. 20. A person in possession or control of premises,  
 2 or a person who is licensed or privileged to be in or upon such  
 3 premises, is justified in using physical force upon another per-  
 4 son when and to the extent that he reasonably believes it is  
 5 necessary to prevent or terminate the commission or attempted  
 6 commission of a criminal trespass by such other person in or  
 7 upon such premises; but he may use deadly physical force  
 8 under such circumstances only (a) in defense of a person as  
 9 prescribed in section 19 of this act, or (b) when he reasonably

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10 believes it is necessary to prevent an attempt by the trespasser  
11 to commit arson, or (c) to the extent that and not earlier in  
12 time than he reasonably believes it necessary to prevent or  
13 terminate an unlawful entry by force into his dwelling as de-  
14 fined in section 101 of this act, or place of work, and for the  
15 sole purpose of such prevention or termination.

1 SEC. 21. A person is justified in using physical force upon  
2 another person when and to the extent that he reasonably be-  
3 lieves it necessary to prevent an attempt by such other person  
4 to commit larceny or criminal mischief involving property, or  
5 when and to the extent he reasonably believes it necessary to  
6 regain property which he reasonably believes to have been  
7 acquired by larceny within a reasonable time prior to the  
8 use of said force; but he may use deadly physical force under  
9 such circumstances only in defense of person as prescribed in  
10 section 19 of this act.

1 SEC. 22. A person is not justified in using physical force to  
2 resist an arrest by a reasonably identifiable peace officer,  
3 whether such arrest is legal or illegal. For purposes of this  
4 section and of section 23 of this act, "peace officer" means a  
5 member of the state police department or an organized local  
6 police department, a county detective, sheriff or deputy sheriff,  
7 or a guard employed in a correctional institution or facility.

1 SEC. 23. (a) For purposes of this section, a reasonable be-  
2 lief that a person has committed an offense means a reasonable  
3 belief in facts or circumstances which if true would in law  
4 constitute an offense. If the believed facts or circumstances  
5 would not in law constitute an offense, an erroneous though not  
6 unreasonable belief that the law is otherwise does not render  
7 justifiable the use of physical force to make an arrest or to  
8 prevent an escape from custody. A peace officer who is effecting  
9 an arrest pursuant to a warrant is justified in using the physical  
10 force prescribed in subsections (b) and (c) unless such warrant  
11 is invalid and is known by such officer to be invalid.

1 (b) Except as provided in subsection (a), a peace officer is  
2 justified in using physical force upon another person when and  
3 to the extent that he reasonably believes it necessary to: (1)  
4 Effect an arrest or to prevent the escape from custody of a per-  
5 son whom he reasonably believes to have committed an offense,  
6 unless he knows that the arrest or custody is unauthorized; or  
7 (2) defend himself or a third person from the use or imminent  
8 use of physical force while effecting or attempting to effect an  
9 arrest or while preventing or attempting to prevent an escape.

1 (c) A peace officer is justified in using deadly physical force  
2 upon another person for the purposes specified in subsection  
3 (b) only when he reasonably believes that such is necessary  
4 to: (1) Defend himself or a third person from the use or  
5 imminent use of deadly physical force; or (2) effect an arrest

6 or to prevent the escape from custody of a person whom he  
7 reasonably believes has committed or attempted to commit a  
8 felony.

1 (d) Except as provided in subsection (e), a person who  
2 has been directed by a peace officer to assist such peace  
3 officer to effect an arrest or to prevent an escape from custody  
4 is justified in using physical force when and to the extent  
5 that he reasonably believes it is necessary to carry out such  
6 peace officer's direction.

1 (e) A person who has been directed to assist a peace  
2 officer under circumstances specified in subsection (d) may  
3 use deadly physical force to effect an arrest or to prevent an  
4 escape from custody only when: (1) He reasonably believes  
5 such to be necessary to defend himself or a third person  
6 from what he reasonably believes to be the use or imminent  
7 use of deadly physical force; or (2) he is directed or author-  
8 ized by such peace officer to use deadly physical force, unless  
9 he knows that the peace officer himself is not authorized to  
10 use deadly physical force under the circumstances.

1 (f) A private person acting on his own account is justified  
2 in using physical force upon another person when and to the  
3 extent that he reasonably believes it is necessary to effect an  
4 arrest or to prevent the escape from custody of an arrested per-  
5 son whom he reasonably believes to have committed an offense  
6 and who in fact has committed such offense; but he is not  
7 justified in using deadly physical force in such circum-  
8 stances, except in defense of person as prescribed in sec-  
9 tion 19 of this act.

1 (g) A peace officer employed in a correctional institution  
2 or facility is justified in using physical force, including deadly  
3 physical force, when and to the extent that he reasonably  
4 believes it is necessary to prevent the escape of a prisoner  
5 from such correctional institution or facility.

1 Sec. 24. (a) The term "offense" means any crime or  
2 violation in which constitutes a breach of any law of this state  
3 or local law or ordinance of a political subdivision of this  
4 state, for which a sentence to a term of imprisonment or to a  
5 fine, or both, may be imposed, except one that defines a  
6 motor vehicle violation. The term "crime" comprises felonies  
7 and misdemeanors. Every offense which is not a "crime" is a  
8 "violation." Conviction of a violation shall not give rise to  
9 any disability or legal disadvantage based on conviction of a  
10 criminal offense.

1 (b) Notwithstanding the provisions of subsection (a), the  
2 provisions of sections 28 to 44, inclusive, of this act, shall  
3 apply to motor vehicle violations.

1 Sec. 25. (a) Any offense for which a person may be sen-

2 tenced to a term of imprisonment in excess of one year is a  
3 felony.

1 (b) Felonies are classified for the purposes of sentence, as  
2 follows: (1) Class A, (2) Class B, (3) Class C, (4) Class D  
3 and (5) unclassified.

1 (c) The particular classification of each felony defined in  
2 this act is expressly designated in the section defining it. Any  
3 offense defined in any other section of the general statutes  
4 which, by virtue of any expressly specified sentence, is within  
5 the definition set forth in subsection (a) shall be deemed an  
6 unclassified felony.

1 SEC. 26. (a) An offense for which a person may be sen-  
2 tenced to a term of imprisonment of not more than one year  
3 is a misdemeanor.

1 (b) Misdemeanors are classified for the purpose of sen-  
2 tence, as follows: (1) class A, (2) class B, (3) class C, and  
3 (4) unclassified.

1 (c) The particular classification of each misdemeanor de-  
2 fined in this act is expressly designated in the section defining  
3 it. Any offense defined in any other section of the general  
4 statutes which, by virtue of an expressly specified sentence, is  
5 within the definition set forth in subsection (a) shall be  
6 deemed an unclassified misdemeanor.

1 SEC. 27. (a) An offense for which the only sentence author-  
2 ized is a fine, is a violation.

1 (b) Every violation defined in this act is expressly designated  
2 as such. Any offense defined in any other section of the general  
3 statutes which is not expressly designated a violation shall be  
4 deemed a violation if, notwithstanding any other express desig-  
5 nation, it is within the definition set forth in subsection (a).

1 SEC. 28. (a) Every person convicted of an offense shall be  
2 sentenced in accordance with this act.

1 (b) Except as provided in sections 45, 46, 93 and 94, when  
2 a person is convicted of an offense, the court shall impose one  
3 of the following sentences: (1) A term of imprisonment; or  
4 (2) a reformatory sentence authorized by section 18-73 or  
5 18-75 of the general statutes; or (3) a fine; or (4) a term of  
6 imprisonment and a fine; or (5) a term of imprisonment, with  
7 the execution of such sentence of imprisonment suspended,  
8 entirely or after a period set by the court, and a period of  
9 probation; or a period of conditional discharge; or (6) a term  
10 of imprisonment, with the execution of said sentence of im-  
11 prisonment suspended, entirely or after a period set by the  
12 court, and a fine and a period of probation, or a period of con-  
13 ditional discharge; or (7) a fine and a reformatory sentence; or  
14 (8) a sentence of unconditional discharge.

1 (c) A sentence to a period of probation or conditional dis-

2 charge in accordance with sections 29 to 34, inclusive, of  
 3 this act, shall be deemed a revocable disposition, in that such  
 4 sentence shall be tentative to the extent that it may be altered  
 5 or revoked in accordance with said sections 29 to 34, inclusive,  
 6 but for all other purposes it shall be deemed to be a final judg-  
 7 ment of conviction.

1 SEC. 29. (a) The court may sentence a person to a period  
 2 of probation upon conviction of any crime, other than a Class  
 3 A felony, if it is of the opinion that: (1) Present or extended  
 4 institutional confinement of the defendant is not necessary for  
 5 the protection of the public; (2) the defendant is in need of  
 6 guidance, training or assistance which, in his case, can be  
 7 effectively administered through probation supervision; and  
 8 (3) such disposition is not inconsistent with the ends of justice.

1 (b) The court may impose a sentence of conditional dis-  
 2 charge for an offense, other than a class A felony, if it is of  
 3 the opinion that:

1 (1) present or extended institutional confinement of the  
 2 defendant is not necessary for the protection of the public; and

1 (2) probation supervision is not appropriate.

1 (c) When the court imposes a sentence of conditional dis-  
 2 charge the defendant shall be released with respect to the  
 3 conviction for which the sentence is imposed but shall be  
 4 subject, during the period of such conditional discharge, to  
 5 such conditions as the court may determine. The court shall  
 6 impose the period of conditional discharge authorized by sub-  
 7 section (d) and shall specify, in accordance with section 30, of  
 8 this act, the conditions to be complied with. When a person  
 9 is sentenced to a period of probation the court shall impose  
 10 the period authorized by subsection (d) and may impose any  
 11 conditions authorized by said section 30. When a person is  
 12 sentenced to a period of probation, he shall be placed under  
 13 the supervision of the commission or adult probation.

1 (d) 4. The period of probation or conditional discharge  
 2 unless terminated sooner as hereinafter provided, shall be as  
 3 follows:

1 (1) for a felony, not more than five years;

1 (2) for a class A misdemeanor, not more than three years;

1 (3) for a class B misdemeanor, not more than two years;

1 (4) for a class C misdemeanor, not more than one year;

2 and

1 (5) for an unclassified misdemeanor, not more than one  
 2 year if the authorized sentence of imprisonment is less than  
 3 three months, or not more than two years if the authorized  
 4 sentence of imprisonment is in excess of three months, or where  
 5 the defendant is charged with failure to provide subsistence  
 6 for dependents, a determinate or indeterminate period.

1 (e) When a person has been on probation for over one

2 year, the probation officer shall, as soon as is convenient after  
3 the expiration of such year, call the matter to the attention of  
4 the sentencing court or judge with a recommendation as to the  
5 advisability of the continuance of probation. The person on  
6 probation shall be given reasonable notice of this action and  
7 shall be entitled to be heard by the court or judge with respect  
8 thereto.

1 SEC. 30. (a) When imposing sentence of probation or con-  
2 ditional discharge, the court may, as a condition of the sen-  
3 tence, order that the defendant:

1 (1) Work faithfully at a suitable employment or faithfully  
2 pursue a course of study or of vocational training that will  
3 equip him for suitable employment;

1 (2) undergo medical or psychiatric treatment and remain  
2 in a specified institution, when required for that purpose;

1 (3) support his dependents and meet other family obliga-  
2 tions;

1 (4) make restitution of the fruits of his offense or make  
2 reparation, in an amount he can afford to pay, for the loss or  
3 damage caused thereby. When restitution or reparation is a  
4 condition of the sentence the court may fix the amount thereof  
5 and the manner of performance;

1 (5) if a minor, (A) reside with his parents or in a suitable  
2 foster home, (B) attend school, and (C) contribute to his own  
3 support in any home or foster home;

1 (6) post a bond or other security for the performance of  
2 any or all conditions imposed;

1 (7) refrain from violating any criminal law of the United  
2 States, this state or any other state;

1 (8) satisfy any other conditions reasonably related to his  
2 rehabilitation.

1 The court shall cause a copy of any such order to be deliv-  
2 ered to the defendant and to the probation officer, if any.

1 (b) When a defendant has been sentenced to a period of  
2 probation, the commission or adult probation may require that  
3 the defendant comply with any or all conditions which the  
4 court could have imposed under subsection (a) which are not  
5 inconsistent with any condition actually imposed by the court.

1 (c) At any time during the period of probation or condi-  
2 tional release, after hearing and for good cause shown, the  
3 court may modify or enlarge the conditions, whether originally  
4 imposed by the court under this section or otherwise, and may  
5 extend the period, provided that the original period with any  
6 extensions shall not exceed the periods authorized by section  
7 29 of this act. The court shall cause a copy of any such order  
8 to be delivered to the defendant and to the probation officer,  
9 if any.

1 SEC. 31. (a) A period of probation or conditional dis-

2 charge commences on the day it is imposed, except that, where  
3 it is preceded by a sentence of imprisonment with execution  
4 suspended after a period of imprisonment set by the court, it  
5 commences on the day the defendant is released from said im-  
6 prisonment. Multiple periods, whether imposed at the same or  
7 different times, shall run concurrently.

1 (b) Issuance of a warrant or notice to appear for violation  
2 pursuant to section 32 of this act, shall interrupt the period of  
3 the sentence as of the date of such issuance until a final deter-  
4 mination as to the violation has been made by the court.

1 (c) In any case where a person who is under a sentence of  
2 probation or of conditional discharge is also under an indeter-  
3 minate sentence of imprisonment, or a reformatory sentence,  
4 imposed for some other offense by a court of this state, the  
5 service of the sentence of imprisonment shall satisfy the sen-  
6 tence of probation or of conditional discharge unless the sen-  
7 tence of probation or of conditional discharge is revoked prior  
8 to parole or satisfaction of the sentence of imprisonment.

1 Sec. 32. (a) At any time during the period of probation  
2 or conditional discharge, the court or any judge thereof may  
3 issue a warrant for the arrest of a defendant for violation of  
4 any of the conditions of probation or conditional discharge, or  
5 may issue a notice to appear to answer to a charge of such vio-  
6 lation, which notice shall be personally served upon the de-  
7 fendant. Any such warrant shall authorize all officers named  
8 therein to return the defendant to the custody of the court or  
9 to any suitable detention facility designated by the court. Any  
10 probation officer may arrest any defendant on probation with-  
11 out a warrant or may deputize any other officer with power to  
12 arrest to do so by giving him a written statement setting forth  
13 that the defendant has, in the judgment of the probation offi-  
14 cer, violated the conditions of his probation. Such written state-  
15 ment, delivered with the defendant by the arresting officer to  
16 the official in charge of any correctional center or other place  
17 of detention, shall be sufficient warrant for the detention of the  
18 defendant. After making such an arrest, such probation officer  
19 shall present to the detaining authorities a similar statement  
20 of the circumstances of violation. Provisions regarding release  
21 on bail of persons charged with crime shall be applicable to  
22 any defendant arrested under the provisions of this section.  
23 Upon such arrest and detention, the probation officer shall im-  
24 mediately so notify the court or any judge thereof. Thereupon,  
25 or upon an arrest by warrant as herein provided, the court shall  
26 cause the defendant to be brought before it without unneces-  
27 sary delay for a hearing on the violation charges. At such hear-  
28 ing the defendant shall be informed of the manner in which  
29 he is alleged to have violated the conditions of his probation  
30 or conditional discharge, shall be advised by the court that he

31 has the right to retain counsel and, if indigent, shall be entitled  
32 to the services of the public defender, and shall have the right  
33 to cross-examine witnesses and to present evidence in his own  
34 behalf.

1 (b) If such violation is established, the court may continue  
2 or revoke the sentence of probation or conditional release or  
3 modify or enlarge the conditions, and, if such sentence is re-  
4 voked, require the defendant to serve the sentence imposed or  
5 any lesser sentence. No such revocation shall be ordered, except  
6 upon consideration of the whole record and unless such viola-  
7 tion is established by reliable and probative evidence.

1 SEC. 33. The court or sentencing judge may at any time  
2 during the period of probation or conditional discharge, after  
3 hearing and for good cause shown, terminate probation or con-  
4 ditional discharge.

1 SEC. 34. (a) The court may impose a sentence of uncon-  
2 ditional discharge in any case where it is authorized to impose  
3 a sentence of conditional discharge under section 29 of this act,  
4 if the court is of the opinion that no proper purpose would be  
5 served by imposing any condition upon the defendant's release.

1 (b) When the court imposes a sentence of unconditional dis-  
2 charge, the defendant shall be released with respect to the con-  
3 viction for which the sentence is imposed without imprison-  
4 ment, probation supervision or conditions. A sentence of uncon-  
5 ditional discharge is for all purposes a final judgment of convic-  
6 tion.

1 SEC. 35. (a) A sentence of imprisonment for a felony shall  
2 be an indeterminate sentence, except as provided in subsection  
3 (a). When such a sentence is imposed, the court shall impose a  
4 maximum term in accordance with the provisions of subsection  
5 (b) and the minimum term shall be as provided in subsection  
6 (c).

1 (b) The maximum term of an indeterminate sentence shall  
2 be fixed by the court as follows:

1 (1) for a class A felony, life imprisonment unless a sen-  
2 tence of death is imposed in accordance with section 46 of this  
3 act.

1 (2) for a class B felony, a term not to exceed twenty years;

1 (3) for a class C felony, a term not to exceed ten years;

1 (4) for a class D felony, a term not to exceed five years;

2 and

1 (5) for an unclassified felony, a term in accordance with  
2 the sentence specified in the section of the general statutes that  
3 defines the crime.

1 (c) The minimum term of an indeterminate sentence shall  
2 be fixed by the court as follows:

1 (1) For a class A felony, the minimum term shall not be  
2 less than one nor more than ten years;

1 (2) for a class B, C or D felony the court may fix a mini-  
 2 mum term which shall be specified in the sentence and shall  
 3 not be less than one year nor more than one-half of the maxi-  
 4 mum term imposed, except where the maximum is less than  
 5 three years.

1 (d) Notwithstanding the provisions of subsections (a) and  
 2 (c), when a person is sentenced for a class C or D felony the  
 3 court, may impose a definite sentence of imprisonment and fix a  
 4 term of one year or less.

1 SEC. 36. A sentence of imprisonment for a misdemeanor  
 2 shall be a definite sentence and the term shall be fixed by the  
 3 court as follows:

1 (a) For a class A misdemeanor, a term not to exceed one  
 2 year;

1 (b) for a class B misdemeanor a term not to exceed six  
 2 months;

1 (c) for a class C misdemeanor a term not to exceed three  
 2 months;

1 (d) for an unclassified misdemeanor a term in accordance  
 2 with the sentence specified in the section of the general  
 3 statutes that defines the crime.

1 SEC. 37. When multiple sentences of imprisonment are im-  
 2 posed on a person at the same time, or when a person who is  
 3 subject to any undischarged term of imprisonment imposed at  
 4 a previous time by a court of this state is sentenced to an  
 5 additional term of imprisonment, the sentence or sentences  
 6 imposed by the court shall run either concurrently or consec-  
 7 utively with respect to each other and to the undischarged term  
 8 or terms in such manner as the court directs at the time of  
 9 sentence. The court shall state whether the respective maxima  
 10 and minima shall run concurrently or consecutively with re-  
 11 spect to each other, and shall state in conclusion the effective  
 12 sentence imposed.

1 SEC. 38. An indeterminate sentence of imprisonment com-  
 2 mences when the prisoner is received in the custody or insti-  
 3 tution to which he was sentenced.

1 (b) A definite sentence of imprisonment commences when  
 2 the prisoner is received in the custody to which he was sen-  
 3 tenced. Where a person is under more than one definite sen-  
 4 tence, the sentences shall be calculated as follows: (1) If the  
 5 sentences run concurrently, the terms merge in and are sati-  
 6 fied by discharge of the term which has the longest term to  
 7 run; (2) If the sentences run consecutively, the terms are  
 8 added to arrive at an aggregate term and are satisfied by  
 9 discharge of such aggregate term.

1 (c) When a sentence of imprisonment that has been im-  
 2 posed on a person is vacated and a new sentence is imposed  
 3 on such a person for the same offense or for an offense based

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4 on the same act, the new sentence shall be calculated as if  
5 it had commenced at the time the vacated sentence com-  
6 menced, and all time served under or credited against the  
7 vacated sentence shall be credited against the new sentence.

1 (d) When a person who is serving a sentence of imprison-  
2 ment escapes, the escape shall interrupt the sentence and such  
3 interruption shall continue until the return of such person to  
4 the custody of the commissioner of correction.

1 SEC. 39. At any time during the period of a definite sen-  
2 tence, the sentencing court or judge may, after hearing and  
3 for good cause shown, reduce the sentence, order the defendant  
4 discharged, or the defendant discharged on probation or con-  
5 ditional discharge for a period not to exceed that to which he  
6 could have been originally sentenced.

1 SEC. 40. (a) A persistent dangerous felony offender is a  
2 person who (1) stands convicted of manslaughter, arson, rape,  
3 kidnapping, robbery in the first or second degree, or assault  
4 in the first degree; and (2) has been, at separate times prior  
5 to the commission of the present crime, two or more times con-  
6 victed of and imprisoned, under a sentence to a term of im-  
7 prisonment of more than one year or of death, in this state or  
8 in any other state or in a federal correctional institution for  
9 any of the following crimes:

1 (A) The crimes enumerated in subdivision 1, the crime of  
2 murder, or an attempt to commit any of said crimes or murder;  
3 or

1 (B) prior to the effective date of this act, in this state: As-  
2 sult with intent to kill under section 53-117, or any of the  
3 crimes enumerated in sections 53-9, 53-10, 53-11, 53-12 to 53-  
4 16, inclusive, 53-19, 53-21, 53-69, 53-78 to 53-80, inclusive,  
5 53-82, 53-83, 53-86, 53-238 and 53-239 of the general statutes,  
6 revision of 1958, revised to 1968, or any predecessor statutes  
7 in this state, or an attempt to commit any of said crimes; or

1 (C) in any other state: Any crimes the essential elements of  
2 which are substantially the same as any of the crimes.

1 (b) A persistent felony offender is a person who (1) stands  
2 convicted of a felony; and (2) has been, at separate times prior  
3 to the commission of the present felony, two or more times  
4 convicted of and imprisoned under an imposed term of more  
5 than one year or of death, in this state or in any other state  
6 prison or in a federal correctional institution for a crime. This  
7 subsection shall not apply, where the present conviction is for  
8 a crime enumerated in subdivision (1) of subsection (a) and  
9 either of the two prior convictions were for crimes other than  
10 those enumerated in subsection (a).

1 (c) A persistent larceny offender is a person who, (a) stands  
2 convicted of larceny in the second degree or a lesser degree;  
3 and (b) has been, at separate times prior to the commission

4 of the present larceny, twice convicted of the crime of larceny.

1 (d) It is an affirmative defense to the charge of being a per-  
2 sistent offender under this section that (1) as to any prior con-  
3 viction on which the state is relying the defendant was par-  
4 doned on the ground of innocence, and (2) without such con-  
5 viction, the defendant was not two or more times convicted  
6 and imprisoned as required by this section.

1 (e) When any person has been found to be a persistent dan-  
2 gerous felony offender, and the court is of the opinion that his  
3 history and character and the nature and circumstances of his  
4 criminal conduct indicate that extended incarceration and life-  
5 time supervision will best serve the public interest, the court,  
6 in lieu of imposing the sentence of imprisonment authorized  
7 by section 35 of this act for the crime of which such person  
8 presently stands convicted, may impose the sentence of im-  
9 prisonment authorized by said section 35 for a class A felony.

1 (f) When any person has been found to be a persistent fel-  
2 ony offender, and the court is of the opinion that his history  
3 and character and the nature and circumstances of his crimi-  
4 nal conduct indicate that extended incarceration will best serve  
5 the public interest, the court in lieu of imposing the sentence  
6 of imprisonment authorized by section 35 of this act for the  
7 crime of which such person presently stands convicted, may  
8 impose the sentence of imprisonment authorized by said sec-  
9 tion 35 for the next more serious degree of felony.

1 (g) When any person has been found to be a persistent  
2 larceny offender, and the court is of the opinion that his his-  
3 tory and character and the nature and circumstances of his  
4 criminal conduct indicate that extended incarceration will best  
5 serve the public interest, the court, in lieu of imposing the sen-  
6 tence authorized by section 35 of this act for the crime of which  
7 such person presently stands convicted, may impose the sen-  
8 tence of imprisonment authorized by said section 35 for a  
9 class D felony.

1 Sec. 41. A fine for the conviction of a felony shall be fixed  
2 by the court as follows:

1 (a) For a class A or B felony an amount not to exceed ten  
2 thousand dollars;

1 (b) for a class C or D felony an amount not to exceed five  
2 thousand dollars;

1 (c) for an unclassified felony an amount in accordance with  
2 the fine specified in the law that defines the crime.

1 Sec. 42. A fine for the conviction of a misdemeanor shall  
2 be fixed by the court as follows:

1 (a) For a class A or B misdemeanor, an amount not to ex-  
2 ceed one thousand dollars;

1 (b) for a class C misdemeanor an amount not to exceed five  
2 hundred dollars;

1 (c) for an unclassified misdemeanor an amount in accord-  
2 ance with the fine specified in the law that defines the crime.

1 SEC. 43. A fine for a violation shall be fixed by the court  
2 in an amount not to exceed five hundred dollars. In the case  
3 of a violation defined in any other section of the general stat-  
4 utes, if the amount of the fine is expressly specified in the law  
5 that defines the offense, the amount of the fine shall be fixed  
6 in accordance with that law.

1 SEC. 44. If a person has gained money or property through  
2 the commission of any felony, misdemeanor or violation, upon  
3 conviction thereof the court, in lieu of imposing the fine author-  
4 ized for the offense under sections 41, 42 or 43 of this act, may  
5 sentence the defendant to pay an amount, fixed by the court,  
6 not to exceed double the amount of the defendant's gain from  
7 the commission of the offense. In such case the court shall make  
8 a finding as to the amount of the defendant's gain from the  
9 offense, and if the record does not contain sufficient evidence  
10 to support such a finding the court may conduct a hearing upon  
11 the issue. For purposes of this section the term "gain" means  
12 the amount of money or the value of property derived.

1 SEC. 45. (a) Murder is punishable as a class A felony unless  
2 the death sentence is imposed as provided by section 46 of this  
3 act.

1 (b) Where the court and the state's attorney consent, a per-  
2 son indicted for murder may plead guilty thereto, in which  
3 case the court shall sentence him as for a class A felony.

1 (c) If a person indicted for murder waives his right to a  
2 jury trial and elects to be tried by a court, the court shall be  
3 composed of the judge presiding at the session and two other  
4 judges to be designated by the chief justice of the supreme  
5 court, and such judges, or a majority of them, shall determine  
6 the question of guilt or innocence and shall, as provided in  
7 said section 46, render judgment and impose sentence.

1 (d) The court or jury before which any person indicted  
2 for murder is tried may find him guilty of homicide in a lesser  
3 degree than that charged.

1 SEC. 46. (a) When a defendant has been found guilty of  
2 murder, there shall thereupon be further proceedings before  
3 the court or jury on the issue of penalty. Such proceedings  
4 shall be conducted before the court or jury which found the  
5 defendant guilty. In these proceedings, evidence may be  
6 presented as to any matter that the court deems relevant to  
7 sentence, including but not limited to the nature and cir-  
8 cumstances of the crime, the defendant's character, back-  
9 ground, history, mental and physical condition, and any other  
10 facts in aggravation or mitigation of the penalty. Any such  
11 evidence which the court deems to have probative force may  
12 be received, regardless of its admissibility under the exclusion-

13 ary rules of evidence. The state's attorney and the defendant  
14 and his counsel shall be permitted to present argument for or  
15 against sentence of death.

1 (b) The court or jury, as the case may be, shall then retire  
2 to consider the penalty. If the jury report unanimous agree-  
3 ment and recommend the imposition of the class A felony  
4 sentence, the court shall discharge the jury and shall impose  
5 such sentence. If the jury report unanimous agreement and  
6 recommend the imposition of the sentence of death, the court  
7 may or may not accept said recommendation and shall dis-  
8 charge the jury and shall impose either the sentence for a  
9 class A felony or the sentence of death.

1 (c) If the jury is unable to reach a unanimous verdict on  
2 the issue of penalty, the court shall discharge the jury and  
3 impose the sentence for a class A felony.

1 (d) On an appeal by the defendant where the sentence is  
2 of death, the supreme court, if it finds substantial error only  
3 in the sentencing proceeding, may set aside such sentence  
4 of death and remand the case to the trial court, in which  
5 event the trial court shall impose the sentence for a class A  
6 felony.

1 SEC. 47. (a) (1) When any person charged with an offense  
2 is acquitted on the grounds of mental disease or defect, the  
3 court shall order such person to be temporarily confined in  
4 any of the state hospitals for mental illness for a reasonable  
5 time, not to exceed ninety days, for an examination to deter-  
6 mine his mental condition, except that, if the court can deter-  
7 mine, on the basis of the evidence already before it, that such  
8 person is not mentally ill to the extent that his release would  
9 constitute a danger to himself or others, the court may order  
10 his immediate release, either unconditionally or conditionally  
11 pursuant to subdivision (b) of subsection 5.

1 (2) The person to be examined shall be informed that,  
2 in addition to the examination provided for in subdivision (1)  
3 of subsection (a), he has a right to be examined during said  
4 confinement by a psychiatrist of his own choice.

1 (3) Within 60 days of the confinement pursuant to sub-  
2 division (1) of subsection (a), the superintendent of such  
3 hospital and the retained psychiatrist, if any, shall file reports  
4 with the court setting forth their findings and conclusions as to  
5 whether such person is mentally ill to the extent that his  
6 release would constitute a danger to himself or others. Copies  
7 of said reports shall be delivered to the state's attorney or  
8 prosecutor and to counsel for said person.

1 (4) Upon receipt of said reports, the court shall promptly  
2 schedule a hearing. If the court determines that the preponder-  
3 ance of the evidence at the hearing establishes that he is  
4 mentally ill to the extent that his release would constitute a

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5 danger to himself or others, the court shall confine such per-  
6 son in a suitable hospital or other treatment facility.

1 (b) Whenever a person is committed for confinement pur-  
2 suant to subdivision (4) of subsection (a), his confinement  
3 shall continue until he is no longer mentally ill to the extent  
4 that his release would constitute a danger to himself or others;  
5 provided the total period of confinement, except as provided  
6 in subsection (d), shall not exceed a maximum term fixed by  
7 the court at the time of confinement, which maximum term  
8 shall not exceed the maximum sentence which could have  
9 been imposed if the person had been convicted of the offense.  
10 Where the offense is a class A felony, such maximum term  
11 shall be twenty-five years.

1 (c) Upon certification by the superintendent of the hospital  
2 or institution that, in his opinion, such person is no longer  
3 mentally ill to the extent that his release would constitute a  
4 danger to himself or others, the court may order the release of  
5 the person confined at the expiration of thirty days from the  
6 time such certificate is filed.

1 (2) At the time said certificate is filed with the court, a  
2 copy shall be furnished to the state's attorney or prosecutor who  
3 may request a hearing as to whether said person should be re-  
4 leased. At such hearing, evidence of mental condition may be  
5 submitted. The confined person shall be released unless the  
6 state establishes by a preponderance of the evidence that such  
7 person is, at the time of hearing, mentally ill to the extent that  
8 his release would constitute a danger to himself or others.

1 (3) The superintendent shall, during said confinement,  
2 submit to the court at least every six months a written report  
3 with respect to the mental condition of such person. Copies of  
4 such report shall be furnished to the state's attorney or prosecu-  
5 tor and counsel for the confined person. The court, upon its own  
6 motion or at the request of the parties, may at any time hold a  
7 hearing to determine whether such person should be released  
8 prior to the expiration of the maximum period, in accordance  
9 with the standards set forth in subdivision of this subsection  
10 provided such a hearing shall be held at least every five years.

1 (d) At the expiration of such maximum period the super-  
2 intendent of such hospital or institution shall, if the person is  
3 still confined there, release him, unless the following procedure  
4 for an order of continued confinement has been instituted. At  
5 any time within ninety days prior to such expiration, the state's  
6 attorney for the county or the chief prosecutor for the circuit  
7 in which the person was tried may petition the court for an order  
8 of further confinement on the grounds that release of the person  
9 would constitute a danger to life or person. The court shall  
10 thereupon hold a prompt hearing, after due notice to the person  
11 confined. At such hearing the state shall have the burden of

12 proving by a preponderance of the evidence that such person's  
 13 continued confinement is warranted because he is mentally ill  
 14 to the extent that his release would constitute a danger to life  
 15 or person. If the court so finds, the court shall order the con-  
 16 tinued confinement of the person until such time as it is de-  
 17 termined that his release would not constitute a danger to life  
 18 or person; provided the provisions of subsections (c) and (e)  
 19 shall be applicable to persons so confined.

1 (e) (1) In each of the hearings provided for in this section  
 2 the mentally ill person shall have a right to be present, to be  
 3 represented by counsel and to present evidence. If he fails or  
 4 refuses to obtain counsel, the court shall appoint counsel to  
 5 represent him. Such person may call a psychiatrist to examine  
 6 him and testify at any such hearing. The participation of such  
 7 psychiatrist shall be at the confined person's expense unless he  
 8 is financially unable to retain one, in which case the court  
 9 shall assist him in obtaining a psychiatrist's services at the  
 10 expense of the state. (2) The court may order that said person  
 11 be released under such conditions and supervision as the court  
 12 deems appropriate to his situation.

1 (f) If any person is confined hereunder, other than for  
 2 temporary confinement authorized by subsection (a), and said  
 3 person has estate, the court may appoint an overseer for such  
 4 person, who shall forthwith make an application to the probate  
 5 court of competent jurisdiction for the appointment of a con-  
 6 servator of the estate of such person.

1 (g) The expense of confinement, support and treatment of  
 2 any person confined hereunder shall be computed and paid for  
 3 in accordance with the provisions of section 17-205a and Chap-  
 4 ter 308 of the general statutes.

1 (h) In lieu of confinement in any state hospital or treat-  
 2 ment facility hereunder, the court may allow some responsible  
 3 person, who posts sufficient bond to the state, to confine such  
 4 person in such manner as the court orders.

1 SEC. 48. A person is guilty of conspiracy when, with intent  
 2 that conduct constituting a crime be performed, he agrees with  
 3 one or more persons to engage in or cause the performance of  
 4 such conduct, and any one of them commits an overt act in  
 5 pursuance of such conspiracy.

1 SEC. 49. It is an affirmative defense to a charge of con-  
 2 spiracy that the actor, after conspiring to commit a crime,  
 3 thwarted the success of the conspiracy, under circumstances  
 4 manifesting a complete and voluntary renunciation of his crim-  
 5 inal purpose.

1 SEC. 50. (a) A person is guilty of an attempt to commit a  
 2 crime if, acting with the kind of mental state required for com-  
 3 mission of the crime he (1) intentionally engages in conduct

1 which would constitute the crime if attendant circumstances  
5 were as he believes them to be; or (2) intentionally does or  
6 omits to do anything which, under the circumstances as he be-  
7 lieves them to be, is an act or omission constituting a substan-  
8 tial step in a course of conduct planned to culminate in his com-  
9 mission of the crime.

1 (b) Conduct shall not be held to constitute a substantial  
2 step under subsection 1 (b) of this section unless it is strongly  
3 corroborative of the actor's criminal purpose. Without negating  
4 the sufficiency of other conduct, the following, if strongly cor-  
5 roborative of the actor's criminal purpose, shall not be held in-  
6 sufficient as a matter of law:

1 (1) Lying in wait, searching for or following the contem-  
2 plated victim of the crime;

1 (2) enticing or seeking to entice the contemplated victim  
2 of the crime to go to the place contemplated for its commission;

1 (3) reconnoitering the place contemplated for the com-  
2 mission of the crime;

1 (4) unlawful entry of a structure, vehicle or enclosure  
2 in which it is contemplated that the crime will be committed;

1 (5) possession of materials to be employed in the commis-  
2 sion of the crime, which are specially designed for such unlaw-  
3 ful use or which can serve no lawful purpose of the actor under  
4 the circumstances;

1 (6) possession, collection or fabrication of materials to be  
2 employed in the commission of the crime, at or near the place  
3 contemplated for its commission, where such possession, col-  
4 lection or fabrication serves no lawful purpose of the actor  
5 under the circumstances;

1 (7) soliciting an innocent agent to engage in conduct  
2 constituting an element of the crime.

1 (c) When the actor's conduct would otherwise constitute an  
2 attempt under subdivision (1) of subsection (a) or subdivision  
3 (1) of subsection (b), it is an affirmative defense that he aban-  
4 doned his effort to commit the crime or otherwise prevented its  
5 commission, under circumstances manifesting a complete and  
6 voluntary renunciation of his criminal purpose.

1 SEC. 51. For purposes of this act, renunciation of criminal  
2 purpose is not voluntary if it is motivated, in whole or in part,  
3 by circumstances, not present or apparent at the inception of  
4 the actor's course of conduct, which increase the probability of  
5 detection or apprehension or which make more difficult the  
6 accomplishment of the criminal purpose. Renunciation is not  
7 complete if it is motivated by a decision to postpone the crimi-  
8 nal conduct or to transfer the criminal effort to another but  
9 similar objective or victim.

1 SEC. 52. Attempt and conspiracy are crimes of the same  
2 grade and degree as the most serious offense which is attempted

3 or is an object of the conspiracy, except that an attempt or con-  
4 spiracy to commit a class A felony is a class B felony.

1 SEC. 53. A person may be convicted of attempt or con-  
2 spiracy, and the completed crime so attempted or committed  
3 in pursuance of such conspiracy; provided if he is so convicted  
4 he may be sentenced only for the completed crime.

1 SEC. 54. Homicide means conduct which causes the death  
2 of a person.

1 SEC. 55. (a) A person is guilty of murder when:

2 (1) With intent to cause the death of another person, he  
3 causes the death of such person or of a third person or causes  
4 a suicide by force, duress or deception; except that in any  
5 prosecution under this subsection, it shall be an affirmative  
6 defense that the defendant acted under the influence of ex-  
7 tremely emotional disturbance for which there was a reasonable  
8 explanation or excuse, the reasonableness of which is to be  
9 determined from the viewpoint of a person in the defendant's  
10 situation under the circumstances as the defendant believed  
11 them to be, provided nothing contained in this subdivision  
12 shall constitute a defense to a prosecution for, or preclude a  
13 conviction of, manslaughter in the first degree or any other  
crime; or

1 (2) Acting either alone or with one or more persons, he  
2 commits or attempts to commit robbery, burglary, kidnapping,  
3 arson, rape in the first degree, deviate sexual intercourse in the  
4 first degree, sexual abuse in the first degree, escape in the first  
5 degree, or escape in the second degree and, in the course of and  
6 in furtherance of such crime or of flight therefrom, he, or an-  
7 other participant, if any, causes the death of a person other  
8 than one of the participants, except that in any prosecution  
9 under this subsection, in which the defendant was not the only  
10 participant in the underlying crime, it shall be an affirmative  
11 defense that the defendant:

1 (A) Did not commit the homicidal act or in any way  
2 solicit, request, command, importune, cause or aid the commis-  
3 sion thereof; and

1 (B) Was not armed with a deadly weapon, or any danger-  
2 ous instrument; and

1 (C) Had no reasonable ground to believe that any other  
2 participant was armed with such a weapon or instrument; and

1 (D) Had no reasonable ground to believe that any other  
2 participant intended to engage in conduct likely to result in  
3 death or serious physical injury.

1 (b) Evidence that the defendant suffered from a mental  
2 disease, mental defect or other mental abnormality is admis-  
3 sible, in a prosecution under subdivision (1) of subsection

4 (a) on the question of whether the defendant acted with  
5 intent to cause the death of another person.

1 Murder is punishable as a class A felony unless the death  
2 penalty is imposed as provided by section 46 of this act.

1 SEC. 56. A person is guilty of manslaughter in the first  
2 degree when:

1 (1) With intent to cause serious physical injury to another  
2 person, he causes the death of such person or of a third person;  
3 or

1 (2) with intent to cause the death of another person, he  
2 causes the death of such person or of a third person under  
3 circumstances which do not constitute murder because he  
4 acts under the influence of extreme emotional disturbance, as  
5 defined in subdivision (a) of subsection (a) of section 61 of  
6 this act, except that the fact that homicide was committed  
7 under the influence of extreme emotional disturbance consti-  
8 tutes a mitigating circumstance reducing murder to man-  
9 slaughter in the first degree and need not be proved in any  
10 prosecution initiated under this subsection; or

1 (3) under circumstances evincing an extreme indifference  
2 to human life, he recklessly engages in conduct which creats  
3 a grave risk of death to another person, and thereby causes  
4 the death of another person.

1 Manslaughter in the first degree is a class B felony.

1 SEC. 57. A person is guilty of manslaughter in the second  
2 degree when:

1 (1) He recklessly causes the death of another person; or  
2 (2) he intentionally causes or aids another person, other  
3 than by force, duress or deception, to commit suicide.

1 Manslaughter in the second degree is a class C felony.

1 SEC. 58. A person is guilty of misconduct with a motor  
2 vehicle when, with criminal negligence in the operation of a  
3 motor vehicle or in consequence of his intoxication while op-  
4 erating a motor vehicle, he causes the death of another person.

1 Misconduct with a motor vehicle is a class D felony.

1 SEC. 59. A person is guilty of criminally negligent homicide  
2 when, with criminal negligence, he causes the death of another  
3 person, except where the defendant caused such death by a  
4 motor vehicle.

1 Criminally negligent homicide is a class A misdemeanor.

1 SEC. 60. A person is guilty of assault in the first degree  
2 when:

1 (1) With intent to cause serious physical injury to another  
2 person, he causes such injury to such person or to a third person  
3 by means of a deadly weapon or a dangerous instrument; or

1 (2) with intent to disfigure another person seriously and  
2 permanently, or to destroy, amputate or disable permanently a  
3 member or organ of his body, he causes such injury to such per-  
4 son or to a third person; or

1 (3) under circumstances evincing an extreme indifference

2 to human life he recklessly engages in conduct which creates  
3 a risk of death to another person, and thereby causes serious  
4 physical injury to another person.

1 Assault in the first degree is a class B felony.

1 SEC. 61. A person is guilty of assault in the second degree  
2 when:

1 (1) With intent to cause serious physical injury to another  
2 person, he causes such injury to such person or to a third per-  
3 son; or

1 (2) with intent to cause physical injury to another person,  
2 he causes such injury to such person or to a third person by  
3 means of a deadly weapon or a dangerous instrument; or

1 (3) with intent to prevent a reasonably identifiable peace  
2 officer from performing his duty, he causes physical injury to  
3 such peace officer; or

1 (4) He recklessly causes serious physical injury to another  
2 person by means of a deadly weapon or a dangerous instru-  
3 ment; or

1 (5) For a purpose other than lawful medical or therapeutic  
2 treatment, he intentionally causes stupor, unconsciousness or  
3 other physical impairment or injury to another person by ad-  
4 ministering to such person, without his consent, a drug, sub-  
5 stance or preparation capable of producing the same.

1 Assault in the second degree is a class D felony.

1 SEC. 62. A person is guilty of assault in the third degree  
2 when:

1 (1) With intent to cause physical injury to another person,  
2 he causes such injury to such person or to a third person; or

1 (2) He recklessly causes serious physical injury to another  
2 person; or

1 (3) With criminal negligence, he causes physical injury to  
2 another person by means of a deadly weapon or a dangerous  
3 instrument.

1 Assault in the third degree is a class A misdemeanor.

1 SEC. 63. A person is guilty of threatening when (1) by  
2 physical threat, he intentionally places or attempts to place  
3 another person in fear of imminent serious physical injury, or

4 (2) he threatens to commit any crime of violence with the in-  
5 tent to terrorize another, to cause evacuation of a building,  
6 place of assembly, or facility of public transportation, or other-  
7 wise to cause serious public inconvenience, or (3) he threatens  
8 to commit such in reckless disregard of the risk of causing such  
9 terror or inconvenience.

1 Threatening is a class A misdemeanor.

1 SEC. 64. A person is guilty of reckless endangerment in the  
2 first degree when, with extreme indifference to human life, he  
3 recklessly engages in conduct which creates a risk of serious  
4 physical injury to another person.

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1 Reckless endangerment in the first degree is a class A mis-  
2 demeanor.

1 SEC. 65. A person is guilty of reckless endangerment in the  
2 second degree when he recklessly engages in conduct which  
3 creates a risk of physical injury to another person.

1 Reckless endangerment in the second degree is a class B  
2 misdemeanor.

1 SEC. 66. As used in sections 66 to 90, inclusive, of this act,  
2 the following terms have the following meanings:

1 (1) "Sexual intercourse" has its ordinary meaning and occurs  
2 upon any penetration, however slight. Its meaning is limited to  
3 persons not married to each other.

1 (2) "Deviate sexual intercourse" means (a) sexual contact  
2 between persons not married to each other consisting of contact  
3 between penis and the anus, the mouth and the penis, or the  
4 mouth and the vulva, or (b) any form of sexual conduct with  
5 an animal or dead body.

1 (3) "Sexual contact" means any touching of the sexual or  
2 other intimate parts of a person not married to the actor for the  
3 purpose of gratifying sexual desire of either party.

1 (4) "Female" means any female person who is not married to  
2 the actor.

1 (5) "Mentally defective" means that a person suffers from  
2 a mental disease or defect which renders him incapable of  
3 appraising the nature of his conduct.

1 (6) "Mentally incapacitated" means that a person is rendered  
2 temporarily incapable of appraising or controlling his conduct  
3 owing to the influence of a narcotic or intoxicating substance  
4 administered to him without his consent, or owing to any other  
5 act committed upon him without his consent.

1 (7) "Physically helpless" means that a person is unconscious  
2 or for any other reason is physically unable to communicate  
3 unwillingness to an act.

1 (8) "Forcible compulsion" means physical force that over-  
2 comes earnest resistance; or a threat, express or implied, that  
3 places a person in fear of immediate death or serious physical  
4 injury to himself or another person, or in fear that he or another  
5 person will immediately be kidnapped.

1 SEC. 67. (a) Lack of consent results from (1) forcible com-  
2 pulsion or incapacity to consent; or

1 (2) where the offense charged is sexual abuse, any circum-  
2 stances, in addition to forcible compulsion or incapacity to con-  
3 sent, in which the victim does not expressly or impliedly  
4 acquiesce in the actor's conduct.

1 (b) A person is deemed incapable of consent when he is (1)  
2 less than sixteen years old; or

1 (2) mentally defective; or

1 (3) mentally incapacitated; or

1 (4) physically helpless.

1 SEC. 68. (a) In any prosecution for an offense under this  
2 article in which the victim's lack of consent is based solely upon  
3 his incapacity to consent because he was mentally defective,  
4 mentally incapacitated or physically helpless, it shall be an  
5 affirmative defense that the defendant, at the time he engaged  
6 in the conduct constituting the offense, did not know of the  
7 facts or conditions responsible for such incapacity to consent.

1 (b) When the alleged victim's age is an element of an offense  
2 under sections 66 to 90, inclusive, of this act, it shall be an  
3 affirmative defense that the actor reasonably believed the  
4 alleged victim to be above the specified age, except when the  
5 alleged victim is less than fourteen years of age.

1 (c) In any prosecution for an offense under this article it is  
2 an affirmative defense that the defendant and the alleged victim  
3 were, at the time of the alleged offense, living together by  
4 mutual consent in a relationship of cohabitation as man and  
5 wife, regardless of the legal status of their relationship.

1 SEC. 69. A person shall not be convicted of any offense  
2 under sections 66 to 90, inclusive, of this act, or of an attempt  
3 to commit such offense, solely on the uncorroborated testimony  
4 of the alleged victim, except as hereinafter provided. Corro-  
5 boration may be circumstantial. This section shall not apply to  
6 the offense of sexual abuse in the third degree, nor to the  
7 offenses of prostitution, patronizing a prostitute, promoting  
8 prostitution or permitting prostitution.

1 SEC. 70. No prosecution may be instituted or maintained  
2 under sections 66 to 90, inclusive, of this act, unless the alleged  
3 offense was brought to the notice of public authority within  
4 three months of its occurrence or, where the alleged victim was  
5 less than sixteen years old or incompetent to make complaint,  
6 within three months after a parent, guardian or other competent  
7 person specially interested in the alleged victim learns of the  
8 offense.

1 SEC. 71. A person is guilty of sexual misconduct in the first  
2 degree when:

1 (1) He has sexual intercourse with another person, or en-  
2 gages in deviate sexual intercourse with another person or  
3 causes another person to engage in deviate sexual intercourse,  
4 and (a) the other person is less than twenty-one years old and  
5 the actor is his guardian or otherwise responsible for general  
6 supervision of his welfare; or (b) the other person is in custody  
7 of law or detained in a hospital or other institution and the  
8 actor has supervisory or disciplinary authority over him.

1 Sexual misconduct in the first degree is a class D felony.

1 SEC. 72. A person is guilty of sexual misconduct in the  
2 second degree when:

1 (1) Being a male, he engages in sexual intercourse with a  
2 female without her consent; or

1 (2) He engages in deviate sexual intercourse with another  
2 person without the latter's consent; or

1 (3) He engages in sexual conduct with an animal or dead  
2 body.

1 Sexual misconduct in the second degree is a class A misde-  
2 meanor.

1 SEC. 73. A male is guilty of rape in the first degree when  
2 he engages in sexual intercourse with a female:

1 (1) By forcible compulsion; but it shall be an affirmative  
2 defense to prosecution under this subsection that the female  
3 had previously with consent engaged in sexual intercourse with  
4 the actor; or

1 (2) Who is incapable of consent by reason of being physi-  
2 cally helpless; or

1 (3) Who is less than fourteen years of age.

1 Rape in the first degree is a class B felony.

1 SEC. 74. A male is guilty of rape in the second degree when  
2 he engages in sexual intercourse with a female by forcible  
3 compulsion.

1 Rape in the second degree is a class C felony.

1 SEC. 75. A male is guilty of rape in the third degree when:

1 (1) He engages in sexual intercourse with a female who is  
2 incapable of consent by reason of some factor other than being  
3 less than sixteen years old; or

1 (2) Being nineteen years old or more, he engages in sexual  
2 intercourse with a female less than sixteen years old.

1 Rape in the third degree is a class D felony.

1 SEC. 76. A person is guilty of deviate sexual intercourse in  
2 the first degree when he engages in deviate sexual intercourse  
3 with another person or causes another person to engage in  
4 deviate sexual intercourse:

1 (1) By forcible compulsion; but it shall be affirmative de-  
2 fense to prosecution under this subsection that the other person  
3 had previously with consent engaged in deviate sexual inter-  
4 course with the actor; or

1 (2) Who is incapable of consent by reason of being physi-  
2 cally helpless; or

1 (3) Who is less than fourteen years old.

1 Deviate sexual intercourse in the first degree is a class B  
2 felony.

1 SEC. 77. A person is guilty of deviate sexual intercourse in  
2 the second degree when he engages in deviate sexual inter-  
3 course with another person or causes another person to engage  
4 in deviate sexual intercourse by forcible compulsion.

1 Deviate sexual intercourse in the second degree is a class C  
2 felony.

1 SEC. 78. A person is guilty of deviate sexual intercourse in  
2 the third degree when he engages in deviate sexual intercourse

3 with another person or causes another person to engage in  
4 deviate sexual intercourse, and (1) the other person is in-  
5 capable of consent by reason of some factor other than being  
6 less than sixteen years old; or (2) he is nineteen years old or  
7 more and the other person is less than sixteen years old.

1 Deviate sexual intercourse in the third degree is a class D  
2 felony.

1 SEC. 79. A person is guilty of sexual contact in the first  
2 degree when he subjects another person to sexual contact:

1 (1) By forcible compulsion; or

1 (2) When the other person is incapable of consent by reason  
2 of being physically helpless; or

1 (3) When the other person is less than eleven years old.

1 Sexual contact in the first degree is a class C felony.

1 SEC. 80. A person is guilty of sexual contact in the second  
2 degree when he subjects another person to sexual contact and  
3 when such other person is:

1 (1) Incapable of consent by reason of some factor other than  
2 being less than sixteen years old; or

1 (2) Less than fourteen years old.

1 Sexual contact in the second degree is a class D felony.

1 SEC. 81. A person is guilty of sexual contact in the third  
2 degree when he subjects another person to sexual contact with-  
3 out the latter's consent; except that in any prosecution under  
4 this section, it shall be an affirmative defense that (1) such  
5 other person's lack of consent was due solely to incapacity to  
6 consent by reason of being less than sixteen years old, and (2)  
7 such other person was more than fourteen years old, and (3)  
8 the defendant was less than five years older than such other  
9 person.

1 Sexual contact in the third degree is a class A misdemeanor.

1 SEC. 82. A person is guilty of prostitution when such per-  
2 son engages or agrees or offers to engage in sexual conduct  
3 with another person in return for a fee.

1 Prostitution is a class A misdemeanor.

1 SEC. 83. A person is guilty of patronizing a prostitute  
2 when:

1 (1) Pursuant to a prior understanding, he pays a fee to an-  
2 other person as compensation for such person or a third person  
3 having engaged in sexual conduct with him; or

1 (2) He pays or agrees to pay a fee to another person pur-  
2 suant to an understanding that in return therefor such person or  
3 a third person will engage in sexual conduct with him; or

1 (3) He solicits or requests another person to engage in  
2 sexual conduct with him in return for a fee.

1 Patronizing a prostitute is a class A misdemeanor.

1 SEC. 84. In any prosecution for prostitution or patronizing  
2 a prostitute, the sex of the two parties or prospective parties to

3 the sexual conduct engaged in, contemplated or solicited is im-  
4 material, and it shall be no defense that:

1 (1) Such persons were of the same sex; or

1 (2) The person who received, agreed to receive or solicited  
2 a fee was a male and the person who paid or agreed or offered  
3 to pay such fee was a female.

1 SEC. 85. The following definitions are applicable to sec-  
2 tions 86 to 89, inclusive of this act.

1 (1) A person "advances prostitution" when, acting other  
2 than as a prostitute or as a patron thereof, he knowingly causes  
3 or aids a person to commit or engage in prostitution, procures  
4 or solicits patrons for prostitution, provides persons or premises  
5 for prostitution purposes, operates or assists in the operation of  
6 a house of prostitution or a prostitution enterprise, or engages  
7 in any other conduct designed to institute, aid or facilitate an  
8 act or enterprise of prostitution.

1 (2) A person "profits from prostitution" when acting other  
2 than as a prostitute receiving compensation for personally  
3 rendered prostitution services, he accepts or receives money or  
4 other property pursuant to an agreement or understanding  
5 with any person whereby he participates or is to participate in  
6 the proceeds of prostitution activity.

1 SEC. 86. A person is guilty of promoting prostitution in the  
2 first degree when he knowingly:

1 (1) Advances prostitution by compelling a person by force  
2 or intimidation to engage in prostitution, or profits from coer-  
3 cive conduct by another; or

1 (2) advances or profits from prostitution of a person less  
2 than sixteen years old.

1 Promoting prostitution in the first degree is a class B felony.

1 SEC. 87. A person is guilty of promoting prostitution in the  
2 second degree when he knowingly:

1 (1) Advances or profits from prostitution by managing,  
2 supervising, controlling or owning, either alone or in associa-  
3 tion with others, a house of prostitution or a prostitution busi-  
4 ness or enterprise involving prostitution activity by two or  
5 more prostitutes; or

1 (2) advances or profits from prostitution of a person less  
2 than nineteen years old.

1 Promoting prostitution in the second degree is a class C  
2 felony.

1 SEC. 88. A person is guilty of promoting prostitution in the  
2 third degree when he knowingly advances or profits from pro-  
3 stitution.

1 Promoting prostitution in the third degree is a class D  
2 felony.

1 SEC. 89. A person is guilty of permitting prostitution when,  
2 having possession or control of premises which he knows are

3 being used for prostitution purposes, he fails to make reason-  
4 able effort to halt or abate such use.

1 Permitting prostitution is a class A misdemeanor.

1 SEC. 90. The court before which is pending any case in-  
2 volving a violation of any provision of sections 66 to 89, inclu-  
3 sive, of this act may, before final disposition of such case, order  
4 the examination of the accused person to determine whether or  
5 not he is suffering from any venereal disease, unless the court  
6 from which such case has been bound over has ordered the ex-  
7 amination of the accused person for such purpose, in which  
8 event the court to which such bindover is taken may determine  
9 that a further examination is unnecessary. A report of the result  
10 of such examination shall be filed with the state department of  
11 health on a form supplied by it. If such examination discloses  
12 the presence of venereal disease, the court may make such order  
13 with reference to the continuance of the case or detention,  
14 treatment or other disposition of such person as the public  
15 health and welfare require. Such examination shall be con-  
16 ducted at the expense of the state department of health. Any  
17 person who fails to comply with any order of any court under  
18 the provisions of this section shall be guilty of a class C mis-  
19 demeanor.

1 SEC. 91 The following definitions are applicable to sections  
2 92 to 100, inclusive, of this act:

1 (1) "Restrain" means to restrict a person's movements inten-  
2 tionally and unlawfully in such a manner as to interfere sub-  
3 stantially with his liberty by moving him from one place to an-  
4 other, or by confining him either in the place where the restric-  
5 tion commences or in a place to which he has been moved,  
6 without consent. As used herein "without consent" means, but  
7 is not limited to (a) deception and (b) any means whatever,  
8 including acquiescence of the victim, if he is a child less than  
9 sixteen years old or an incompetent person and the parent,  
10 guardian or other person or institution having lawful control or  
11 custody of him has not acquiesced in the movement or confine-  
12 ment.

1 (2) "Abduct" means to restrain a person with intent to pre-  
2 vent his liberation by either (a) secreting or holding him in a  
3 place where he is not likely to be found, or (b) using or threat-  
4 ening to use physical force or intimidation.

1 (3) "Relative" means a parent, ancestor, brother, sister,  
2 uncle or aunt.

1 SEC. 92. A person is guilty of kidnapping in the first degree  
2 when he abducts another person and when:

1 (1) His intent is to compel a third person to pay or deliver  
2 money or property as ransom, or to engage in other particular

3 conduct or to refrain from engaging in particular conduct; or

1 (2) he restrains the person abducted with intent to (a) in-  
2 flict physical injury upon him or violate or abuse him sexually;  
3 or (b) accomplish or advance the commission of a felony; or  
4 (c) terrorize him or a third person; or (d) interfere with the  
5 performance of a government function; or

1 (3) The person abducted dies during the abduction or be-  
2 fore he is able to return or to be returned to safety. Such death  
3 shall be presumed, in a case where such person was less than  
4 sixteen years old or an incompetent person at the time of the  
5 abduction, from evidence that his parents, guardians or other  
6 lawful custodians did not see or hear from him following the  
7 termination of the abduction and prior to trial and received no  
8 reliable information during such period persuasively indicating  
9 that he was alive. In all other cases, such death shall be pre-  
10 sumed from evidence that a person whom the person abducted  
11 would have been extremely likely to visit or communicate with  
12 during the specified period were he alive and free to do so did  
13 not see or hear from him during such period and received no  
14 reliable information during such period persuasively indicating  
15 that he was alive.

1 SEC. 93. (a) Kidnapping in the first degree is punishable as  
2 a class A felony unless the death sentence is imposed as pro-  
3 vided by section 46 of this act.

1 (b) When the court and the state's attorney consent, a per-  
2 son indicted for kidnapping in the first degree may plead guilty  
3 thereto, in which case the court shall sentence him as for a class  
4 A felony.

1 SEC. 94. When a defendant has been found guilty after trial  
2 of kidnapping in the first degree: (a) the court if it is satisfied  
3 that the person kidnapped has been voluntarily returned alive  
4 or voluntarily released alive under circumstances enabling him  
5 to return to safety without substantial risk of death, or (b) that  
6 the sentence of death is not warranted because of substantial  
7 mitigating circumstances shall discharge the jury, if any, and  
8 sentence the defendant as for a class A felony; or (c) if the de-  
9 fendant is not sentenced in accordance with subsection (a), the  
10 court shall conduct a proceeding to determine whether the de-  
11 fendant should be sentenced as for a class A felony or to death  
12 in the manner prescribed in section 46 of this act and all the  
13 provisions of said section 46 relating to procedure and to deter-  
14 mination and imposition of sentence, appeal, remand and re-  
15 sentence shall apply.

1 SEC. 95. A person is guilty of kidnapping in the second  
2 degree when he abducts another person.

1 Kidnapping in the second degree is a class B felony.

1 SEC. 96. A person is guilty of unlawful restraint in the first  
2 degree when he restrains another person under circumstances  
3 which expose the latter to a substantial risk of physical injury.

1 Unlawful restraint in the first degree is a class D felony.  
1 SEC. 97. A person is guilty of unlawful restraint in the sec-  
2 ond degree when he restrains another person.

1 Unlawful restraint in the second degree is a class A misde-  
2 meanor.

1 SEC. 98. A person is guilty of custodial interference in the  
2 first degree when he commits the crime of custodial interfer-  
3 ence in the second degree as defined in section 99 of this act:  
4 under circumstances which expose the child or person taken or  
5 enticed from lawful custody to a risk that his safety will be  
6 endangered or his health materially impaired; or he takes or  
7 entices the child or person out of this state.

1 Custodial interference in the first degree is a class D felony.

1 SEC. 99. A person is guilty of custodial interference in the  
2 second degree when:

1 (1) Being a relative of a child who is less than sixteen years  
2 old and intending to hold such child permanently or for a pro-  
3 tracted period and knowing that he has no legal right to do so,  
4 he takes or entices such child from his lawful custodian; or

1 (2) Knowing that he has no legal right to do so, he takes or  
2 entices from lawful custody any incompetent person or any  
3 person entrusted by authority of law to the custody of another  
4 person or institution.

1 Custodial interference in the second degree is a class A mis-  
2 demeanor.

1 SEC. 100. A person is guilty of substitution of children  
2 when, having been temporarily entrusted with a child less  
3 than one year old and intending to deceive a parent, guardian  
4 or other lawful custodian of such child, he substitutes, pro-  
5 duces or returns to such parent, guardian or custodian a child  
6 other than the one entrusted.

1 Substitution of children is a class D felony.

1 SEC. 101. (a) The following definitions are applicable to  
2 sections 102 to 118, inclusive, of this act: (1) "Building" in  
3 addition to its ordinary meaning, includes any watercraft, air-  
4 craft, trailer, sleeping car, or other structure or vehicle, dapted  
5 for overnight accommodation of persons or for carrying on  
6 business therein. Where a building consists of separate units,  
7 such as, but not limited to separate apartments, offices or  
8 rented rooms, any unit not occupied by the actor is, in addition  
9 to being a part of such building, a separate building.

1 (2) "Dwelling" means a building which is usually occu-  
2 pied by a person lodging therein at night, whether or not a  
3 person is actually present.

is guilty of unlawful restraint in the first degree when he restrains another person under circumstances which create a substantial risk of physical injury. A person guilty of unlawful restraint in the first degree is a class D felony.

is guilty of unlawful restraint in the second degree when he restrains another person. A person guilty of unlawful restraint in the second degree is a class A misdemeanor.

is guilty of custodial interference in the first degree when he commits the crime of custodial interference as defined in section 99 of this act: (1) He takes or causes to be taken into custody a child or person taken or placed in custody which expose the child or person taken or placed in custody to a risk that his safety will be materially impaired; or he takes or causes to be taken out of this state. A person guilty of custodial interference in the first degree is a class D felony.

is guilty of custodial interference in the second degree when he commits the crime of custodial interference as defined in section 99 of this act: (2) He takes or causes to be taken into custody a child or person taken or placed in custody which expose the child or person taken or placed in custody to a risk that his safety will be materially impaired; or he takes or causes to be taken out of this state. A person guilty of custodial interference in the second degree is a class A misdemeanor.

is guilty of substitution of children when he temporarily entrusts a child less than sixteen years of age to another person knowing that he has no legal right to do so, or he takes or causes to be taken into custody any incompetent person or any person without the authority of law to the custody of another person. A person guilty of substitution of children in the first degree is a class D felony.

is guilty of substitution of children in the second degree when he temporarily entrusts a child less than sixteen years of age to another person knowing that he has no legal right to do so, or he takes or causes to be taken into custody any incompetent person or any person without the authority of law to the custody of another person. A person guilty of substitution of children in the second degree is a class A misdemeanor.

is guilty of substitution of children in the third degree when he temporarily entrusts a child less than sixteen years of age to another person knowing that he has no legal right to do so, or he takes or causes to be taken into custody any incompetent person or any person without the authority of law to the custody of another person. A person guilty of substitution of children in the third degree is a class C felony.

A person guilty of substitution of children in the fourth degree is a class D felony.

The following definitions are applicable to sections 102 through 108, inclusive, of this act: (1) "Building" in its ordinary meaning, includes any watercraft, aircraft, motor vehicle, or other structure or vehicle, adapted for habitation or for the accommodation of persons or for carrying on business, whether or not the structure or vehicle is a building, and whether or not it is occupied by the actor or another person. A building which is usually occupied by persons, whether or not it is occupied by the actor or another person, means a building which is usually occupied by persons at night, whether or not it is occupied by the actor or another person.

A person guilty of substitution of children in the fourth degree is a class D felony.

(3) "Night" means the period between thirty minutes after sunset and thirty minutes before sunrise.

(b) The following definition is applicable to sections 102 through 108, inclusive, of this act: A person "enters or remains unlawfully" in or upon premises when the premises, at the time of such entry or remaining, are not open to the public and when the actor is not otherwise licensed or privileged to do so.

SEC. 102. (a) A person is guilty of burglary in the first degree when he enters or remains unlawfully in a building with intent to commit a crime therein and:

(1) He is armed with explosives or a deadly weapon or dangerous instrument, or

(2) In the course of committing the offense, he intentionally, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone.

(b) An act shall be deemed "in the course of committing" the offense if it occurs in an attempt to commit the offense or flight after the attempt or commission.

Burglary in the first degree is a class B felony.

SEC. 103. A person is guilty of burglary in the second degree when he enters or remains unlawfully in a dwelling at night with intent to commit a crime therein.

Burglary in the second degree is a class C felony.

SEC. 104. A person is guilty of burglary in the third degree when he enters or remains unlawfully in a building with intent to commit a crime therein.

Burglary in the third degree is a class D felony.

SEC. 105. It shall be an affirmative defense to prosecution for burglary that the building was abandoned.

SEC. 106. A person may not be convicted both for burglary and for the offense which it was his intent to commit after the unlawful entry or remaining unless the additional offense constitutes a felony.

SEC. 107. A person is guilty of manufacturing or possession of burglar's tools when he manufactures or has in his possession any tool, instrument or other thing adapted, designed or commonly used for advancing or facilitating offenses involving unlawful entry into premises, or offenses involving forcible breaking of safes or other containers or depositories of property, under circumstances manifesting an intent to use or knowledge that some person intends to use the same in the commission of an offense of such character.

Manufacture or possession of burglar's tools is a class A misdemeanor.

SEC. 108. A person is guilty of criminal trespass in the first degree when, knowing that he is not licensed or privileged to do so, he enters or remains in a building or any other premises

4 after an order to leave or not to enter personally communicated  
5 to him by the owner of the premises or other authorized person.

1 Criminal trespass in the first degree is a class A misdemeanor.

1 SEC. 109. A person is guilty of criminal trespass in the second  
2 degree when, knowing that he is not licensed or privileged to  
3 do so, he enters or remains in a building.

1 Criminal trespass in the second degree is a class B misde-  
2 meanor.

1 SEC. 110. A person is guilty of criminal trespass in the third  
2 degree when, knowing that he is not licensed or privileged to  
3 do so, he enters or remains in premises which are posted in a  
4 manner prescribed by law or reasonably likely to come to the  
5 attention of intruders, or fenced or otherwise enclosed in a  
6 manner designed to exclude intruders, or which belong to the  
7 state and are appurtenant to any state institution.

1 Criminal trespass in the third degree is a class C misde-  
2 meanor.

1 SEC. 111. It shall be an affirmative defense to prosecution  
2 for criminal trespass that: (1) The building involved in the  
3 offense was abandoned; or (2) the premises were at the time  
4 of the entry or remaining open to the public and the actor com-  
5 plied with all lawful conditions imposed on access to or remain-  
6 ing in the premises; or (3) the actor reasonably believed that  
7 the owner of the premises, or a person empowered to license  
8 access thereto, would have licensed him to enter or remain, or  
9 that he was licensed to do so.

1 SEC. 112. A person is guilty of arson in the first degree  
2 when, with intent to destroy or damage a building, he starts a  
3 fire or causes an explosion, and (1) at the time, another person  
4 is present in such building or is so close to such building as to  
5 be in substantially the same danger as a person in such build-  
6 ing would be, and (2) the actor is either aware that a person is  
7 present in or close to such building, or his conduct manifests an  
8 indifference as to whether a person is present in or close to such  
9 building.

1 Arson in the first degree is a class B felony.

1 SEC. 113. A person is guilty of arson in the second degree  
2 when he starts a fire or causes an explosion:

1 (1) With intent to destroy or damage a building (a) of an-  
2 other, or (b) whether his own or another's, to collect insurance  
3 for such loss; and

1 (2) Such act subjects another person to a substantial risk of  
2 bodily injury or another building to a substantial risk of de-  
3 struction or damage.

1 Arson in the second degree is a class C felony.

1 SEC. 114. A person is guilty of arson in the third degree if  
2 he recklessly causes destruction or damage to a building of  
3 another by intentionally starting a fire or causing an explosion.

1 Arson in the third degree is a class D felony.

1 SEC. 115. A person is guilty of reckless burning if he inten-  
2 tionally starts a fire or causes an explosion, whether on his own  
3 property or another's, and thereby recklessly places a building  
4 of another in danger of destruction or damage.

1 Reckless burning is a class A misdemeanor.

1 SEC. 116. A person is guilty of criminal mischief in the first  
2 degree when:

1 (1) With intent to cause damage to tangible property of  
2 another and having no reasonable ground to believe that he has  
3 a right to do so, he damages tangible property of another in an  
4 amount exceeding one thousand five hundred dollars, or

1 (2) With intent to cause an interruption or impairment of  
2 service rendered to the public and having no reasonable ground  
3 to believe that he has a right to do so, he damages or tampers  
4 with tangible property of a utility or mode of public transporta-  
5 tion, power or communication, and thereby causes an interrup-  
6 tion or impairment of service rendered to the public.

1 Criminal mischief in the first degree is a class D felony.

1 SEC. 117. A person is guilty of criminal mischief in the  
2 second degree when:

1 (1) With intent to cause damage to tangible property of  
2 another and having no reasonable ground to believe that he has  
3 a right to do so, he damages tangible property of another in an  
4 amount exceeding two hundred fifty dollars; or

1 (2) With intent to cause an interruption or impairment of  
2 service rendered to the public and having no reasonable ground  
3 to believe that he has a right to do so, he damages or tampers  
4 with tangible property of a public utility or mode of public  
5 transportation, power or communication, and thereby causes a  
6 risk of interruption or impairment of service rendered to the  
7 public.

1 Criminal mischief in the second degree is a class A misde-  
2 meanor.

1 SEC. 118. A person is guilty of criminal mischief in the  
2 third degree when, having no reasonable ground to believe  
3 that he has a right to do so, he:

1 (1) Intentionally or recklessly (a) damages tangible prop-  
2 erty of another, or (b) tampers with tangible property of an-  
3 other and thereby causes such property to be placed in danger  
4 of damage; or

1 (2) Damages tangible property of another by negligence  
2 involving the use of any potentially harmful or destructive force  
3 or substance, such as fire explosives, flood, avalanche, collapse  
4 of building, poison gas or radioactive material.

1 Criminal mischief in the third degree is a class B misde-  
2 meanor.

1 SEC. 119. (a) The following definitions are applicable to  
2 sections 120 to 137, inclusive, of this act: (1) "Property" means  
3 any money, personal property, real property, thing in action,

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

1 (2) "Obtain" includes, but is not limited to, the bringing  
2 about of a transfer or purported transfer of property or of a  
3 legal interest therein, whether to the obtainer or another.

1 (3) To "deprive" another of property means (a) to with-  
2 hold it or cause it to be withheld from him permanently or for so  
3 extended a period or under such circumstances that the major  
4 portion of its economic value or benefit is lost to him, or (b) to  
5 dispose of the property in such manner or under such circum-  
6 stances as to render it unlikely that an owner will recover such  
7 property.

1 (4) To "appropriate" property of another to oneself or a  
2 third person means (A) to exercise control over it, or to aid a  
3 third person to exercise control over it, permanently or for so  
4 extended a period or under such circumstances as to acquire  
5 the major portion of its economic value or benefit, or (B) to  
6 dispose of the property for the benefit of oneself or a third  
7 person.

1 (5) An "owner" means any person who has a right to pos-  
2 session superior to that of a taker, obtainer or withholder.

1 (b) A person who has obtained possession of property by  
2 theft or other illegal means shall be deemed to have a right of  
3 possession superior to that of a person who takes, obtains or  
4 withholds it from him by larcenous means.

1 (c) A joint or common owner of property shall not be  
2 deemed to have a right of possession thereto superior to that  
3 of any other joint or common owner thereof.

1 (d) In the absence of a specific agreement to the contrary,  
2 a person in lawful possession of property shall be deemed to  
3 have a right of possession superior to that of a person having  
4 only a security interest therein, even if legal title lies with the  
5 holder of the security interest pursuant to a conditional sale  
6 contract or other security agreement.

1 SEC. 120. A person commits larceny when, with intent to  
2 deprive another of property or to appropriate the same to him-  
3 self or a third person, he wrongfully takes, obtains or withholds  
4 such property from an owner. Larceny includes, but is not lim-  
5 ited to:

1 (a) Embezzlement. A person commits embezzlement  
2 when he wrongfully appropriates to himself or to another prop-  
3 erty of another in his care or custody.

1 (b) Obtaining property by false pretenses. A person ob-  
2 tains property by false pretenses when, by any false token, pre-

3 tense or device, he obtains from another any property, with in-  
4 tent to defraud him or any other person.

1 (c) Obtaining property by false promise. A person obtains  
2 property by false promise when, pursuant to a scheme to de-  
3 fraud, he obtains property of another by means of a represen-  
4 tation, express or implied, that he or a third person will in the  
5 future engage in particular conduct, and when he does not in-  
6 tend to engage in such conduct or does not believe that the  
7 third person intends to engage in such conduct. In any prose-  
8 cution for larceny based upon a false promise, the defendant's  
9 intention or belief that the promise would not be performed  
10 may not be established by or inferred from the fact alone that  
11 such promise was not performed. Such a finding shall be based  
12 upon evidence establishing that the facts and circumstances of  
13 the case are wholly consistent with guilty intent or belief and  
14 wholly inconsistent with innocent intent or belief, and exclud-  
15 ing to a moral certainty every hypothesis except that of the  
16 defendant's intention or belief that the promise would not be  
17 performed.

1 (d) Acquiring property lost, mislaid or delivered by mis-  
2 take. A person who comes into control of property of another  
3 that he knows to have been lost, mislaid, or delivered under a  
4 mistake as to the nature or amount of the property or the  
5 identity of the recipient is guilty of larceny if, with purpose to  
6 deprive the owner thereof, he fails to take reasonable measures  
7 to restore the property to a person entitled to it.

1 (e) Extortion. A person obtains property by extortion  
2 when he compels or induces another person to deliver such  
3 property to himself or a third person by means of instilling in  
4 him a fear that, if the property is not so delivered, the actor or  
5 another will:

1 (1) Cause physical injury to some person in the future; or

1 (2) cause damage to property; or

1 (3) engage in other conduct constituting a crime; or

1 (4) accuse some person of a crime or cause criminal  
2 charges to be instituted against him; or

1 (5) expose a secret or publicize an asserted fact, whether  
2 true or false, tending to subject some person to hatred, contempt  
3 or ridicule; or

1 (6) cause a strike, boycott or other collective labor group  
2 action injurious to some person's business; except that such a  
3 threat shall not be deemed extortion when the property is de-  
4 manded or received for the benefit of the group in whose in-  
5 terest the actor purports to act; or

1 (7) testify or provide information or withhold testimony  
2 or information with respect to another's legal claim or de-  
3 fence; or

1 (8) use or abuse his position as a public servant by per-

2 forming some act within or related to his official duties, or by  
3 failing or refusing to perform an official duty, in such manner  
4 as to affect some person adversely; or

1 (9) inflict any other harm which would not benefit the  
2 actor.

1 (f) Committing the crime of defrauding of public commu-  
2 nity. Any officer or agent of any public community is guilty  
3 of defrauding of public community who, with intent to preju-  
4 dice it, appropriates its property to the use of any person or  
5 draws any order upon its treasury or presents or aids in procur-  
6 ing to be allowed any fraudulent claim against such community.  
7 For purposes of this section such order or claim shall be deemed  
8 to be property.

1 (g) Committing the crime of theft of services, as defined in  
2 section 121 of this act.

1 (h) Committing the crime of receiving stolen property, as  
2 defined in section 127 of this act.

1 SEC. 121. (a) The following definitions are applicable to  
2 this section:

1 (1) "Service" includes, but is not limited to, labor, pro-  
2 fessional service, public utility and transportation service, the  
3 supplying of hotel accommodations, restaurant services, enter-  
4 tainment, and the supplying of equipment for use.

1 (2) "Credit card" means any instrument, whether known  
2 as a credit card, credit plate, charge plate, or by any other  
3 name, which purports to evidence an undertaking to pay for  
4 property or services delivered or rendered to or upon the order  
5 of a designated person or bearer.

1 (b) A person is guilty of theft of services when:

1 (1) With intent to defraud, he obtains a service, or in-  
2 duces the supplier of a rendered service to agree to payment  
3 therefor on a credit basis, by the use of a credit card which he  
4 knows to be stolen, forged, revoked, cancelled, unauthorized  
5 or in any way invalid for the purpose; or

1 (2) With intent to avoid payment for restaurant services  
2 rendered, or for services rendered to him as a transient guest  
3 at a hotel, motel, inn, tourist cabin, rooming house or compa-  
4 rable establishment, he avoids such payment by unjustifiable  
5 failure or refusal to pay, by stealth, or by any misrepresenta-  
6 tion of fact which he knows to be false; or

1 (3) With intent to obtain railroad, subway, bus, air, taxi  
2 or any other public transportation service without payment of  
3 the lawful charge therefor or to avoid payment of the lawful  
4 charge for such transportation service which has been rendered  
5 to him, he obtains such service or avoids payment therefor by  
6 force, intimidation, stealth, deception or mechanical tamper-  
7 ing, or by unjustifiable failure or refusal to pay; or

1 (4) with intent to avoid payment by himself or another

2 person of the lawful charge for a telecommunication service,  
3 he obtains such service or avoids payment therefor by himself  
4 or another person by means of (A) tampering or making con-  
5 nection with the equipment of the supplier, whether by me-  
6 chanical, electrical, acoustical or other means, or (B) any mis-  
7 representation of fact which he knows to be false, or (C) any  
8 other artifice, trick, deception, code or device; or

1 (5) with intent to avoid payment by himself or another  
2 person for a prospective or already rendered service the charge  
3 or compensation for which is measured by a meter or other  
4 mechanical device provided by the supplier of the service, he  
5 tampers with such device or with other equipment related  
6 thereto, or in any manner attempts to prevent the meter or  
7 device from performing its measuring function, without the  
8 consent of the supplier of the service. A person who tampers  
9 with such a device or equipment without the consent of the  
10 supplier of the service is presumed to do so with intent to  
11 avoid, or to enable another to avoid, payment for the service  
12 involved; or

1 (6) with intent to obtain, without the consent of the  
2 supplier thereof, gas, electricity, water, steam or telephone  
3 service, he tampers with any equipment of the supplier there-  
4 of designed to supply or to prevent the supply of such service  
5 either to the community in general or to particular premises; or

1 (7) obtaining or having control over labor in the employ  
2 of another person, or of business, commercial or industrial  
3 equipment or facilities of another person, knowing that he is  
4 not entitled to the use thereof, and with intent to derive a  
5 commercial or other substantial benefit for himself or a third  
6 person, he uses or diverts to the use of himself or a third per-  
7 son such labor, equipment or facilities.

1 Sec. 122. (a) For the purposes of sections 119 to 137, in-  
2 clusive, of this act, the value of property or services shall be  
3 ascertained as follows:

1 (1) Except as otherwise specified in this section, value  
2 means the market value of the property or services at the time  
3 and place of the crime, or if such cannot be satisfactorily  
4 ascertained, the cost of replacement of the property or services  
5 within a reasonable time after the crime.

1 (2) Whether or not they have been issued or delivered,  
2 written instruments, except those having a readily ascertain-  
3 able market value such as some public and corporate bonds  
4 and securities, shall be evaluated as follows:

1 (A) The value of an instrument constituting evidence of  
2 debt, such as a check, draft or promissory note, shall be  
3 deemed the amount due or collectible thereon, such figure  
4 ordinarily being the face amount of the indebtedness less any  
5 portion thereof which has been satisfied.

1 (B) The value of any other instrument which creates, re-  
2 leases, discharges or otherwise affects any valuable legal right,  
3 privilege or obligation shall be deemed the greatest amount of  
4 economic loss which the owner of the instrument might  
5 reasonably suffer by virtue of the loss of the instrument.

1 (3) When the value of property or services cannot be sat-  
2 isfactorily ascertained pursuant to the standards set forth in  
3 this section, its value shall be deemed to be an amount less  
4 than fifty dollars.

1 (b) Amounts included in thefts committed pursuant to one  
2 scheme or course of conduct, whether from the same person or  
3 several persons, may be aggregated in determining the grade  
4 of the offense.

1 SEC. 123. A person is guilty of larceny in the first degree  
2 when:

1 (1) the property or service regardless of its nature and  
2 value, is obtained by extortion committed by instilling in the  
3 victim a fear that the actor or another person will cause physi-  
4 cal injury to some person in the future, or cause damage to  
5 property, or use or abuse his position as a public servant by  
6 engaging in conduct within or related to his official duties or  
7 by failing or refusing to perform an official duty, in such a  
8 manner as to affect some person adversely, or

1 (2) the value of the property or service exceeds two thou-  
2 sand dollars.

1 Larceny in the first degree is a class D felony.

1 SEC. 124. A person is guilty of larceny in the second degree  
2 when the value of the property or service exceeds five hundred  
3 dollars.

1 Larceny in the second degree is a class A misdemeanor.

1 SEC. 125. A person is guilty of larceny in the third degree  
2 when:

1 (1) The value of the property or service exceeds fifty dol-  
2 lars; or

1 (2) The property consists of a public record, writing or in-  
2 strument kept, held or deposited according to law with or in  
3 the keeping of any public office or public servant; or

1 (3) The property consists of a sample, culture, micro-  
2 organism, specimen, record, recording, document, drawing or  
3 any other article, material, device or substance which consti-  
4 tutes, represents, evidences, reflects, or records a secret scien-  
5 tific or technical process, invention or formula or any phase  
6 or part thereof. A process, invention or formula is "secret"  
7 when it is not, and is not intended to be, available to anyone  
8 other than the owner thereof or selected persons having access  
9 thereto for limited purposes with his consent, and when it  
10 accords or may accord the owner an advantage over competi-

11 tors or other persons who do not have knowledge or the bene-  
12 fit thereof; or

1 (4) The property, regardless of its nature and value, is  
2 taken from the person of another; or

1 (5) The property or service, regardless of its nature and  
2 value, is obtained by extortion.

1 Larceny in the third degree is a class B misdemeanor.

1 SEC. 126. A person is guilty of larceny in the fourth degree  
2 when the value of the property or services is fifty dollars or  
3 less.

1 Larceny in the fourth degree is a class C misdemeanor.

1 SEC. 127. A person is guilty of larceny by receiving stolen  
2 property if he receives, retains, or disposes of stolen property  
3 knowing that it has probably been stolen or believing that it  
4 has probably been stolen, unless the property is received, re-  
5 tained or disposed of with purpose to restore it to the owner.  
6 "Receiving" means acquiring possession, control or title, or  
7 lending on the security of the property.

1 SEC. 128. Any person who fraudulently procures for him-  
2 self or another, from any employee of the state or any depart-  
3 ment thereof, the benefit of any labor which the state or any  
4 department thereof is entitled to receive from such employee  
5 during his hours of employment or fraudulently aids or assists  
6 in procuring or attempting to procure the benefit of any such  
7 labor shall be guilty of diversion from the state of benefit of  
8 labor of employees.

1 Diversion from the state of benefit of labor of employees is a  
2 class A misdemeanor.

1 SEC. 129. (a) The following definitions are applicable to  
2 this section.

1 (1) "Check" means any check, draft or similar sight order  
2 for the payment of money which is not post-dated with respect  
3 to the time of issuance.

1 (2) "Drawer" of a check means a person whose name ap-  
2 pears thereon as the primary obligor, whether the actual signa-  
3 ture be that of himself or of a person purportedly authorized to  
4 draw the check in his behalf.

1 (3) "Representative drawer" means a person who signs a  
2 check as drawer in a representative capacity or as agent of the  
3 person whose name appears thereon as the principal drawer or  
4 obligor.

1 (4) A person "issues" a check when, as a drawer or repre-  
2 sentative drawer thereof, he delivers it or causes it to be deliv-  
3 ered to a person who thereby acquires a right against the  
4 drawer with respect to such check. One who draws a check  
5 with intent that it be so delivered is deemed to have issued it if  
6 the delivery occurs.

1 (5) A person "passes" a check when, being a payee, holder  
2 or bearer of a check which previously has been or purports to  
3 have been drawn and issued by another, he delivers it, for a  
4 purpose other than collection, to a third person who thereby  
5 acquires a right with respect thereto.

1 (6) "Funds" means money or credit.

1 (7) A drawer has "insufficient funds" with a drawee to  
2 cover a check when he has no funds or account whatever, or  
3 funds in an amount less than that of the check; and a check  
4 dishonored for "no account" shall also be deemed to have been  
5 dishonored for "insufficient funds."

1 (8) "Credit" means an arrangement or understanding with  
2 such bank or depository for the payment of such check, draft  
3 or order in full on presentation.

1 (b) A person is guilty of issuing a bad check when:

1 (1) As a drawer or representative drawer, he issues a  
2 check knowing that he or his principal, as the case may be, does  
3 not then have sufficient funds with the drawee to cover it, and  
4 (A) he intends or believes at the time of issuance that payment  
5 will be refused by the drawee upon presentation, and (B) pay-  
6 ment is refused by the drawee upon presentation; or

1 (2) He passes a check knowing that the drawer thereof  
2 does not then have sufficient funds with the drawee to cover it,  
3 and (A) he intends or believes at the time the check is passed  
4 that payment will be refused by the drawee upon presentation,  
5 and (B) payment is refused by the drawee upon presentation.

1 (c) For the purposes of this section, an issuer is presumed to  
2 know that the check or order, other than a post-dated check or  
3 order, would not be paid, if: (1) The issuer had no account  
4 with the drawee at the time the check or order was issued; or  
5 (2) payment was refused by the drawee for insufficient funds,  
6 upon presentation within thirty days after issue and the issuer  
7 failed to make good within eight days after receiving notice of  
8 such refusal.

1 Issuing a bad check is a class A misdemeanor.

1 SEC. 130. (a) A person is guilty of misappropriation of prop-  
2 erty when, knowingly possessing personal property of another  
3 pursuant to an agreement that the same will be returned to the  
4 owner at a future time, he loans, leases, pledges, pawns or oth-  
5 erwise encumbers such property without the consent of the  
6 owner thereof in such manner as to create a risk that the owner  
7 will not be able to recover it or will suffer pecuniary loss.

1 (b) In any prosecution under this section, it shall be a de-  
2 fense that, at the time the prosecution was commenced, (1) the  
3 defendant had recovered possession of the property, unencum-  
4 bered as a result of the unlawful disposition, and (2) the owner  
5 had suffered no material economic loss as a result of the unlaw-  
6 ful disposition.

1 Misapplication of property is a class A misdemeanor.

1 SEC. 131. A person is guilty of criminal impersonation when  
2 he:

1 (1) Impersonates another and does an act in such assumed  
2 character with intent to obtain a benefit or to injure or defraud  
3 another; or

1 (2) Pretends to be a representative of some person or organ-  
2 ization and does an act in such pretended capacity with intent  
3 to obtain a benefit or to injure or defraud another; or

1 (3) Pretends to be a public servant, or wears or displays  
2 without authority any uniform or badge by which such public  
3 servant is lawfully distinguished, with intent to induce another  
4 to submit to such pretended official authority or otherwise to  
5 act in reliance upon that pretense.

1 Criminal impersonation is a class B misdemeanor.

1 SEC. 132. A person is guilty of unlawfully concealing a will,  
2 when, with intent to defraud, he conceals, secretes, suppresses,  
3 mutilates, or destroys a will, codicil or other testamentary in-  
4 strument.

1 Unlawfully concealing a will is a class A misdemeanor.

1 SEC. 133. Any officer or agent of any public community is  
2 guilty of false entry by officer or agent of public community  
3 who makes any intentionally false entry on its books.

1 False entry by officer or agent of public community is a class  
2 A misdemeanor.

1 SEC. 134. A person commits robbery when in the course of  
2 committing a larceny, he uses or threatens the immediate use  
3 of physical force upon another person for the purpose of: (1)  
4 Preventing or overcoming resistance to the taking of the prop-  
5 erty or to the retention thereof immediately after the taking; or  
6 (2) compelling the owner of such property or another person  
7 to deliver up the property or to engage in other conduct which  
8 aids in the commission of the larceny.

1 SEC. 135. A person is guilty of robbery in the first degree  
2 when in the course of the commission of the crime or of imme-  
3 3 diate flight therefrom, he or another participant in the crime:

4 (1) Causes serious physical injury to any person who is not a  
5 participant in the crime; or (2) is armed with a deadly weapon  
6 or dangerous instrument.

1 Robbery in the first degree is a class B felony.

1 SEC. 136. A person is guilty of robbery in the second degree  
2 when he commits robbery and (1) he is aided by another per-  
3 3 son actually present; or (2) he or another participant in the  
4 crime threatens the use of what purports to be or what he rep-  
5 5 sents by his words or conduct to be a deadly weapon or a  
6 6 dangerous instrument.

1 Robbery in the second degree is a class C felony.

1 SEC. 137. A person is guilty of robbery in the third degree

2 when he commits robbery.

1 Robbery in the third degree is a class D felony.

1 SEC. 138. The following definitions are applicable to this  
2 article:

1 (1) "Written instrument" means any instrument or article  
2 containing written or printed matter or the equivalent thereof,  
3 used for the purpose of reciting, embodying, conveying or re-  
4 cording information or constituting a symbol or evidence of  
5 value, right, privilege or identification, which is capable of be-  
6 ing used to the advantage or disadvantage of some person.

1 (2) "Complete written instrument" means one which pur-  
2 ports to be a genuine written instrument fully drawn with re-  
3 spect to every essential feature thereof. An endorsement, attes-  
4 tation, acknowledgment or other similar signature or statement  
5 is deemed both a complete written instrument in itself and a  
6 part of the main instrument in which it is contained or to which  
7 it attaches.

1 (3) "Incomplete written instrument" means one which con-  
2 tains some matter by way of content or authentication but  
3 which requires additional matter in order to render it a com-  
4 plete written instrument.

1 (4) A person "falsely makes" a written instrument when he  
2 makes or draws a complete written instrument in its entirety,  
3 or an incomplete written instrument, which purports to be an  
4 authentic creation of its ostensible maker or drawer, but which  
5 is not such either because the ostensible maker or drawer is  
6 fictitious or because, if real, he did not authorize the making  
7 or drawing thereof.

1 (5) A person "falsely completes" a written instrument when,  
2 by adding, inserting or changing matter, he transforms an in-  
3 complete written instrument into a complete one, without the  
4 authority of anyone entitled to grant it, so that such complete  
5 instrument appears or purports to be in all respects an authentic  
6 creation of or fully authorized by its ostensible maker or  
7 drawer.

1 (6) A person "falsely alters" a written instrument when,  
2 without the authority of anyone entitled to grant it, he changes  
3 a written instrument, whether it be in complete or incomplete  
4 form, by means of erasure, obliteration, deletion, insertion of  
5 new matter, transposition of matter, or in any other manner,  
6 so that such instrument in its thus altered form appears or pur-  
7 ports to be in all respects an authentic creation of or fully au-  
8 thorized by its ostensible maker or drawer.

1 (7) "Forged instrument" means a written instrument which  
2 has been falsely made, completed or altered.

1 SEC. 139. A person is guilty of forgery in the first degree  
2 when, with intent to defraud, deceive or injure another, he  
3 falsely makes, completes, or alters a written instrument or is-

4 sues or possesses any written instrument which he knows to be  
5 forged, which is or purports to be, or which is calculated to be-  
6 come or represent if completed:

1 (1) Part of an issue of money, stamps, securities or other  
2 valuable instruments issued by a government or governmental  
3 instrumentality; or

1 (2) Part of an issue of stock, bonds or other instruments  
2 representing interests in or claims against a corporate or other  
3 organization or its property.

1 Forgery in the first degree is a class D felony.

1 SEC. 140. (a) A person is guilty of forgery in the second  
2 degree when, with intent to defraud, deceive or injure another,  
3 he falsely makes, completes or alters a written instrument or  
4 issues or possesses any written instrument which he knows to  
5 be forged, which is or purports to be, or which is calculated to  
6 become or represents if completed:

1 (1) A deed, will, codocil, contract, assigned, commercial  
2 instrument, or other instrument which does or may evidence,  
3 create, transfer, terminate or otherwise affect a legal right,  
4 interest, obligation or status; or

1 (2) A public record, or an instrument filed or required or  
2 authorized by law to be filed in or with a public office or public  
3 servant; or

1 (3) A written instrument officially issued or created by a  
2 public office, public servant or governmental instrumentality; or

1 (4) A prescription of a duly licensed physician or other  
2 person authorized to issue the same for any drug or any in-  
3 strument or device used in the taking or administering of drugs  
4 for which a prescription is required by law.

1 (b) "Drugs" as used in this section includes all drugs except  
2 narcotic drugs or controlled drugs as defined in section 19-443  
3 of the general statutes.

1 Forgery in the second degree is a class A misdemeanor.

1 SEC. 141. A person is guilty of forgery in the third degree  
2 when, with intent to defraud, deceive or injure another, he  
3 falsely makes, completes or alters a written instrument, or  
4 alters or possesses any written instrument which he knows to  
5 be forged.

1 Forgery in the third degree is a class B misdemeanor.

1 SEC. 142. A person is guilty of criminal simulation when:

1 (1) With intent to defraud, he makes or alters any object  
2 in such manner that it appears to have an antiquity, rarity,  
3 source or authorship which it does not in fact possess; or

1 (2) with knowledge of its true character and with intent to  
2 defraud, he issues or possesses an object so simulated.

1 Criminal simulation is a class A misdemeanor.

1 SEC. 143. A person is guilty of forgery of symbols of value  
2 when, with intent to defraud, deceive or injure another, he

3 falsely makes, completes or alters a written instrument or issues  
4 or possesses any written instrument which he knows to be  
5 forged, which is or purports to be, or which is calculated to  
6 become or represent if completed part of an issue of tokens,  
7 public transportation transfers, certificates or other articles  
8 manufactured and designed for use as symbols of value usable  
9 in place of money for the purchase of property or services.

1 Forgery of symbols of value is a class A misdemeanor.

1 SEC. 144. The following definitions are applicable to sec-  
2 tions 145 and 146 of this act.

1 (a) "Coin machine" means a coin box, turnstile, vending  
2 machine or other mechanical or electronic device or receptacle  
3 designed (1) to receive a coin or bill or token made for the  
4 purpose, and (2) in return for the insertion or deposit thereof,  
5 automatically to offer, to provide, to assist in providing or to  
6 permit the acquisition of some property or some service.

1 (b) "Slug" means an object or article which, by virtue of its  
2 size, shape or any other quality, is capable of being inserted or  
3 deposited in a coin machine as an improper substitute for a  
4 genuine coin, bill or token.

1 (c) "Value" of a slug means the value of the coin, bill or  
2 token for which it is capable of being substituted.

1 SEC. 145. A person is guilty of unlawfully using slugs in the  
2 first degree when he makes, possesses or disposes of slugs with  
3 intent to enable a person to insert or deposit them in a coin  
4 machine, and the value of such slugs exceeds one hundred dol-  
5 lars.

1 Unlawfully using slugs in the first degree is a class B mis-  
2 demeanor.

1 SEC. 146. A person is guilty of unlawfully using slugs in the  
2 second degree when:

1 (1) With intent to defraud the owner of a coin machine, he  
2 inserts or deposits a slug in such machine; or

1 (2) he makes, possesses or disposes of a slug with intent to  
2 enable a person to insert or deposit it in a coin machine.

1 Unlawfully using slugs in the second degree is a class C  
2 misdemeanor.

1 SEC. 147. For purposes of sections 148 to 168, inclusive, of  
2 this act:

1 (1) An "official proceeding" is any proceeding held or which  
2 may be held before any legislative, judicial, administrative or  
3 other agency or official authorized to take evidence under  
4 oath, including any referee, hearing examiner, commissioner or  
5 notary or other person taking evidence in connection with any  
6 proceeding.

1 (2) "Benefit" means gain or advantage, or anything re-  
2 garded by the beneficiary as a gain or advantage, including  
3 benefit to any person or entity in whose welfare he is inter-  
4 ested.

1 (3) "Public Servant" is an officer or employee of govern-  
2 ment, elected or appointed, and any person participating as ad-  
3 visor, consultant or otherwise in performing a governmental  
4 function.

1 (4) "Government" includes any branch, subdivision or  
2 agency of the state or any locality within it.

1 (5) "Labor official" means any duly appointed or elected  
2 representative of a labor organization or any duly appointed  
3 or elected trustee or representative of an employee welfare  
4 trust fund.

1 (6) "Witness" is any person summoned, or who may be sum-  
2 moned, to give testimony in an official proceeding.

1 (7) "Juror" is any person who has been drawn or summoned  
2 to serve or act as a juror in any court.

1 (8) "Physical evidence" means any article, object, docu-  
2 ment, record or other thing of physical substance which is or  
3 is about to be produced or used as evidence in an official  
4 proceeding.

1 SEC. 148. A person is guilty of bribery if he offers, confers  
2 or agrees to confer upon a public servant any benefit as con-  
3 sideration for the recipient's decision, opinion, recommenda-  
4 tion, vote or other exercise of discretion as a public servant.

1 Bribery is a class D felony.

1 SEC. 149. A public servant is guilty of bribe receiving if  
2 he solicits, accepts or agrees to accept from another any bene-  
3 fit as consideration for his decision, opinion, recommendation,  
4 vote or other exercise of discretion.

1 Bribe receiving is a class D felony.

1 SEC. 150. A person is guilty of bribery of a witness if he  
2 offers, confers or agrees to confer upon a witness any benefit  
3 to influence the testimony or conduct of such witness in, or  
4 in relation to, an official proceeding.

1 Bribery of a witness is a class D felony.

1 SEC. 151. A witness is guilty of bribe receiving by a wit-  
2 ness if he solicits, accepts or agrees to accept any benefit from  
3 another person upon an agreement or understanding that such  
4 benefit will influence his testimony or conduct in, or in relation  
5 to, any official proceeding.

1 Bribe receiving by a witness is a class D felony.

1 SEC. 152. A person is guilty of tampering with a witness  
2 if, believing that an official proceeding is pending or about to  
3 be instituted, he induces or attempts to induce a witness to  
4 testify falsely, withhold testimony, elude legal process sum-  
5 moning him to testify or absent himself from any official pro-  
6 ceeding.

1 Tampering with a witness is a class D felony.

1 SEC. 153. A person is guilty of bribery of a juror if he of-  
2 fers, confers or agrees to confer upon a juror any benefit as  
3 consideration for the juror's decision or vote.

- 1 Bribery of a juror is a class D felony.
- 1 SEC. 154. A juror is guilty of bribe receiving by a juror if  
2 he solicits, accepts or agrees to accept from another any bene-  
3 fit as consideration for his decision or vote.
- 1 Bribe receiving by a juror is a class D felony.
- 1 SEC. 155. A person is guilty of tampering with a juror if he  
2 influences any juror in relation to any official proceeding to or  
3 for which such juror has been drawn, summoned or sworn.
- 1 Tampering with a juror is a class D felony.
- 1 SEC. 156. A person is guilty of tampering with or fabricat-  
2 ing physical evidence if, believing that an official proceeding  
3 is pending, or about to be instituted, he:
- 1 (1) Alters, destroys, conceals or removes any record, docu-  
2 ment or thing with purpose to impair its verity or availability  
3 in such proceeding; or
- 1 (2) makes, presents or uses any record, document or thing  
2 knowing it to be false and with purpose to mislead a public  
3 servant who is or may be engaged in such official proceeding.
- 1 Tampering with or fabricating physical evidence is a class D  
2 felony.
- 1 SEC. 157. A person is guilty of perjury, if, in any official  
2 proceeding, he intentionally, under oath, makes a false state-  
3 ment, swears, affirms or testifies falsely, to a material state-  
4 ment which he does not believe to be true.
- 1 Perjury is a class D felony.
- 1 SEC. 158. A person is guilty of false statement when he  
2 intentionally makes a false written statement under oath or  
3 pursuant to a form bearing notice, authorized by law, to the  
4 effect that false statements made therein are punishable, which  
5 he does not believe to be true and which statement is intended  
6 to mislead a public servant in the performance of his official  
7 function.
- 1 False statement is a class A misdemeanor.
- 1 SEC. 159. A person is guilty of bribery of a labor official if  
2 he offers, confers or agrees to confer upon a labor official any  
3 benefit with intent to influence him in respect to any of his acts,  
4 decisions or duties as such labor official.
- 1 Bribery of a labor official is a class D felony.
- 1 SEC. 160. A labor official is guilty of bribe receiving by a  
2 labor official if he solicits, accepts or agrees to accept any bene-  
3 fit from another person upon an agreement or understanding  
4 that such benefit will influence him in respect to any of his acts,  
5 decisions or duties as such labor official.
- 1 Bribe receiving by a labor official is a class D felony.
- 1 SEC. 161. A person is guilty of commercial bribery when he  
2 confers, or agrees to confer, any benefit upon any employee,  
3 agent or fiduciary without the consent of the latter's employer

4 or principal, with intent to influence his conduct in relation to  
5 his employer's or principal's affairs.

1 Commercial bribery is a class A misdemeanor.

1 SEC. 162. An employee, agent or fiduciary is guilty of re-  
2 ceiving a commercial bribe when, without consent of his em-  
3 ployer or principal, he solicits, accepts or agrees to accept any  
4 benefit from another person upon an agreement or understand-  
5 ing that such benefit will influence his conduct in relation to his  
6 employer's or principal's affairs.

1 Receiving a commercial bribe is a class A misdemeanor.

1 SEC. 163. A person is guilty of rigging if, with intent to pre-  
2 vent a publicly exhibited sporting or other contest from being  
3 conducted in accordance with the rules and usages purporting  
4 to govern it, he:

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

1 (2) tampers with any person, animal or thing.

1 Rigging is a class D felony.

1 SEC. 164. A person is guilty of soliciting or accepting bene-  
2 fit for rigging if he knowingly solicits, accepts or agrees to ac-  
3 cept any benefit the giving of which would be criminal under  
4 section 163 of this act.

1 Soliciting or accepting benefit for rigging is a class A misde-  
2 meanor.

1 SEC. 165. A person is guilty of participation in a rigged con-  
2 test if he knowingly engages in, sponsors, produces, judges or  
3 otherwise participates in a publicly exhibited sporting or other  
4 contest knowing that the contest is not being conducted in  
5 compliance with the rules and usages purporting to govern it,  
6 by reason of conduct which would be criminal under this sec-  
7 tion.

1 Participation in a rigged contest is a class A misdemeanor.

1 SEC. 166. As used in section 167 and 168 of this act, a per-  
2 son "renders criminal assistance" when, with intent to prevent,  
3 hinder or delay the discovery or apprehension of, or the lodging  
4 of a criminal charge against, a person whom he knows or  
5 believes has committed a felony or is being sought by law en-  
6 forcement officials for the commission of a felony, or with intent  
7 to assist a person in profiting or benefiting from the commission  
8 of a felony, he:

1 (1) Harbors or conceals such person; or

1 (2) warns such person of impending discovery or apprehen-  
2 sion; or

1 (3) provides such person with money, transportation,  
2 weapon, disguise or other means of avoiding discovery or ap-  
3 prehension; or

1 (4) prevents or obstructs, by means of force, intimidation  
2 or deception, anyone from performing an act which might aid  
3 in the discovery or apprehension of such person or in the lodg-  
4 ing of a criminal charge against him; or

1 (5) suppresses, by an act of concealment, alteration or de-  
2 struction, any physical evidence which might aid in the dis-  
3 covery or apprehension of such person or in the lodging of a  
4 criminal charge against him; or

1 (6) aids such person to protect or expeditiously profit from  
2 an advantage derived from such crime.

1 SEC. 167. A person is guilty of hindering prosecution in the  
2 first degree when he renders criminal assistance to a person  
3 who has committed a class A or class B felony.

1 Hindering prosecution in the first degree is a class D felony.

1 SEC. 168. A person is guilty of hindering prosecution in the  
2 second degree when he renders criminal assistance to a person  
3 who has committed a class C or class D felony.

1 Hindering prosecution in the second degree is a class A mis-  
2 demeanor.

1 SEC. 169. For purposes of sections 170 and 172 of this act:

1 1. Correctional institution means the facilities defined in  
2 section 1-1 of the general statutes, and any other correctional  
3 facility established by the commissioner of correction.

1 2. Custody means restraint by a public servant pursuant to  
2 an arrest or court order.

1 SEC. 170. A person is guilty of escape from a correctional  
2 institution if he escapes from a correctional institution. Escape  
3 from a correctional institution is a class C felony.

1 SEC. 171. A person is guilty of escape from custody if he  
2 escapes from custody. If a person has been arrested for,  
3 charged with or convicted of a felony, escape from such cus-  
4 tody is a class D felony, otherwise, escape from custody is a  
5 class A misdemeanor.

1 SEC. 172. A person who escapes from any correctional in-  
2 stitution while employed at work outside such correctional in-  
3 stitution, is guilty of escape while at work. Escape while at  
4 work is a class D felony.

1 SEC. 173. Any person who, while charged with the commis-  
2 sion of a felony and while out on bail or released under other  
3 procedure of law, willfully fails to appear when legally called  
4 according to the terms of his bail bond or promise to appear,  
5 is guilty of failure to appear in the first degree. Failure to ap-  
6 pear in the first degree is a class D felony.

1 SEC. 174. Any person who, while charged with the com-  
2 mission of a misdemeanor and while out on bail or released  
3 under other procedure of law, willfully fails to appear when  
4 legally called according to the terms of his bail bond or prom-  
5 ise to appear, is guilty of failure to appear in the second degree.

6 Failure to appear in the second degree is a class A misdemeanor.

1 SEC. 175. Any person not authorized by law who conveys  
2 or passes, or causes to be conveyed or passed, into any correc-  
3 tional institution or the grounds or buildings thereof, or to any  
4 inmate of such an institution who is outside the premises there-  
5 of and known to the person so conveying or passing or causing  
6 such conveying or passing to be such an inmate, who receives  
7 or possesses any narcotic or hypnotic drug, any intoxicating liq-  
8 uors, any firearm, weapon or explosive of any kind, or any rope,  
9 ladder or other instrument or device for use in making, at-  
10 tempting or aid an escape, shall be guilty of a class D felony.

1 (b) The unauthorized conveying, passing or possession of  
2 any rope or ladder or other instrument or device, adapted for  
3 use in making or aiding an escape, into any such institution or  
4 the grounds or buildings thereof, shall be presumptive evidence  
5 that it was so conveyed, passed or possessed for such use. Any  
6 person not authorized by law who conveys into any such insti-  
7 tution, any letter or other missive which is intended for any  
8 person confined therein, or who conveys from within the en-  
9 closure to the outside of such institution any letter or other  
10 missive written or given by any person confined therein, shall  
11 be guilty of a class A misdemeanor.

1 SEC. 176. A person is guilty of riot in the first degree when  
2 simultaneously with six or more other persons he engages in  
3 tumultuous and violent conduct and thereby intentionally or  
4 recklessly causes or creates a grave risk of causing public  
5 alarm, and in the course of and as a result of such conduct, a  
6 person other than one of the participants suffers physical in-  
7 jury or substantial property damage occurs. Riot in the first  
8 degree is a class A misdemeanor.

1 SEC. 177. A person is guilty of riot in the second degree  
2 when, simultaneously with two or more other persons, he en-  
3 gages in tumultuous and violent conduct and thereby intention-  
4 ally or recklessly causes or creates a grave risk of causing pub-  
5 lic alarm. Riot in the second degree is a class B misdemeanor.

1 SEC. 178. A person is guilty of unlawful assembly when he  
2 assembles with two or more other persons for the purpose of  
3 engaging in conduct constituting the crime or riot, or when,  
4 being present at an assembly which either has or develops such  
5 a purpose, he remains there with intent to advance that pur-  
6 pose. Unlawful assembly is a class B misdemeanor.

1 SEC. 179. A person is guilty of inciting to riot when he ad-  
2 vocates, urges or organizes six or more persons to engage in  
3 tumultuous and violent conduct of a kind likely to create pub-  
4 lic alarm. Inciting to riot is a class A misdemeanor.

1 SEC. 180. A person is guilty of criminal advocacy when (1)  
2 he advocates the overthrow of the existing form of government  
3 of this state or any subdivision thereof by imminent dangerous

4 action, or (2) with knowledge of its contents, he publishes,  
5 sells or distributes any document which advocates such im-  
6 minent dangerous action.

1 Criminal advocacy is a class D felony.

1 Sec. 181. A person is guilty of falsely reporting an incident  
2 when, knowing the information reported, conveyed or circu-  
3 lated to be false or baseless, he:

1 (1) Initiates or circulates a false report or warning of an  
2 alleged occurrence or impending occurrence of a fire, explo-  
3 sion, crime catastrophe or emergency under circumstances in  
4 which it is likely that public alarm or inconvenience will re-  
5 sult; or

1 (2) reports, by word or action, to any official or quasi-of-  
2 ficial agency or organization having the function of dealing  
3 with emergencies involving danger to life or property, an  
4 alleged occurrence or impending occurrence of a fire, explosion,  
5 or other catastrophe or emergency which did not in fact occur  
6 or does not in fact exist; or

1 (3) gratuitously reports to a law enforcement officer or  
2 agency the alleged occurrence of an offense or incident which  
3 did not in fact occur; or an allegedly impending occurrence of  
4 an offense or incident which in fact is not about to occur; or  
5 false information relating to an actual offense or incident or to  
6 the alleged implication of some person therein.

1 Falsely reporting an incident is a class B misdemeanor.

1 Sec. 182. A person is guilty of breach of the peace when,  
2 with intent to cause inconvenience, annoyance or alarm, or  
3 recklessly creating a risk thereof:

1 (1) He engages in fighting or in violent, tumultuous or  
2 threatening behavior in a public place; or

1 (2) he assaults or strikes another; or

1 (3) he threatens to commit any crime against another per-  
2 son or his property; or

1 (4) he publicly exhibits, distributes, posts up or advertises  
2 any offensive, indecent or abusive matter concerning any per-  
3 son; or

1 (5) in a public place, he uses abusive or obscene language  
2 or makes an obscene gesture; or

1 (6) he creates a public, hazardous or physically offensive  
2 condition by any act which he is not licensed or privileged to  
3 do.

1 Breach of peace is a class B misdemeanor.

1 Sec. 183. A person is guilty of disorderly conduct when,  
2 with intent to cause inconvenience, annoyance or alarm, or  
3 recklessly creating a risk thereof:

1 (1) He engages in fighting or in violent, tumultuous or  
2 threatening behavior; or

1 (2) by offensive or disorderly conduct, he annoys or inter-  
2 feres with another person; or

- 1 (3) he makes unreasonable noise; or  
1 (4) without lawful authority, he disturbs any lawful assem-  
2 bly or meeting of persons; or  
1 (5) he obstructs vehicular or pedestrian traffic; or  
1 (6) he congregates with other persons in a public place and  
2 refuses to comply with a reasonable official request or order  
3 to disperse.

1 Disorderly conduct is a class C misdemeanor.

1 SEC. 184. (a) A person is guilty of harassment when:

1 (1) By telephone, he addresses another in or uses indecent  
2 or obscene language; or

1 (2) with intent to harass, annoy or alarm another person,  
2 he communicates with a person by telephone, mail, or any  
3 other form of written communication, in a manner likely to  
4 cause annoyance or alarm; or

1 (3) with intent to harass, annoy or alarm another person,  
2 he makes a telephone call, whether or not a conversation en-  
3 sues, in a manner likely to cause annoyance or alarm.

1 (b) For purposes of this section such offense may be deemed  
2 to have been committed either at the place where the tele-  
3 phone call was made, or at the place where it was received.  
4 The court may order any person convicted under this section  
5 to be examined by one or more psychiatrists.

1 Harassment is a class C misdemeanor.

1 SEC. 185. (a) A person is guilty of intoxication when he is  
2 under the influence of alcohol, narcotic drug or controlled drug  
3 as defined in section 19-443 of the general statutes or other  
4 substance, to the degree that he may endanger himself or other  
5 persons or property, or annoy persons in his vicinity.

1 (b) The court in its discretion may commit to the custody  
2 and control of the department of mental health or to any ap-  
3 propriate facility within that department for not less than thirty  
4 days nor more than twelve months, or until discharged within  
5 that period by the commissioner of mental health:

1 (1) Any person charged under this section who requests  
2 such commitment, if the court finds that there is reasonable  
3 ground to believe such a person is an alcoholic. If such request  
4 is granted before conviction, the criminal proceeding shall be  
5 dismissed.

1 (2) Any person found guilty under this section who has  
2 been convicted previously, under this section or under section  
3 53-246 of the general statutes, at least twice in the last preced-  
4 ing six months or four times in the last preceding year.

1 (c) The defendant shall be advised of his rights under sub-  
2 section (b) by the court before being put to plea.

1 (d) Notwithstanding the provisions of subsection (a), in  
2 lieu of arrest, a police officer in his discretion may escort an in-  
3 toxicated person to a civil facility for the care of alcoholics.

1 Intoxication shall be deemed an unclassified misdemeanor,

2 the sentence for which shall be imprisonment for a period of  
3 not more than thirty days or a fine of not more than twenty  
4 dollars or both.

1 Sec. 186. A person is guilty of loitering on school grounds  
2 when he loiters or remains in or about a school building or  
3 grounds, not having any reason or relationship involving cus-  
4 tody of or responsibility for a pupil or any other license or  
5 privilege to be there.

1 Loitering in or about school grounds is a class C misde-  
2 meanor.

1 Sec. 187. Any person who performs any of the following  
2 acts in a public place is guilty of public indecency: (1) An act  
3 of sexual intercourse; or, (2) an act of deviate sexual conduct;  
4 or, (3) a lewd exposure of the body with intent to arouse or to  
5 satisfy the sexual desire of the person; or, (4) a lewd fondling  
6 or caress of the body of another person. Public place, for the  
7 purposes of this section, means any place where the conduct  
8 may reasonably be expected to be viewed by others.

1 Public indecency is a class B misdemeanor.

1 Sec. 188. (a) The following definitions are applicable to  
2 sections 189 and 190, of this act:

1 (1) "Wiretapping" means the intentional overhearing or  
2 recording of a telephonic or telegraphic communication by a  
3 person other than a sender or receiver thereof, without the  
4 consent of either the sender or receiver, by means of any in-  
5 strument, device or equipment. The normal operation of a tele-  
6 phone or telegraph corporation and the normal use of the serv-  
7 ices and facilities furnished by such corporation pursuant to its  
8 tariffs shall not be deemed "wiretapping."

1 (2) "Mechanical overhearing of a conversation" means  
2 the intentional overhearing or recording of a conversation or  
3 discussion, without the consent of at least one party thereto,  
4 by a person not present thereat, by means of any instrument,  
5 device or equipment.

1 (3) "Unlawfully" means not specifically authorized by  
2 law.

1 (b) This section and sections 189 and 190 of this act, shall  
2 not apply to wiretapping by criminal law enforcement officials  
3 in the lawful performance of their duties and does not affect  
4 the admissibility of evidence in any proceedings other than a  
5 prosecution for eavesdropping or tampering with private com-  
6 munications.

1 Sec. 189. A person is guilty of tampering with private com-  
2 munications when:

1 (1) Knowing that he does not have the consent of the sender  
2 or receiver, he obtains from an employee, officer or representa-  
3 tive of a telephone or telegraph corporation, by connivance, de-  
4 ception, intimidation or in any other manner, information with

5 respect to the contents or nature of a telephonic or telegraphic  
6 communication; or

1 (2) Knowing that he does not have the consent of the  
2 sender or receiver, and being an employee, officer or repre-  
3 sentative of a telephone or telegraph corporation, he knowingly  
4 divulges to another person the contents or nature of a tele-  
5 phonic or telegraphic communication.

1 Tampering with private communications is a class A mis-  
2 demeanor.

1 SEC. 190. A person is guilty of eavesdropping when he un-  
2 lawfully engages in wiretapping or mechanical overhearing of a  
3 conversation.

1 Eavesdropping is a class D felony.

1 SEC. 191. (a) Any person is guilty of bigamy who marries  
2 or purports to marry another person in this state if either is law-  
3 fully married; or so marries or purports to marry another person  
4 in any other state or country in violation of the laws thereof,  
5 and knowingly cohabits and lives with such other person in  
6 this state as husband and wife.

1 (b) It shall be an affirmative defense to the charge of  
2 bigamy that at the time of the subsequent marriage or pur-  
3 ported marriage: (1) The actor reasonably believes, based on  
4 persuasive and reliable information, that the prior spouse is  
5 dead; or

1 (2) a court has entered a judgment purporting to termi-  
2 nate or annul any prior disqualifying marriage and the actor  
3 does not know that judgment to be invalid; or

1 (3) the single person does not know that the other is  
2 legally married.

1 Bigamy is a class D felony.

1 SEC. 192. A person is guilty of incest when he marries or  
2 engages in sexual intercourse with a person whom he knows  
3 to be related to him within any of the degree of kindred speci-  
4 fied in section 46-1 of the general statutes.

1 Incest is a class D felony.

1 SEC. 193. (a) A person is guilty of coercion when he com-  
2 pels or induces a person to engage in conduct which the latter  
3 has a legal right to abstain from engaging in, or to abstain  
4 from engaging in conduct in which he has a legal right to  
5 engage, by means of instilling in him a fear that, if the demand  
6 is not complied with, the actor or another will:

1 (1) Commit any criminal offense; or

1 (2) accuse anyone of a criminal offense; or

1 (3) expose any secret tending to subject any person to  
2 hatred, contempt or ridicule, or to impair his credit or business  
3 repute; or

1 (4) take or withhold action as an official, or cause an official  
2 to take or withhold action.

1 It shall be an affirmative defense to prosecution based on  
2 subdivisions (2), (3), or (4) that the actor believed the ac-  
3 cusation or secret to be true or the proposed official action  
4 justified and that his purpose was limited to compelling the  
5 other to behave in a way reasonably related to the circum-  
6 stances which were the subject of the accusation, exposure or  
7 proposed official action, as by desisting from further misbe-  
8 havior or making good a wrong done.

1 Criminal coercion is a class A misdemeanor unless the threat  
2 is to commit a felony, in which case the offense is a class D  
3 felony.

1 SEC. 194. The following definitions are applicable to sec-  
2 tions 194 to 197, inclusive, in this act: (a) Any material or per-  
3 formance is "obscene" if (1) considered as a whole, its pre-  
4 dominant appeal is to prurient, shameful or morbid interest in  
5 nudity, sex, excretion, sadism or masochism, (2) it goes sub-  
6 stantially beyond customary limits of candor in describing or  
7 representing such matters, and (3) it is utterly without re-  
8 deeming social value. Predominant appeal shall be judged with  
9 reference to ordinary adults unless it appears from the charac-  
10 ter of the material or the circumstances of its dissemination to  
11 be designed for some other specially susceptible audience.

1 (b) Material or a performance is "obscene as to minors" if  
2 it depicts nudity, sexual conduct, sexual excitement or sado-  
3 masochistic abuse and, taken as a whole, it is harmful to  
4 minors. For purposes of this subsection: (1) "Minor" means  
5 any person less than seventeen years old.

1 (2) "Nudity" means the showing of the human male or  
2 female genitals, pubic area or buttocks with less than a fully  
3 opaque covering, or the showing of the female breast with less  
4 than a fully opaque covering of any portion thereof below the  
5 top of the nipple, or the depiction of covered male genitals in  
6 a discernably turgid state.

1 (3) "Sexual conduct" means acts of masturbation, homo-  
2 sexuality, sexual intercourse, or physical contact with a per-  
3 son's clothed or unclothed genitals, pubic area, buttocks, or if  
4 such person is a female, breast.

1 (4) "Sexual excitement" means the condition of human  
2 male or female genitals when in a state of sexual stimulation or  
3 arousal.

1 (5) "Sado-masochistic abuse" means flagellation or tor-  
2 ture by or upon a person clad in undergarments, a mask or  
3 bizarre costume, or the condition of being fettered, bound or  
4 otherwise physically restrained on the part of one so clothed.

1 (6) "Harmful to minors" means that quality of any de-  
2 scription or representation, in whatever form, of nudity, sexual  
3 conduct, sexual excitement or sado-masochistic abuse, when  
4 (a) it predominantly appeals to the prurient, shameful or mor-

5 bid interest of minors, (b) it is patently offensive to prevailing  
6 standards in the adult community as a whole with respect to  
7 what is suitable material for minors, and (c) it is utterly with-  
8 out redeeming social importance for minors.

1 (c) "Material" means anything tangible which is capable of  
2 being used or adapted to arouse interest, whether through the  
3 medium of reading, observation, sound or in any other manner.  
4 Undeveloped photographs, molds, printing plates, and the like,  
5 may be deemed obscene notwithstanding that processing or  
6 other acts may be required to make the obscenity patent or to  
7 disseminate it.

1 (d) "Performance" means any play, motion picture, dance  
2 or other exhibition performed before an audience.

1 (e) "Promote" means to manufacture, issue, sell, give, pro-  
2 vide, lend, mail, deliver, transfer, transmit, publish, distribute,  
3 circulate, disseminate, present, exhibit, advertise, produce, di-  
4 rect or participate in.

1 SEC. 195. A person is guilty of obscenity when, knowing  
2 its content and character, he promotes, or possesses with intent  
3 to promote, any obscene material or performance.

1 Obscenity is a class B misdemeanor.

1 SEC. 196. In any prosecution for obscenity it is a defense  
2 that the persons to whom allegedly obscene material was dis-  
3 seminated, or the audience to an allegedly obscene perform-  
4 ance, consisted of persons or institutions having scientific, edu-  
5 cational, or governmental justification for possession or viewing  
6 the same.

1 SEC. 197. (a) A person is guilty of obscenity as to minors  
2 when he knowingly promotes to a minor, for monetary consid-  
3 eration, any material or performance which is obscene as to  
4 minors.

1 (b) For purposes of this section, "knowingly" shall mean  
2 having general knowledge of or reason to know or a belief or  
3 ground for belief which warrants further inspection or inquiry  
4 as to the character and content of any material or performance  
5 which is reasonably susceptible of examination by said person  
6 and the age of the minor.

1 (c) In any prosecution for obscenity as to minors, it shall be  
2 an affirmative defense that (1) the defendant made a reason-  
3 able mistake as to age, or (2) the defendant made a reasonable  
4 bona fide attempt to ascertain the true age of such minor, by  
5 examining a draft card, driver's license, birth certificate or other  
6 official or apparently official document, exhibited by such mi-  
7 nor, purporting to establish that such minor was seventeen years  
8 old or more.

1 Obscenity as to minors is a class A misdemeanor.

1 SEC. 198. A person is guilty of disseminating indecent  
2 comic books when he publishes or distributes for resale any

3 book, pamphlet or magazine consisting of narrative material in  
4 pictorial form, colored or uncolored, and commonly known  
5 as comic books, which are devoted to or principally made up  
6 of pictures of accounts of physical torture or brutality, horror  
7 or terror.

1 Disseminating indecent comic books is a class A misde-  
2 meanor.

1 SEC. 199. (a) Any person who publishes or prints any book,  
2 pamphlet or magazine consisting of narrative material in pic-  
3 torial form, colored or uncolored, and commonly known as  
4 comic books, shall have the name and address of such pub-  
5 lisher or printer imprinted on such book, pamphlet or maga-  
6 zine.

1 (b) A person is guilty of failing to identify a comic book  
2 publication when he violates any duty prescribed in subsec-  
3 tion (a).

1 Failing to identify a comic book publication is a violation.

1 SEC. 200. An injunction may be granted against the pro-  
2 moting of any material or performance that is obscene or ob-  
3 scene as to minors or the possessing with intent to promote any  
4 such material.

1 SEC. 201. Whenever any prosecuting attorney of the cir-  
2 cuit court has reasonable cause to believe that any person is  
3 knowingly promoting any material or performance that is ob-  
4 scene or obscene as to minors, he shall institute an action for  
5 an adjudication of the obscenity of such material or perform-  
6 ance. Such action shall commence with the filing of an appli-  
7 cation for an injunction with a judge of the circuit court for  
8 the circuit court wherein is located such material or perform-  
9 ance. The complaint shall (a) be directed against the promot-  
10 ing of the material or performance; (b) designate as defend-  
11 ants and list the names and addresses, if known, of its promot-  
12 ers, or any person possessing it with intent to promote it; (c)  
13 allege its obscene nature; (d) seek an adjudication that is ob-  
14 scene or obscene as to minors and an injunction against any  
15 promoting or possessing with intent to promote; (e) seek its  
16 surrender, seizure, destruction or termination.

1 SEC. 202. The prosecuting attorney, at the time of present-  
2 ing the complaint and application to the court, shall also pre-  
3 sent the material or a witness or other evidence describing or  
4 depicting the performance. If after examination the court finds  
5 no probable cause to believe such material or performance  
6 obscene or obscene as to minors, the court shall then proceed  
7 as in other applications for an injunction. The person, sought  
8 to be enjoined shall be entitled to a trial of the issues, com-  
9 mencing within one day after the close of all pleadings, and any  
10 decision by the court shall be rendered within two days of the  
11 conclusion of the trial.

1 SEC. 203. On or before the date set for trial, any person  
2 who promotes, or who possesses with intent to promote, the  
3 material or performance complained of in the application for  
4 an injunction may file an appearance and be made a party to  
5 the proceedings.

1 SEC. 204. Every person appearing shall be entitled, upon  
2 request, to a trial by jury at the criminal sessions of such court  
3 and the court may order a trial of any issue to the jury.

1 SEC. 205. At the trial, all parties shall be permitted to sub-  
2 mit evidence, including the testimony of experts, pertaining  
3 but not limited to the following: (a) The elements or standards  
4 specified in the definitions of obscene and obscene as to minors;  
5 (b) the artistic, literary, scientific, educational or governmental  
6 merits of the material or performance; (c) the intent and  
7 knowledge of any defendant.

1 SEC. 206. If the court or jury, as the case may be, finds the  
2 material or performance not to be obscene or obscene as to  
3 minors, the court shall enter judgment accordingly. If the court  
4 or jury, as the case may be, finds the material or performance  
5 to be obscene or obscene as to minors, the court shall enter  
6 judgment to such effect and may, in such judgment or in sub-  
7 sequent orders of enforcement thereof: (a) Enter an injunc-  
8 tion against any defendant prohibiting him from promoting or  
9 possessing such material or performance, under such condi-  
10 tions and within such time as the court may order; (b) direct  
11 any resident defendant to dispose of all such material in his  
12 possession or under his control under such conditions and  
13 within such time as the court may order; or (c) if any de-  
14 fendant fails fully to comply with the judgment or order of  
15 the court, direct the state police or any organized local police  
16 department to seize and destroy all such material in the pos-  
17 sion or under the control of such defendant wherever the  
18 same may be found within their jurisdiction.

1 SEC. 207. Every order granting an injunction and every  
2 restraining order shall set forth the reasons for its issuance and  
3 shall describe in reasonable detail the obscene material or per-  
4 formance, and the promoting or possessing sought to be re-  
5 strained, and is binding only upon the defendants to the action,  
6 their officers, agents, servants and employees and upon those  
7 persons in active concert or participating by contract or  
8 arrangement with them, who receive actual notice of the order  
9 by personal service or otherwise.

1 SEC. 208. Every nonresident person, whether acting per-  
2 sonally or by an agent, salesman, employee, officer or another,  
3 who promotes material or a performance that is obscene or  
4 obscene as to minors in this state and shall be deemed to have  
5 appointed the secretary of the state as his attorney and to have  
6 agreed that any process in any action arising under sections

7 200 to 207, inclusive, of this act brought against or naming such  
8 nonresident as a defendant, may be served upon said secretary  
9 and shall have the same validity as if served upon such non-  
10 resident personally. Such process shall be served by the officer  
11 to whom the same is directed upon said secretary by leaving  
12 with or at the office of said secretary a true and attested copy  
13 thereof and by sending to the defendant, by registered or cer-  
14 tified mail, postage prepaid, a like true and attested copy with  
15 an endorsement thereon of the service upon said secretary ad-  
16 dressed to such defendant at his last known address. The secre-  
17 tary of the state shall keep a record of each such process and  
18 the day and hour of service.

1 SEC. 209. In all cases in which a court has entered its judg-  
2 ment pursuant to sections 200 to 207, inclusive, of this act that  
3 the material or performance in question is obscene or obscene  
4 as to minors, and a charge of a violation of the injunction or  
5 restraining order is thereafter brought against a person who,  
6 being a defendant to such judgment, cannot be found in this  
7 state, the governor, or anyone performing the functions of gov-  
8 ernor by authority of a law of this state, shall unless such per-  
9 son has appealed from such judgment and such appeal is not  
10 finally determined, demand his extradition from the executive  
11 authority of the state in which such person may be found, pur-  
12 suant to the laws of this state.

1 SEC. 210. Any defendant, or any officer, agent, servant or  
2 employee of such defendant, or any person in active concert or  
3 participation by contract or arrangement with such defendant,  
4 who receives actual notice, by personal service or otherwise, of  
5 any injunction or restraining order entered pursuant to sections  
6 200 to 207, inclusive, of this act and who disobeys any of the  
7 provisions thereof shall be fined not more than one thousand  
8 dollars or imprisoned not more than two years or both.

1 SEC. 211. Any fine against any person under any of sections  
2 200 to 207, inclusive, of this act may be levied against any of his  
3 real property, personal property, tangible or intangible, choses  
4 in action or property of any kind or nature, including debts  
5 owing to him, which may be situated or found in this state.

1 SEC. 212. Paragraph 18 of section 1-1 of the general stat-  
2 utes concerning felonies and misdemeanors is repealed.

1 SEC. 213. Section 54-40 of the general statutes is amended  
2 by adding subsection (d) as follows: The foregoing notwith-  
3 standing, at the time of any commitment under subsection (c)  
4 hereof, the court shall set a maximum period of commitment,  
5 which maximum shall not exceed the maximum sentence which  
6 could have been imposed for the offense for which the accused  
7 is awaiting trial. To said maximum period of commitment there  
8 shall be credited the number of days spent by the accused in  
9 jail or other confinement prior to said commitment under sub-

10 section (c) hereof. In the case of a class A felony, the maxi-  
11 mum period shall be twenty-five years. During the period of  
12 confinement the superintendent of the hospital or institution  
13 shall, at least every six months, issue a written report to the  
14 court stating his opinion of the mental condition of the accused.  
15 This report shall be filed with the clerk of the court who shall  
16 cause copies to be delivered as in subsection (a).

1 SEC. 214. Sections 53-1 to 53-10, inclusive, 53-11 to 53-19,  
2 inclusive, 53-24, 53-26 to 53-28, inclusive, 53-32, 53-33, 53-38,  
3 53-40, 53-42 to 53-49, inclusive, 53-52 to 53-129, inclusive,  
4 53-135 to 53-142, inclusive, 53-143 to 53-150, inclusive, 53-154  
5 to 53-163, inclusive, 53-166 to 53-180, inclusive, 53-183 to  
6 53-186, inclusive, 53-195 to 53-197, inclusive, 53-207 to 53-209,  
7 inclusive, 53-213, 53-214, 53-216 to 53-246, inclusive, 53-254  
8 to 53-263, inclusive, 53-265 to 53-269, inclusive, 53-284 to  
9 53-288, inclusive, 53-309, 53-311, 53-335 to 53-340, inclusive,  
10 53-343, 53-346, 53-348 to 53-355, inclusive, 53-357 to 53-364,  
11 inclusive, 53-366, 53-367, 53-371 to 53-376, inclusive, 53-379,  
12 54-82a, 54-111 to 54-114, inclusive, 54-116 to 54-119, inclusive,  
13 54-121 and 54-196 to 54-198, inclusive, are repealed.

1 SEC. 215. This act shall take effect October 1, 1971.

**9.**

**Transcript of House floor debate,  
June 2, 1969**

**13 House of Representatives Proceedings,  
Part 11, 1969 Session,  
pp. 5033-5063.**

Monday, June 2, 1969

7 MR. SPEAKER:

So ordered.

THE CLERK:

Cal. 1234. Mod. Senate Joint Resolution No. 32.

REP. KENNELLY - 1st D.

Cal. 1234 Mod. Senate Joint Resolution No. 32 be passed retaining its place on the Cal.

MR. SPEAKER:

Is there objection? Hearing none, so ordered.

THE CLERK:

Cal. 1264. Sub. for H.B. No. 7119.

REP. KENNELLY - 1st D.

Cal. 1264, Sub. for H.B. No. 7119 be passed temporarily.

MR. SPEAKER:

So ordered.

THE CLERK:

Cal. 1270. Mod. H.B. No. 7182. An Act concerning Revision and Codification of the Substantive Criminal Law.

REP. CARROZZELLA - 81st D.

I move for acceptance of the Joint Committee's Favorable Report and passage of the bill.

MR. SPEAKER:

Motions on acceptance and passage. Would you remark?

REP. CARROZZELLA - 81st D.

Mr. Speaker, the bill before us is another in a series of measures which the Judiciary Committee is recommending to the

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e 8 members of this house. In order to meet its primary commitment to the concept of law and order. As I have said before, Mr. Speaker, and I think I can repeat it again today, the citizens of our state deserve and rightfully demand to be able to live without fear. In order that this becomes a total reality, we in this legislature have a primary obligation to enact strict laws that will adequately protect the public with specific emphasis on the never ending battle against organized crime. Mr. Speaker, under present law, the criminal statutes of our state are disconnected, inconsistent and in many cases archaic and outmoded. The legislature of this state recognizes this fact and in 1963 passed a measure which created a commission, and I quote, "to revise and codify the criminal statutes and to report its findings for substantive and clarifying changes to the legislature." I had the privilege to serve as a member of this commission. It was headed by a dear friend of ours, a now judge of the Superior Court, former Speaker of this House, Robert Testo. Under his leadership, the Commission worked long and hard and I would like at this time, Mr. Speaker, to pay a special tribute to an attorney who served as the executive director of that commission. The attorney to whom I refer is attorney David Borden. He spent many, many, long hours helping and advising this commission with respect to many changes it was going to recommend with respect to our criminal law. The bill before us is a combination of almost six years of effort. In research, in drafting and respects the recommendation of the criminal commission as modified by certain changes made

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REP: CARROZZELLA - 81st. D.

by Judiciary Committee. I would like to emphasise this time Mr. speaker, that the bill before us represents a codification of of the substitutive criminal law only. In-so-far-as the procedural criminal law, it is the hope that this legislature will see fit to continue the criminal commission, so that the study can be made with the respect to the procedural criminal law. This is the first such under-taking in the history of our State. I would like to emphasise two points, Mr. speaker to the members of this House. First and for-most I think it is important to note, that the effective date of this law is October 1, 1971, we here today are going to make a radical change in our criminal statutes. It was the feeling of the Judiciary Committee, that the bill should be passed in this session in order that the members of the bar, members of the Judiciary, and members of the public could study the tremendous ramifications of this act, and in order that a new legislature the 1971 legislature. As I said Mr. speaker, the effective date October 1, 1971, one of the purposes is to let everyone study the tremendous ramifications of this bill, and also to allow a new legislature to convene in 1971 so that it could make whatever changes it should see fit to make in light of such study. Mr. speaker, one further point I'd like to make, this is not and I emphasise the word not a wholesale repeal, of existing criminal law, it doesn't reduce new criminal statutes, but it also retains portions of the law especially in so-far-as

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10 REP: CARROZZELLA - 81st D.

offenses of gambling, civil rights, narcotics, non support, ~~xxx~~ etc. Mr. speaker, I submit to the members of this House that this is a good bill. It is a bill in the interest of the people of our State, and it ~~pr~~ represents the efforts of many many dedecated people, who are dedecated to the principle of law and order. I know would yeild, Mr. speaker, to the gentleman from the 98th, who served as chairman of the sub. committee that studied this particular bill. I would also like to pay tribute to him and his sub. committee for they spent many, many long hours working on the language of this bill, and helping make it the best possible bill that is now before us. I yeild to the gentleman from the 98th.

REP: CAPLAN - 98th D.

Mr. speaker, may I call the attention of the House to one error that appears on page 1 line 9 of the bill, the word substantial appears and it aroniously included, that word should be deleted. Mr. speaker, the code divides offenses into various categories. Felonies are classified A, B, C, and D. Class A felonies, which are limited to murder and one grade of kidnapping are punishable by a life sentence or death. Class E, C, and D felonies carry maximum terms of 20, 10, and 5 years ~~respectively~~ respectively. Ungraded felonies, that is those not with~~xi~~ in the code are deemed unclassified, in addition certain maximum fines may be imposed for felonies. ~~Misdemeanors~~ Misdemeanors are classified, A, B, and C, plus an unclassified

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REP: CAPLAN - 98th D.

category. Class A misdemeanors carry a maximum penalty of 1 year, Class B, 6 months, and Class C, three months, a provision is also made for fines. Offenses are also categorized in some cases by degrees of seriousness, for example, arson may be in the first, second, or third degree. An offense which is punishable only by a fine is called a violation under the code. This system of classification permits gradation of criminal conduct with appropriate scaling of penalties, and is designed to eliminate our present patch work method, which often results in a wide disparity of sentences, for example a ~~violation~~ under our existing law, ~~breaking~~<sup>breaking</sup> and entering a dwelling, carries a four year maximum, breaking and entering a railroad car provides for sentence of up to ten years. The code retains capital punishment and the split trial concept, but permits the judge to reject a jury's recommendation of the death sentence and impose instead life sentence. Dispositions or sentences are spelled ~~out~~ out in detail. Criteria and conditions for a probation, conditional discharge, and unconditional discharge are enumerated, specific provisions are made for concurrent and consecutive terms and for multiple or persistent offenders. The code also contains provisions for certain defenses, such as justification, mental disease, or defect, and also provides the concept of affirmative defenses, such as ~~direct~~<sup>duress</sup> ~~coercion~~ and entrapment, in many ~~instances~~ instances the ~~statutory~~ language presents the embodiment

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of existing Connecticut case law and the common law. It also contains a system of procedural safe-guards for the protection of the individual by dealing with commitment of persons equited for mental reason. Provision is made for hearing periodic review and maximum periods of commitment. Rather than try to mention and explain all of the other crimes in the code, some of which are new to Connecticut, I will touch upon some of the more significant ones and I will then call upon other speakers. The sections on homicide involve a considerable change from present law consisting of one degree of murder and two degrees of manslaughter. The code treats sex offenses on the theory that private consensual activity between persons of certain ages not involving corruption of young people or commercialization of sex should not be governed by the criminal law. Of course, sexual activity involving force or compulsion or certain age groups is still prohibited under the code. But penalties are graded according to seriousness of conduct and age differences. The crimes of bigamy and incest are retained. In this area certain affirmative defenses such as reasonable mistake of age are permitted to afford protection for an accused requirements of coobritration and prompt complaint have been inserted. Traditional crimes such as burglary or breaking and entering are combined. The necessity of proving breaking is eliminated and the offense is expanded in scope. Unlicensed entry is brought within the crime of criminal trespass and criminal mischief concerns

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damaged property. Offenses of attempt and conspiracy are included in the code. Accessory, liability is specifically stated. The presently distinct crimes of larceny and embezzlement, false pretenses, extortions, public fraud, and theft of services are consolidated into the offense of larceny which in turn has four degrees correspondingly different penalties. Robbery not specifically defined in our statute is spelled out in three degrees as are the crimes of assault and forgery. Degrees of riot are enumerated depending on the number of participants in the consequences of their actions as are related defenses of unlawful assembly and inciting a riot. Lesser misdemeanors such as breach of peace and disorderly conduct with specific standards of conduct are incorporated to the code. Protection on intoxication contains a provision for commitment to the department of Mental Health, for certain multiple offenders or upon request of a person believed to be an alcoholic. Eavesdropping which involves wire tapping or listening by means of a device and tampering with private communication are two new offenses relating to the right of privacy. Neither applies to wiretapping by law enforcement officials. Last but not least the code deals at length with the problem of obscenity and borrows substantially from the New York law which was upheld by the United States Supreme Court in the case of State and Ginsberg. It defines obscenity as a separate crime as to minors and contains tested standards in this difficult area. In aiding at the commercial promoter of such materials it also provides for injunctive release.

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14 At this time, Mr. Speaker, I yield to Rep. Sullivan of the 169th.

REP. SULLIVAN - 169th D.

Thank you Mr. Speaker, Mr. Speaker, I would like to say also that it is a pleasure to be involved in reporting out of this code to assembly. I feel that great strides forward have been made and I will at this point attempt to enumerate the sections 54 forward which will include the crimes of homicide and kidnapping. I will do this as briefly as possible. Many of these sections are very complicated and I would think it might be better if questions, if there are questions, that they might be asked later. Mr. Speaker, Section 54 contains the definition of homicide, which means conduct causing the death of another person. Section 55 is the classic murder section, it includes the deliberate intent to cause death when in fact death is so caused after the effort is made. Surprisingly enough it includes another sanction, which also provides ~~to~~<sup>that</sup> the person who causes a suicide, by force or deceptive despection would also be guilty of the crime of murder, includes the second section, which is the classic felony murder section, indicating the person committing a felony during the course of which death occurs would be guilty of a felony murder. In each case there are certain defenses that can be raised. To the crime of murder there is a defense of extreme emotional disturbance for which there is a reasonable explanation or excuse. ~~The~~ If this defense does~~not~~ in fact occur or

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exist, then the charge would be lowered to manslaughter in first degree. Murder would be punishable as a class A felony calling for life imprisonment or the death penalty. Sections 56, 57, describe manslaughter in the first degree, and manslaughter in the second degree. Section 58 is mis-conduct with a motor vehicle, a person who with reckless negligence or ~~with~~ while intoxicated caused death by a motor vehicle. Section 59, a person criminally guilty of committing negligence homicide other than by motor vehicle. Section 60 and 61 and section 62 are the assault sections. We have now assault first degree assault in the second degree, and assault in the third degree. The various differences depend upon for instance intent with also, would also depend upon the manner in which the assault in committed. Section 63, that's a crime of threatening, this would be the situation ~~in~~ where the person actually in fact causes a riot, panick, knowing well the threat he makes, the intimidation useable in fact result in this type of an action. Section 64, bring into existense a new crime or classification at least called reckless dangerment in the first degree. Section 65 adds reckless dangerment in the second degree. section 66 I believe is the section that most members should read because in this section are contain the definitetions relating to sexual crimes, and sexual offenses. Section 67 indicates ~~exactly~~ what does cause lack of consent in the sexual area

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REP: SULLIVAN 169th D.

lack of consent for instance would be force, female less than sixteen, incompassity to consent, mentally defective person could not consent, or a person who is physically helpless, these items would constitute lack of consent, and become very important items as you proceed through the balance of the sexual offenses as are cardified. As representative Caplan indicated, there are some defenses in this area, a person had reasonable grounds to believe that the female was less than the age of ~~sixxx~~ sixteen, but over fourteen, this ~~good~~ in fact be a defense. A person lack knowledge with the could females right or ability to consent, this in turn may also be defense in this area. Prohabitation by male or female as man or wife this would constitute a defense most in sexual area's. The sexual crimes range ~~in~~ section 66 and 90, in all <sup>through</sup> of these sections, with one small exception collabaration would be required. Circumstancial evidence would constitute collaboration in these situations. Another interesting item appears in article 7, which indicates, that if no complaint is made within three months from the date of the sexual crime that this in itself would constitute an absolute defense, unless the victim was a minor under sixteen or an ~~incompetent~~ <sup>incompetent</sup> person for whom a guardian, conservator been appointed, at that time the statue would ~~xx~~ <sup>the</sup> run 90 days, the date that the guardian or conservator had knowledge of the sexual offense but this statues would constitute a a bar to prosecution.

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REP: SULLIVAN - 169th D.

I think very ~~axial~~ ~~extremely~~ <sup>obviously</sup> it seems in situations where a crime may or may not been committed where the offended party, the victim attempts to use with the crime some sort of blackmail, and the State would now take the position if the complaint is not made in three months then a bar would exist. Section 71 and section 72 codify a new type of sexual crime called sexual ~~conduct~~ <sup>misconduct</sup> in the first degree, sexual misconduct in the second degree. Section 73, 74 and 75 are the rape statues. Seventy-three would be rape in the first degree, section 74 would be rape in the second degree, section 75 would be rape in the third degree. I think it would be ~~axious~~ <sup>obvious</sup> that the differences in these statues depend to a large extent whether or not force was used to the age of the victim, if the victim were under fourteen, would be rape in the first degree, if force were used it would be rape in the first degree. The party were physically helpless, would be rape in the first degree. Rape in the second degree the standard is some what lower, rape in the third degree, we would have a situation for instance where the male party involved in the act of the crime was over the age of nineteen, and the female victim was less than sixteen, this would be rape in the third degree. Section 76 and 77 and 78. I can codify a new criminal offense which <sup>type of</sup> would, did in fact exist under the older statues ~~it~~ but is reclassified under the new code, and this would be the crime of that deviates sexual intercourse in the first degree, deve-

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REF: SULLIVAN - 169th D.

ates sexual intercourse in the second degree, and the third degree, again the differences being based on the type of compulsion or force that was used, and the age of the victim. Section 79 and 78, I'm sorry, 79 and 80 and 81, again codify a new type of ~~DEFENSE~~<sup>offense</sup>, not really a new offense, but to re-classify again under the code, sexual contact in the first degree, sexual contact in the second degree, and sexual contact in the third degree. Sections 82, 83, 84, 85, 86, and 87, and 88 really are aimed at the crime and problem of prostitution. Section 86, 87, and 88 actually again creating classification so to speak of the crime itself. Section 86 would provide for promoting prostitution, first degree, 87 would provide for the same crime in the second degree, section 88 would provide for the same crime in the third degree. Section 89 feels that the permitting of prostitution on ~~or~~ <sup>premises</sup> premises. Section 90 is a state which indicates, any person who is charged with any of the sexual offenses, which we've just outlined, by order of the court be required to submit to venereal ~~in~~ disease examination. Section 91 one is a definitional statute relating to definitions of restraint, abduction, kidnapping, section 92 is the kidnapping statute, it's interesting to note that in this statute there are presumptions of death, depending upon the age of the kidnapped victim. Kidnapping is a Class A felony, procedure is provided for the imposition of the death penalty. Kidnapping in the second degree, which would constitute simply

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REP: SULLIVAN - 169th D.

abduction. Section 96, 97, deal with the crimes of unlawful restraint, by name this a new offense, in actuality it had been enforced in the earlier statute's. Section 99 speaks of custodial interference, making a crime of interference by a custodian child in certain ~~xxx~~ circumstances. Mr. speaker, at this time I'd like to yield to the Rep: from the 75th Rep: Gillies.

REP: GILLIES - 75th D.

Mr. speaker, in sections 101 through 127 of this code, concern the crimes of burglary, criminal trespass, Arson, criminal mischief, and related offenses. The crimes of burglary, are broken into varying degrees, changing the common law concept of burglary, ~~which~~ which is restricted to crimes committed in the night season, we now have breaking and entering as burglary in the third degree. Further division provides for varying degrees of criminal trespass. The crime of Arson is also described in ~~in~~ <sup>varying</sup> degrees of severity, with corresponding penalties being prescribed, the more severe penalties are imposed where there is substantial danger to persons, as well as the property. Where necessary concepts of the affirmative defense are included, which would simply codify the existing case ~~in~~ commensuring with section 119 we deal with the area of <sup>law</sup> larceny, robbery, and related offenses. Again the offenses are divided into varying degrees, dependent upon the severity of the offense involved. We include here two sections,

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REP: GILLIES - 75th D.

division from state, benefit employees, and false entry by  
of labor  
officer or agent of public community, also included in this  
section is the unlawful concealment of a will. I would now  
yield to Rep: Willard of the 15th D.

REP: WILLARD - 15th D.

Mr. speaker, I'm going to deal with sections 139 through  
169. 139 through 147 deal with the crime of Forgery, it sets  
out specific classes in degrees of forgery, and included in  
these sections is the crime of criminal simulation, which has  
to do with a simulating public transfers, public documents,  
the forgery of symbols, and finally the class concerning  
with slugs, the forgery of slugs, and the use of slugs. Sec-  
tion 148 deals with the Bribery and it provides a system of  
defining, and punishment for varying degrees, and activities,  
concerning bribery. Section 147, and through 163 has to do  
with Perjury, and once again the ~~varin~~ varying degrees, and  
activities which it provides and suitable penalties. 163 has  
to do with rigging, and that pertains to sports activities  
and there is a procedure, and definition again. section 166  
has to do with the rendering criminal assistance, 167 has to  
do with hindering prosecution, and once again the definition  
and the penalties, and finally section 169 through 170 which  
deals with the problem of the crime of Escape from Custody, once  
a gain the customary definitions and penalty. Mr. speaker, I  
would now yield to Mr. Bingham of the 157th D.

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REF: BINGHAM - 157thD.

Mr. speaker, I will begin with sections 176 to the end of the proposed criminal code. Section 176 through 180 deals with the crime of Riot, Broken into various degrees, Riot in the first degree deals with conduct which is ~~sumpup~~ tumultuous, violent conduct causing risk or public alarm, causing physical injury or property damage. Riot in the second degree is a lesser degree, is a crime causing some grave risk. There are crimes of unlawful assembly, constituting the crime of riot with intent to advance that purpose. Insiting to riot, and criminal ~~expianxy~~ are also made crimes under this section. Section 181 has to do with False Reporting which deals with a false report to a law enforcement officer, included in those would be a false report to a Fire official or Police officer. Section 182 involves the crime of Breach of Peace, which is a classic crime, and is already in our criminal code. It has to do with fight, and person who will fight, threaten, uses abusive language or creates physically offensive conditions. Section 183 deals with the crime Disorderly Conduct, which is constituted a threatening behavior, and noise which interferes with another. Section 184 has to do with the crime of Harrassment, which as we know is using indecent language on a telephone or means of communication with the intent to harrass another person. Section 185 has to do with the crime of Intoxication, a person who endangers himself or other persons and property maybe placed in the department of mental health.

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REP: BINGHAM - 157th D.

for cure. Section 186 deals with the crime of loitering on school grounds, and that is defined as a person who has no reasonable relationship with the school, and it's main thrust is directed to those people who sell narcotics to school children. Section 187 has to deal with public indecency, those persons who are publicly lewd in public places. Section 188 deals with the crime of Wire Tapping, and will not be <sup>applicable</sup> applicable to law officials, and will not apply to the law as previously passed by this House. There is a section dealing with private communications. Section 190 has to do with Ease Dropping, which makes ease dropping a crime, section 191 deals with Bigamy, thus a person who is married, who marries or attempts to marry an already married person, there are defenses of belief of death or divorce. Section 192 involves a crime of Incest, 193 involves a crime of ~~seduction~~ coercion, a person who compels, or induces another person to engage in conduct, which the latter has a right either to do or to obtain from. Section 197 has ~~to~~ to do with the crime of ~~obscenity~~ <sup>Obscenity</sup> a crime of ~~obscenity~~ <sup>Obscenity</sup> is modeled after the New York Law, and was affirmed by our United States Supreme Court, in The ~~a~~ case of Ginsberg against the United States. Under these statutes the crimes of Obscenity are well defined, it's necessary that it be well defined, and there is a provision in this section for the crime of Sale of Obscene Material to Minors, there is crime of sale of indecent comic books to

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REP: BINGHAM - 157th D.

minors, which comic books dwell upon physical torture, brutality or terror. There are provisions in the code where the Stat's Attorney may seek an injunction to be brought against those who are disseminating obscene material and indecent comic books. The following sections provide for ~~for~~ procedure from the injunction. Those who deal in indecent comic books and indecent pornographic literature ~~may~~ may be required the secretary of agent as a service for none residents who promote this type of material. Section 209 provides for the demand for extradition of a none resident who would engage in this particular type of crime. The next section provides for a penalty in some, if there is an injunction received, and the injunction is violated, there is a penalty of violation of the injunction. The remaining sections are, have to do with the repealer of the present criminal code so that this particular code may become effective at the proper time. The last section has to do with maximum sentences, and credit for jail time. Thank you, Mr. speaker. I return to Mr. Caplan of the 98th.

REP: CAPLAN 98th D.

Mr. speaker, this is a momentous historical bill and represents a progressive step toward modernization of our entire body of penal law. It is indeed a worthy bill and I urge its passage.

MR. SPEAKER:

Are there questions or further remarks at this time?

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REP. MCKINNEY - 141st D.

I wantn't to comment in general. I think that the best compliment that almost anyone can make on this bill is that almost to thank God it is about time. I think for anyone who had been in the position I have been had a layman who had worked their way through the laws of the state of Connecticut, they obviously don't or haven't made sense. It seems to me in many cases they have not only been arcadie but they have been contradictory and I can only say that as a individual, as well as a legislator, I commend the Committee, I commend all of those who worked for six years. I have read the complete revision. I wished it could have arrived here on the floor a little sooner but I do think/<sup>that</sup> if ever there is a word mandate about this house that I disagree with , great deal, it seems to come from the other side of the aisle quite often and it always ends up being called landmark and I quite often disagreed with the gentleman from the 118th when he talks about a landmark but I think that it would be fair to call it a landmark. It's about time that one of the most progressive, modern, affulent, knowledgeable state in the nation had a criminal code that matched its population and I think that this one does.

REP. AJELLO - 118th D.

Mr. Speaker, let me say at the outset and speaking in support of this bill that I am glad that at this stage of the game the gentleman from the 141st had finally begun to get some of our

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philosophy in thinking and I hope that this process will continue for its beneficial effect during the next couple of days. But, Mr. Speaker, indeed, landmark significant in all of those terms do apply to the code which we have adopted today. I will point out to the chamber, to all of those listening that this contained in the platform of the Democratic party in which we urged consideration of the criminal code consisted with the recommendation of the commission to revise the criminal statutes and of the Governor's Commission on Gambling. All of this dovetails very well with the statutes we have adopted in the past few weeks concerning wire taps, Grand Jury investigation, witness immunity. In a united front in an approach to organized crime which we have been urged to do and which this ~~gentleman~~ General Assembly is doing. And we are in the process of mounting a war against organized crime. At the same time, I believe that the gentleman from the 14th used words, "arcadic". I would agree with him again that up until now our criminal statutes has anyone knows who have been in the courts and used them, have been somewhat arcadic. They have been scrambled up. They have been in some cases, useless because of the confusion in doubt and the ancient methods of stating the various ~~in~~ offenses. This will bring a coordinated and intergrated set of statutes which can be used by anybody. The classification of crimes is something that is usually done in most every criminal code in the United States and Connecticut has longed lagged behind in this respect and it's has been a rather a shame the state has not had a modern and up

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to date criminal code. So what we do today is to again in the words of the platform to reflect more adequately the needs and desires of modern society. I think that this code does this in every respect and it's a most significant thing that we do today.

MR. SPEAKER:

Will you remark further?

REP. COLLINS - 165th D.

Mr. Speaker, as the House Republican member of this Commission for the last two years, I am proud to rise in support of 99% of the code before us and I would like to point out to the gentleman from the 118th that the adoption of this code also appeared in our platform. Just so that the record will be clear on this. I don't want them to get carried away with the other legislature we had coming before us for the next few days. But, I do feel, Mr. Speaker, that the code before us is inadequately in one area and I do have an amendment to correct that. Would the clerk please read the amendment?

MR. SPEAKER:

Will the Clerk call amendment Schedule A.

THE CLERK:

House Amendment Schedule A. Add a new section as follows: Section 82, any man guilty of adultery when he engages in sexual intercourse with any person other than his spouse. Adultery is a class A misdemeanor.

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REP. COLLINS - 165th D.

Mr. Speaker, I move adoption of the amendment and in doing so, Mr. Speaker, I would like to say that the two years I have served on the Criminal Statutes Commission was an extremely rewarding experience. The members of the Commission both legislative from the Law school of Yale and the law school of the University of Connecticut, the prosecutors, we had tremendous cooperation. The matter before us in the amendment is putting adultery back into the criminal code in the state was the matter that was discussed at some length among the members of the Committee. The amendment before us which I opposed in Committee and which was defeated in the criminal code committee, is one that I think is very necessary. And I say so Mr. Speaker knowing <sup>full</sup> well that often times the crime of adultery is not enforced with any degree of regularity by law enforcement officers. But I offer this amendment and I do so in a bipartisan sponsorship. I offer this amendment because I think that abolishment of adultery strikes the very heart of our civilized society. That is the family unit. I think for the state to say that they have no interest in the preservation of the family unit and no interest in protecting the marriage or marital relationship between spouse is wrong. This amendment served would also reduce the penalty on adultery from its present five years penalty to one year. I think that the amendment is self evident to those members in the House. I will not go into any great detail on the moral aspects or

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otherwise. I strongly move its adoption.

REP. CARROZZELLA - 81st D.

I rise and support this amendment and I concur wholeheartedly with the remarks of the ~~distinguished~~ distinguished assistant minority leader. This problem bothered not only the Commission but it also bothered the Judiciary Committee. When the votes were taken on this issue, the votes were very close, and after further reconsideration and so forth is discussing it on the floor here with members of the committee, we feel that by adopting this amendment, we are setting a policy, a public policy for the people of the state that this legislature recognizes the sanctity of the family unit. I wholeheartedly agree with the amendment.

MR. SPEAKER:

Will you remark further on the amendment?

REP. KENNELLY - 1st D.

I rise in support of the amendment and I will note that its bipartisan nature has the endorsement of the distinguished chairman of the Judiciary Committee. I think all the reasons listed by the gentleman from the 165th are sound and I think the public policy of this state ~~would~~<sup>will</sup> be well served if we maintain adultery in this sense.

MR. SPEAKER:

Will you remark further on the amendment? If not, all those in favor indicate by saying aye. Those opposed.  
Amendment is adopted. Will the clerk call Amendment

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Schedule B. offered by Mrs. Thornton of the 21st.

THE CLERK:

Offered by Mrs. Thornton of the 21st. Insert the following as a new section 101. In section 101 to section 215 inclusive as Sections 102 to 216, inclusive. Section 101. Notwithstanding the provisions of Section 53-29-59-30 of the General Statutes, any women may request ~~of~~ <sup>and</sup> any duly ~~like~~ <sup>licensed</sup> physician or ~~surgeon~~ <sup>surgeon</sup> make ~~arrangements~~ perform an abortion.

REP. THORNTON - 21st D.

Mr. Speaker, there is an amendment that is suppose to come before mine. Mr. McCarthy's amendment.

MR. SPEAKER:

The amendments are amended and labeled by the Clerk and this is the way the Clerk has them labeled and this is the way it is our intention to call them. This amendment has already been labeled B and is being called presently as Amendment Schedule B.

REP. THORNTON - 21st D.

Well, the Clerk must have misunderstood me when I brought them down.

MR. SPEAKER:

Clerk, please proceed.

THE CLERK:

In a hospital approved by the Commissioner of Health. When the pregnancy resulted from rape or incest provided there is is credible evidence of rape or incest and the patient has been

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a resident of the state for four months or the pregnancy occurred while the patient was a resident of the state. If the patient is less than sixteen years old, the request shall be made by her parent or guardian.

REP. CARROZZELLA - 81st D.

Point of order, Mr. Speaker.

MR. SPEAKER:

Motion on adoption of the amendment. Will you remark?

REP. CARROZZELLA - 81st D.

Point of order.

MR. SPEAKER:

Please state your point of order.

REP. CARROZZELLA - 81st D.

Mr. Speaker, I would submit to you sir that the amendment is not properly before us nor is it germane to the issues that we are debating. The issue here that is covered in the amendment refers to the topic of abortion and I might submit, if I might submit to you Mr. Speaker respectfully that this issue was already decided by the House about a month or so ago. I would prefer as authority to you, Mr. Speaker, Section 401 of Masons Legislative Manual in which it says, "An amendment which was put before the House, a question identical with one previously decided by the House during the session, whether in an affirmative or in a negative form is not in order." As further authority I would cite you, Section Three-Ninety-Eighty of Masons Legislative Manual and as further authority may I cite you the

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preliminary Manual of the Blue Book, Page 116.

MR. SPEAKER:

Will you remark on the point of order.

REP. MCHINNEY - 141st D.

Mr. Speaker, it would seem to me that since this particular amendment was originally in the piece of legislation before us but was removed at one time by the committee, that the amendment is properly before us, because it is giving to the entire Chamber the opportunity to review an action taken by a Committee and I wouldn't say that certainly it is not ~~frivolous~~ frivolous nor improper an amendment has stated in section 401 of Mason's. It is instead an amendment which replaces the part of the original piece of legislative before it reaches the Committee.

MR. SPEAKER:

Will you remark further on the point of order. If not, in the opinion of the ~~speaker~~ <sup>chair</sup>, the point of order is well taken. In the opinion of the chair, this is in fact a reconsideration which under rule 34 of our rules can be taken out only on the day of the vote ~~for~~ the next succeeding session day. The entire subject of abortion was debated approximately a month ago. The debate ran if recall, two and half to three hours. In effect, what we are attempting to do by the amendment is to reconsider this debate and for that reason and citing a precedent which is found on Page 116 of your manual, I would indicate in my opinion this is an attempt at reconsideration.

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REP. MCKINNEY - 141st D.

If I may be allowed to comment. The gracious lady from the 21st will not appeal the point of order, but I would suggest that I would consider her to be extremely gracious because we did not serve reject the bill. We discussed a petition on the abortion debate and I think that it is to her credit that she wished to speed the business of the House and not get us involved in a long parliamentary debate.

MR. SPEAKER:

The gracious lady from the 21st is to be commended for her allowing us to proceed with the full debate. I understand fully her interest in the subject. I think it is known throughout the state. I think she had made her interest known intelligently in this ~~session~~ <sup>session</sup> and in view of the fact there is less than seventy-two hours left I would thank her for allowing us to have this point of order sustained without an appeal and she has not only the thanks of the chair but the entire chamber.

REP. MCCARTHY - 22nd D.

In deference to the consideration you have just voiced so happily, I am happy to withdraw my own sequently amendment.

MR. SPEAKER:

Are there further amendments pending? Will you remark further on the bill as amended by Amendment Schedule A.

REP. SINGHAM - 157th D.

Mr. Speaker, I think there is another amendment. The Clerk have another amendment.

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The clerk is not in position of another amendment. Will the gentleman from the 81st please come to the well. The gentleman from the 157th after consulting with the gentleman from the 81st is willing.

REP. BINGHAM - 157th D.

Mr. Speaker, the gentleman from the 81st indicates he is willing to make that correction indicating there was a typographical error in the instructive clerk, it appears that there is a typographical error. In section 197, Mr. speaker there a defense to the crime of Obscenity, in which a person has a defense, if the defendant made a reasonable mistake as to age, and our file copy reads or, it should read, and, and the defendant made a reasonable bonafied attempt to ~~ascertain~~ ascertain the true age of the minor.

MR. SPEAKER:

That would then be in Section 197, sub section C.

REP: BINGHAM: - 157th D.

Sub. section C, that's right Mr. speaker, between, that's on line 3. The word or should be stricken, and the word, and, should be read.

MR. SPEAKER:

May the original copy be so corrected, may the journal indicate this clerical error, it has been corrected by the clerk.

REP: BINGHAM - 157D.

Thank you, Mr. speaker.

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MR. SPEAKER:

Are there further remarks or comments?

REP: CARROZZELLA - 81st D.

Mr. speaker, very briefly I neglected in my earlier remarks to commend another person who worked very hard on this monumental piece of legislation, that is our own Norma <sup>Kloter</sup> ~~Kloter~~ <sub>is</sub> who ~~was~~ from the legislative commissioners office, who devoted a week and a half of her time both day and night to helping draft this bill. I would like to commend her publicly for her efforts in this regard. I would also point out to you Mr. speaker, that by when we enact this bill we are doing an ~~extra~~ ~~es-~~ special tribute to the chairman of the criminal ~~committee~~ commission, our own Bob Testo, because this bill is very ~~is~~ close to his heart.

REP: STRADA - 156th D.

Mr. speaker, I was also privileged to have served on this commission for the past two years along with Rep: Carrozzella, and Rep: Collins. I am happy at this time to stand to support this bill. Mr. speaker, I have never seen members of a commission work so hard, so long, and to go into such depth, and detail on a subject before. I think they are to be commended, I ~~is~~ wholeheartedly endorse the bill.

REP: REYNOLDS - 54th D.

Mr. speaker, members of the House. You know that I am always concerned with justice. I have not read the revisions of these criminal statute's completely, and probably would not

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REP: REYNOLDS - 54th D.

understand them if I did. However, I have listened to some of the explanations of the Revision, and I am indeed unhappy to find, that you have retained the death penalty. Ladies and gentleman human beings are prone to make mistakes. I have long been opposed to Capital Punishment, and I still am. Ladies and gentleman, we make mistakes, a jury can make a mistake. Let me ask you. Could you press the button, that would fry your own son? Or turn the handle that would spring the trap to break his neck? When you know it is possible that he might be innocent. Perhaps not probable, but possible, then ladies and gentleman if you could not take your own sons life, how then can you recommend taking the life of somebody else's son. I don't know what to do, to change this provision that you have retained of capital punishment, except to vote against the bill. Ladies and gentleman as I read section 66, and 67, and on, I realize that my education as a young man was seriously neglected in some respect, but I do not favor the liberalization of these sexual laws. I find that it is not necessary to get married, all you need is consent, and I don't believe in these days of modern times, that, that is hard to obtain. I will vote against the bill.

MR. SPEAKER:

Will you remark further on the bill as amended?

REP: BARROWS - 13th D.

Mr. speaker, I will vote for the bill, but I would like



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REP: SULLIVAN - 169th D.

I'm referring to Rep: Caplan.

MR. SPEAKER:

Will you remark further before we vote? If not all those in favor indicate by saying aye. Those opposed. The bill is passed.

THE CLERK:

Cal. No. 1278 Sub. for Senate Bill No. 500. An Act concerning the Annexation of a Portion of Hamden to the New Haven City School District.

REP: CRISWOLD - 109th D.

Mr. speaker, I move the acceptance of the committee's Favorable Report and passage of the bill in ~~concurrence~~ <sup>concurrence</sup> with the Senate.

MR. SPEAKER:

Questions on acceptance and passage in ~~concurrence~~ <sup>concurrence</sup> with the Senate. Will ~~ix~~ you remark?

REP: CRISWOLD - 109th D.

Mr. speaker, this act was repealed a special act in 1917, by which land in Hamden owned by what was then called New Haven Orphanage ~~Asylum~~ <sup>Asylum</sup>, was an annex to the New Haven school District. If it was desirable and proper in 1917, when children placed in the New Haven Orphanage ~~Asylum~~ <sup>Asylum</sup> were exclusively or largely from New Haven, it is no longer so desirable. The children's center serves many children who do not come from New Haven now. Of the 452 children in the center in 1967

**10.**

**House Amendment Schedule A  
Adopted June 2, 1969**

Appropriations. Substitute for Senate Bill No. 813. (File No. 1572) An Act concerning the Establishment of the Connecticut Mortgage Authority.

BUSINESS ON THE CONSENT CALENDAR  
MATTER RECONSIDERED AFTER PASSAGE  
MATTER RETAINED

The following bill when reached on the Consent Calendar was passed, then reconsidered and passed retaining its place on the regular Calendar:

Appropriations. Senate Bill No. 291. (File No. 1369) An Act concerning Support of **Program by License Fees**. *The Center for Real Estate and Urban Economic Studies at The University of Connecticut.*

Rep. Kennelly who was on the prevailing side moved for reconsideration of the previous action.

On a voice vote the bill was reconsidered.

Rep. Kennelly then moved that the matter be passed retaining its place on the regular calendar.

On a voice vote the bill was ordered passed retaining.

BUSINESS ON THE CALENDAR  
FAVORABLE REPORTS OF JOINT STANDING COMMITTEES  
HOUSE AND SENATE BILLS  
BILLS PASSED

The following bills were taken from the table, read the third time, the reports of the committees indicated accepted, and the bills passed:

Judiciary and Governmental Functions. Substitute for House Bill No. 7182. (File No. 1447) An Act concerning Revision and Codification of the Substantive Criminal Law.

Reps. Collins of the 165th, Stevens of the 122nd, Gaffney of the 29th, Begg of the 86th, and Papandrea of the 78th offered House Amendment Schedule "A" and moved its adoption.

The amendment was discussed by Reps. Collins of the 165th, Carrozzella of the 81st, Kennelly of the 1st and Begg of the 86th.

On a voice vote the amendment was adopted.

Rep. Thornton of the 21st offered House Amendment Schedule "B" and moved its adoption.

The amendment was discussed by Rep. Carrozzella of the 81st who raised a point of order.

The Speaker ruled the point of order well taken because the subject matter of the amendment had been considered earlier in the session.

The bill was explained by Rep. Carrozzella of the 81st.

The bill was discussed by Reps. Caplan of the 98th, Sullivan of the 169th, Gillies of the 75th, Willard of the 15th, Bingham of the 157th, McKinney of the 141st, Ajello of the 118th, Strada of the 156th, Reynolds of the 54th, Barrows of the 13th and Clark of the 14th.

On a voice vote the bill passed as amended by House Amendment Schedule "A."

The following is House Amendment Schedule "A":

Add a new section as follows: "Sec. 82. Any married person is guilty of adultery when he engages in sexual intercourse with any person other than his spouse. Adultery is a Class A misdemeanor."

Renumber Secs. 82-215 accordingly as Secs. 83-216.

Education. Substitute for Senate Bill No. 500. (File No. 1251) An Act concerning the Annexation of a Portion of Hamden to the New Haven City School District.

The bill was explained by Rep. Griswold of the 109th.

On a voice vote the bill passed in concurrence with the Senate.

State Development. Substitute for House Bill No. 6149. (File No. 1409) An Act concerning Technical Amendments to the Planning and Zoning Statute.

The bill was explained by Rep. Mettler of the 96th.

On a voice vote the bill passed.

Judiciary and Governmental Functions. House Bill No. 8704. (File No. 1428) An Act concerning the Payment of Small Claim Court Fees by the Attorney General.

Rep. Carrozzella of the 81st offered House Amendment Schedule "A" and moved its adoption.

On a voice vote the amendment was adopted.

The bill was explained by Rep. Carrozzella of the 81st.

On a voice vote the bill passed as amended by House Amendment Schedule "A."

The following is House Amendment Schedule "A":

In line 41, insert after the word "actions." "*The fee for small claims procedure shall be three dollars.*"

Judiciary and Governmental Functions. Substitute for House Bill No. 6786. (File No. 1448) An Act concerning Appeals with Respect to Liquor Permits.

Rep. Collins of the 165th offered House Amendment Schedule "A" and moved its adoption.

On a voice vote the amendment was adopted.

The bill was explained by Rep. Collins of the 165th.

On a voice vote the bill passed as amended by House Amendment Schedule "A."

The following is House Amendment Schedule "A":

Delete section 1.

In section 2, line 1, delete "Sec. 2."

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**13 Senate Proceedings,  
Part 7, 1969 Session,  
pp. 3507, 3519-3547**

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ruling, the only administrative agency, in the State of Connecticut, at this time, from which an aggrieved person cannot appeal. House Amendment Schedule, "A", really makes technical changes in the bill. When it finally came out of the Judiciary Committee it did not come out in the form desired by the Committee. It's a good bill and should pass.

THE CHAIR:

Are there any further remarks on the bill, as amended? If not, all those in favor signify by saying, "aye". Opposed? The ayes have it the bill the bill is passed.

THE CLERK:

CAL. NO. 1470. File No. 1447. Favorable report of the Joint Committee on Judiciary and Governmental Functions. Modified House Bill No. 7182. An Act concerning Revision and Codification of the Substantive Criminal Law. (As Amended by House Amendment Schedule "A")

SENATOR LYDDY:

Mr. President, the Clerk has an amendment. Will the Clerk please read the amendment.

THE CLERK:

Senate Amendment Schedule "A", offered by Senator Lyddy. Delete sections 68 to 83, inclusive and renumber the succeeding sections accordingly.

In section 214, strike out line ~~and~~ substitute in lieu thereof: "inclusive, 53-213, 53-214, 53-221, 53-242, to 53-246, inclusive, 53-254".

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approval of the Commissioner of Finance and Control to become a member of the corporation established to provide laundry services and facilities and to enter into contracts with such corporations. The bill is specifically designed to allow the new medical, dental hospital located in Farmington, to provide services for the facility. Under the new bonding facilities are included in the bonding act to provide for permanent facilities on a short term basis. I urge passage.

THE CHAIR:

Any further remarks on the passage of this bill? If there are no further remarks, as many who are in favor signify by saying, "a ye". Opposed? The ayes have it. The bill is passed.

THE CLERK:

CAL. NO. 1470. File No. 1447. Favorable report of the Joint Committee on Judiciary and Governmental Functions. Modified House Bill No. 7182. An Act concerning Revision and Codification of the Substantive Criminal Law.

SENATOR LYDDY:

The amendment that the Clerk has that I presented is a Senate Amendment. I would assume that the Senator from the 33rd, would probably want to explain the bill, as amended by the House, and then maybe we could get to my amendment when he gets through explaining it.

SENATOR PICKETT:

I move acceptance of the committee's favorable report and passage of the bill, as amended by House amendment only.

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SENATOR PICKETT:

Senator Lyddy will proceed in the usual fashion now.

SENATOR HULL:

It will be a lot simpler, if we told everyone what House Amendment Schedule "A" does. Just so they'll know about it. Do you object to that? O.K. Senator Lyddy will explain.

SENATOR LYDDY:

Mr. President, actually this amendment, this is why I suggested that maybe the bill should be explained first. Because, this is an all encompassing change in the criminal code of the State of Connecticut. My amendment is directed only at one portion of that criminal code, as presented in the bill, originally. That bill section, under the general heading, sex-offenses. The House Amendment actually deleted or put back into our present statutes, and deleted from this criminal code, made a crime, still kept it as a crime, adultery. My amendment is all encompassing, goes further in that it includes not only what the House did, but everything else, it included or eliminated as a crime, in the State of Connecticut, under the bill as it stands.

In other words, under this bill, under this portion of the bill, such crimes as adultery, fornication, lascivious carriage if I may for those who may not know, lascivious carriage is actually living together without the benefit of matrimony. These are deleted or eliminated from our statutes, as crimes. It legalizes all sexual acts between adults, in private, between

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consenting adults, with the exception of prostitution. It keeps prostitution in. Why they kept prostitution in, under the present circumstances, I don't know. Because when you come down to the question of differentiation, whether or not you pay for the services, that are rendered under prostitution, I hope I'm not being out of order, who can really tell, whether or not a fee was paid. And I think that most lawyers would agree, that it is most difficult in the courts to enforce the crime of prostitution, because the only two people involved, are the only two people who know, whether or not a fee was paid.

I would suppose, probably that some segment of our citizenry might feel that my opposition to this, that these should still be considered as crimes or if you might permit me, that I say a legality is being given to immorality, that it's an unpopular stand. Human nature being what it is.

I'm really not rising here, to argue the practicality of whether or not we can enforce these laws. I'm aware that it is very difficult to enforce crimes of adultery, sodomy and lascivious carriage. But should we merely, through up our hands, actually, this commission well meaning and sincere people has gone and said, they're going to do it anyway, so we might as well close our eyes and say, go ahead.

If you'll forgive me, and I' really don't think I'm being naive, I like to think that there are still some people in our state, who, have a conscience. And, actually, they feel that I feel that people are going to engage in these sex acts in-

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volved here, regardless of what I do or we do here. I'm really not concerned about that. I'm concerned really about, the moral aspects. What example we are giving, as adults, not only to other adults but also to our children and our grandchildren, because this again, will be on the books of the law of the State of Connecticut.

Now, Mr. President, truly these past few years, there's built up a philosophy, in many quarters, to a complete abolition of any rules, of any sort. This is what this bill does as to sex offenses. They say, individual can act as he pleases, as he chooses, without any regard for any kind of law or precept or past precept any experience over the hundreds of thousands of years, that have gone into the making of laws. All of a sudden, our rules were made by fools. Made by people who didn't know what they were doing. There is a complete disregard for any moral aspect in our laws. Good or bad. Every one is a god unto himself. Do what your conscience says. Do what you want to do. Don't listen to anyone else. This is being taught in our schools today and our elementary schools. They just say, don't worry about laws. Don't worry about rules or concepts. Do as you want to do. I don't buy this, respectfully. I don't buy this, Mr. President. Look what has happened under our so-called new morality. We've had increases in crime in juvenile delinquency. We've had drug-addiction. We've had so many increases in that. The destruction of private property. Riots.

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Generally a serious deterioration of home life and a general rebellion of any and all forms of authority. This new liberalism has been demonstrated in books, TV, radio and so forth. Even going into again, our schools. They're under the guidance of family life education. Our children in the fourth grade are being shown graphically and described verbally acts of sexual intercourse between adults between people, contraception, homosexuality. I call it plain and simple, sex.

In the face of this, I'm really amazed that this commission took this attitude. This strikes at the heart of the family, in my opinion, in our state. This state really has an obligation, morally, to the family in this state. Don't leave it to the church. This state has an obligation to the family in this state, so many laws have been passed to safeguard, the interest of the family. The family unity as we know it.

This committee, dedicated people worked hard. Again, I don't question their sincerity. But, when we're talking about a statute, the good of a statute, the effect of a statute is to be judged by its effect on the community, on society as a whole. I ask anyone, in this circle, if they have felt any pressure, from anyone, to do away with these sex offenses, that these offenses, I call them as crimes. Have you had pressure from anyone, then I would bow to you, because I have had no pressure from anyone, to do away with these acts as crimes.

Actually, people again, under this law, are going to be free to engage in any type of sexual practice, supposedly in

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in private. This then, would establish a public policy in our state. Actually, this is going to be a great boom, maybe they don't need it, to motels, hotels, trailer camps what have you. People are going to be living openly, in the state of so-called matrimony without benefit of matrimony. Because again, we're going to have lascivious carriage, again, you know what it is, to be allowed to stand in our state.

To me, it's quite obvious, that the people of the State of Connecticut, don't really know what is happening. That the people of the State of Connecticut don't know that these offenses are now being deliberately delineated from our statutes as crimes. Actually, there are so many things that could be said about this. We're going to fruster, in my humble opinion, illegitimacy. We have mach of it now. We have too much of it now. But, what we will have if this law passes, will be staggering.

Now, Mr. President, I'm in a dead difficult and a delicate position. Because of the lateness of the hour, and I'm not in any way, going to attack, if you will, the Chairman of the Judiciary Committee. He is well aware of my feelings and I'm well aware of his. And his attempts to get this bill out, on to the floor, earlier than this. But I heard it said, don't amend this bill, because we need the bill. I agree. We do need a revamping, a codification, if you will, of our criminal statutes. And it's been said to me, that if you put in an amendment at this late time, that if the amendment conceivably were to pass, this would kill the bill. I deny this. I say this is not

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so. We still have six hours in which much business can be transacted and much business is being transacted between the two houses.

So, actually, this bill doesn't take effect until 1971, to give the people of the State of Connecticut a chance to acclimate themselves, to the entire changes which are being made. Someone would say, true that my objections are premature. Ladies and gentlemen, can any of us say, that we're going to be back here two years from now. Can any of us say or guarantee that the attack that I'm making today, on this portion of the bill, will be made two years from now? I feel an obligation a deep sense of obligation, to make this attack, to put in this amendment at this time. I ask that we seriously consider it. I don't want the entire bill to fail. This would be the last thing that I want to happen and the Chairman of the Judiciary Committee knows this. He and I have discussed it in the past. I merely ask you to take proper action on this amendment. Consider it seriously. Do not consider it, in the overall effect that it might have upon this bill because, in my humble opinion it won't have that much effect. It can be enacted. It can be adopted by the House and we can have a good law passed here, tonight.

SENATOR LUPTON:

Mr. President, I rise to support the amendment. I think the gentleman from the 22 has said a very high tone for this circle, for this senate, today. A wise man once said, that we

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must, in America, learn the difference between our needs and our wants. He has said, that, for instance, the world might need Christ but it doesn't necessarily want him. There is no cry for the particular section of this new code, as the Senator has pointed out. We, in this legislature, on the other hand, have a responsibility to set the tone. To keep the standards high. It isn't up to us to take our legislature down into every dip and valley of community morals as it goes and as it sags, up and down. I think Senator Lyddy has done the State of Connecticut a great service. I think we ought to keep on the high road, whether or not it's enforceable is immaterial. What is important is that we have set a standard. And that we must keep this standard and I hope that we will all find it, in our hearts or at least the majority of us, to get the amendment through and then get the criminal code through, also.

SENATOR CALDWELL:

Mr. President, my colleague and I from Bridgeport have disagreed on several issues, in the course of this session of the General Assembly. And I think Senator Lupton and I, probably haven't been on the same side once, since the beginning of this general assembly. For I am happy to say, that the three of us are in complete agreement, here, this evening.

I'm aware of the serious nature, of this bill. And I certainly do want to see it pass. But, I think it could well afford to pass without this particular section. I was very delighted, earlier in the session, to report out a bill from

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appropriations, which had been referred from the Judiciary Committee, establishing a commission of 15 members to study the methods employed, the nature and volume of traffic in and the affect upon the public of pornographic or obscene materials. And to come back recommending legislation two years hence.

I think this is badly needed. I think by doing, establishing this commission, we certainly are making a step in the right direction. But for the one step forward taken with the study commission, I think we would be taking about five steps backward, if we were to adopt the particular section of this bill, that's been referred to. I expect to vote against the <sup>you</sup> amendment.

SENATOR DUPONT:

Mr. President and members of the circle, I also rise to support of this amendment. Calling for the attention of our criminal statutes dealing with sex offenders. I see no need at this time, to change and liberalize the sex laws of our State. Laws which have existed virtually down through the centuries. Have times change so much. Is adultery, which was leagalized under the original bill, any less of a crime today, than it was two hundred years ago? Is sodomy, or homo-sexuality less wrong today, than it was in biblical times? Is there any legitimate reason to change the name of sodomy, to deviate sexual intercourse as this section, of this proposed penal code would do? The state does and should have an interest from the moral well-being of its citizens. If for no other reason, than

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to attempt to minimize the incidents of illegitimate birth, in our communities. I'm not saying, that we have been anywhere close to being successful in this regard, under our existing statutes. But if this section, of the proposed penal code were to be enacted into law, I think we'd be selling out, to this contract. Grieved children, children of misery sort of feat, are born into the world, with more than three strikes against them. They're brought up, without the benefit of a father. They're brought up in most cases, or in many cases, deserted by their mother. In all too many instances, they become additional names on our already over-burdened welfare rolls. Unfortunately, in many instances, they do not receive proper prenatal care because the mother is reluctant to admit that she is pregnant or she hides this fact. Frequently, they're born into pre-school environment, that are so bad in some and so poor, that by the time, they become of school age, they are beyond help.

In New York City, for example, 27% of the children, on the welfare rolls there, many of these are illegitimate children or fatherless children or from broken homes. 27% of these children by the time they get to first grade, are so mentally defective and deficient that they never will be gainfully employed in our society. Besides doing this, I think the elimination of our existing statutes in this regard, and placing them with these proposals, besides condoning and adding to this illegitimacy problem, I think this statute as originally proposed attacks,

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the basic unit of our society. This is the family. Wars formulated by the wisdom of centuries are struck down as obsolete. Wars which were formulated down through the years, to protect and to safeguard the family, as a unit, are terminated.

If the penal code is adopted without this amendment, the legislature would be accomplishing no good purpose. And logically should also legalize prostitution. Abolish the statutes dealing with marriage, divorce and bigamy. I urge the members of this circle, to vote yea on this amendment.

SENATOR HULL:

Mr. President, I rise briefly, to discuss this matter in two aspects. I rise to oppose the amendment. First, philosophically, and secondly, perhaps due to the nature of the clock, we're all so desperately watching, procedurally.

Philosophically, I do not think that sex is a dirty word. I do not intend to emotionalize about it or to predict unrealistic and completely, unlikely prospects of wild sexual conduct in this state, if the law is changed.

The view represented, by this study commission, on which I was proud to serve with other legislators, is the so-called modern view. Developing out of the Wolferton Report named after Lord Wolferton in England, and recently adopted by the State of Illinois. And this view is: That laws governing sexual conduct in private by consenting adults, are by their nature unenforceable, that they have no effect whatsoever on sexual conduct. And that the existence of these laws, which are so un-

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iversally ignored and so rarely enforced, tends naturally, to lean to a disrespect of the law. The point is, that the more laws that we have, on the books, governing sexual or any other morality that are not enforced, because they do not conform to social reality, the more we leave all of our people and particularly the young people, to think that the law is a fraud, and that the law doesn't make sense.

Governor Philip Hall, former Governor, three term Democratic Governor of Vermont, a very impressive gentleman. I hope this circle will remember from our pre-session conference in the Hotel America. I was priveleged to sit in on some seminar at which he was one of the speakers of the National Legislative Conference in Miami, last August. And Governor Hall, supporting the view that I am prsnting to you, tonight, stated that the law aga inst Adultery, in the State of Vermont, had resulted in one conviction, in 300 years. And this was when a black Minister moved into a small town in Vermont, with a white woman, who was apparently or allegedly not his wife. This case has since received wide renown coverage. The point is that the laws of this nature, concerning adults without duress, or force or any commercial vice such as, prostitution, which has obvious different problems. This law is enforced sparingly, chiefly against the lower socíal and economic classes. And leads to a feeling that hypocrisy is the order of the day.

How many of us, attorneys, have been to court on adultery charges a civil case? The evidence was overwhelming that the

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absented spouse either the husband or wife, was living with another person, as husband and wife. And has anyone in this circle, ever seen our judges in this is not to criticize them, because they know how hard the law, such laws are to prove, because these acts do take place in private and the persons are not condemned or compelled to testify against themselves. Has anyone ever seen the Judge turn to the State's Attorney and said, issue a warrant for the crime of adultery? Not to my knowledge, Mr. President, I think it is totally unrealistic and I respect the views of the learned Senators, very much and I understand their view point. But I think it is totally unrealistic to predict, that if these laws are changed there will be one iota of change in the sexual conduct of the citizens of Connecticut. For that is judged, by each one's private moral code.

Mr. President and members of the circle, the members of this commission worked for six years. It was a bi-partisan commission. Eminent law enforcement officers, such as, John LeBelle, for whom I've learned to have the greatest respect, the State's Attorney for Hartford County, Arnold Maerke, who is now the Chief Prosecutor of the Circuit Court and then later we placed on our commission, the hard driving law enforcement officer John Evans, George Gilman, the much respected and veteran and good defender of New London County, Professor Abe Goldstein of Yale University, Professor Archibald of the University of Connecticut and members of the Judiciary Committee and other

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members of this General Assembly. We did not approach this lightly. We were aware there was a moral issue. But we felt that it was time to bring our laws concerning sexual morality in line with social reality. Because they are unenforceable. They're not enforced except on a hit or miss basis, which discriminates against the lower classes. And their very existence in the books, leads to a disrespect for the law. We do not, for one moment, accept Senator Lupton's poem about somebody taking the low road. I don't think this has anything to do with it. We're just as honorable. Just as anxious to have strong families, which we all love and respect. Just as anxious to have chaste daughters and decent sons and social and sexual stability. But we, sincerely press the view, that I have made.

There is an additional stronger reason, to reject this amendment, overwhelmingly at this time. And I know that Senator Eddy or Senator Lyddy is entirely serious in his views, that the adoption of this amendment, will probably not, or may well not affect the passage of this act.

Mr. President, I won't take time to talk about where the time has gone. But I will tell you, the Judiciary Committee under the much respected Senator Pickett, did not delay this bill for any reason of having it get lost or curbing debate on it. It was an immensely complex bill. The sub-committee worked on it for weeks, trying to thrash through it and find any clerical errors or any major policy decisions that the Judiciary

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Committee could not have done.

Now, Mr. Chairman, if this amendment is passed, with the chaos that is beginning to build up and I don't have to describe it to you because you can all see it. In a few hours, as soon as the Governor and Senator Marcus get back from New Haven, things are going to break loose. It is not only likely but probable that this bill will not pass the house. We all know that the Minority down there has taken a view, which they've warned the Majority of since January 8, that they would not suspend the rules because they felt they wanted to have their rights to debate and have the Minority rights protected. Whether this world will crack under horse-trading at a late hour, I won't predict. But it is not only likely but highly probable, that the works of scores of thousand of dollars, of an outstanding legal staff or the bi-partisan and professional commission, over six years down the drain.

Now, to show the sincerity of my argument on this, Mr. President, this bill is not effective until October 1, 1971. Now the reason for this is, it is a mammoth change in the criminal law, and laws prescribing social conduct. And it is felt that everyone should have a chance to analyze this law. Every Judge should state, every prosecutor, every professor and clergyman and father and mother. And if this amendment, is the wish of a majority of the people who will certainly be equally represented through the state, they'll have plenty of time in due course, in the early months of the 1971 session, to knock

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this out. So keep in mind, it isn't effective until after the next session. We should pass it not destroy this great body of work and this is obviously a very controversial subject. But it should not be used or allowed to be used, to destroy six years of work.

SENATOR FINNEY:

Mr. President, I'm not going into the argument that the Senators who are opposed to this or who are for this amendment have gone into because they have done it so well. But let me say that my feeling is that here is an assumption in this bill, that such actions as you have here by consenting adults, somehow are done privately. And that they will not affect others. I just don't believe this. I don't think it's so. I see no reason to in effect say that some of the acts that are covered here, are not abnormal. And so you obviate the need for help which many people believe is very important to some of the people we're talking about.

As to the business of this bill being lost. I believe that if this bill is passed, with this section in it, it will be impossible to ever repeal it, no matter what the outcome is. I'm quite sure that even if by some mischance, the total bill were caught in the confusion of this last day. If I know the Judiciary Committee, it won't be lost, for long. And I would much rather assume that this bill would become law before October 1, 1971, which is the date you say. I'm also sure that the Judges and others can be made very conscious of what is in this bill.

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I'm quite sure most of them know what it's about now. I would much rather, that we amended this bill, an unpopular, and silly as the word moral has become. I am hopeful that one day, it will be a word that people believe in and recognize. And that maybe we will have taken this out just a little bit early. I'm for this amendment and when the vote is taken, I ask for roll call.

SENATOR PICKETT:

I rise to oppose the amendment. Mr. President, I listened carefully to the arguments proposed by the proponents of this amendment and in fact, they're pretty much the same as the arguments proposed when this bill went to the House of Representatives, some days ago. I, respectfully wish to call to the attention of the proponents that as a result of your feelings, much of which I do share, the House passed what now is known as House Amendment Schedule "A", which would make adultery a crime. The rationale behind this action, in the House of Representatives after this matter was debated for an extensive period of time. Was that adultery goes to the heart of family life, that the arguments that we have heard in the past few minutes concerning family life, do in fact, have merit. And therefore, adultery is not exempt but rather because of House Amendment Schedule "A" adultery, by any person, regardless of age, will remain a crime.

I've listened also, to the arguments of some wide spread prostitution this will cause. It's always nice to look at the bills that come before us and I respectfully direct their at-

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tention to Section 82 and the section thereafter, which clearly point out, that prostitution is a class A, misdemeanor.

Mr. President, sometimes when we consider bill of this nature, which are voluminous, we simply don't have the time to thoroughly acquaint ourselves with the contents. Let me assure you, that the splendid efforts of the commission that drafted this, right here in our own General Assembly, Senator Barry, an exhaustive amount of time has been spent in drafting and re-drafting and scrutinizing this bill, to give us what we think is an excellent piece of legislation. But, that's not enough. As has been brought out, so vividly, that this bill would not be effective until October 1, 1971.

Mr. President, I think the arguments have been expressed at length. We now have to assume to some extent the role of practical politicians or statesman as the map may fit. It is now about 25 after 6, the house is out. When it will reconvene we don't know. I speak with experience, as a 10 year veteran of the General Assembly and now to witness my fifth-closing session. That the next few hours will be a bit wild. There is a very definite attempt in both houses of the General Assembly, to close as early as possible. I have talked with some House Leadership and know this is so and I'm sure it is our feeling here and so Mr. President, while I respectfully must acknowledge and in part, perhaps, agree with some of the philosophies proposed and arguments proposed by the preceding speakers. I implore you, not to go for this amendment, but rather to defeat

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it, so that we can get on with the bill and take this bill and send it to the Governor's desk. Please, defeat this amendment.

SENATOR SCHAPFER:

Mr. President, I rise in opposition to the amendment. I want to commend the members of the commission and the members of the Judiciary Committee for what I feel, very strongly, a courageous and intelligent report. Which has resulted in the bill that is before us today. It seems to me that we, in this State, tend to, try to legislate or impose our own personal senses of morality, on the population as a whole. There's been a long history of this and fortunately, as we look at the states right across this country, there's beginning to be the dorme of some enlightenment.

I wonder whether the members of this circle have, perhaps, realized that not only the social realities which the Senator from the 24th referred to, but also, the realities which we have learned from the studies of the science of human behavior.

I might perhaps point out that the justification and the need for this bill. People like Freud and even Doctor Spock I commend you to consult with them on these questions. These are very fundamental issues which effect each and everyone of us as individuals. The Supreme Court has ruled time and time again, in favor of the right of privacy of adults. And I feel very strongly that this attempt through this amendment to unnecessarily regulate the private behavior of consenting adults would be extremely unfortunate and would really destroy the ex-

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cellent work of this committee.

SENATOR STANLEY:

Mr. President, I have listened to the debate. Very often in this circle, I hesitate to rise because I am so impressed with the great ability of my colleagues, especially those that are engaged in the field of Law. And yet, I've heard some refer to the distinguished men on the bench, Supreme Court which says this. I'm not a lawyer. I'm just an average guy who does not always agree the the Supreme Court, is always deserving of the final word. I believe, that at this time, in our history we're living a very liberal and very wreckless period. I'm not at all sure that history is not going to record this year, as a year that the world went mad. And I resent certain principles and certain values that are being eaten away, that are in fact, the foundation of our society.

I rise to support this amendment. And I don't care if somebody worked six years to come to this conclusion. Or what the Supreme Court of the United States says.

I believe that the issues here, is the deterioration of values. And we see it on all fronts. And by our actions in passing this bill, if you do not amend it, we are, in fact, accelerating the deterioration of the values and the fundamentals that I have always held sacred, and I think the majority of the people of the State of Connecticut hold sacred.

Senator Lyddy was right. I have had, not one person say, we must pass a law that would do the things that they're pro-

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posing here, which we even hesitate to mention. Maybe I'm corny. Maybe I'm not eloquent. But as an American citizen, as a citizen of the State of Connecticut, I resent the attack on values that I think all of us should pay a little more attention to.

SENATOR AMENTA:

Mr. President, members of the circle, I'm not going to prolong the discussion. I think its been a very excellent one. I want to commend Senator Lyddy for a job well-done and well prepared. I'm going to vote for the amendment, and very briefly I'm going to tell you why I'm going to vote for the amendment.

Although this body or no other legislative body can legislate morality. I think we can encourage it or discourage it by our action. By voting for this amendment we will be encouraging morality.

SENATOR DUPONT:

Mr. President, I don't want to prolong this debate, although I think this is a very important piece of legislation. But I've heard repeatedly here, this evening, the phrase consenting adults. I think it's important that we understand what is meant by adults, in this statute. It doesn't mean people 21 or over. It doesn't mean people 19 or over. I could be wrong. As I read the statute, in many instances it means the age of 16. I think in some instances as low as 14, if I'm wrong, perhaps, Senator Pickett, could explain this better.

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SENATOR HICKEY:

Mr. President, I rise regretfully to oppose the amendment. On another day, earlier in this session, I believe I would vote for it because I am substantially in agreement with what Senator Lyddy and the others have said. But the sheer mechanics of the legislative process nulligates against our passing the amendment if we hope to save the bill itself. It's six-thirty. We will close at twelve and I'm personally sure, that the bill will not pass the house. If it is amended. I think the fact that it would be considered for two years and it's not effective until October 1, 1971, should be weighed by the circle.

And, I would also point out and stress that, this bill and really a tremendous bill, in the field of criminal law, is a product of six years of hard work. I sincerely urge the circle to reject the amendment.

SENATOR LUPTON:

Mr. President, I can not let go by all these pious crocodile tears about the lateness of the hour. The lateness of the hour has been with us since we came into this session early in January. And if we lose, what you think is such a great bill, because of the over-riding principle and because of the lateness of the hour, we had it coming to us. And I have seen rabbits pulled out hats, in the most unparliamentary way, in the last few days and I'm sure that if the Senator from the 27th and head of the Judiciary Committee want to get this bill through they'll figure a way. I move that we pass this amendment.

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THE CHAIR:

Are there further remarks on this amendment?

SENATOR LYDDY:

Mr. President, just briefly, Senator Schaffer mentioned Dr. Spock. Well, I consulted with Dr. Spock for many years, bringing up my children. When he left that area, I don't think he has anything that I'd like to consult with him, right now. But, we're talking here about six years of work. And I protest. Because after six years of work on the very last night of our session at 6 O'clock, this bill is given to us, to accept. Now again, I have noway, not any, they know it. Senator Pickett I am in no way criticizing him, because he knew and I knew that the work that had to be done to get this bill out of the various offices that it was in. Senator Hull knows this. But again, our system meditates against bringing this bill out, on the very last night, at this hour. I do ask that, Senator Finney, withdraw her motion for a roll call vote.

SENATOR PINNEY:

Mr. President, I don't want anyone to misunderstand. I have a great respect for the Judiciary Committee. I just disagree with them on this. I will be very glad to withdraw my motion for roll call.

THE CHAIR:

The motion for roll call has been withdrawn. Are there further remarks on the amendment? If there are none, as many as are in favor of the Senate Amendment, offered by Senator

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Lyddy, signify by saying, "Aye". Opposed? The Chair is in doubt. All those in favor of the amendment, stand. Those opposed to the amendment, please rise. Those voting against the amendment were 19 in number. In the opinion of the Chair, the amendment is lost.

SENATOR PICKETT:

Mr. President, I now move for acceptance of the committee's favorable report and passage of the bill, as amended by House Amendment Schedule "A".

THE CHAIR:

Question is on the bill as amended. Will you remark, Senator?

SENATOR PICKETT:

Mr. President, as has been so eloquently expressed, this evening, this is to known as the Penal Code, effective on October 1, 1971. We have heard about the six years of preparation. We have heard about the splendid work of the committee. And again I would like to pay tribute to Senator David Barry of Manchester, As we now, know this completely revises in capsizes the criminal law in the State of Connecticut. It categorizes crime to five classes of felonies and four classes of misdemeanors. It provides for uniform penalties within these categories. It statutorily defines with modern language crime, perpetrated to make it perpetrated in the State of Connecticut, so that, we no longer, as we at present must rely, simply on the common law, for definitions of our crimes. Mr. President,

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because of the lateness of the hour, I shall not prolong this. I will simply say, our hats should go off to the people who have worked so hard on this bill. While I realize so well, that people disagree with this one aspect of it. Let's not forget, that this consenting adults aspect of it is a just one aspect. I don't mean to say insignificant, at all. But, there are pages and pages and pages of very far reaching, well thought out laws or statutory language, which will place our criminal laws in the State of Connecticut, into a modern codification so that we in Connecticut, can be proud of our statutes in this field.

THE CHAIR:

Will you remark further on the bill as amended?

SENATOR JACKSON:

I rise for two reasons. First, to support the bill. The distinguished chairman of the Judiciary, has given the reasons for it. But secondly, and I feel most important, I would like to pay public tribute to the Chairman of the Committee that did the work on this bill. A former great Speaker of the House, Robert Testo. When the times got rough and the going got hard, Bob Testo was there to keep things going. I know that the this bill is here today, because, of his efforts and dedication.

SENATOR LYDDY:

Mr. President, I rise to support this bill. Again, may I indicate, that it is with reservation but I do support it. But,

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I ask, for the record and hope that the record will show, to the Legislature, two years from now, the feeling that was engendered here, by those people who supported openly, the amendment which I proposed. And I would hope that there will be a Senator in 1971, in this circle, who will again propose that amendment. And I hope he will have an opportunity to propose it early enough, in the session, so that, maybe, the feeling about the possibility of killing the bill, so to speak, may not be present, as it is here this evening.

SENATOR HICKEY:

Mr. President, I'd just like to say that, I heartily endorse the remarks by Senator Lyddy.

SENATOR BARRY:

Mr. President, I rise to support enthusiastically, the adoption of this code. I think it's long over due. And while it doesn't embrace 100%, the criminal laws on the statute books in the State of Connecticut, perhaps it embraces 90% of it. And, in the interim, I would hope that, the balance of the 100% would be worked into the code itself, so that, a complete package could be brought into the 1971 Assembly.

I think that, in his modesty, Senator Jackson forgot or intentionally forgot, to acknowledge that a great deal of the work that went into this, is by his own hand, as Vice-Chairman of this Interim Commission. And I think that he ought to get equal credit with Judge Testo.

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SENATOR HULL:

While the <sup>KU</sup> ~~o~~odos are being passed out and before we start fighting with each other. I was going to mention Senator Jackson's roll, along that commission as vice-chairman, when Judge Testo was unable to be there, he took over with real leadership and it was a very difficult commission. I will tell you, the hours were the longest and the toughest, I think any interim commission put in, in the last two years. I should also point out that Attorney David Borden, of Hartford, was the chief counsel among a good staff. He put in hours above and beyond the call of duty and certainly above the compensation that he received, in bringing this about. And finally, I want to concur, with Senator Lyddy, I too, deplore the late hour of such a major bill coming up and we won't go into the reasons. The reasons are not the ones that I have been railing against concerning other major legislation. It was the length of bill. The commission didn't get its work done quite on time because we were all so busy. And the great complexity in the Commissioners Office, checking and re-checking a bill of this magnitude.

I too, hope, that the controversial amendment, here tonight, will receive, and I'm sure it will, the most thorough, vigorous philosophical and moral argument, possible in 1971.

SENATOR STANLEY:

Mr. President, I rise in support of this bill and I would like also to point out, the fact that, Senate Bill 1150 is en-

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graced here. And, I only point that out, although I was sponsor of it and proud of the fact that it's here. To show that after six years of hard work, that the statute, as it related to dissemination of obscene materials to children, came out at the last minute. And that Senate Bill 1150, almost to the word, is engrased here, of this I'm proud and I'm rising today, in support of this bill. Although I do wish that the amendment had passed.

SENATOR FAULISO:

Mr. President, I support this bill as a member of the commission, I made very little contribution to it because of my activities in the Human Rights and Opportunities Committee.

I certainly, want to pay tribute to the architects of this great bill. I think it represents hard work. I'm particularly fond of the field of criminal law. The codification was long overdue. It represents a monumental achievement and I'm sure that it represents progress and it will renew it to the benefit of the State of Connecticut.

THE CHAIR:

Are there further remarks on the bill, as amended?

SENATOR FINNEY:

Mr. President, I hesitate to say what I'm going to say but I must. I have been beaten before, so this isn't I hope, lack of sportsmanship. Let me say with this great conglomeration of really wonderful legal minds and I say that seriously. I hope that the next time, you set up a commission or you set up

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a Judiciary Committee, that perhaps, you have some people who do not have legal minds.

THE CHAIR:

Will you remark further? If not, as many as are in favor signify by saying, "aye". Opposed? The ayes have it and the bill is passed, as amended.

THE CLERK:

CAL. NO. 1477. File No. 1489. Favorable report of the Joint Committee on Liquor Control. Substitute for House Bill No. 7705. An Act concerning Requirements for a Golf Country Club Liquor Permit.

SENATOR HICKEY:

Mr. President, I move acceptance of the committee's favorable report and passage of the bill. This bill removes from the requirements for a so-called Golf Country Club, the requirement that the Club be an existence for at least one year, prior to applying for the permit. The committee felt that as long as the other requirements were met, that this waiting period was unnecessary.

THE CHAIR:

Are there further remarks on this bill? If not, as many who are in favor signify by saying, "aye". Opposed? Ayes have it. The bill is passed.

THE CLERK:

CAL. NO. 1478. File No. 1525. Favorable report of the Joint Committee on Liquor Control. Substitute for House Bill No. 8664

12.

**Senate Amendment Schedule A  
Rejected June 4, 1969.**

On a voice vote the bill passed as amended.

Judiciary and Governmental Functions. Substitute for House Bill No. 6697. (File No. 1431) An Act concerning Creating a Judicial Review Council. (As amended by House Amendment Schedule "A.")

The bill was explained by Senator Pickett of the 33rd who moved for passage of the bill as amended by House Amendment Schedule "A."

On a voice vote the bill passed as amended.

Judiciary and Governmental Functions. Modified House Bill No. 6772. (File No. 1418) An Act concerning Credit Card Crimes. (As amended by House Amendment Schedule "A.")

The bill was explained by Senator Pickett of the 33rd who moved for passage of the bill as amended by House Amendment Schedule "A."

On a voice vote the bill passed as amended.

Judiciary and Governmental Functions. Substitute for House Bill No. 6786. (File No. 1448) An Act concerning Appeals with Respect to Liquor Permits. (As amended by House Amendment Schedule "A.")

The bill was explained by Senator Hull of the 24th who moved for passage of the bill as amended by House Amendment Schedule "A."

On a voice vote the bill passed as amended.

Judiciary and Governmental Functions. Modified House Bill No. 7182. (File No. 1447) An Act concerning Revision and Codification of the Substantive Criminal Law. (As amended by House Amendment Schedule "A.")

The bill was explained by Senator Lyddy of the 22nd who offered Senate Amendment Schedule "A" and moved for its acceptance.

Remarking favorably on the amendment were Senators Lupton of the 26th, Caldwell of the 23rd, Dupont of the 29th, Finney of the 36th, Stanley of the 19th and Amenta of the 6th.

Remarking unfavorably on the amendment were Senators Hull of the 24th, Pickett of the 33rd, Schaffer of the 14th and Hickey of the 27th.

On a standing vote Senate Amendment Schedule "A" was lost.

The following is Senate Amendment Schedule "A":

Delete sections 68 to 83, inclusive, and renumber the succeeding sections accordingly.

In section 214, strike out line 7 and substitute in lieu thereof: "inclusive, 53-213, 53-214, 53-221, 53-223, 53-242 to 53-246, inclusive, 53-254".

Senator Pickett of the 33rd moved for passage of the bill as amended by House Amendment Schedule "A."

**Connecticut Legislative Histories**

**Landmark Series**

**1969 Public Act No. 828,  
Volume Three**

**Hartford, Connecticut State Library,  
Law & Legislative Reference Unit,  
2005.**

**Legislative History  
of  
“An Act Concerning Revision and Codification  
of the Substantive Criminal Law.  
This act shall be known as the  
Penal Code”**

**Public Act 69-828  
1969 House Bill No. 7182**

**Volume Three**

Compiled from the following  
Connecticut General Assembly documents  
on deposit in the  
Law & Legislative Reference Unit of Connecticut State Library

**13 Senate Proceedings, Part 7, 1969 Session, pp. 3507, 3519-3547.**

**13 House of Representatives Proceedings, Parts 2 and 11, 1969  
Session, pp. 961-967, 5033-5063.**

**Connecticut. Joint Standing Committee Hearings,  
Judiciary and Governmental Functions, Part 1, 1969 Session,  
pp. 1-35, 254-258.**

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**Public Act 828 from 1969,  
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and signed by the Governor on July 8, 1969  
Effective: October 1, 1971**

## PUBLIC ACT NO. 825

AN ACT CONCERNING REVISION AND CODIFICATION  
OF THE SUBSTANTIVE CRIMINAL LAW.

*Be it enacted by the Senate and House of Representatives in  
General Assembly convened:*

SECTION 1. This act shall be known as the "Penal Code."

SEC. 2. The provisions of this act shall apply to any offense defined in this act or the general statutes, unless otherwise expressly provided or unless the context otherwise requires, and committed on or after October 1, 1971, and to any defense to prosecution for such an offense.

SEC. 3. Except where different meanings are expressly specified, the following terms have the following meanings when used in this act: (1) "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality; (2) "possess" means to have physical possession or otherwise to exercise dominion or control over tangible property; (3) "physical injury" means impairment of physical condition or pain; (4) "serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ; (5) "deadly physical force" means physical force which can be reasonably expected to cause death or serious physical injury; (6) "deadly weapon" means any loaded weapon from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles; (7) "dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury, and includes a "vehicle" as that term is defined in this section; (8) "vehicle" means a "motor vehicle" as defined in section 14-1 of the general statutes, any aircraft, or any vessel equipped for propulsion by mechanical means or sail; (9) a person acts "intentionally" with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct; (10) a person acts "knowingly" with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists; (11) a person acts "recklessly" with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; (12) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists.

tifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

SEC. 4. The provisions of sections 4 to 23, inclusive, of this act shall not be construed as precluding any court from recognizing other principles of criminal liability or other defenses not inconsistent with such provisions.

SEC. 5. When the commission of an offense defined in this act, or some element of an offense, requires a particular mental state, such mental state is ordinarily designated in the statute defining the offense by use of the terms "intentionally," "knowingly," "recklessly" or "criminal negligence," or by use of terms, such as "with intent to defraud" and "knowing it to be false," describing a specific kind of intent or knowledge. When one and only one of such terms appears in a statute defining an offense, it is presumed to apply to every element of the offense unless an intent to limit its application clearly appears.

SEC. 6. (a) A person shall not be relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief of fact, unless: (1) Such factual mistake negates the mental state required for the commission of an offense; or (2) the statute defining the offense or a statute related thereto expressly provides that such factual mistake constitutes a defense or exemption; or (3) such factual mistake is of a kind that supports a defense of justification.

(b) A person shall not be relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless (1) the law provides that the state of mind established by such mistaken belief constitutes a defense, or unless (2) such mistaken belief is founded upon an official statement of law contained in a statute or other enactment, an administrative order or grant of permission, a judicial decision of a state or federal court, or an interpretation of the statute or law relating to the offense, officially made or issued by a public servant, agency or body legally charged or empowered with the responsibility or privilege of administering, enforcing or interpreting such statute or law.

SEC. 7. Intoxication shall not be a defense to a criminal charge, but in any prosecution for an offense evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negate an element of the crime charged, provided when recklessness or criminal negligence is an element of the crime charged, if the actor, due to self-induced intoxication, is unaware of or disregards or fails to perceive a risk which he would have been aware of had he not been intoxicated, such unawareness, disregard or failure to perceive shall be immaterial. As used in this section, "intoxication" means a substantial disturbance of mental or physical capacities resulting from the introduction of substances into the body.

SEC. 8. A person, acting with the mental state required for commission of an offense, who solicits, requests, commands, importunes or intentionally aids another person to engage in con-

duct which constitutes an offense shall be criminally liable for such conduct.

SEC. 9. In any prosecution for an offense in which the criminal liability of the defendant is based upon the conduct of another person under section 8 of this act it shall not be a defense that: (1) Such other person is not guilty of the offense in question because of lack of criminal responsibility or legal capacity or awareness of the criminal nature of the conduct in question or of the defendant's criminal purpose or because of other factors precluding the mental state required for the commission of the offense in question; or (2) such other person has not been prosecuted for or convicted of any offense based upon the conduct in question, or has been acquitted thereof, or has legal immunity from prosecution therefor; or (3) the offense in question, as defined, can be committed only by a particular class or classes of persons, and the defendant, not belonging to such class or classes, is for that reason legally incapable of committing the offense in an individual capacity.

SEC. 10. (a) In any prosecution in which the criminal liability of the defendant is based upon the conduct of another person under section 8 of this act, it shall be an affirmative defense that the defendant terminated his complicity prior to the commission of the offense under circumstances: (1) Wholly depriving it of effectiveness in the commission of the offense, and (2) manifesting a complete and voluntary renunciation of his criminal purpose.

(b) For purposes of this section, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

SEC. 11. A person shall be criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.

SEC. 12. (a) When a defense other than an affirmative defense, is raised at a trial, the state shall have the burden of disproving such defense beyond a reasonable doubt.

(b) When a defense declared to be an affirmative defense is raised at a trial, the defendant shall have the burden of establishing such defense by a preponderance of the evidence.

SEC. 13. In any prosecution for an offense, it shall be a defense that the defendant, at the time of the proscribed conduct, as a result of mental disease or defect lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law. As used in this section, the terms mental disease or defect do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

SEC. 14. In any prosecution for an offense, it shall be a de-

fense that the defendant engaged in the proscribed conduct because he was coerced by the use or threatened imminent use of physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist. The defense of duress as defined in this section shall not be available to a person who intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

SEC. 15. In any prosecution for an offense, it shall be a defense that the defendant engaged in the proscribed conduct because he was induced to do so by a public servant, or by a person acting in cooperation with a public servant, for the purpose of institution of criminal prosecution against the defendant, and that the defendant did not contemplate and would not otherwise have engaged in such conduct.

SEC. 16. In any prosecution for an offense, justification, as defined in sections 17 to 23, inclusive, of this act shall be a defense.

SEC. 17. Unless inconsistent with any provision of this act defining justifiable use of physical force, or with any other provision of law, conduct which would otherwise constitute an offense is justifiable when such conduct is required or authorized by a provision of law or by a judicial decree, including but not limited to (1) laws defining duties and functions of public servants, (2) laws defining duties of private citizens to assist public servants in the performance of certain of their functions, (3) laws governing the execution of legal process, (4) laws governing the military services and the conduct of war, and (5) judgments and orders of courts.

SEC. 18. The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

(1) A parent, guardian, teacher or other person entrusted with the care and supervision of a minor or an incompetent person may use physical force, but not deadly physical force, upon such minor or incompetent person when and to the extent that he reasonably believes it is necessary to maintain discipline or to promote the welfare of such minor or incompetent person.

(2) An authorized official of a correctional institution or facility may, in order to maintain order and discipline, use such physical force as is reasonable and authorized by the rules and regulations of the department of correction.

(3) A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his direction, may use physical force when and to the extent that he reasonably believes it is necessary to maintain order, but he may use deadly physical force only when he reasonably believes it is necessary to prevent death or serious physical injury.

(4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force upon such person to the extent that he reasonably believes it is necessary to thwart such result.

(5) A duly licensed physician, or a person acting under his direction, may use physical force for the purpose of adminis-

tering a recognized form of treatment which he reasonably believes to be adapted to promoting the physical or mental health of the patient, provided the treatment (a) is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent, guardian or other person entrusted with his care and supervision, or (b) is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

SEC. 19. (a) Except as provided in subsections (b) and (c) a person is justified in using physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force, and he may use such degree of force which he reasonably believes to be necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (1) using or about to use deadly physical force, or (2) inflicting or about to inflict great bodily harm.

(b) Notwithstanding the provisions of subsection (a), a person is not justified in using deadly physical force upon another person if he knows that he can avoid the necessity of using such force with complete safety (1) by retreating, except that the actor shall not be required to retreat if he is in his dwelling, as defined in section 102 of this act, or place of work and was not the initial aggressor, or if he is a peace officer or a private person assisting such peace officer at his direction, and acting pursuant to section 23 of this act, or (2) by surrendering possession of property to a person asserting a claim of right thereto, or (3) by complying with a demand that he abstain from performing an act which he is not obliged to perform.

(c) Notwithstanding the provisions of subsection (a), a person is not justified in using physical force when (1) with intent to cause physical injury or death to another person, he provokes the use of physical force by such other person, or (2) he is the initial aggressor, except that his use of physical force upon another person under such circumstances is justifiable if he withdraws from the encounter and effectively communicates to such other person his intent to do so, but such other person notwithstanding continues or threatens the use of physical force, or (3) the physical force involved was the product of a combat by agreement not specifically authorized by law.

SEC. 20. A person in possession or control of premises, or a person who is licensed or privileged to be in or upon such premises, is justified in using physical force upon another person when and to the extent that he reasonably believes it is necessary to prevent or terminate the commission or attempted commission of a criminal trespass by such other person in or upon such premises; but he may use deadly physical force under such circumstances only (1) in defense of a person as prescribed in section 19 of this act, or (2) when he reasonably believes it is necessary to prevent an attempt by the trespasser to commit arson, or (3) to the extent that and not earlier in time than he reasonably believes it necessary to prevent or

terminate an unlawful entry by force into his dwelling as defined in section 102 of this act, or place of work, and for the sole purpose of such prevention or termination.

SEC. 21. A person is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to prevent an attempt by such other person to commit larceny or criminal mischief involving property, or when and to the extent he reasonably believes it necessary to regain property which he reasonably believes to have been acquired by larceny within a reasonable time prior to the use of such force; but he may use deadly physical force under such circumstances only in defense of person as prescribed in section 19 of this act.

SEC. 22. A person is not justified in using physical force to resist an arrest by a reasonably identifiable peace officer, whether such arrest is legal or illegal. For purposes of this section and of section 23 of this act, "peace officer" means a member of the state police department or an organized local police department, a county detective, sheriff or deputy sheriff, or a guard employed in a correctional institution or facility.

SEC. 23. (a) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of physical force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (b) and (c) unless such warrant is invalid and is known by such officer to be invalid.

(b) Except as provided in subsection (a), a peace officer is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to: (1) Effect an arrest or to prevent the escape from custody of a person whom he reasonably believes to have committed an offense, unless he knows that the arrest or custody is unauthorized; or (2) defend himself or a third person from the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

(c) A peace officer is justified in using deadly physical force upon another person for the purposes specified in subsection (b) only when he reasonably believes that such is necessary to: (1) Defend himself or a third person from the use or imminent use of deadly physical force; or (2) effect an arrest or to prevent the escape from custody of a person whom he reasonably believes has committed or attempted to commit a felony.

(d) Except as provided in subsection (e), a person who has been directed by a peace officer to assist such peace officer to effect an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he reasonably believes it is necessary to carry out such peace officer's direction.

(e) A person who has been directed to assist a peace officer under circumstances specified in subsection (d) may

use deadly physical force to effect an arrest or to prevent an escape from custody only when: (1) He reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or (2) he is directed or authorized by such peace officer to use deadly physical force, unless he knows that the peace officer himself is not authorized to use deadly physical force under the circumstances.

(f) A private person acting on his own account is justified in using physical force upon another person when and to the extent that he reasonably believes it is necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he reasonably believes to have committed an offense and who in fact has committed such offense; but he is not justified in using deadly physical force in such circumstances, except in defense of person as prescribed in section 19 of this act.

(g) A peace officer employed in a correctional institution or facility is justified in using physical force, including deadly physical force, when and to the extent that he reasonably believes it is necessary to prevent the escape of a prisoner from such correctional institution or facility.

SEC. 24. (a) The term "offense" means any crime or violation which constitutes a breach of any law of this state or local law or ordinance of a political subdivision of this state, for which a sentence to a term of imprisonment or to a fine, or both, may be imposed, except one that defines a motor vehicle violation. The term "crime" comprises felonies and misdemeanors. Every offense which is not a "crime" is a "violation." Conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(b) Notwithstanding the provisions of subsection (a), the provisions of sections 28 to 44, inclusive, of this act, shall apply to motor vehicle violations.

SEC. 25. (a) Any offense for which a person may be sentenced to a term of imprisonment in excess of one year is a felony.

(b) Felonies are classified for the purposes of sentence, as follows: (1) Class A, (2) class B, (3) class C, (4) class D and (5) unclassified.

(c) The particular classification of each felony defined in this act is expressly designated in the section defining it. Any offense defined in any other section of the general statutes which, by virtue of any expressly specified sentence, is within the definition set forth in subsection (a) shall be deemed an unclassified felony.

SEC. 26. (a) An offense for which a person may be sentenced to a term of imprisonment of not more than one year is a misdemeanor.

(b) Misdemeanors are classified for the purpose of sentence, as follows: (1) Class A, (2) class B, (3) class C and (4) unclassified.

(c) The particular classification of each misdemeanor defined in this act is expressly designated in the section defining it. Any offense defined in any other section of the general

statutes which, by virtue of an expressly specified sentence, is within the definition set forth in subsection (a) shall be deemed an unclassified misdemeanor.

SEC. 27. (a) An offense for which the only sentence authorized is a fine, is a violation.

(b) Every violation defined in this act is expressly designated as such. Any offense defined in any other section of the general statutes which is not expressly designated a violation shall be deemed a violation if, notwithstanding any other express designation, it is within the definition set forth in subsection (a).

SEC. 28. (a) Every person convicted of an offense shall be sentenced in accordance with this act.

(b) Except as provided in sections 45, 46, 94 and 95 of this act, when a person is convicted of an offense, the court shall impose one of the following sentences: (1) A term of imprisonment; or (2) a reformatory sentence authorized by section 18-73 or 18-75 of the general statutes; or (3) a fine; or (4) a term of imprisonment and a fine; or (5) a term of imprisonment, with the execution of such sentence of imprisonment suspended, entirely or after a period set by the court, and a period of probation or a period of conditional discharge; or (6) a term of imprisonment, with the execution of such sentence of imprisonment suspended, entirely or after a period set by the court, and a fine and a period of probation, or a period of conditional discharge; or (7) a fine and a reformatory sentence; or (8) a sentence of unconditional discharge.

(c) A sentence to a period of probation or conditional discharge in accordance with sections 29 to 34, inclusive, of this act, shall be deemed a revocable disposition, in that such sentence shall be tentative to the extent that it may be altered or revoked in accordance with said sections 29 to 34, inclusive, but for all other purposes it shall be deemed to be a final judgment of conviction.

SEC. 29. (a) The court may sentence a person to a period of probation upon conviction of any crime, other than a class A felony, if it is of the opinion that: (1) Present or extended institutional confinement of the defendant is not necessary for the protection of the public; (2) the defendant is in need of guidance, training or assistance which, in his case, can be effectively administered through probation supervision; and (3) such disposition is not inconsistent with the ends of justice.

(b) The court may impose a sentence of conditional discharge for an offense, other than a class A felony, if it is of the opinion that: (1) Present or extended institutional confinement of the defendant is not necessary for the protection of the public; and (2) probation supervision is not appropriate.

(c) When the court imposes a sentence of conditional discharge the defendant shall be released with respect to the conviction for which the sentence is imposed but shall be subject, during the period of such conditional discharge, to such conditions as the court may determine. The court shall impose the period of conditional discharge authorized by subsection (d) and shall specify, in accordance with section 30 of this act, the conditions to be complied with. When a person is sentenced to a period of probation the court shall impose the period authorized by subsection (d) and may impose any

conditions authorized by said section 30. When a person is sentenced to a period of probation, he shall be placed under the supervision of the commission on adult probation.

(d) The period of probation or conditional discharge unless terminated sooner as hereinafter provided, shall be as follows:

- (1) For a felony, not more than five years;
- (2) for a class A misdemeanor, not more than three years;
- (3) for a class B misdemeanor, not more than two years;
- (4) for a class C misdemeanor, not more than one year;

and

(5) for an unclassified misdemeanor, not more than one year if the authorized sentence of imprisonment is less than three months, or not more than two years if the authorized sentence of imprisonment is in excess of three months, or where the defendant is charged with failure to provide subsistence for dependents, a determinate or indeterminate period.

(e) When a person has been on probation for over one year, the probation officer shall, as soon as is convenient after the expiration of such year, call the matter to the attention of the sentencing court or judge with a recommendation as to the advisability of the continuance of probation. The person on probation shall be given reasonable notice of this action and shall be entitled to be heard by the court or judge with respect thereto.

Sec. 30. (a) When imposing sentence of probation or conditional discharge, the court may, as a condition of the sentence, order that the defendant:

(1) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;

(2) undergo medical or psychiatric treatment and remain in a specified institution, when required for that purpose;

(3) support his dependents and meet other family obligations;

(4) make restitution of the fruits of his offense or make reparation, in an amount he can afford to pay, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance;

(5) if a minor, (A) reside with his parents or in a suitable foster home, (B) attend school, and (C) contribute to his own support in any home or foster home;

(6) post a bond or other security for the performance of any or all conditions imposed;

(7) refrain from violating any criminal law of the United States, this state or any other state;

(8) satisfy any other conditions reasonably related to his rehabilitation.

The court shall cause a copy of any such order to be delivered to the defendant and to the probation officer, if any.

(b) When a defendant has been sentenced to a period of probation, the commission on adult probation may require that the defendant comply with any or all conditions which the court could have imposed under subsection (a) which are not inconsistent with any condition actually imposed by the court.

(c) At any time during the period of probation or conditional release, after hearing and for good cause shown, the

court may modify or enlarge the conditions, whether originally imposed by the court under this section or otherwise, and may extend the period, provided that the original period with any extensions shall not exceed the periods authorized by section 29 of this act. The court shall cause a copy of any such order to be delivered to the defendant and to the probation officer, if any.

SEC. 31. (a) A period of probation or conditional discharge commences on the day it is imposed, except that, where it is preceded by a sentence of imprisonment with execution suspended after a period of imprisonment set by the court, it commences on the day the defendant is released from such imprisonment. Multiple periods, whether imposed at the same or different times, shall run concurrently.

(b) Issuance of a warrant or notice to appear for violation pursuant to section 32 of this act, shall interrupt the period of the sentence as of the date of such issuance until a final determination as to the violation has been made by the court.

(c) In any case where a person who is under a sentence of probation or of conditional discharge is also under an indeterminate sentence of imprisonment, or a reformatory sentence, imposed for some other offense by a court of this state, the service of the sentence of imprisonment shall satisfy the sentence of probation or of conditional discharge unless the sentence of probation or of conditional discharge is revoked prior to parole or satisfaction of the sentence of imprisonment.

SEC. 32. (a) At any time during the period of probation or conditional discharge, the court or any judge thereof may issue a warrant for the arrest of a defendant for violation of any of the conditions of probation or conditional discharge, or may issue a notice to appear to answer to a charge of such violation, which notice shall be personally served upon the defendant. Any such warrant shall authorize all officers named therein to return the defendant to the custody of the court or to any suitable detention facility designated by the court. Any probation officer may arrest any defendant on probation without a warrant or may depute any other officer with power to arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of the probation officer, violated the conditions of his probation. Such written statement, delivered with the defendant by the arresting officer to the official in charge of any correctional center or other place of detention, shall be sufficient warrant for the detention of the defendant. After making such an arrest, such probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to any defendant arrested under the provisions of this section. Upon such arrest and detention, the probation officer shall immediately so notify the court or any judge thereof. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charges. At such hearing the defendant shall be informed of the manner in which he is alleged to have violated the conditions of his probation

or conditional discharge, shall be advised by the court that he has the right to retain counsel and, if indigent, shall be entitled to the services of the public defender, and shall have the right to cross-examine witnesses and to present evidence in his own behalf.

(b) If such violation is established, the court may continue or revoke the sentence of probation or conditional release or modify or enlarge the conditions, and, if such sentence is revoked, require the defendant to serve the sentence imposed or any lesser sentence. No such revocation shall be ordered, except upon consideration of the whole record and unless such violation is established by reliable and probative evidence.

SEC. 33. The court or sentencing judge may at any time during the period of probation or conditional discharge, after hearing and for good cause shown, terminate probation or conditional discharge.

SEC. 34. (a) The court may impose a sentence of unconditional discharge in any case where it is authorized to impose a sentence of conditional discharge under section 29 of this act, if the court is of the opinion that no proper purpose would be served by imposing any condition upon the defendant's release.

(b) When the court imposes a sentence of unconditional discharge, the defendant shall be released with respect to the conviction for which the sentence is imposed without imprisonment, probation supervision or conditions. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

SEC. 35. (a) A sentence of imprisonment for a felony shall be an indeterminate sentence, except as provided in subsection (d). When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subsection (b) and the minimum term shall be as provided in subsection (c).

(b) The maximum term of an indeterminate sentence shall be fixed by the court as follows:

(1) For a class A felony, life imprisonment unless a sentence of death is imposed in accordance with section 46 of this act;

(2) for a class B felony, a term not to exceed twenty years;

(3) for a class C felony, a term not to exceed ten years;

(4) for a class D felony, a term not to exceed five years; and

(5) for an unclassified felony, a term in accordance with the sentence specified in the section of the general statutes that defines the crime.

(c) The minimum term of an indeterminate sentence shall be fixed by the court as follows:

(1) For a class A felony, the minimum term shall not be less than one nor more than ten years;

(2) for a class B, C or D felony the court may fix a minimum term which shall be specified in the sentence and shall not be less than one year nor more than one-half of the maximum term imposed, except where the maximum is less than three years.

(d) Notwithstanding the provisions of subsections (a) and

(c), when a person is sentenced for a class C or D felony the court, may impose a definite sentence of imprisonment and fix a term of one year or less.

SEC. 36. A sentence of imprisonment for a misdemeanor shall be a definite sentence and the term shall be fixed by the court as follows:

(a) For a class A misdemeanor, a term not to exceed one year;

(b) for a class B misdemeanor a term not to exceed six months;

(c) for a class C misdemeanor a term not to exceed three months;

(d) for an unclassified misdemeanor a term in accordance with the sentence specified in the section of the general statutes that defines the crime.

SEC. 37. When multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and to the undischarged term or terms in such manner as the court directs at the time of sentence. The court shall state whether the respective maxima and minima shall run concurrently or consecutively with respect to each other, and shall state in conclusion the effective sentence imposed.

SEC. 38. An indeterminate sentence of imprisonment commences when the prisoner is received in the custody or institution to which he was sentenced.

(b) A definite sentence of imprisonment commences when the prisoner is received in the custody to which he was sentenced. Where a person is under more than one definite sentence, the sentences shall be calculated as follows: (1) If the sentences run concurrently, the terms merge in and are satisfied by discharge of the term which has the longest term to run; (2) if the sentences run consecutively, the terms are added to arrive at an aggregate term and are satisfied by discharge of such aggregate term.

(c) When a sentence of imprisonment that has been imposed on a person is vacated and a new sentence is imposed on such a person for the same offense or for an offense based on the same act, the new sentence shall be calculated as if it had commenced at the time the vacated sentence commenced, and all time served under or credited against the vacated sentence shall be credited against the new sentence.

(d) When a person who is serving a sentence of imprisonment escapes, the escape shall interrupt the sentence and such interruption shall continue until the return of such person to the custody of the commissioner of correction.

SEC. 39. At any time during the period of a definite sentence, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or the defendant discharged on probation or conditional discharge for a period not to exceed that to which he could have been originally sentenced.

SEC. 40. (a) A persistent dangerous felony offender is a person who (1) stands convicted of manslaughter, arson, rape, kidnapping, robbery in the first or second degree, or assault in the first degree; and (2) has been, at separate times prior to the commission of the present crime, two or more times convicted of and imprisoned, under a sentence to a term of imprisonment of more than one year or of death, in this state or in any other state or in a federal correctional institution for any of the following crimes:

(A) The crimes enumerated in subdivision 1, the crime of murder, or an attempt to commit any of said crimes or murder; or

(B) prior to the effective date of this act, in this state: Assault with intent to kill under section 53-117, or any of the crimes enumerated in sections 53-9, 53-10, 53-11, 53-12 to 53-16, inclusive, 53-19, 53-21, 53-69, 53-78 to 53-80, inclusive, 53-82, 53-83, 53-86, 53-238 and 53-239 of the general statutes, revision of 1958, revised to 1968, or any predecessor statutes in this state, or an attempt to commit any of said crimes; or

(C) in any other state: Any crimes the essential elements of which are substantially the same as any of the crimes enumerated in subdivision (1) or (2).

(b) A persistent felony offender is a person who (1) stands convicted of a felony; and (2) has been, at separate times prior to the commission of the present felony, two or more times convicted of and imprisoned under an imposed term of more than one year or of death, in this state or in any other state or in a federal correctional institution for a crime. This subsection shall not apply where the present conviction is for a crime enumerated in subdivision (1) of subsection (a) and either of the two prior convictions were for crimes other than those enumerated in subsection (a).

(c) A persistent larceny offender is a person who, (a) stands convicted of larceny in the second degree or a lesser degree; and (b) has been, at separate times prior to the commission of the present larceny, twice convicted of the crime of larceny.

(d) It shall be an affirmative defense to the charge of being a persistent offender under this section that (1) as to any prior conviction on which the state is relying the defendant was pardoned on the ground of innocence, and (2) without such conviction, the defendant was not two or more times convicted and imprisoned as required by this section.

(e) When any person has been found to be a persistent dangerous felony offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration and lifetime supervision will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by section 35 of this act for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by said section 35 for a class A felony.

(f) When any person has been found to be a persistent felony offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration will best serve the public interest, the court in lieu of imposing the sentence

of imprisonment authorized by section 35 of this act for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by said section 35 for the next more serious degree of felony.

(g) When any person has been found to be a persistent larceny offender, and the court is of the opinion that his history and character and the nature and circumstances of his criminal conduct indicate that extended incarceration will best serve the public interest, the court, in lieu of imposing the sentence authorized by section 35 of this act for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by said section 35 for a class D felony.

SEC. 41. A fine for the conviction of a felony shall be fixed by the court as follows:

(a) For a class A or B felony an amount not to exceed ten thousand dollars;

(b) for a class C or D felony an amount not to exceed five thousand dollars;

(c) for an unclassified felony an amount in accordance with the fine specified in the law that defines the crime.

SEC. 42. A fine for the conviction of a misdemeanor shall be fixed by the court as follows:

(a) For a class A or B misdemeanor, an amount not to exceed one thousand dollars;

(b) for a class C misdemeanor an amount not to exceed five hundred dollars;

(c) for an unclassified misdemeanor an amount in accordance with the fine specified in the law that defines the crime.

SEC. 43. A fine for a violation shall be fixed by the court in an amount not to exceed five hundred dollars. In the case of a violation defined in any other section of the general statutes, if the amount of the fine is expressly specified in the section that defines the offense, the amount of the fine shall be fixed in accordance with such section.

SEC. 44. If a person has gained money or property through the commission of any felony, misdemeanor or violation, upon conviction thereof the court, in lieu of imposing the fine authorized for the offense under section 41, 42 or 43 of this act, may sentence the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain from the commission of the offense. In such case the court shall make a finding as to the amount of the defendant's gain from the offense, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the term "gain" means the amount of money or the value of property derived.

SEC. 45. (a) Murder is punishable as a class A felony unless the death sentence is imposed as provided by section 46 of this act.

(b) Where the court and the state's attorney consent, a person indicted for murder may plead guilty thereto, in which case the court shall sentence him as for a class A felony.

(c) If a person indicted for murder waives his right to a jury trial and elects to be tried by a court, the court shall be composed of the judge presiding at the session and two other

judges to be designated by the chief justice of the supreme court, and such judges, or a majority of them, shall determine the question of guilt or innocence and shall, as provided in said section 46, render judgment and impose sentence.

(d) The court or jury before which any person indicted for murder is tried may find him guilty of homicide in a lesser degree than that charged.

SEC. 46. (a) When a defendant has been found guilty of murder, there shall thereupon be further proceedings before the court or jury on the issue of penalty. Such proceedings shall be conducted before the court or jury which found the defendant guilty. In these proceedings, evidence may be presented as to any matter that the court deems relevant to sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any such evidence which the court deems to have probative force may be received, regardless of its admissibility under the exclusionary rules of evidence. The state's attorney and the defendant and his counsel shall be permitted to present argument for or against sentence of death.

(b) The court or jury, as the case may be, shall then retire to consider the penalty. If the jury reports unanimous agreement and recommends the imposition of the class A felony sentence, the court shall discharge the jury and shall impose such sentence. If the jury reports unanimous agreement and recommends the imposition of the sentence of death, the court may or may not accept said recommendation and shall discharge the jury and shall impose either the sentence for a class A felony or the sentence of death.

(c) If the jury is unable to reach a unanimous verdict on the issue of penalty, the court shall discharge the jury and impose the sentence for a class A felony.

(d) On an appeal by the defendant where the sentence is of death, the supreme court, if it finds substantial error in the sentencing proceeding only, may set aside such sentence of death and remand the case to the trial court, in which event the trial court shall impose the sentence for a class A felony.

SEC. 47. (a) (1) When any person charged with an offense is acquitted on the grounds of mental disease or defect, the court shall order such person to be temporarily confined in any of the state hospitals for mental illness for a reasonable time, not to exceed ninety days, for an examination to determine his mental condition, except that, if the court can determine, on the basis of the evidence already before it, that such person is not mentally ill to the extent that his release would constitute a danger to himself or others, the court may order his immediate release, either unconditionally or conditionally pursuant to subdivision (2) of subsection (e).

(2) The person to be examined shall be informed that, in addition to the examination provided for in subdivision (1), he has a right to be examined during such confinement by a psychiatrist of his own choice.

(3) Within sixty days of the confinement pursuant to sub-

division (1), the superintendent of such hospital and the retained psychiatrist, if any, shall file reports with the court setting forth their findings and conclusions as to whether such person is mentally ill to the extent that his release would constitute a danger to himself or others. Copies of such reports shall be delivered to the state's attorney or prosecutor and to counsel for such person.

(4) Upon receipt of such reports, the court shall promptly schedule a hearing. If the court determines that the preponderance of the evidence at the hearing establishes that such person is mentally ill to the extent that his release would constitute a danger to himself or others, the court shall confine such person in a suitable hospital or other treatment facility.

(b) Whenever a person is committed for confinement pursuant to subdivision (4) of subsection (a), his confinement shall continue until he is no longer mentally ill to the extent that his release would constitute a danger to himself or others, provided the total period of confinement, except as provided in subsection (d), shall not exceed a maximum term fixed by the court at the time of confinement, which maximum term shall not exceed the maximum sentence which could have been imposed if the person had been convicted of the offense. Where the offense is a class A felony, such maximum term shall be twenty-five years.

(c) (1) Upon certification by the superintendent of the hospital or institution that, in his opinion, such person is no longer mentally ill to the extent that his release would constitute a danger to himself or others, the court may order the release of the person confined at the expiration of thirty days from the time such certificate is filed.

(2) At the time such certificate is filed with the court, a copy shall be furnished to the state's attorney or prosecutor who may request a hearing as to whether such person should be released. At such hearing, evidence of mental condition may be submitted. The confined person shall be released unless the state establishes by a preponderance of the evidence that such person is, at the time of hearing, mentally ill to the extent that his release would constitute a danger to himself or others.

(3) The superintendent shall, during such confinement, submit to the court at least every six months a written report with respect to the mental condition of such person. Copies of such report shall be furnished to the state's attorney or prosecutor and counsel for the confined person. The court, upon its own motion or at the request of the parties, may at any time hold a hearing to determine whether such person should be released prior to the expiration of the maximum period, in accordance with the standards set forth in subdivision (1), provided such a hearing shall be held at least every five years.

(d) At the expiration of such maximum period the superintendent of such hospital or institution shall, if the person is still confined there, release him, unless the following procedure for an order of continued confinement has been instituted. At any time within ninety days prior to such expiration, the state's attorney for the county or the chief prosecutor for the circuit in which the person was tried may petition the court for an order

of further confinement on the grounds that release of the person would constitute a danger to life or person. The court shall thereupon hold a prompt hearing, after due notice to the person confined. At such hearing the state shall have the burden of proving by a preponderance of the evidence that such person's continued confinement is warranted because he is mentally ill to the extent that his release would constitute a danger to life or person. If the court so finds, the court shall order the continued confinement of the person until such time as it is determined that his release would not constitute a danger to life or person; provided the provisions of subsections (c) and (e) shall be applicable to persons so confined.

(e) (1) In each of the hearings provided for in this section the mentally ill person shall have a right to be present, to be represented by counsel and to present evidence. If he fails or refuses to obtain counsel, the court shall appoint counsel to represent him. Such person may call a psychiatrist to examine him and testify at any such hearing. The participation of such psychiatrist shall be at the confined person's expense unless he is financially unable to retain one, in which case the court shall assist him in obtaining a psychiatrist's services at the expense of the state. (2) The court may order that such person be released under such conditions and supervision as the court deems appropriate to his situation.

(f) If any person is confined hereunder, other than for temporary confinement authorized by subsection (a), and such person has estate, the court may appoint an overseer for such person, who shall forthwith make an application to the probate court of competent jurisdiction for the appointment of a conservator of the estate of such person.

(g) The expense of confinement, support and treatment of any person confined hereunder shall be computed and paid for in accordance with the provisions of section 17-205a and chapter 308 of the general statutes.

(h) In lieu of confinement in any state hospital or treatment facility hereunder, the court may allow some responsible person, who posts sufficient bond to the state, to confine such person in such manner as the court orders.

SEC. 48. A person is guilty of conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy.

SEC. 49. It is an affirmative defense to a charge of conspiracy that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

SEC. 50. (a) A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime he: (1) Intentionally engages in conduct which would constitute the crime if attendant circumstances were as he believes them to be; or (2) intentionally does or omits to do anything which, under the circumstances as he be-

lieves them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(b) Conduct shall not be held to constitute a substantial step under subdivision (2) of subsection (a) unless it is strongly corroborative of the actor's criminal purpose. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

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

(2) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(3) reconnoitering the place contemplated for the commission of the crime;

(4) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(5) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;

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

(7) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(c) When the actor's conduct would otherwise constitute an attempt under subsection (a), it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

SEC. 51. For purposes of this act, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct or to transfer the criminal effort to another but similar objective or victim.

SEC. 52. Attempt and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or is an object of the conspiracy, except that an attempt or conspiracy to commit a class A felony is a class B felony.

SEC. 53. A person may be convicted of attempt or conspiracy, and the completed crime so attempted or committed in pursuance of such conspiracy, except that if he is so convicted he may be sentenced only for the completed crime.

SEC. 54. Homicide means conduct which causes the death of a person.

SEC. 55. (a) A person is guilty of murder when:

(1) With intent to cause the death of another person, he causes the death of such person or of a third person or causes

a suicide by force, duress or deception; except that in any prosecution under this subsection, it shall be an affirmative defense that the defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be, provided nothing contained in this subdivision shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime; or

(2) acting either alone or with one or more persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, deviate sexual intercourse in the first degree, sexual contact in the first degree, escape in the first degree, or escape in the second degree and, in the course of and in furtherance of such crime or of flight therefrom, he, or another participant, if any, causes the death of a person other than one of the participants, except that in any prosecution under this subsection, in which the defendant was not the only participant in the underlying crime, it shall be an affirmative defense that the defendant:

(A) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(B) was not armed with a deadly weapon, or any dangerous instrument; and

(C) had no reasonable ground to believe that any other participant was armed with such a weapon or instrument; and

(D) had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(b) Evidence that the defendant suffered from a mental disease, mental defect or other mental abnormality is admissible, in a prosecution under subdivision (1) of subsection (a) on the question of whether the defendant acted with intent to cause the death of another person.

Murder is punishable as a class A felony unless the death penalty is imposed as provided by section 46 of this act.

SEC. 56. A person is guilty of manslaughter in the first degree when:

(1) With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or

(2) with intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance, as provided in subdivision (1) of subsection (a) of section 55 of this act, except that the fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subsection; or

(3) under circumstances evincing an extreme indifference

to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person.

Manslaughter in the first degree is a class B felony.

SEC. 57. A person is guilty of manslaughter in the second degree when:

- (1) He recklessly causes the death of another person; or
- (2) he intentionally causes or aids another person, other than by force, duress or deception, to commit suicide.

Manslaughter in the second degree is a class C felony.

SEC. 58. A person is guilty of misconduct with a motor vehicle when, with criminal negligence in the operation of a motor vehicle or in consequence of his intoxication while operating a motor vehicle, he causes the death of another person.

Misconduct with a motor vehicle is a class D felony.

SEC. 59. A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person, except where the defendant caused such death by a motor vehicle.

Criminally negligent homicide is a class A misdemeanor.

SEC. 60. A person is guilty of assault in the first degree when:

- (1) With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
- (2) with intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or
- (3) under circumstances evincing an extreme indifference to human life he recklessly engages in conduct which creates a risk of death to another person, and thereby causes serious physical injury to another person.

Assault in the first degree is a class B felony.

SEC. 61. A person is guilty of assault in the second degree when:

- (1) With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or
- (2) with intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
- (3) with intent to prevent a reasonably identifiable peace officer from performing his duty, he causes physical injury to such peace officer; or
- (4) he recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or
- (5) for a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to such person, without his consent, a drug, substance or preparation capable of producing the same.

Assault in the second degree is a class D felony.

SEC. 62. A person is guilty of assault in the third degree when:

- (1) With intent to cause physical injury to another person, he causes such injury to such person or to a third person; or
- (2) he recklessly causes serious physical injury to another person; or
- (3) with criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a class A misdemeanor.

- SEC. 63. A person is guilty of threatening when: (1) By physical threat, he intentionally places or attempts to place another person in fear of imminent serious physical injury, or
- (2) he threatens to commit any crime of violence with the intent to terrorize another, to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or
  - (3) he threatens to commit such crime in reckless disregard of the risk of causing such terror or inconvenience.

Threatening is a class A misdemeanor.

- SEC. 64. A person is guilty of reckless endangerment in the first degree when, with extreme indifference to human life, he recklessly engages in conduct which creates a risk of serious physical injury to another person.

Reckless endangerment in the first degree is a class A misdemeanor.

- SEC. 65. A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a risk of physical injury to another person.

Reckless endangerment in the second degree is a class B misdemeanor.

- SEC. 66. As used in sections 67 to 91, inclusive, of this act, the following terms have the following meanings:

(1) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight. Its meaning is limited to persons not married to each other.

(2) "Deviate sexual intercourse" means (a) sexual contact between persons not married to each other consisting of contact between penis and the anus, the mouth and the penis, or the mouth and the vulva, or (b) any form of sexual conduct with an animal or dead body.

(3) "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party.

(4) "Female" means any female person who is not married to the actor.

(5) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.

(6) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or owing to any other act committed upon him without his consent.

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

(8) "Forcible compulsion" means physical force that over-

comes earnest resistance; or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person, or in fear that he or another person will immediately be kidnapped.

SEC. 67. (a) Lack of consent results from (1) forcible compulsion or incapacity to consent; or (2) where the offense charged is sexual contact, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(b) A person is deemed incapable of consent when he is (1) less than sixteen years old; or (2) mentally defective; or (3) mentally incapacitated; or (4) physically helpless.

SEC. 68. (a) In any prosecution for an offense under sections 67 to 91, inclusive, of this act in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally defective, mentally incapacitated or physically helpless, it shall be an affirmative defense that the defendant, at the time he engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

(b) When the alleged victim's age is an element of an offense under sections 67 to 91, inclusive, of this act, it shall be an affirmative defense that the actor reasonably believed the alleged victim to be above the specified age, except when the alleged victim is less than fourteen years of age.

(c) In any prosecution for an offense under sections 67 to 91, inclusive, of this act, it shall be an affirmative defense that the defendant and the alleged victim were, at the time of the alleged offense, living together by mutual consent in a relationship of cohabitation as man and wife, regardless of the legal status of their relationship.

SEC. 69. A person shall not be convicted of any offense under sections 67 to 91, inclusive, of this act, or of an attempt to commit such offense, solely on the uncorroborated testimony of the alleged victim, except as hereinafter provided. Corroboration may be circumstantial. This section shall not apply to the offense of sexual contact in the third degree, nor to the offenses of prostitution, patronizing a prostitute, promoting prostitution or permitting prostitution.

SEC. 70. No prosecution may be instituted or maintained under sections 67 to 91, inclusive, of this act, unless the alleged offense was brought to the notice of public authority within three months of its occurrence or, where the alleged victim was less than sixteen years old or incompetent to make complaint, within three months after a parent, guardian or other competent person specially interested in the alleged victim learns of the offense.

SEC. 71. A person is guilty of sexual misconduct in the first degree when he has sexual intercourse with another person, or engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse, and (a) the other person is less than twenty-one years old and the actor is his guardian or otherwise responsible for general supervision of his welfare; or (b) the other person is in custody

of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

Sexual misconduct in the first degree is a class D felony.

SEC. 72. A person is guilty of sexual misconduct in the second degree when:

- (1) Being a male, he engages in sexual intercourse with a female without her consent; or
- (2) he engages in deviate sexual intercourse with another person without the latter's consent; or
- (3) he engages in sexual conduct with an animal or dead body.

Sexual misconduct in the second degree is a class A misdemeanor.

SEC. 73. A male is guilty of rape in the first degree when he engages in sexual intercourse with a female:

- (1) By forcible compulsion, but it shall be an affirmative defense to prosecution under this subsection that the female had previously with consent engaged in sexual intercourse with the actor; or
- (2) who is incapable of consent by reason of being physically helpless; or
- (3) who is less than fourteen years of age.

Rape in the first degree is a class B felony.

SEC. 74. A male is guilty of rape in the second degree when he engages in sexual intercourse with a female by forcible compulsion.

Rape in the second degree is a class C felony.

SEC. 75. A male is guilty of rape in the third degree when:

- (1) He engages in sexual intercourse with a female who is incapable of consent by reason of some factor other than being less than sixteen years old; or
- (2) being nineteen years old or more, he engages in sexual intercourse with a female less than sixteen years old.

Rape in the third degree is a class D felony.

SEC. 76. A person is guilty of deviate sexual intercourse in the first degree when he engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse:

- (1) By forcible compulsion, but it shall be affirmative defense to prosecution under this subsection that the other person had previously with consent engaged in deviate sexual intercourse with the actor; or
- (2) who is incapable of consent by reason of being physically helpless; or
- (3) who is less than fourteen years old.

Deviate sexual intercourse in the first degree is a class B felony.

SEC. 77. A person is guilty of deviate sexual intercourse in the second degree when he engages in deviate sexual intercourse with another person or causes another person to engage in deviate sexual intercourse by forcible compulsion.

Deviate sexual intercourse in the second degree is a class C felony.

SEC. 78. A person is guilty of deviate sexual intercourse in the third degree when he engages in deviate sexual intercourse

with another person or causes another person to engage in deviate sexual intercourse, and (1) the other person is incapable of consent by reason of some factor other than being less than sixteen years old or (2) he is nineteen years old or more and the other person is less than sixteen years old.

Deviate sexual intercourse in the third degree is a class D felony.

SEC. 79. A person is guilty of sexual contact in the first degree when he subjects another person to sexual contact:

- (1) By forcible compulsion; or
- (2) when the other person is incapable of consent by reason of being physically helpless; or
- (3) when the other person is less than eleven years old.

Sexual contact in the first degree is a class C felony.

SEC. 80. A person is guilty of sexual contact in the second degree when he subjects another person to sexual contact and when such other person is:

- (1) Incapable of consent by reason of some factor other than being less than sixteen years old; or
- (2) less than fourteen years old.

Sexual contact in the second degree is a class D felony.

SEC. 81. A person is guilty of sexual contact in the third degree when he subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it shall be an affirmative defense that (1) such other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen years old, and (2) such other person was more than fourteen years old and (3) the defendant was less than five years older than such other person.

Sexual contact in the third degree is a class A misdemeanor.

SEC. 82. Any married person is guilty of adultery when he engages in sexual intercourse with any person other than his spouse.

Adultery is a class A misdemeanor.

SEC. 83. A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

Prostitution is a class A misdemeanor.

SEC. 84. A person is guilty of patronizing a prostitute when:

- (1) Pursuant to a prior understanding, he pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him; or
- (2) he pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him; or
- (3) he solicits or requests another person to engage in sexual conduct with him in return for a fee.

Patronizing a prostitute is a class A misdemeanor.

SEC. 85. In any prosecution for prostitution or patronizing a prostitute, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated or solicited is immaterial, and it shall be no defense that:

- (1) Such persons were of the same sex; or
- (2) the person who received, agreed to receive or solicited

a fee was a male and the person who paid or agreed or offered to pay such fee was a female.

SEC. 86. The following definitions are applicable to sections 87 to 90, inclusive, of this act:

(1) A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.

(2) A person "profits from prostitution" when acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.

SEC. 87. A person is guilty of promoting prostitution in the first degree when he knowingly:

(1) Advances prostitution by compelling a person by force or intimidation to engage in prostitution, or profits from coercive conduct by another; or

(2) advances or profits from prostitution of a person less than sixteen years old.

Promoting prostitution in the first degree is a class B felony.

SEC. 88. A person is guilty of promoting prostitution in the second degree when he knowingly:

(1) Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes; or

(2) advances or profits from prostitution of a person less than nineteen years old.

Promoting prostitution in the second degree is a class C felony.

SEC. 89. A person is guilty of promoting prostitution in the third degree when he knowingly advances or profits from prostitution.

Promoting prostitution in the third degree is a class D felony.

SEC. 90. A person is guilty of permitting prostitution when, having possession or control of premises which he knows are being used for prostitution purposes, he fails to make reasonable effort to halt or abate such use.

Permitting prostitution is a class A misdemeanor.

SEC. 91. The court before which is pending any case involving a violation of any provision of sections 66 to 90, inclusive, of this act may, before final disposition of such case, order the examination of the accused person to determine whether or not he is suffering from any venereal disease, unless the court from which such case has been bound over has ordered the examination of the accused person for such purpose, in which event the court to which such bindover is taken may determine that a further examination is unnecessary. A report of the result

of such examination shall be filed with the state department of health on a form supplied by it. If such examination discloses the presence of venereal disease, the court may make such order with reference to the continuance of the case or detention, treatment or other disposition of such person as the public health and welfare require. Such examination shall be conducted at the expense of the state department of health. Any person who fails to comply with any order of any court under the provisions of this section shall be guilty of a class C misdemeanor.

SEC. 92. The following definitions are applicable to sections 93 to 101, inclusive, of this act:

(1) "Restrain" means to restrict a person's movements intentionally and unlawfully in such a manner as to interfere substantially with his liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in a place to which he has been moved, without consent. As used herein "without consent" means, but is not limited to (a) deception and (b) any means whatever, including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of him has not acquiesced in the movement or confinement.

(2) "Abduct" means to restrain a person with intent to prevent his liberation by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use physical force or intimidation.

(3) "Relative" means a parent, ancestor, brother, sister, uncle or aunt.

SEC. 93. A person is guilty of kidnapping in the first degree when he abducts another person and when:

(1) His intent is to compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct or to refrain from engaging in particular conduct; or

(2) he restrains the person abducted with intent to (a) inflict physical injury upon him or violate or abuse him sexually; or (b) accomplish or advance the commission of a felony; or (c) terrorize him or a third person; or (d) interfere with the performance of a government function; or

(3) the person abducted dies during the abduction or before he is able to return or to be returned to safety. Such death shall be presumed, in a case where such person was less than sixteen years old or an incompetent person at the time of the abduction, from evidence that his parents, guardians or other lawful custodians did not see or hear from him following the termination of the abduction and prior to trial and received no reliable information during such period persuasively indicating that he was alive. In all other cases, such death shall be presumed from evidence that a person whom the person abducted would have been extremely likely to visit or communicate with during the specified period were he alive and free to do so did not see or hear from him during such period and received no

reliable information during such period persuasively indicating that he was alive.

SEC. 94. (a) Kidnapping in the first degree is punishable as a class A felony unless the death sentence is imposed as provided by section 46 of this act.

(b) When the court and the state's attorney consent, a person indicted for kidnapping in the first degree may plead guilty thereto, in which case the court shall sentence him as for a class A felony.

SEC. 95. When a defendant has been found guilty after trial of kidnapping in the first degree: (a) The court, if it is satisfied that the person kidnapped has been voluntarily returned alive or voluntarily released alive under circumstances enabling him to return to safety without substantial risk of death, or that the sentence of death is not warranted because of substantial mitigating circumstances, shall discharge the jury, if any, and sentence the defendant as for a class A felony; or (b) if the defendant is not sentenced in accordance with subsection (a), the court shall conduct a proceeding to determine whether the defendant should be sentenced as for a class A felony or to death in the manner prescribed in section 46 of this act and all the provisions of said section 46 relating to procedure and to determination and imposition of sentence, appeal, remand and re-sentence shall apply.

SEC. 96. A person is guilty of kidnapping in the second degree when he abducts another person.

Kidnapping in the second degree is a class B felony.

SEC. 97. A person is guilty of unlawful restraint in the first degree when he restrains another person under circumstances which expose the latter to a substantial risk of physical injury.

Unlawful restraint in the first degree is a class D felony.

SEC. 98. A person is guilty of unlawful restraint in the second degree when he restrains another person.

Unlawful restraint in the second degree is a class A misdemeanor.

SEC. 99. A person is guilty of custodial interference in the first degree when he commits the crime of custodial interference in the second degree as defined in section 100 of this act:

(1) Under circumstances which expose the child or person taken or enticed from lawful custody to a risk that his safety will be endangered or his health materially impaired; or (2) if he takes or entices the child or person out of this state.

Custodial interference in the first degree is a class D felony.

SEC. 100. A person is guilty of custodial interference in the second degree when:

(1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; or

(2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution.

Custodial interference in the second degree is a class A misdemeanor.

SEC. 101. A person is guilty of substitution of children when, having been temporarily entrusted with a child less than one year old and intending to deceive a parent, guardian or other lawful custodian of such child, he substitutes, produces or returns to such parent, guardian or custodian a child other than the one entrusted.

Substitution of children is a class D felony.

SEC. 102. (a) The following definitions are applicable to sections 103 to 119, inclusive, of this act:

(1) "Building" in addition to its ordinary meaning, includes any watercraft, aircraft, trailer, sleeping car, or other structure or vehicle, adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not occupied by the actor is, in addition to being a part of such building, a separate building.

(2) "Dwelling" means a building which is usually occupied by a person lodging therein at night, whether or not a person is actually present.

(3) "Night" means the period between thirty minutes after sunset and thirty minutes before sunrise.

(b) The following definition is applicable to sections 103 to 108, inclusive, of this act: A person "enters or remains unlawfully" in or upon premises when the premises, at the time of such entry or remaining, are not open to the public and when the actor is not otherwise licensed or privileged to do so.

SEC. 103. (a) A person is guilty of burglary in the first degree when he enters or remains unlawfully in a building with intent to commit a crime therein and:

(1) He is armed with explosives or a deadly weapon or dangerous instrument, or

(2) in the course of committing the offense, he intentionally, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone.

(b) An act shall be deemed "in the course of committing" the offense if it occurs in an attempt to commit the offense or flight after the attempt or commission.

Burglary in the first degree is a class B felony.

SEC. 104. A person is guilty of burglary in the second degree when he enters or remains unlawfully in a dwelling at night with intent to commit a crime therein.

Burglary in the second degree is a class C felony.

SEC. 105. A person is guilty of burglary in the third degree when he enters or remains unlawfully in a building with intent to commit a crime therein.

Burglary in the third degree is a class D felony.

SEC. 106. It shall be an affirmative defense to prosecution for burglary that the building was abandoned.

SEC. 107. A person may not be convicted both for burglary and for the offense which it was his intent to commit after the unlawful entry or remaining unless the additional offense constitutes a felony.

SEC. 108. A person is guilty of manufacturing or possession of burglar's tools when he manufactures or has in his possession any tool, instrument or other thing adapted, designed or commonly used for advancing or facilitating offenses involving

unlawful entry into premises, or offenses involving forcible breaking of safes or other containers or depositories of property, under circumstances manifesting an intent to use or knowledge that some person intends to use the same in the commission of an offense of such character.

Manufacture or possession of burglar's tools is a class A misdemeanor.

SEC. 109. A person is guilty of criminal trespass in the first degree when, knowing that he is not licensed or privileged to do so, he enters or remains in a building or any other premises after an order to leave or not to enter personally communicated to him by the owner of the premises or other authorized person.

Criminal trespass in the first degree is a class A misdemeanor.

SEC. 110. A person is guilty of criminal trespass in the second degree when, knowing that he is not licensed or privileged to do so, he enters or remains in a building.

Criminal trespass in the second degree is a class B misdemeanor.

SEC. 111. A person is guilty of criminal trespass in the third degree when, knowing that he is not licensed or privileged to do so, he enters or remains in premises which are posted in a manner prescribed by law or reasonably likely to come to the attention of intruders, or fenced or otherwise enclosed in a manner designed to exclude intruders, or which belong to the state and are appurtenant to any state institution.

Criminal trespass in the third degree is a class C misdemeanor.

SEC. 112. It shall be an affirmative defense to prosecution for criminal trespass that: (1) The building involved in the offense was abandoned; or (2) the premises, at the time of the entry or remaining, were open to the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or (3) the actor reasonably believed that the owner of the premises, or a person empowered to license access thereto, would have licensed him to enter or remain, or that he was licensed to do so.

SEC. 113. A person is guilty of arson in the first degree when, with intent to destroy or damage a building, he starts a fire or causes an explosion, and (1) at the time, another person is present in such building or is so close to such building as to be in substantially the same danger as a person in such building would be, and (2) the actor is either aware that a person is present in or close to such building, or his conduct manifests an indifference as to whether a person is present in or close to such building.

Arson in the first degree is a class B felony.

SEC. 114. A person is guilty of arson in the second degree when he starts a fire or causes an explosion:

(1) With intent to destroy or damage a building (a) of another, or (b) whether his own or another's, to collect insurance for such loss; and

(2) such act subjects another person to a substantial risk of bodily injury or another building to a substantial risk of destruction or damage.

Arson in the second degree is a class C felony.

SEC. 115. A person is guilty of arson in the third degree if

he recklessly causes destruction or damage to a building of another by intentionally starting a fire or causing an explosion.

Arson in the third degree is a class D felony.

SEC. 116. A person is guilty of reckless burning if he intentionally starts a fire or causes an explosion, whether on his own property or another's, and thereby recklessly places a building of another in danger of destruction or damage.

Reckless burning is a class A misdemeanor.

SEC. 117. A person is guilty of criminal mischief in the first degree when:

(1) With intent to cause damage to tangible property of another and having no reasonable ground to believe that he has a right to do so, he damages tangible property of another in an amount exceeding one thousand five hundred dollars, or

(2) with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that he has a right to do so, he damages or tampers with tangible property of a utility or mode of public transportation, power or communication, and thereby causes an interruption or impairment of service rendered to the public.

Criminal mischief in the first degree is a class D felony.

SEC. 118. A person is guilty of criminal mischief in the second degree when:

(1) With intent to cause damage to tangible property of another and having no reasonable ground to believe that he has a right to do so, he damages tangible property of another in an amount exceeding two hundred fifty dollars; or

(2) with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that he has a right to do so, he damages or tampers with tangible property of a public utility or mode of public transportation, power or communication, and thereby causes a risk of interruption or impairment of service rendered to the public.

Criminal mischief in the second degree is a class A misdemeanor.

SEC. 119. A person is guilty of criminal mischief in the third degree when, having no reasonable ground to believe that he has a right to do so, he:

(1) Intentionally or recklessly (a) damages tangible property of another, or (b) tampers with tangible property of another and thereby causes such property to be placed in danger of damage; or

(2) damages tangible property of another by negligence involving the use of any potentially harmful or destructive force or substance, such as fire, explosives, flood, avalanche, collapse of building, poison gas or radioactive material.

Criminal mischief in the third degree is a class B misdemeanor.

SEC. 120. (a) The following definitions are applicable to sections 121 to 138, inclusive, of this act: (1) "Property" means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam and water constitute property, but the supplying of such a commodity to premises from an outside source by means of

wires, pipes, conduits or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

(2) "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

(3) To "deprive" another of property means (A) to withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him, or (B) to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

(4) To "appropriate" property of another to oneself or a third person means (A) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit, or (B) to dispose of the property for the benefit of oneself or a third person.

(5) An "owner" means any person who has a right to possession superior to that of a taker, obtainer or withholder.

(b) A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds it from him by larcenous means.

(c) A joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof.

(d) In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest therein, even if legal title lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

SEC. 121. A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. Larceny includes, but is not limited to:

(a) Embezzlement. A person commits embezzlement when he wrongfully appropriates to himself or to another property of another in his care or custody.

(b) Obtaining property by false pretenses. A person obtains property by false pretenses when, by any false token, pretense or device, he obtains from another any property, with intent to defraud him or any other person.

(c) Obtaining property by false promise. A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or does not believe that the third person intends to engage in such conduct. In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that

such promise was not performed. Such a finding shall be based upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed.

(d) Acquiring property lost, mislaid or delivered by mistake. A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of larceny if, with purpose to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to it.

(e) Extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

- (1) Cause physical injury to some person in the future; or
- (2) cause damage to property; or
- (3) engage in other conduct constituting a crime; or
- (4) accuse some person of a crime or cause criminal charges to be instituted against him; or
- (5) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (6) cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
- (7) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (8) use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (9) inflict any other harm which would not benefit the actor.

(f) Committing the crime of defrauding of public community. Any officer or agent of any public community is guilty of defrauding of public community who, with intent to prejudice it, appropriates its property to the use of any person or draws any order upon its treasury or presents or aids in procuring to be allowed any fraudulent claim against such community. For purposes of this section such order or claim shall be deemed to be property.

(g) Committing the crime of theft of services, as defined in section 122 of this act.

(h) Committing the crime of receiving stolen property, as defined in section 128 of this act.

Sec. 122. (a) The following definitions are applicable to this section:

- (1) "Service" includes, but is not limited to, labor, pro-

fessional service, public utility and transportation service, the supplying of hotel accommodations, restaurant services, entertainment, and the supplying of equipment for use.

(2) "Credit card" means any instrument, whether known as a credit card, credit plate, charge plate, or by any other name, which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(b) A person is guilty of theft of services when:

(1) With intent to defraud, he obtains a service, or induces the supplier of a rendered service to agree to payment therefor on a credit basis, by the use of a credit card which he knows to be stolen, forged, revoked, cancelled, unauthorized or in any way invalid for the purpose; or

(2) with intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false; or

(3) with intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor or to avoid payment of the lawful charge for such transportation service which has been rendered to him, he obtains such service or avoids payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay; or

(4) with intent to avoid payment by himself, or another person of the lawful charge for a telecommunication service, he obtains such service or avoids payment therefor by himself or another person by means of (A) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (B) any misrepresentation of fact which he knows to be false, or (C) any other artifice, trick, deception, code or device; or

(5) with intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device provided by the supplier of the service, he tampers with such device or with other equipment related thereto, or in any manner attempts to prevent the meter or device from performing its measuring function, without the consent of the supplier of the service. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved; or

(6) with intent to obtain, without the consent of the supplier thereof, gas, electricity, water, steam or telephone service, he tampers with any equipment of the supplier thereof designed to supply or to prevent the supply of such service either to the community in general or to particular premises; or

(7) obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not entitled to the use thereof, and with intent to derive a

commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.

SEC. 123. (a) For the purposes of sections 120 to 138, inclusive, of this act, the value of property or services shall be ascertained as follows:

(1) Except as otherwise specified in this section, value means the market value of the property or services at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property or services within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows: (A) The value of an instrument constituting evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied; (B) the value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(3) When the value of property or services cannot be satisfactorily ascertained pursuant to the standards set forth in this section, its value shall be deemed to be an amount less than fifty dollars.

(b) Amounts included in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

SEC. 124. A person is guilty of larceny in the first degree when:

(1) the property or service regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will cause physical injury to some person in the future, or cause damage to property, or use or abuse his position as a public servant by engaging in conduct within or related to his official duties or by failing or refusing to perform an official duty, in such a manner as to affect some person adversely, or

(2) the value of the property or service exceeds two thousand dollars.

Larceny in the first degree is a class D felony.

SEC. 125. A person is guilty of larceny in the second degree when the value of the property or service exceeds five hundred dollars.

Larceny in the second degree is a class A misdemeanor.

SEC. 126. A person is guilty of larceny in the third degree when:

(1) The value of the property or service exceeds fifty dollars; or

(2) the property consists of a public record, writing or in-

strument kept, held or deposited according to law with or in the keeping of any public office or public servant; or

(3) the property consists of a sample, culture, micro-organism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a secret scientific or technical process, invention or formula or any phase or part thereof. A process, invention or formula is "secret" when it is not, and is not intended to be, available to anyone other than the owner thereof or selected persons having access thereto for limited purposes with his consent, and when it accords or may accord the owner an advantage over competitors or other persons who do not have knowledge or the benefit thereof; or

(4) the property, regardless of its nature and value, is taken from the person of another; or

(5) the property or service, regardless of its nature and value, is obtained by extortion.

Larceny in the third degree is a class B misdemeanor.

SEC. 127. A person is guilty of larceny in the fourth degree when the value of the property or services is fifty dollars or less.

Larceny in the fourth degree is a class C misdemeanor.

SEC. 128. A person is guilty of larceny by receiving stolen property if he receives, retains, or disposes of stolen property knowing that it has probably been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

SEC. 129. Any person who fraudulently procures for himself or another, from any employee of the state or any department thereof, the benefit of any labor which the state or any department thereof is entitled to receive from such employee during his hours of employment or fraudulently aids or assists in procuring or attempting to procure the benefit of any such labor shall be guilty of diversion from the state of benefit of labor of employees.

Diversion from the state of benefit of labor of employees is a class A misdemeanor.

SEC. 130. (a) The following definitions are applicable to this section:

(1) "Check" means any check, draft or similar sight order for the payment of money which is not post-dated with respect to the time of issuance.

(2) "Drawer" of a check means a person whose name appears thereon as the primary obligor, whether the actual signature be that of himself or of a person purportedly authorized to draw the check in his behalf.

(3) "Representative drawer" means a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor.

(4) A person "issues" a check when, as a drawer or representative drawer thereof, he delivers it or causes it to be deliv-

ered to a person who thereby acquires a right against the drawer with respect to such check. One who draws a check with intent that it be so delivered is deemed to have issued it if the delivery occurs.

(5) A person "passes" a check when, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and issued by another, he delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect thereto.

(6) "Funds" means money or credit.

(7) A drawer has "insufficient funds" with a drawee to cover a check when he has no funds or account whatever, or funds in an amount less than that of the check; and a check dishonored for "no account" shall also be deemed to have been dishonored for "insufficient funds."

(8) "Credit" means an arrangement or understanding with such bank or depository for the payment of such check, draft or order in full on presentation.

(b) A person is guilty of issuing a bad check when:

(1) As a drawer or representative drawer, he issues a check knowing that he or his principal, as the case may be, does not then have sufficient funds with the drawee to cover it, and (A) he intends or believes at the time of issuance that payment will be refused by the drawee upon presentation, and (B) payment is refused by the drawee upon presentation; or

(2) he passes a check knowing that the drawer thereof does not then have sufficient funds with the drawee to cover it, and (A) he intends or believes at the time the check is passed that payment will be refused by the drawee upon presentation, and (B) payment is refused by the drawee upon presentation.

(c) For the purposes of this section, an issuer is presumed to know that the check or order, other than a post-dated check or order, would not be paid, if: (1) The issuer had no account with the drawee at the time the check or order was issued; or (2) payment was refused by the drawee for insufficient funds upon presentation within thirty days after issue and the issuer failed to make good within eight days after receiving notice of such refusal.

Issuing a bad check is a class A misdemeanor.

SEC. 131. (a) A person is guilty of misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that the same will be returned to the owner at a future time, he loans, leases, pledges, pawns or otherwise encumbers such property without the consent of the owner thereof in such manner as to create a risk that the owner will not be able to recover it or will suffer pecuniary loss.

(b) In any prosecution under this section, it shall be a defense that, at the time the prosecution was commenced, (1) the defendant had recovered possession of the property, unencumbered as a result of the unlawful disposition, and (2) the owner had suffered no material economic loss as a result of the unlawful disposition.

Misapplication of property is a class A misdemeanor.

SEC. 132. A person is guilty of criminal impersonation when he:

(1) Impersonates another and does an act in such assumed

character with intent to obtain a benefit or to injure or defraud another; or

(2) pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit or to injure or defraud another; or

(3) pretends to be a public servant, or wears or displays without authority any uniform or badge by which such public servant is lawfully distinguished, with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

Criminal impersonation is a class B misdemeanor.

SEC. 133. A person is guilty of unlawfully concealing a will when, with intent to defraud, he conceals, secrets, suppresses, mutilates, or destroys a will, codicil or other testamentary instrument.

Unlawfully concealing a will is a class A misdemeanor.

SEC. 134. Any officer or agent of any public community is guilty of false entry by officer or agent of public community who makes any intentionally false entry on its books.

False entry by officer or agent of public community is a class A misdemeanor.

SEC. 135. A person commits robbery when in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of: (1) Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or (2) compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.

SEC. 136. A person is guilty of robbery in the first degree when in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime: (1) Causes serious physical injury to any person who is not a participant in the crime; or (2) is armed with a deadly weapon or dangerous instrument.

Robbery in the first degree is a class B felony.

SEC. 137. A person is guilty of robbery in the second degree when he commits robbery and (1) he is aided by another person actually present; or (2) he or another participant in the crime threatens the use of what purports to be or what he represents by his words or conduct to be a deadly weapon or a dangerous instrument.

Robbery in the second degree is a class C felony.

SEC. 138. A person is guilty of robbery in the third degree when he commits robbery.

Robbery in the third degree is a class D felony.

SEC. 139. The following definitions are applicable to sections 140 to 147, inclusive, of this act:

(1) "Written instrument" means any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(2) "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with re-

spect to every essential feature thereof. An endorsement, attestation, acknowledgment or other similar signature or statement is deemed both a complete written instrument in itself and a part of the main instrument in which it is contained or to which it attaches.

(3) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

(4) A person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof.

(5) A person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

(6) A person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

(7) "Forged instrument" means a written instrument which has been falsely made, completed or altered.

SEC. 140. A person is guilty of forgery in the first degree when, with intent to defraud, deceive or injure another, he falsely makes, completes, or alters a written instrument or issues or possesses any written instrument which he knows to be forged, which is or purports to be, or which is calculated to become or represent if completed:

(1) Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality; or

(2) part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property.

Forgery in the first degree is a class D felony.

SEC. 141. (a) A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument or issues or possesses any written instrument which he knows to be forged, which is or purports to be, or which is calculated to become or represent if completed:

(1) A deed, will, codicil, contract, assignment, commercial instrument or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or

(2) a public record or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or

(3) a written instrument officially issued or created by a public office, public servant or governmental instrumentality; or

(4) a prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

(b) "Drugs" as used in this section includes all drugs except narcotic drugs or controlled drugs as defined in section 19-443 of the general statutes.

Forgery in the second degree is a class A misdemeanor.

SEC. 142. A person is guilty of forgery in the third degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument, or alters or possesses any written instrument which he knows to be forged.

Forgery in the third degree is a class B misdemeanor.

SEC. 143. A person is guilty of criminal simulation when:

(1) With intent to defraud, he makes or alters any object in such manner that it appears to have an antiquity, rarity, source or authorship which it does not in fact possess; or

(2) with knowledge of its true character and with intent to defraud, he issues or possesses an object so simulated.

Criminal simulation is a class A misdemeanor.

SEC. 144. A person is guilty of forgery of symbols of value when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument or issues or possesses any written instrument which he knows to be forged, which is or purports to be, or which is calculated to become or represent if completed part of an issue of tokens, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services.

Forgery of symbols of value is a class A misdemeanor.

Sec. 145. The following definitions are applicable to sections 146 and 147 of this act.

(a) "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle designed (1) to receive a coin or bill or token made for the purpose, and (2) in return for the insertion or deposit thereof, automatically to offer, to provide, to assist in providing or to permit the acquisition of some property or some service.

(b) "Slug" means an object or article which, by virtue of its size, shape or any other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill or token.

(c) "Value" of a slug means the value of the coin, bill or token for which it is capable of being substituted.

SEC. 146. A person is guilty of unlawfully using slugs in the first degree when he makes, possesses or disposes of slugs with intent to enable a person to insert or deposit them in a coin machine, and the value of such slugs exceeds one hundred dollars.

Unlawfully using slugs in the first degree is a class B misdemeanor.

SEC. 147. A person is guilty of unlawfully using slugs in the second degree when:

(1) With intent to defraud the owner of a coin machine, he inserts or deposits a slug in such machine; or

(2) he makes, possesses or disposes of a slug with intent to enable a person to insert or deposit it in a coin machine.

Unlawfully using slugs in the second degree is a class C misdemeanor.

SEC. 148. For purposes of sections 149 to 169, inclusive, of this act:

(1) An "official proceeding" is any proceeding held or which may be held before any legislative, judicial, administrative or other agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner or notary or other person taking evidence in connection with any proceeding.

(2) "Benefit" means gain or advantage, or anything regarded by the beneficiary as a gain or advantage, including benefit to any person or entity in whose welfare he is interested.

(3) "Public Servant" is an officer or employee of government, elected or appointed, and any person participating as advisor, consultant or otherwise in performing a governmental function.

(4) "Government" includes any branch, subdivision or agency of the state or any locality within it.

(5) "Labor official" means any duly appointed or elected representative of a labor organization or any duly appointed or elected trustee or representative of an employee welfare trust fund.

(6) "Witness" is any person summoned, or who may be summoned, to give testimony in an official proceeding.

(7) "Juror" is any person who has been drawn or summoned to serve or act as a juror in any court.

(8) "Physical evidence" means any article, object, document, record or other thing of physical substance which is or is about to be produced or used as evidence in an official proceeding.

SEC. 149. A person is guilty of bribery if he offers, confers or agrees to confer upon a public servant any benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant.

Bribery is a class D felony.

SEC. 150. A public servant is guilty of bribe receiving if he solicits, accepts or agrees to accept from another any benefit as consideration for his decision, opinion, recommendation, vote or other exercise of discretion.

Bribe receiving is a class D felony.

SEC. 151. A person is guilty of bribery of a witness if he offers, confers or agrees to confer upon a witness any benefit to influence the testimony or conduct of such witness in, or in relation to, an official proceeding.

Bribery of a witness is a class D felony.

SEC. 152. A witness is guilty of bribe receiving by a wit-

ness if he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his testimony or conduct in, or in relation to, any official proceeding.

Bribe receiving by a witness is a class D felony.

SEC. 153. A person is guilty of tampering with a witness if, believing that an official proceeding is pending or about to be instituted, he induces or attempts to induce a witness to testify falsely, withhold testimony, elude legal process summoning him to testify or absent himself from any official proceeding.

Tampering with a witness is a class D felony.

SEC. 154. A person is guilty of bribery of a juror if he offers, confers or agrees to confer upon a juror any benefit as consideration for the juror's decision or vote.

Bribery of a juror is a class D felony.

SEC. 155. A juror is guilty of bribe receiving by a juror if he solicits, accepts or agrees to accept from another any benefit as consideration for his decision or vote.

Bribe receiving by a juror is a class D felony.

SEC. 156. A person is guilty of tampering with a juror if he influences any juror in relation to any official proceeding to or for which such juror has been drawn, summoned or sworn.

Tampering with a juror is a class D felony.

SEC. 157. A person is guilty of tampering with or fabricating physical evidence if, believing that an official proceeding is pending, or about to be instituted, he:

(1) Alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such proceeding; or

(2) makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such official proceeding.

Tampering with or fabricating physical evidence is a class D felony.

SEC. 158. A person is guilty of perjury if, in any official proceeding, he intentionally, under oath, makes a false statement, swears, affirms or testifies falsely, to a material statement which he does not believe to be true.

Perjury is a class D felony.

SEC. 159. A person is guilty of false statement when he intentionally makes a false written statement under oath or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable, which he does not believe to be true and which statement is intended to mislead a public servant in the performance of his official function.

False statement is a class A misdemeanor.

SEC. 160. A person is guilty of bribery of a labor official if he offers, confers or agrees to confer upon a labor official any benefit with intent to influence him in respect to any of his acts, decisions or duties as such labor official.

Bribery of a labor official is a class D felony.

SEC. 161. A labor official is guilty of bribe receiving by a labor official if he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding

that such benefit will influence him in respect to any of his acts, decisions or duties as such labor official.

Bribe receiving by a labor official is a class D felony.

SEC. 162. A person is guilty of commercial bribery when he confers, or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs.

Commercial bribery is a class A misdemeanor.

SEC. 163. An employee, agent or fiduciary is guilty of receiving a commercial bribe when, without consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs.

Receiving a commercial bribe is a class A misdemeanor.

SEC. 164. A person is guilty of rigging if, with intent to prevent a publicly exhibited sporting or other contest from being conducted in accordance with the rules and usages purporting to govern it, he:

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

(2) tampers with any person, animal or thing.

Rigging is a class D felony.

SEC. 165. A person is guilty of soliciting or accepting benefit for rigging if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under section 164 of this act.

Soliciting or accepting benefit for rigging is a class A misdemeanor.

SEC. 166. A person is guilty of participation in a rigged contest if he knowingly engages in, sponsors, produces, judges or otherwise participates in a publicly exhibited sporting or other contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct which would be criminal under this section.

Participation in a rigged contest is a class A misdemeanor.

SEC. 167. As used in section 168 and 169 of this act, a person "renders criminal assistance" when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom he knows or believes has committed a felony or is being sought by law enforcement officials for the commission of a felony, or with intent to assist a person in profiting or benefiting from the commission of a felony, he:

(1) Harbors or conceals such person; or

(2) warns such person of impending discovery or apprehension; or

(3) provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or

(4) prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid

in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or

(5) suppresses, by an act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or

(6) aids such person to protect or expeditiously profit from an advantage derived from such crime.

SEC. 168. A person is guilty of hindering prosecution in the first degree when he renders criminal assistance to a person who has committed a class A or class B felony.

Hindering prosecution in the first degree is a class D felony.

SEC. 169. A person is guilty of hindering prosecution in the second degree when he renders criminal assistance to a person who has committed a class C or class D felony.

Hindering prosecution in the second degree is a class A misdemeanor.

SEC. 170. For purposes of sections 171 and 173 of this act:

(1) Correctional institution means the facilities defined in section 1-1 of the general statutes, and any other correctional facility established by the commissioner of correction.

(2) Custody means restraint by a public servant pursuant to an arrest or court order.

SEC. 171. A person is guilty of escape from a correctional institution if he escapes from a correctional institution.

Escape from a correctional institution is a class C felony.

SEC. 172. A person is guilty of escape from custody if he escapes from custody.

If a person has been arrested for, charged with or convicted of a felony, escape from such custody is a class D felony, otherwise, escape from custody is a class A misdemeanor.

SEC. 173. A person who escapes from any correctional institution while employed at work outside such correctional institution, is guilty of escape while at work.

Escape while at work is a class D felony.

SEC. 174. Any person who, while charged with the commission of a felony and while out on bail or released under other procedure of law, willfully fails to appear when legally called according to the terms of his bail bond or promise to appear, is guilty of failure to appear in the first degree.

Failure to appear in the first degree is a class D felony.

SEC. 175. Any person who, while charged with the commission of a misdemeanor and while out on bail or released under other procedure of law, willfully fails to appear when legally called according to the terms of his bail bond or promise to appear, is guilty of failure to appear in the second degree.

Failure to appear in the second degree is a class A misdemeanor.

SEC. 176. (a) Any person not authorized by law who conveys or passes, or causes to be conveyed or passed, into any correctional institution or the grounds or buildings thereof, or to any inmate of such an institution who is outside the premises thereof and known to the person so conveying or passing or causing such conveying or passing to be such an inmate, who receives or possesses any narcotic or hypnotic drug, any intoxi-

cating liquors, any firearm, weapon or explosive of any kind, or any rope, ladder or other instrument or device for use in making, attempting or aiding an escape, shall be guilty of a class D felony. The unauthorized conveying, passing or possession of any rope or ladder or other instrument or device, adapted for use in making or aiding an escape, into any such institution or the grounds or buildings thereof, shall be presumptive evidence that it was so conveyed, passed or possessed for such use.

(b) Any person not authorized by law who conveys into any such institution, any letter or other missive which is intended for any person confined therein, or who conveys from within the enclosure to the outside of such institution any letter or other missive written or given by any person confined therein, shall be guilty of a class A misdemeanor.

SEC. 177. A person is guilty of riot in the first degree when simultaneously with six or more other persons he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm, and in the course of and as a result of such conduct, a person other than one of the participants suffers physical injury or substantial property damage occurs.

Riot in the first degree is a class A misdemeanor.

SEC. 178. A person is guilty of riot in the second degree when, simultaneously with two or more other persons, he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm.

Riot in the second degree is a class B misdemeanor.

SEC. 179. A person is guilty of unlawful assembly when he assembles with two or more other persons for the purpose of engaging in conduct constituting the crime of riot, or when, being present at an assembly which either has or develops such a purpose, he remains there with intent to advance that purpose.

Unlawful assembly is a class B misdemeanor.

SEC. 180. A person is guilty of inciting to riot when he advocates, urges or organizes six or more persons to engage in tumultuous and violent conduct of a kind likely to create public alarm.

Inciting to riot is a class A misdemeanor.

SEC. 181. A person is guilty of criminal advocacy when (1) he advocates the overthrow of the existing form of government of this state or any subdivision thereof by imminent dangerous action, or (2) with knowledge of its contents, he publishes, sells or distributes any document which advocates such imminent dangerous action.

Criminal advocacy is a class D felony.

SEC. 182. A person is guilty of falsely reporting an incident when, knowing the information reported, conveyed or circulated to be false or baseless, he:

(1) Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe or emergency under circumstances in which it is likely that public alarm or inconvenience will result; or

(2) reports, by word or action, to any official or quasi-of-

ficial agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion or other catastrophe or emergency which did not in fact occur or does not in fact exist; or

(3) gratuitously reports to a law enforcement officer or agency the alleged occurrence of an offense or incident which did not in fact occur; or an allegedly impending occurrence of an offense or incident which in fact is not about to occur; or false information relating to an actual offense or incident or to the alleged implication of some person therein.

Falsely reporting an incident is a class B misdemeanor.

SEC. 183. A person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or

(2) assaults or strikes another; or

(3) threatens to commit any crime against another person or his property; or

(4) publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter concerning any person; or

(5) in a public place, uses abusive or obscene language or makes an obscene gesture; or

(6) creates a public, hazardous or physically offensive condition by any act which he is not licensed or privileged to do.

Breach of peace is a class B misdemeanor.

SEC. 184. A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(1) Engages in fighting or in violent, tumultuous or threatening behavior; or

(2) by offensive or disorderly conduct, annoys or interferes with another person; or

(3) makes unreasonable noise; or

(4) without lawful authority, disturbs any lawful assembly or meeting of persons; or

(5) obstructs vehicular or pedestrian traffic; or

(6) congregates with other persons in a public place and refuses to comply with a reasonable official request or order to disperse.

Disorderly conduct is a class C misdemeanor.

SEC. 185. (a) A person is guilty of harassment when:

(1) By telephone, he addresses another in or uses indecent or obscene language; or

(2) with intent to harass, annoy or alarm another person, he communicates with a person by telephone, mail, or any other form of written communication, in a manner likely to cause annoyance or alarm; or

(3) with intent to harass, annoy or alarm another person, he makes a telephone call, whether or not a conversation ensues, in a manner likely to cause annoyance or alarm.

(b) For purposes of this section such offense may be deemed to have been committed either at the place where the tele-

phone call was made, or at the place where it was received. The court may order any person convicted under this section to be examined by one or more psychiatrists.

Harassment is a class C misdemeanor.

SEC. 186. (a) A person is guilty of intoxication when he is under the influence of alcohol, narcotic drug or controlled drug, as defined in section 19-443 of the general statutes, or other substance, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

(b) The court in its discretion may commit to the custody and control of the department of mental health or to any appropriate facility within that department for not less than thirty days nor more than twelve months, or until discharged within that period by the commissioner of mental health:

(1) Any person charged under this section who requests such commitment, if the court finds that there is reasonable ground to believe such a person is an alcoholic and if such request is granted before conviction, the criminal proceeding shall be dismissed.

(2) Any person found guilty under this section who has been convicted previously, under this section or under section 53-246 of the general statutes, revision of 1958, revised to 1968, at least twice in the last-preceding six months or four times in the last-preceding year.

(c) The defendant shall be advised of his rights under subsection (b) by the court before being put to plea.

(d) Notwithstanding the provisions of subsection (a), in lieu of arrest, a police officer in his discretion may escort an intoxicated person to a civil facility for the care of alcoholics.

Intoxication shall be deemed an unclassified misdemeanor, the sentence for which shall be imprisonment for a period of not more than thirty days or a fine of not more than twenty dollars or both.

SEC. 187. A person is guilty of loitering on school grounds when he loiters or remains in or about a school building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or any other license or privilege to be there.

Loitering in or about school grounds is a class C misdemeanor.

SEC. 188. Any person who performs any of the following acts in a public place is guilty of public indecency: (1) An act of sexual intercourse; or (2) an act of deviate sexual conduct; or (3) a lewd exposure of the body with intent to arouse or to satisfy the sexual desire of the person; or (4) a lewd fondling or caress of the body of another person. Public place, for the purposes of this section, means any place where the conduct may reasonably be expected to be viewed by others.

Public indecency is a class B misdemeanor.

SEC. 189. (a) The following definitions are applicable to sections 190 and 191 of this act:

(1) "Wiretapping" means the intentional overhearing or recording of a telephonic or telegraphic communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any in-

strument, device or equipment. The normal operation of a telephone or telegraph corporation and the normal use of the services and facilities furnished by such corporation pursuant to its tariffs shall not be deemed "wiretapping."

(2) "Mechanical overhearing of a conversation" means the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment.

(3) "Unlawfully" means not specifically authorized by law.

(b) This section and sections 190 and 191 of this act shall not apply to wiretapping by criminal law enforcement officials in the lawful performance of their duties and does not affect the admissibility of evidence in any proceedings other than a prosecution for eavesdropping or tampering with private communications.

SEC. 190. A person is guilty of tampering with private communications when:

(1) Knowing that he does not have the consent of the sender or receiver, he obtains from an employee, officer or representative of a telephone or telegraph corporation, by connivance, deception, intimidation or in any other manner, information with respect to the contents or nature of a telephonic or telegraphic communication; or

(2) knowing that he does not have the consent of the sender or receiver, and being an employee, officer or representative of a telephone or telegraph corporation, he knowingly divulges to another person the contents or nature of a telephonic or telegraphic communication.

Tampering with private communications is a class A misdemeanor.

SEC. 191. A person is guilty of eavesdropping when he unlawfully engages in wiretapping or mechanical overhearing of a conversation.

Eavesdropping is a class D felony.

SEC. 192. (a) Any person is guilty of bigamy who marries or purports to marry another person in this state if either is lawfully married; or so marries or purports to marry another person in any other state or country in violation of the laws thereof, and knowingly cohabits and lives with such other person in this state as husband and wife.

(b) It shall be an affirmative defense to the charge of bigamy that at the time of the subsequent marriage or purported marriage: (1) The actor reasonably believed, based on persuasive and reliable information, that the prior spouse was dead; or

(2) a court had entered a judgment purporting to terminate or annul any prior disqualifying marriage and the actor did not know that such judgment was invalid; or

(3) the single person did not know that the other was legally married.

Bigamy is a class D felony.

SEC. 193. A person is guilty of incest when he marries or engages in sexual intercourse with a person whom he knows

to be related to him within any of the degrees of kindred specified in section 46-1 of the general statutes.

Incest is a class D felony.

SEC. 194. A person is guilty of coercion when he compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

- (1) Commit any criminal offense; or
- (2) accuse anyone of a criminal offense; or
- (3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or
- (4) take or withhold action as an official, or cause an official to take or withhold action.

It shall be an affirmative defense to prosecution based on subsections (2), (3), or (4) that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior or making good a wrong done.

Criminal coercion is a class A misdemeanor unless the threat is to commit a felony, in which case the offense is a class D felony.

SEC. 195. The following definitions are applicable to sections 195 to 198, inclusive, of this act: (a) Any material or performance is "obscene" if (1) considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism, (2) it goes substantially beyond customary limits of candor in describing or representing such matters, and (3) it is utterly without redeeming social value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for some other specially susceptible audience.

(b) Material or a performance is "obscene as to minors" if it depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse and, taken as a whole, it is harmful to minors. For purposes of this subsection:

- (1) "Minor" means any person less than seventeen years old.
- (2) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(3) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person is a female, breast.

(4) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(5) "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(6) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when (A) it predominantly appeals to the prurient, shameful or morbid interest of minors, (B) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (c) it is utterly without redeeming social importance for minors.

(c) "Material" means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner. Undeveloped photographs, molds, printing plates, and the like, may be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(d) "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

(e) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, advertise, produce, direct or participate in.

SEC. 196. A person is guilty of obscenity when, knowing its content and character, he promotes, or possesses with intent to promote, any obscene material or performance.

Obscenity is a class B misdemeanor.

SEC. 197. In any prosecution for obscenity it is a defense that the persons to whom allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, or governmental justification for possession or viewing the same.

SEC. 198. (a) A person is guilty of obscenity as to minors when he knowingly promotes to a minor, for monetary consideration, any material or performance which is obscene as to minors.

(b) For purposes of this section, "knowingly" means having general knowledge of or reason to know or a belief or ground for belief which warrants further inspection or inquiry as to (1) the character and content of any material or performance which is reasonably susceptible of examination by such person and (2) the age of the minor.

(c) In any prosecution for obscenity as to minors, it shall be an affirmative defense that the defendant made (1) a reasonable mistake as to age, and (2) a reasonable bona fide attempt to ascertain the true age of such minor, by examining a draft card, driver's license, birth certificate or other official or apparently official document, exhibited by such minor, purporting to establish that such minor was seventeen years old or more.

Obscenity as to minors is a class A misdemeanor.

SEC. 199. A person is guilty of disseminating indecent comic books when he publishes or distributes for resale any book, pamphlet or magazine consisting of narrative material in

pictorial form, colored or uncolored, and commonly known as comic books, which are devoted to or principally made up of pictures of accounts of physical torture or brutality, horror or terror.

Disseminating indecent comic books is a class A misdemeanor.

SEC. 200. (a) Any person who publishes or prints any book, pamphlet or magazine consisting of narrative material in pictorial form, colored or uncolored, and commonly known as comic books, shall have the name and address of such publisher or printer imprinted on such book, pamphlet or magazine.

(b) A person is guilty of failing to identify a comic book publication when he violates any duty prescribed in subsection (a).

Failing to identify a comic book publication is a violation.

SEC. 201. An injunction may be granted against the promoting of any material or performance that is obscene or obscene as to minors or the possessing with intent to promote any such material.

SEC. 202. Whenever any prosecuting attorney of the circuit court has reasonable cause to believe that any person is knowingly promoting any material or performance that is obscene or obscene as to minors, he shall institute an action for an adjudication of the obscenity of such material or performance. Such action shall commence with the filing of an application for an injunction with a judge of the circuit court for the circuit court wherein is located such material or performance. The complaint shall (a) be directed against the promoting of the material or performance; (b) designate as defendants and list the names and addresses, if known, of its promoters, or any person possessing it with intent to promote it; (c) allege its obscene nature; (d) seek an adjudication that it is obscene or obscene as to minors and an injunction against any promoting or possessing with intent to promote; (e) seek its surrender, seizure, destruction or termination.

SEC. 203. The prosecuting attorney, at the time of presenting the complaint and application to the court, shall also present the material or a witness or other evidence describing or depicting the performance. If after examination the court finds no probable cause to believe such material or performance obscene or obscene as to minors, the court shall then proceed as in other applications for an injunction. The person, sought to be enjoined shall be entitled to a trial of the issues, commencing within one day after the close of all pleadings, and any decision by the court shall be rendered within two days of the conclusion of the trial.

SEC. 204. On or before the date set for trial, any person who promotes, or who possesses with intent to promote, the material or performance complained of in the application for an injunction may file an appearance and be made a party to the proceedings.

SEC. 205. Every person appearing shall be entitled, upon request, to a trial by jury at the criminal sessions of such court and the court may order a trial of any issue to the jury.

SEC. 206. At the trial, all parties shall be permitted to sub-

mit evidence, including the testimony of experts, pertaining but not limited to the following: (a) The elements or standards specified in the definitions of obscene and obscene as to minors; (b) the artistic, literary, scientific, educational or governmental merits of the material or performance; (c) the intent and knowledge of any defendant.

SEC. 207. If the court or jury, as the case may be, finds the material or performance not to be obscene or obscene as to minors, the court shall enter judgment accordingly. If the court or jury, as the case may be, finds the material or performance to be obscene or obscene as to minors, the court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof: (a) Enter an injunction against any defendant prohibiting him from promoting or possessing such material or performance, under such conditions and within such time as the court may order; (b) direct any resident defendant to dispose of all such material in his possession or under his control under such conditions and within such time as the court may order; or (c) if any defendant fails fully to comply with the judgment or order of the court, direct the state police or any organized local police department to seize and destroy all such material in the possession or under the control of such defendant wherever the same may be found within their jurisdiction.

SEC. 208. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance and shall describe in reasonable detail the obscene material or performance, and the promoting or possessing sought to be restrained, and is binding only upon the defendants to the action, their officers, agents, servants and employees and upon those persons in active concert or participating by contract or arrangement with them, who receive actual notice of the order by personal service or otherwise.

SEC. 209. Every nonresident person, whether acting personally or by an agent, salesman, employee, officer or another, who promotes material or a performance that is obscene or obscene as to minors in this state shall be deemed to have appointed the secretary of the state as his attorney and to have agreed that any process in any action arising under sections 201 to 208, inclusive, of this act brought against or naming such nonresident as a defendant, may be served upon said secretary and shall have the same validity as if served upon such nonresident personally. Such process shall be served by the officer to whom the same is directed upon said secretary by leaving with or at the office of said secretary a true and attested copy thereof and by sending to the defendant, by registered or certified mail, postage prepaid, a like true and attested copy with an endorsement thereon of the service upon said secretary addressed to such defendant at his last known address. The secretary of the state shall keep a record of each such process and the day and hour of service.

SEC. 210. In all cases in which a court has entered its judgment pursuant to sections 201 to 208, inclusive, of this act that the material or performance in question is obscene or obscene as to minors, and a charge of a violation of the injunction or restraining order is thereafter brought against a person who,

being a defendant to such judgment, cannot be found in this state, the governor, or anyone performing the functions of governor by authority of a law of this state, shall unless such person has appealed from such judgment and such appeal is not finally determined, demand his extradition from the executive authority of the state in which such person may be found, pursuant to the laws of this state.

SEC. 211. Any defendant, or any officer, agent, servant or employee of such defendant, or any person in active concert or participation by contract or arrangement with such defendant, who receives actual notice, by personal service or otherwise, of any injunction or restraining order entered pursuant to sections 201 to 208, inclusive, of this act and who disobeys any of the provisions thereof shall be fined not more than one thousand dollars or imprisoned not more than two years or both.

SEC. 212. Any fine against any person under any of sections 201 to 208, inclusive, of this act may be levied against any of his real property, personal property, tangible or intangible, choses in action or property of any kind or nature, including debts owing to him, which may be situated or found in this state.

SEC. 213. Section 54-40 of the general statutes is amended by adding subsection (d) as follows: The foregoing notwithstanding, at the time of any commitment under subsection (c), the court shall set a maximum period of commitment, which maximum shall not exceed the maximum sentence which could have been imposed for the offense for which the accused is awaiting trial. To such maximum period of commitment there shall be credited the number of days spent by the accused in jail or other confinement prior to such commitment under said subsection (c). In the case of a class A felony, the maximum period shall be twenty-five years. During the period of confinement, the superintendent of the hospital or institution shall, at least every six months, issue a written report to the court stating his opinion of the mental condition of the accused. This report shall be filed with the clerk of the court who shall cause copies to be delivered as in subsection (a).

SEC. 214. Paragraph 18 of section 1-1 of the general statutes concerning felonies and misdemeanors, sections 53-1 to 53-10, inclusive, 53-11 to 53-19, inclusive, 53-24, 53-26 to 53-28, inclusive, 53-32, 53-33, 53-38, 53-40, 53-42 to 53-49, inclusive, 53-52 to 53-129, inclusive, 53-135 to 53-142, inclusive, 53-143 to 53-150, inclusive, 53-154 to 53-163, inclusive, 53-166 to 53-180, inclusive, 53-183 to 53-186, inclusive, 53-195 to 53-197, inclusive, 53-207 to 53-209, inclusive, 53-213, 53-214, 53-216 to 53-246, inclusive, 53-254 to 53-263, inclusive, 53-265 to 53-269, inclusive, 53-282 to 53-288, inclusive, 53-309, 53-311, 53-335 to 53-340, inclusive, 53-343, 53-346, 53-348 to 53-355, inclusive, 53-357 to 53-364, inclusive, 53-366, 53-367, 53-371 to 53-376, inclusive, 53-379, 54-82a, 54-111 to 54-114, inclusive, 54-116 to 54-119, inclusive, 54-121 and 54-196 to 54-198, inclusive, of the general statutes are repealed.

SEC. 215. This act shall take effect October 1, 1971.

*Certified as correct by*

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*Legislative Commissioner.*

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*Clerk of the Senate.*

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*Clerk of the House.*

Approved July 8, 1969.

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*Governor.*

**13.**

**State of Connecticut.  
Commission to Revise the Criminal Statutes.  
Commentary on title 53a  
(Public Act 828, 1969 Session of the General Assembly)  
The Penal Code.**

COMMISSION TO REVISE THE CRIMINAL  
STATUTES

COMMENTARY ON TITLE 53a (PUBLIC ACT 828, 1969 SESSION  
OF THE GENERAL ASSEMBLY). THE PENAL CODE

The following commentary on the Penal Code, enacted by the 1969 General Assembly, is meant to indicate the rationale, background and source of the various portions of the Code, as an aid to interpretation thereof. It should be kept in mind, however, that the Code as finally enacted differed in some respects from the Code as proposed to the General Assembly by the Commission. Nevertheless, most of the Code as enacted did not differ significantly from the Code as proposed. Furthermore, since the staff of the Commission was closely involved in the redrafting process between proposal and enactment, to the extent that these comments concern language proposed by the Commission, the Commissioner believes that the comments are accurate. It should also be kept in mind that the Commission has recommended to the 1971 General Assembly a number of changes in the Code. Some of these recommendations concern only minor drafting changes with no substantive changes intended. Others, however, do involve significant substantive changes. These comments take note of most of those recommended changes.

Much of the Code is based on comparable provisions of the recent New York Revised Penal Law, effective September 1, 1967.

Other provisions are based on comparable portions of the Model Penal Code. These comments generally do not refer to the specific sections of the New York law or Model Penal Code.

The references to section numbers in these comments are to the sections of the new Title 53a of the General Statutes, which is the result of Public Act 828 of the 1969 General Assembly. The comments do not cover every single section; rather, they are an attempt to focus on those sections which, in the opinion of the Commission, require comment.

Section 2. The purpose of this section is two-fold. First, it makes clear that the Code only applies to offenses committed on or after October 1, 1971 and to defenses thereto. The question of whether a particular offense begun on September 30, 1971 and completed thereafter comes within the Code is left to judicial elaboration. Second, it applies the general provisions of the Code not only to the offenses defined in the Code but to the other offenses scattered throughout the General Statutes, except where otherwise provided, either expressly or by implication of the context. These general provisions are contained in section 3 (definitions), sections 4-23 (principles of criminal liability and defenses), sections 24-27 (definitions and classification of offenses), sections 28-44 (sentences), and section 47 (procedure upon acquittal on grounds of mental disease or defect).

Section 3. This section contains some definitions of both general and specific applicability throughout the Code. For example, subsections (3), (4), (6) and (7) (physical injury, serious physical injury, deadly weapon and dangerous instrument) apply principally to the assault and robbery sections. Subsections (9)-(11) (intentionally, knowingly and recklessly) apply generally throughout the Code and the rest of the General Statutes. (Note: The Commission has recommended that the definition of "peace officer" contained in section 23 be transferred to this section, and that the following be included in the definitions: a constable who performs criminal law enforcement duties on a full time basis.)

Physical injury. This definition is intentionally broad. Its principal application is to the offenses of assault in the second and third degree (sections 61 and 62). Any impairment of physical condition or any pain amounts to "physical injury."

Deadly weapon and Dangerous instrument. "Deadly weapon" is confined to those items designed for violence. "Dangerous instrument" is meant to include anything which, under the circumstances of its actual or threatened use, is capable of causing death or serious physical injury. The focus, in the concept of a "dangerous instrument," it is on the way it is used or threatened or attempted to be used, and its capability under these circumstances

Recklessly. This concept, much like the concept of recklessness under the present reckless driving statute, requires conscious disregard of a substantial and unjustifiable risk. But this disregard must also be a gross deviation from the standard of a reasonable man.

Section 4. The purpose of this saving clause is to make clear that the provisions of sections 5-23, which define the principles of criminal liability and defenses, are not necessarily exclusive. A court is not precluded by sections 5-23 from recognizing other such principles and defenses not inconsistent therewith. This does not mean, however, that the court is free to fashion additional substantive offenses, for the Code precludes, by repealing section 54-117, the notion of common law crimes.

Sections 5-23. General Comments. Sections 5-23 set out the basic principles of an defenses to criminal liability. This is the first time in this state that most of these principles and defenses have been articulated in statutory form. Some of these provisions are simply restatements of the case law of the state; some constitute rules of law different from the prior law or articulate rules of law where none had been stated under prior Connecticut law.

Section 7. This section clarifies the significance of the element of intoxication. It begins by restating prior law, to the effect that intoxication is not itself a defense but is relevant to

negate an element of the crime, e.g. intent. It goes on to state, however, in effect that where the offense is based on recklessness or criminal negligence, unawareness of the actor due to self-induced intoxication does not excuse him. For example, a defendant charged with criminally negligent homicide cannot argue that he was too intoxicated to be aware of the risks involved in his conduct and therefore should not be held liable for his unawareness. The second sentence of the section defines intoxication. The language is intentionally general. "Introduction of substances into the body" is meant to include, for example, the act of inhaling fumes.

Section 8. This is the basic accessory statute, comparable to prior section 54-196, with some change in some of the language. The prior language that an accessory "may be prosecuted and punished as if he were the principal offender" does not appear, but this omission was inadvertent. No change in the prior method of charging accessories is contemplated by this section. The Commission has recommended the addition of the inadvertently omitted language.

Section 9. The purpose of this section, which refers to section 8, is to make clear that an accessory may, under the circumstances defined, be criminally liable even though the principal may not

be, or, as in subsection (3), that one may be liable as an accessory even though he could not be guilty of the underlying offense. For example, one may be guilty as an accessory to the offense of bribe receiving by a labor official (section 161) even though he, not being a labor official, could not be guilty of the offense itself. Of course, accessorial liability under section 8, requires that the accessory act "with the mental state required for commission of" the offense.

Section 10. The Commission has recommended that this affirmative defense be amended to be a defense.

Section 12. This section introduces a new concept: the affirmative defense. It is taken largely from the recent New York Revised Penal Law. Subsection (a) provides, in accordance with prior law, that when a defense is raised the burden of proof as to that issue does not shift from the prosecution. Subsection (b) provides, however, that when an affirmative defense is raised, the defendant has the burden of establishing it by the traditional civil standard of proof: a preponderance of the evidence. Those defenses declared "affirmative defenses" in the Code embrace conduct which did not heretofore constitute a defense under Connecticut law. For example, under section 68 reasonable mistake of age is declared an affirmative defense to some of the sex offenses.

Section 13. This is a restatement of the prior law defining the defense of mental disease or defect, which was taken originally from the Model Penal Code.

Section 15. The defense of entrapment, as formulated here, is a codification of the prior Connecticut case law. No change in that case law is intended. See State v. Marquadt, 139 Conn. 1 (1952); State v. Avery, 152 Conn. 582 (1965).

Sections 16-23. Justification. General Comments. These sections state the rules of law under which the use of force is justified and thus not criminal. For the most part, they attempt to restate the common law. They should be read in the light of their common law background, and the fact that an individual section does not fully state the relevant common law rule, with all its possible applications, exceptions or implications, should not prevent a court from reading it as incorporating the full body of common law rules relevant thereto. (Note: The Commission has recommended that the word "reasonable" be inserted in these sections before the phrase "physical force." The purpose of this recommendation is to emphasize that in all the cases contemplated by these sections the reasonableness of the force used must be judged objectively in the light of all the circumstances then obtaining as well as in the light of the actor's belief.)

Section 16. This section makes clear that justification in the use of force, in accordance with prior law, is a defense, not an affirmative defense. Thus the traditional rules as to burden of proof apply.

Section 18 (1). This section restates the rule of such cases as Andreozzi v. Rubano, 145 Conn. 280 (1945), placing a teacher in the position of loco parentis. While no Connecticut cases have been found dealing specifically with the parent's right to use force, this section is not intended to change the common law rule that such force must be reasonable. See 39 Am. Jur., Parent and Child, Sec. 13.

Section 20. This section, which states the rule as to use of force in defense of premises, is based on the rule of such cases as State v. Perkins, 88 Conn. 360 (1914). It adds, however, to the traditional common law rule as to the use of deadly force to prevent unlawful entry, the right to prevent such entry to one's "place of work" as well as one's dwelling. It also makes clear that deadly force is justified to prevent an attempted arson by the trespasser.

Section 21. This section restates the rule of such cases as Heminway v. Heminway, 58 Conn. 443 (1890), involving the right to use force to protect or regain personal property.

Section 22 (c). This section restates the rule of such cases as Martyn v. Donlin, 151 Conn. 402 (1964).

Section 23. This section intends to change the common law rule, as stated in State v. Amara, 152 Conn. 296 (1964), regarding the right to use force to resist an illegal arrest. The rationale for this change is that the question of whether an arrest is legal or illegal (i.e. whether there is probable cause therefor) is usually a very difficult factual question; that the present rule invites violence; and that it is better social policy to require the arrestee to submit and challenge the arrest in court, rather than to permit him to use force at the place of arrest subject to a later judicial determination of the legality of the arrest.

Sections 24-44. General Comments. These sections deal with the classification of offenses, sentences and sentencing procedure. Unlike prior law, in which virtually every offense carried with it its own authorized sentence, this statutory scheme places each offense within a penalty category - e.g. class A misdemeanor - and provides an authorized sentence for that category. The purpose of this scheme is to eliminate the kind of irrationally disparate sentences which often existed in prior law between essentially similarly serious crimes, and irrationally similar sentences between crimes of greatly varying seriousness, and to substitute

therefor a system which will, as nearly as is possible, treat essentially the same similarly serious kinds of conduct.

Section 24 (a). This section defines the terms "offense", "crime", and "violation". "Offense" is a general term which means a breach of state or local "criminal" law- i.e., one that calls for imprisonment or fine for breach thereof. "Crime" means either a felony or misdemeanor. "Violation", which must be read in connection with section 27, means an offense calling only for a fine for breach thereof. The concept of a "violation", which is taken from the Model Penal Code, is new. Section 24 makes clear that conviction of a violation does not "give rise to any disability or legal disadvantage based on conviction of a criminal offense." It is a new category of non-criminal offense; conduct which should be proscribed but conviction for which should in no way brand the offender a "criminal." Thus, for example, a person who has been convicted only of a violation can truthfully answer "no" to the question: Have you ever been convicted of a crime?

Section 24 (b). The definition of "offense" in section 24 (a) makes clear that it does not include motor vehicle infractions. The purpose of this provision is to except from the operation of the Code, except as provided in section 24 (b), motor vehicle infractions. Section 24 (b), however, provides that the sentenc-

ing principles enumerated in sections 28-44, inclusive, should apply to motor vehicle violations. Thus, a motor vehicle violator would have the limits of his sentence determined by the motor vehicle section, since his "offense" would be an "unclassified misdemeanor" within the meaning of section 26 (c); but he would be sentenced under the principles and procedures of sections 28-44.

Section 25. This section continues the traditional definition of a felony as an offense carrying a potential penalty of more than one year. It provides for five categories of felonies: A, B, C, D and unclassified. Sections 35 and 41 give the authorized penalties therefor.

The concept of an "unclassified felony" like that of "unclassified misdemeanor" referred to in section 26, is meant to refer to the virtually hundreds of criminal offenses which will continue to exist outside the Code but which will be subject to sections 28-47 for sentencing.

Section 26. This section continues the traditional definition of a misdemeanor as an offense carrying a potential penalty of not more than one year. It provides for four categories of misdemeanors: A, B, C and unclassified. Sections 36 and 42 give the authorized penalties therefor. The concept of "unclassified misdemeanor" is analogous to the "unclassified felony" explained

immediately above.

Section 28 (a). This section provides that every person convicted for an offense, whether it be a Code or non-Code offense, must be sentenced in accordance with the sentencing provisions of the Code. This provision, however was not meant to supersede in any way the provisions of the Drug Dependency Act (Chapter 359 of the General Statutes). (Note: The Commission has recommended an appropriate amendment making clear that Chapter 359 is excepted from this provision to the extent that Chapter 359 is inconsistent therewith.)

Section 28 (b). This section outlines the eight various sentencing options. It must be read in connection with subsequent sections, which define the meanings of those options. These options are exclusive; no other sentences are permitted.

Subsections (b) (5) and (6) make clear that, when the court imposes a sentence of probation or conditional discharge it must first impose a sentence of imprisonment with execution suspended (entirely or partially). This is a departure from both the New York Revised Penal Law and the Model Penal Code, both of which provide for elimination of the "execution suspended" concept and for imposition of the probation or conditional discharge sentence alone. The result of those provisions would be that, upon violation of probation or conditional discharge, the court would then

be imposing a sentence for the original offense and, in addition, where the violation consists of a new offense, would also be imposing a sentence for the new offense. The Commission decided to retain the "execution suspended" concept and make it a prerequisite of probation or conditional discharge, however, for the following reasons. First, it informs the probationer or conditional dischargee of what he faces if he violates. Second, it eliminates the risk, in the case where the violation consists of a new offense, of the court, in imposing sentence for the original offense and the new offense, of maximizing the first sentence because the defendant now stands before him as, in effect, a second offender. Third, it lodges in the first judge only, who is the one most familiar with the first offense, the authority to set the maximum sentence to be served for that offense, rather than leaving it to a court sitting perhaps as much as two or three years later. It should be noted that this section involves the elimination of the concept of "imposition of sentence suspended" as opposed to "execution suspended."

Subsection (c) makes clear that probation and conditional discharge are revocable dispositions. Thus the court retains jurisdiction of the defendant and can later alter or revoke them. At the same time, they are final judgments of conviction for all other purposes, e.g. appeal.

Sections 29-33. General Comments. These sections deal with the concepts of probation, which is familiar from prior law, and conditional discharge, which is new.

The concept of probation remains essentially unchanged hereunder. The concept of conditional discharge, which is taken from both the Model Penal Code and New York Revised Penal Law, is new. It is designed to meet those cases in which present or extended confinement or probation supervision is unnecessary but some jurisdictional hold on the defendant and some conditions which the defendant should meet are desirable. Unlike the imposition of a sentence of probation, where the court usually leaves the conditions to be set by the probation officer (although it may impose conditions of its own), the court sentencing to a period of conditional discharge must set the conditions, since there is no other intervening agency to do so. If the defendant violates the conditions of his release and this comes to the attention of the court--by, for example, a subsequent arrest--he will then be subject to the consequences of violation similar to those of violation of probation.

Section 29. This section sets out the criteria to be used by the court in deciding whether to impose probation or conditional discharge and the limitations on the periods authorized therefor. The criteria are fairly general, and are an attempt to articulate

the discretion which a court in fact has in making such a decision. The section provides that the court, in either case, must set the period of probation or conditional discharge, within the limits set; must, in the case of conditional discharge, set the conditions of release; and may, in the case of probation, impose the conditions of probation or leave them to the Adult Probation Commission under section 30. The provision for a determinate or indeterminate period in cases involving non-support of dependents is a carry-over from prior law. The reason for it is that the period of required support may be lengthy and the court may want to tailor its period accordingly. Something of a change from prior law is involved in this section, in that the maximum periods of probation vary according to the degree of misdemeanor involved. Subsection (e) provides, in accordance with prior law (Section 54-113), that the probation officer must make a report to the court after the expiration of one year with a recommendation as to whether or not to continue probation; a new addition is that the person on probation be given notice of this action and be entitled to be heard by the court or judge with respect thereto. This, of course, in no way contemplates a formal hearing of any kind. (Note: The Commission has recommended that the entire subsection (e) be eliminated.)

Section 30. This section sets out, as a kind of guideline, the

general conditions that the court may impose on the sentence of probation or conditional discharge. The list is not intended to be exhaustive. Condition number (8), in subsection (a), is intended to provide the kind of latitude and flexibility that is needed in such a situation. Under subsection (b), the Adult Probation Commission is given the same latitude and flexibility. It is contemplated that, in sentences of probation, the court will, as it does now, usually leave the conditions to be set by the probation authorities. As is noted above, however, the court will have the responsibility of setting the conditions of conditional discharge. Subsection (c) provides that the conditions and period of probation or conditional discharge may be modified, enlarged or extended, so long as the extended period does not exceed the maximum authorized under section 29. This is taken largely from prior law.

Section 32. This section provides for the procedure upon violation of probation or conditional discharge. It is based largely on prior law (Section 54-114) and practice. This section sets out minimum standards of fairness applicable to hearings on violation charges. Under prior law there was no statutory provision (other than the requirement of a "hearing") governing this situation. The standards required differed from court to court and from judge to judge. Because the defendant's continued freedom is likely to

be at stake, and because the decision as to the violation may turn on conflicting sets of facts, the right to counsel, to cross-examine witnesses and to present evidence (which rights were often granted in practice anyway) are made clear. The language limiting revocation orders to those supported by "the whole record" and "by reliable and probative evidence" is an attempt to reach a middle ground between the requirement of a full trial-type hearing and allowing revocation simply upon what may be unsupported hearsay information in the probation officer's report. The language is taken largely from the Federal Administrative Procedures Act. 5. U.S.C. § 1006 (c).

Section 33. This section restates prior law, that the court may terminate the probation, or conditional discharge, at any time.

Section 34. This section creates the concept of unconditional discharge. This concept is in fact simply a more accurate label for a disposition authorized by prior law. Under prior law, a sentence of imprisonment with execution suspended but no period of probation meant that the offender was no longer under the jurisdiction of the court. See Baker v. Potter, 17 Conn. Supp. 444 (1952). He was, in fact, released unconditionally. The sentence of unconditional discharge retains that sentencing option but describes it accurately. The section also makes clear that such a sentence is a final judgment of conviction.

Section 35. This section provides the authorized sentences for felonies. It provides that, except where the court imposes under subsection (d) a definite sentence of one year or less, a felony sentence of imprisonment shall be indeterminate, i.e. "not less than" and "not more than...." Subsection (b) gives the authorized maxima. Under subsection (c) the minimum sentence for a class B, C or D felony must not be less than one year nor more than one-half the maximum term imposed. The rationale behind this system is, in the first instance, to give the court relatively broad discretionary limits within which to impose sentence, based on its knowledge of the defendant and the circumstances of the offense; but to leave the upper and lower limits of the sentence disparate enough to allow the parole authorities to take an early second look at the situation, based on their information as to the defendant's rehabilitation or need for continued confinement. Thus, for example, if a defendant is given a maximum sentence of eight years for a class C felony, the minimum sentence could be no longer than four years; if the court wished to impose the longest minimum possible, it would impose an effective sentence of "not less than four years nor more than eight years."

Another principal change of note concerns the authorized sentences for a class A felony. The maximum is life (unless the death penalty is imposed). The court must, however, impose a minimum which can be no less than one nor more than ten years.

Thus if the court wished to impose the longest minimum possible, it would impose an effective sentence of "not less than ten and not more than life." The purpose of this provision is, also, to enable the parole authorities to enter the picture earlier than possible under prior law. (Note: The Commission has recommended that this section be amended to provide a mandatory minimum sentence of not less than five years, for any person convicted of any crime while armed with a pistol, revolver, rifle or shotgun. The purpose of this recommendation is to incorporate part of the principle of section 54-118b, as amended by the 1969 General Assembly. The Commission has also recommended clarifying language in subsection (c) (2) to make clear that, in the case of a class B, C or D felony, the minimum term shall be not less than one year.)

Section 36. This section sets out the authorized sentences for misdemeanors. All misdemeanors carry definite, as opposed to indeterminate, sentences. Thus, as under prior law, a typical sentence for a class A misdemeanor would be for a term of imprisonment of nine months.

Section 37. This section explains how concurrent or consecutive sentences run as to each other. It also deals with the question of imposing a sentence on someone who is already imprisoned under an earlier sentence. The basic principle of the section is that the court must direct at the time of sentencing how the various

terms, including the various maxima and minima and the previous undischarged term, are to run as to each other; and the court must state the effective sentence imposed. This changes the sentencing procedure in effect under prior section 54-121.

Section 38. This section provides for calculation of sentences. Subsection (c) provides that when a sentence is vacated and a new sentence is imposed, as for example following a successful appeal and retrial, resulting in a new sentence, the time served under the vacated sentence is credited against the new sentence. Subsection (c) makes clear that an escape interrupts the calculation of a sentence.

Section 39. This section provides that the court may modify a definite sentence and order a defendant discharged or placed on probation or conditional discharge.

Section 40. This section creates a new scheme of sentencing relating to recidivists. It singles out three types of recidivists for special treatment: (1) persistent dangerous felony offender; (2) persistent felony offender; and (3) persistent larceny offender.

The purpose of the definition of persistent dangerous felony offender is to identify those persons who have shown themselves to be repeatedly physically dangerous to others. The essential elements of the definition of a persistent dangerous felony offenders

are: (1) a present conviction of the dangerous felonies listed in subsection (a)(1); (2) two prior dangerous felony convictions; and (3) two prior imprisonments as a felon. See prior section 54-121 for the comparable provisions. The consequence of being found to be a persistent dangerous felony offender is that the court may, under subsection (e), impose a life sentence as for a class A felony. Whether to do so is a matter left to the discretion of the court.

A persistent felony offender (as opposed to a persistent dangerous felony offender) is one who stands convicted of a felony and who has twice before been convicted of felonies and sentenced as a felon. The consequence of being found to be a persistent felony offender is that the court may, in its discretion, impose the sentence authorized for the next more serious degree of felony. Thus, a person convicted of a class C felony who has two prior felony convictions and imprisonments on his record may be sentenced as a class B felon. The purpose of the last section of subsection (b) is to make clear, however, that this escalation to the next higher degree does not apply where the present conviction is for one of the dangerous felonies listed in subsection (a)(1), since the authorized maximum sentences for those offenses are already high, and it would otherwise be possible to reach a life sentence under subsection (b) where the requirements of subsection (a) had not been met.

A persistent theft offender is one who is convicted of theft in a misdemeanor degree, but who has two or more times been convicted of theft. The effect of such a conviction is to give the sentencing court discretion to impose the sentence for a class D felony. This provision is taken largely from the prior Connecticut provision dealing with persistent theft offender.

An affirmative defense is provided for in the case where the defendant was pardoned on the ground of innocence as to one or more of the prior convictions. This defense, however, is not meant to relieve the defendant who has such a pardon in his background from persistent offender liability where the state is not relying on that particular conviction but is relying on two or more other prior convictions for which the defendant served the requisite sentences.

The Commission does not contemplate that any change will be necessary in the present procedure of determining whether or not the defendant is a persistent offender-i.e. a second charge and trial (unless there is a plea of guilty) prior to sentencing.

Sections 41-44. These sections set out the authorized fines that may be imposed. They replace the greatly varying amounts of authorized fines which are the result of the prior system of each offense carrying its own authorized fine. This problem is more prevalent/<sup>in misdemeanors</sup> than in felonies. There are two fines authorized

for felonies (plus unclassified felonies), two fines authorized for misdemeanors (plus unclassified misdemeanors), and one fine authorized for violations. All the figures given are, of course, only maximum figures. Section 44 creates an alternative fine geared to the amount of gain realized by the defendant, as an option for the sentencing court.

Sections 45 and 46. These sections concern the imposition of the death penalty. While section 45 refers in terms only to murder, reference must also be made to section 93, which provides that conviction of first degree kidnapping may also subject the offender to the death penalty under section 46.

Section 45 provides that murder is a class A felony (maximum of life) unless the death sentence is imposed under section 46. Subsection (b), which is based on the recent New York Revised Penal Law, provides however, that with the consent of the court and state attorney, the defendant may plead guilty, in which case the sentence must be the class A felony sentence, not death. This is comparable to a plea under prior law to second degree murder, which insulates against the death penalty and ensures a life sentence.

It may be argued that this provision is unconstitutional as imposing an unnecessary penalty on the defendant's right to plead not guilty, under United States v. Jackson, 390 U.S. 570 (1968). The Commission was aware of this problem and relied on a recent New

Jersey Supreme Court case, New Jersey v. Forcella, 52 N.J. 263, 245 A.2d 181 (1968), which upheld a similar statute in the face of an attack on Jackson grounds.

The basic rationale of the Forcella decision is that the Jackson opinion was based on the fact that a combination of both the right to jury trial and right to plead not guilty was inhibited by the statute involved in Jackson, whereas there was no impairment of the right to jury trial in the New Jersey statute. The same reasoning applies to section 45. Furthermore, the United States Supreme Court has, subsequent to Jackson, held that an otherwise valid guilty plea, under a comparable statutory scheme, is not invalidated by the fact that it was motivated by desire to avoid the death penalty. See Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L. Ed. 2d (1970); but the Court stopped short of upholding the entire statutory scheme, and the question of whether the death penalty may constitutionally be imposed thereunder was still open. See Parker v. North Carolina, 397 U.S. 790, 90 S.Ct. 1474, 25 L. Ed 2d (1970). Subsequently, however, the Court held that a guilty plea, entered in order to avoid the death penalty but accompanied by simultaneous protestations of innocence, was nevertheless valid. North Carolina v. Alford, \_\_\_ U.S. \_\_\_, 91 S.Ct. 160, \_\_\_ L. Ed.2d \_\_\_ (1970). The Commission, therefore, believes the statutory scheme to be constitutional.

It should be kept in mind that under the Code there is only

one degree of murder. See section 54. To prohibit a lesser penalty potential for one who pleads guilty would mean that even one of whom the State does not want the death penalty would be required to run its risk.

Subsection (c), providing for a court trial, is based on prior section 53-9.

Section 46, which sets out the basic procedure for determination of the penalty, retains the split trial concept embodied in prior section 53-10. There are, however, the following major changes. First, it makes clear that in the penalty hearing the rules of evidence do not apply; any evidence which the court deems to have probative force may be received. Second, if the jury recommends a life sentence, the court must impose it. But if the jury recommends death, the court may reject the recommendation and impose a life sentence. Third, if the jury cannot reach agreement, the court must impose the life sentence. Fourth, if on appeal from a death sentence the Supreme Court finds error in the sentencing proceeding, there can be no new hearing; the life sentence must then be imposed.

Section 47. This section sets up a new, and much more elaborate, procedure upon the acquittal of a person on the grounds of mental disease or defect. The important new elements are: (1) an initial commitment to a state hospital for not more than ninety days, for

examination; (2) the right of the person to be examined by a psychiatrist of his own choice; (3) prompt reports to the court by the psychiatrists; (4) a prompt hearing; (5) a standard for the court to follow in deciding whether to commit--if the "person is mentally ill to the extent that his release would constitute a danger to himself or others"; (6) a limitation on the period of commitment to the maximum period to which he could have been sentenced had he been convicted; (7) release upon the expiration of the period of confinement unless the state initiates proceedings for further confinement and proves that his release would constitute "a danger to life or person."

The two standards--"danger to himself or others" and "danger to life or person" are meant to be different; and the second is meant to be of greater gravity than the first. The first "danger to himself or others"- is not meant to be confined to physical danger; thus, a kleptomaniac, who constitutes a danger to the property of others, might under appropriate circumstances be held to constitute such a danger. The second- "danger to life or person" is meant to be confined to physical danger.

Of course, under subsection (e) the superintendent of the hospital may, at any time, order the person released.

Section 48. This section deals with conspiracy. Its language is based upon the New York Revised Penal Law. One major change from

the prior statute, section 54-197, is that the object of the agreement and/or the means of execution must be criminal in nature and not just unlawful or a lawful object to be accomplished by unlawful means. A second change is the requirement that the defendant must have a specific intent to agree in the performance or causation of criminal conduct. A general intent to promote or facilitate the criminal object or means is not sufficient to establish guilt.

Subsection (b) proposes the affirmative defense of renunciation, provided that the defendant can carry the burden of proving that he thwarted the success of the conspiracy with a complete and voluntary renunciation of his criminal purpose. The twofold requirement for renunciation is more stringent than the common law doctrine of withdrawal, which only required communication of the withdrawal to the co-conspirators. (Note: The Commission has recommended that this be amended to be a defense, not an affirmative defense.)

Section 49. This section deals with attempt. It is based, in part, upon the Model Penal Code. It requires that the actor have a specific intent to commit the crime which he is alleged to have attempted. Further, the theory of transferred intent is not applicable. If the actor shoots at A with intent to kill A but endangers B as well, under common law he can be held for attempting to murder both A and B; under this section he would be guilty only of an attempt to murder A.

This section sweeps aside any consideration of the defense of impossibility, including the distinction between so-called factual and legal impossibility. Under subsections (a)(1) and (2), the liability of the actor turns on his purpose, considered in the light of his beliefs, and not on what is actually possible under existing circumstances. If the actor attempted to pick an empty pocket of another person mistakenly thinking it contained money he would be guilty of attempted larceny. This is consistent with the prior law in Connecticut. Also, if the actor attempted to kill B, mistakenly thinking it was A, he would be guilty of an attempt to kill A under subsection (a). The common law theory of "transferred intent" is not needed to reach this result. However, it is still necessary that the result desired or intended by the actor constitute a crime. If, according to his beliefs as to facts or legal relationships, the result desired or intended is not a crime the actor will not be guilty of an attempt even though he firmly believes that his goal is criminal.

The section introduces two new concepts: (1) the act must be a substantial step in a course of conduct planned to accomplish the criminal result, and (2) the act must be strongly corroborative of criminal purpose in order for it to constitute such a substantive step. This formulation is used to distinguish acts of preparation from acts of perpetration and is contrasted with criteria specified in State vs. Mazzadra, 141 Conn. 731 (1954), that "the

acts done must be at least the start of a line of conduct which will lead naturally to the commission of a crime which appears to the actor at least to be possible of commission by the means adopted." This section requires more than a mere start of a line of conduct leading to the attempt. It also requires that the line of conduct already taken be unambiguous in supporting a criminal purpose.

Subsection (c) and Section 50 create an affirmative defense of renunciation. The actor must show that he abandoned his effort to commit the crime or otherwise prevented its commission by manifesting a complete and voluntary renunciation of his criminal purpose. Unlike the same defense in conspiracy, he need not actually thwart the success of the attempt by others if he abandoned the criminal conduct. (Note: The Commission has recommended that this be amended to be a defense, not an affirmative defense.)

Section 51. This section provides that a conspiracy or attempt to commit a crime is a crime of the same degree as the underlying offense, except as to Class A felonies. This changes the prior law of section 54-197 that conspiracy carries a maximum sentence of fifteen years even though the underlying offense may have had a much less severe maximum sentence.

Section 52. This section is not intended to change the rule that proof of a crime will sustain a conviction for an attempt or

conspiracy to commit the crime. However, it does provide that where the defendant is convicted of both the inchoate and completed crime, he may only be sentenced for the completed crime. (Note: The Commission has recommended that this section be repealed, leaving the question of multiple convictions to prior law and judicial elaboration.)

Section 54. Murder. This section, which is based partly on the New York Revised Penal Law and partly on the Model Penal Code, embodies perhaps the most striking change from prior law in the homicide area. Murder consists of but one degree. This change is consistent with the New York proposal, the Model Penal Code, and the recently revised Illinois and Wisconsin penal codes.

Subsection (a)(1) defines the basic crime as intentional killing, making no mention of malice, premeditation or deliberation. If those words clearly denoted planning or preparation there might be validity to the distinction drawn between intentional homicides of a premeditated and unpremeditated character. The inherent difficulty of precise definition has produced judicial construction which necessarily goes beyond such a formulation. "Time is not important as long as there is time to form the intent." State v. Zukauskas, 132 Conn. 450 (1945). See also New York Revised Penal Law, Commission Staff Notes, p.338. Under this inevitable formulation--inevitable because of the impossibility of a definition

based upon length of time--the determination of premeditation frequently amounts to an exercise in semantics, and the jury's decision of a matter of life and death turns upon an issue which is at best, vague and confusing and which has troubled judges and attorneys throughout legal history. See New York Revised Penal Law, Commission Staff Notes, p. 338. For these reasons the section eliminates the elements of malice, premeditation and deliberation and predicates homicidal intent alone as the mens rea for murder.

Murder also includes causing the suicide of another by force, duress or deception, with the requisite homicidal intent. This limitation, taken together with the corresponding manslaughter provisions, is designed to differentiate between the more sympathetic cases, such as suicide pacts, assistance rendered to one tortured by a painful disease, and the like, and cases where the actor causes or aids a suicide by aggressive or devious means and for purely selfish motives.

The excepting clause in subsection (a) excludes from murder those intentional killings which are reduced to first degree manslaughter by virtue of the actor's "extreme emotional disturbance".

The provision in subsection (b) concerning the admissibility of evidence of mental disease, mental defect or other mental abnormality on the question of intent, is designed to ensure that any relevant psychiatric testimony as to the defendant's state of

mind will be available to the jury. This provision is not meant, however, to replace the defense of insanity.

Subsection (a) (2) deals with the felony-murder doctrine, and is taken from the New York Revised Penal Law. The list of felonies is an attempt to include those felonies which themselves involve danger to the person. It should be noted that the offense embraces immediate flight from the felony, and is limited to the death of one not a participant in the crime.

The very limited affirmative defense, which is taken from the New York law, is aimed at the rare case in which the defendant would be able to persuade a jury (and he has the burden of proof thereon) that he not only had nothing to do with the killing itself but was unarmed and had no idea that any of his confederates was armed or intended to engage in dangerous conduct. Of course, this defense would not insulate him from liability for the underlying felony.

Section 55. Manslaughter in the first degree. This section covers three types of conduct. The first covers causing the death of another, where the actor's intent was not to kill but was to cause serious physical injury. The second covers the cases which would be murder but for the presence of extreme emotional disturbances; the "heat of passion" cases, for example. The third is aimed at reckless conduct coupled with "an extreme indifference to human

life," which causes death. Thus, this is one step further towards culpability than the reckless conduct of second degree manslaughter.

Section 56. Manslaughter in the second degree. This section covers two types of homicide: recklessly causing the death of another; and intentionally causing or aiding another person to commit suicide.

The first part may be viewed as a kind of involuntary manslaughter. Prior Connecticut law did not distinguish, in terms of authorized penalty, between voluntary and involuntary manslaughter. The Commission thinks that the differing kinds of conduct between the two justifies different treatment. Recklessly is defined, in short, as conscious disregard of a substantial and unjustifiable risk, constituting a gross deviation from reasonable conduct. See Section 3. Thus it is one step further towards culpability than criminal negligence.

The second part, causing or aiding a suicide, is aimed at such situations as aiding, out of feelings of sympathy, the suicide of one inflicted with a painful and incurable disease. While such conduct is blameworthy, the possible mitigating circumstances justify its treatment as manslaughter, rather than murder.

Section 57. Misconduct with a motor vehicle. This section is based largely on the prior section 53-17. However, the standard

of "criminal negligence" has replaced the present "gross or wilful misconduct or ...gross negligence," to make the standard of culpability consistent with section 58.

It may be argued that, given the criminally negligent homicide section (58), this section is unnecessary. However, it is desirable to retain a separate section for motor vehicle cases, principally because of their prevalence. Furthermore, the Code has not repealed section 14-218 (negligent homicide with a motor vehicle), which is a misdemeanor offense and which requires only the civil standard of negligence to be proved, although of course, the burden of proof required is that of the criminal law.

Section 58. Criminally negligent homicide. This section introduces a concept which has only a limited counterpart in prior law. It deals with homicide caused by "criminal negligence," which is a degree of negligence greater than ordinary civil negligence but less than the wantonness and recklessness required of involuntary manslaughter. See State v. DiLorenzo, 138 Conn. 281 (1951).

Criminal negligence is defined as, in summary, a failure to perceive a substantial and unjustifiable risk, of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. See section 3. The only counterpart to this in prior law is the area covered by sections 14-218

(negligent homicide with a motor vehicle), and 53-17 (misconduct with a motor vehicle). Thus, seriously negligent conduct not involving sufficient culpability to constitute manslaughter was not covered by prior law. Hence, for example, the necessity to enact a special statute dealing with death resulting from abandoning refrigerators without taking precautions against a child getting trapped inside. This section would have covered such cases, and is necessary to cover the myriad of kinds of seriously negligent conduct which could result in death in the future.

It should be noted that this section specifically does not deal with negligent homicide involving a motor vehicle. This is dealt with by the preceding section.

Sections 59-64. Assault and related offenses. General Comments.

The prior law of assault was contained essentially in sections 53-12 (assault with intent to murder), 53-16 (aggravated assault) and 53-174 (breach of peace by assault). These statutes draw distinctions based only on the intent of the actor or the weapon used, without regard to the degree of injury inflicted. Thus there was a wide gap between breach of peace by assault and aggravated assault, resulting in the fact that if the actor intentionally inflicted serious injury on his victim, but did not use a deadly weapon or dangerous instrument, the most he could be charged with was breach of peace by assault, a misdemeanor.

Sections 59-64, which are based primarily on the New York Revised Penal Law, grade the seriousness of the offense by reference to the intent of the actor, the means used, the injury inflicted and the seriousness of the other risks created. Assault is divided into three degrees. In addition, there is the offense of threatening, and two degrees of Reckless Endangerment.

Section 59. This section, which is the most serious degree of assault, covers three types of conduct: intentionally causing serious physical injury to another by means of a deadly weapon or dangerous instrument; intentionally disfiguring or disabling another permanently (similar to the prior maiming statute); and recklessly creating a grave risk of death to another and thereby causing serious physical injury, under circumstances evincing an extreme indifference to human life.

Section 60. This section covers five types of conduct: intentionally causing serious physical injury; intentionally causing or attempting to cause injury by means of a deadly weapon or dangerous instrument; causing physical injury to a police officer with intent to prevent him from performing his lawful duty; recklessly causing serious injury by means of a deadly weapon or dangerous instrument; and intentionally causing stupor, unconsciousness or other physical injury or impairment to another by

administering a drug or other substance to him without his consent.

(Note: The Commission has recommended that subsection (a) (3) be broadened to include a fireman as well as police officer. It has also recommended that the section be amended to include an assault on a member or employee of the Department of Correction or Board of Parole. This amendment incorporates the principle of section 53-11a, enacted by the 1969 General Assembly.)

Section 61. This is the basic assault section. It covers three types of conduct; intentionally causing physical injury to another; recklessly causing serious physical injury to another; and criminally negligently causing physical injury to another by means of a deadly weapon or dangerous instrument.

Section 62. This section is a combination of the New York and Model Penal Code proposals. It covers three types of conduct: intentional physical threat of serious physical injury; threat to commit any crime of violence with intent to terrorize another; and threat to commit a crime of violence with intent to cause evacuation of a public transportation facility or otherwise to cause serious public inconvenience (e.g., a bomb scare).

Sections 63-64. These sections cover dangerous conduct which falls short of assault because of a lack of specific intent and because of

a lack of actual injury taking place.

Sections 65-81. General comments. These sections adopt the basic principle that non-commercial sexual activity in private, whether heterosexual or homosexual, between consenting, competent adults, not involving corruption of the young by older persons, is no business of the criminal law. To put it another way, excluded from the criminal law are all sexual practices not involving force, adult corruption of the young, or public offense. This principle lies behind the corresponding provisions on sex offenses in the Model Penal Code (see MPC Tent. Draft No. 4, p.277) and, to a great extent, the New York Revised Penal Law, upon which most of these sections are based. It finds limited expression in the recent Illinois revision and has been endorsed by church and lay officials alike.

Great Britain has recently enacted a similar statute, dealing with homosexuality. The basic reasons for this scheme are detailed in the report of the Connecticut Commission to Revise the Criminal Statutes (1967).

These sections are concerned principally with prohibiting non-consensual sexual activity between parties not married to each other, and, even where there may be actual consent, situations in which one party may be under the control of the other because of

factors of youth, age disparity, mental, emotional or physical limitations, or other factors. At the same time they attempt to draw rational distinctions between degrees of blameworthiness based on varying age disparities and degrees and kinds of lack and consent, and also attempt to define special affirmative defenses to cover cases in which blameworthiness may be reduced or eliminated.

Section 65. These definitions are taken largely from the New York Revised Penal Law. One important element involved in them is that they make clear that the offenses do not apply to persons married to each other. While as a practical matter prosecutions based on sexual activity between spouses are not and would not be brought, and would be constitutionally suspect, see Griswold v. Connecticut, 381 U.S. 479 (1965), as a matter of drafting and of the moral integrity of the law this is made clear.

Deviate sexual intercourse. This phrase specifically defines the sexual acts which it covers, and is intended to replace the archaic and ambiguous terms of "carnal copulation," "carnal knowledge" and "indecent assault."

Mentally defective. This phrase is aimed at the person mentally incapable of appraising his conduct. Its significance is that such a person is deemed incapable of consent. It is intended to replace the prior terms of "idiot" and "imbecile."

Mentally incapacitated. This phrase is aimed at the person who temporarily cannot appraise or control his conduct because of the influence of some narcotic or intoxicating substance, or some act (such as hypnosis), administered to him without his consent. It is aimed at the person rendered incapable either unwittingly or by compulsion. Like "mentally defective" its significance is that such a person is deemed incapable of consent.

Forcible compulsion. This phrase is aimed at the situation in which the victim is forced to comply, either by "physical force that overcomes earnest resistance" or by threat of immediate harm to the victim or a third party. It embodies an attempt to draw a distinction between the situation where the lack of consent results from such force or threat and where it results from other less serious factors.

Section 66. The age of sixteen is retained as the age of consent. Incapacity to consent (or constructive lack of consent) results from being less than sixteen, mentally defective, mentally incapacitated or physically helpless. Where the offense charged is sexual contact, lack of consent results from any circumstances in which the victim does not acquiesce. Thus, where the actor in a crowded place fondles the unwitting victim, it is clear that there is no consent, even though there may have been no resistance.

Section 67. This section sets out three affirmative defenses which, in the Commission's opinion, sufficiently negate blameworthiness so as to justify excluding the actor's conduct from criminal sanction. It should be noted that the defendant would have the burden of proving these defenses by a preponderance of the evidence.

Lack of knowledge. This defense, which is taken from the New York provision, applies where the victim's lack of consent is based solely on his being mentally defective, mentally incapacitated or physically helpless, and the defendant did not know of such fact or condition. The Commission considered this situation within the general rule requiring criminal intent for the commission of a crime. It is meant to cover situations, for example, in which patients at mental hospitals or institutions, who are trained to work in the community and to function normally, may engage in sexual intercourse with a defendant who does not know of this background and who innocently believes that the willing "victim" is consenting; or situations in which the victim has been rendered "mentally incapacitated," perhaps by a narcotic, unbeknown to the defendant.

Reasonable mistake of age. Like the lack of knowledge defense, this defense is aimed at a situation in which the defendant may not have the requisite mens rea because he reasonably

believed the facts to be other than what they were. It does not apply, however, where the alleged victim is less than fourteen. The California court has recently adopted this principle by judicial decision. See People v. Hernandez, 61 Cal. 2d 529 (1964). There are two principal related reasons for this defense. The first is, as stated above, that it is in effect a mistake which negates the actor's culpability as to mens rea. The second is the realization that present day standards of dress and appearance make such mistakes all the more likely.

Spouse relationships. Parties not legally married to each other but living together as man and wife are treated the same as married persons. The rationale is that the same elements of privacy, consent and intimacy of relationship are likely to be present here as in the marriage situation. This is in accord with the position taken by the Model Penal Code. A principal problem was the drafting of such a provision. The Model Penal Code uses the language "living together as man and wife." The Commission considered that language too vague to be useful. The language adopted is taken largely from New Jersey law, which recognizes common law marriages entered into before 1939. See Jackson v. Jackson, 94 N.J. Eq. 233 (1922); Franzen v. Equitable Life Assurance Society of the United States, 130 N.J.L. 457 (1943) N.J. Stats., Tit. 37 C. 1, sec. 10. It is meant to convey a continuing status of cohabitation as man and wife.

Section 68. This section, which is taken from the New York law, requires that, with some exceptions some corroboration of the alleged victim's testimony is necessary to conviction. This does not mean that there must be an eye witness. The corroboration may be circumstantial. This provision would change prior Connecticut law, which does not require corroboration but which, in the absence of corroboration, requires the fact-finder to weigh the credibility of the complainant with care, particularly if there are improbabilities suggested by the complainant's story or substantial controverting evidence. State v. Zimharuk, 128 Conn. 124 (1941).

Section 69. This section requires that any complaint of a sex offense must be made within three months of its occurrence, or, where the victim is under sixteen or incompetent to complain, within three months after a parent, guardian or other person specially interested in the victim learns of the offense. The purpose of this provision is to guard against stale claims in situations where blackmail is a possibility and where evidence may be difficult to obtain after passage of time.

Section 70. This offense is aimed at situations in which there is consent but the actor is in a supervisory or custodial position vis-a-vis the victim. For example, the other person is the actor's

ward or under his general supervision; or the other person is in legal custody or under commitment to a hospital and the actor has supervisory or disciplinary authority over him. This provision is taken largely from the Model Penal Code.

Section 71. This section deals with nonconsensual sexual intercourse and deviate sexual intercourse, and with sexual conduct with an animal or dead body. Non-consensual here principally means, by reference to the section defining lack of consent and by reference to the sections on rape and deviate sexual intercourse, age of less than sixteen. It may be argued that sexual conduct with an animal or dead body, in private, should not be included, since it is probably a symptom of severe emotional disorder and should be treated, not punished. The Commission was impressed with this argument and included this conduct only because an examination of the civil commitment statutes left it very doubtful whether it would be covered therein, even on an emergency basis.

Section 72. This section deals with sexual intercourse in three cases. First, where it is by forcible compulsion. This is the traditional rape situation. Note that an affirmative defense is provided, however, where the female had previously consensually engaged in sexual intercourse with the actor. This

defense, if sustained, would not eliminate criminality entirely; it would merely reduce the offense from first degree to second degree. The rationale for this defense is that where the parties had previously engaged in intercourse by consent, there is not the same sense of violation as when they had not, and so the offender should be treated differently. Furthermore, the actor is more likely, in such a situation, to believe that the present resistance is feigned. Finally, where there is a forcible rape, evidence of prior consent may be relied on by the defendant to show present consent; thus the defense may tend to relieve the jury of the difficult decision of deciding guilt on first degree, which is a very high degree of felony, if they can then fall back on a conviction of second degree. The other two cases covered by this section are self-explanatory; where the victim is physically helpless, and where she is less than fourteen years old.

Section 73. This section deals with the traditional rape situation: sexual intercourse by forcible compulsion, where there is no previous consensual intercourse.

Section 74. This section deals with sexual intercourse in two cases: first, where the female is incapable of consent by reason of some factor other than being under sixteen--i.e., mentally defective or mentally incapacitated; second, where

the male is nineteen or more and the female is less than sixteen.

Sections 75-77. These sections parallel exactly the rape sections. The only difference is that rape deals with sexual intercourse, and these deal with deviate sexual intercourse, as defined.

Section 78. This section deals with subjecting another person to sexual contact in three cases, which cases are parallel to those of first degree rape. They are where there is forcible compulsion, where the victim is physically helpless and where the victim is less than eleven years old.

Section 79. This section deals with nonconsensual sexual contact when the victim is incapable of consent because of mental incapacity or mental defectiveness, or where the victim is less than fourteen years old.

Section 80. This section deals with nonconsensual sexual contact. The affirmative defense, however, has the effect of excluding from criminality the situation where the victim's lack of consent is based solely on being fifteen years old and the actor is less than five years older. Thus, in a situation in which the victim is fifteen and <sup>the</sup> actor is nineteen or younger, and there was actual consent, the affirmative defense would apply.

Section 81. This section retains the crime of adultery, but

modifies the prior law (section 53-218, which applied only where the woman was married) to include sexual intercourse with any person other than one's spouse. It also reduces the offense from a felony to a misdemeanor.

Sections 82-89. These sections cover, in more precise and briefer language, essentially the same conduct as do the prior statutes on prostitution (sections 53-226 through 53-235). However, two elements which are presently included in the prostitution offenses are excluded: promiscuous sexual activity not for hire; and conviction of prostitution activities simply on the basis of reputation of the individual or premises. Furthermore, these sections make clear that commercial homosexual, as well as heterosexual activity, is prohibited. In addition, they draw more rationale distinctions between the various kinds of related activities, and grade the penalties accordingly.

Section 90. This section is taken from the prior law, section 53-241. The only change is that this section makes a venereal exam discretionary with the court, rather than mandatory, since many offenses to which it applies indicate no need for such an exam.

Section 91. This section effects several significant changes in

the prior Connecticut law of kidnapping and related offenses. Perhaps the most significant is the distinction drawn between restraining and abduction. Restraining, as defined, involves non-consensual restriction or interference with physical liberty. Abduction involves restraining plus intent to secrete the victim or the threat to use or the use of physical force or intimidation. Restraining leads to the crime of "unlawful imprisonment"; abduction leads to the crime of "kidnapping." This distinction was not present in the prior Connecticut kidnapping statute (section 53-27). That statute put all the varying degrees of restriction of liberty under the one umbrella of kidnapping.

Sections 92-94. Kidnapping is divided into two degrees. Second degree kidnapping (section 94) involves simple abduction; first degree (section 92) involves abduction plus the presence of any or several aggravating factors: intent to demand ransom or some other similar quid pro quo; intent to do certain specified prohibited acts; or death of the victim or circumstances indicating the high likelihood of such death. First degree kidnapping is a Class A felony (maximum sentence of life) unless the death sentence is imposed. If the victim is returned voluntarily under circumstances enabling him to return to safety without substantial risk of death, the court must impose the Class A felony penalty. The purpose of this is to encourage the kidnapper to release his

victim. Also, the court may impose the Class A felony penalty if it is satisfied that there are "substantial mitigating circumstances. In lieu thereof, if the defendant is found guilty of first degree kidnapping, after a trial, a second hearing on penalty must be held, as in the case of murder, and all the provisions of section 46 apply.

Sections 95-96. The offense of unlawful restraint (which involves a "restraining", as opposed to an "abduction") is divided into two degrees. The aggravating factor raising it to first degree is the presence of "circumstances which expose the (victim) to a substantial risk of physical injury."

Sections 97-98. The offenses labeled "custodial interference" are for the purpose of specifically dealing with situations involving intentional and knowing violations of custody of children under sixteen and incompetent persons or persons the legal custody of whom has been given to some other person or institution. The first degree offense deals with the situation where the victim's safety or health was endangered, or where the child is taken out of the state.

Sections 100-106. General Comments. The traditional common law definition of burglary was the breaking and entering the house of another in the nighttime with an intent to commit a felony. The

prior Connecticut statute, section 53-86, incorporated this definition. State v. Ward, 43 Conn. 489 (1876). Historically, the statutory crime of burglary, and its various companion offenses, can probably be explained as an effort to compensate for defects of traditional attempt law. Making entry with criminal intent a separate offense covered many cases which might not have otherwise met the "overt act" requirement of attempt. Thus, the moment when the law could intervene was moved back. See MPC Tent. Draft No. 11 P. 56 (1960). And since burglary was confined to nighttime intrusions, into dwellings, with felonious intent, the various forms of breaking and entering statutory crimes arose to cover the gaps.

The reform here is to narrow the offense to meet its original and basic rationale; protection against invasion of premises likely to terrorize occupants. The basic definition of the crime of burglary, implicit in these sections, is: an unlawful entry into or remaining in a building with intent to commit a crime therein. This definition is tailored to carry out the basic rationale of the crime. The three degrees of the crime differ only in terms of aggravating factors for which the basic rationale requires different treatment.

This basic definition serves many purposes. First, it does away with the necessity for a distinction between crimes labeled "burglary" and "breaking and entering," the reasons for which were

largely historical rather than pragmatic. Second, it does away with the necessity of proving a "breaking," which has the desirable effect of abolishing artificial distinctions which had surrounded the concept of "breaking" and which had been perpetuated without reason. For example, raising a closed window is breaking, but raising a partly open one is not. See MPC Tent. Draft No. 11, P. 58 (1960); Perkins, Criminal Law 151-155 (1957). Third, it does away with the necessity of proving intent to commit a felony; intent to commit any crime will suffice. The reason for this is that, in terms of the basic rationale of the crime, the intruder bent on committing a misdemeanor is as likely to instill terror on the part of the occupants of the building as the felonious intruder. Fourth, it does away with the "nighttime" requirement. Whether the intrusion is at night or not simply becomes one of the factors determining the degree of the crime. All these changes are justified by and directly related to the basic rationale of the crime: protection against invasion of premises likely to terrorize occupants.

General Scheme of Burglary Sections. The general scheme of the burglary sections is based on the New York Revised Penal Law, with some modifications and refinements. Three degrees of burglary are created. They can be summarized as follows: first degree-- burglary accompanied by explosives, a deadly weapon or physical

violence; second degree--burglary in a dwelling at night; third degree--burglary in any building at any time of day or night.

Section 100. Definitions. Building. This definition is essentially the same as that used in the sections on Arson. Its purpose is to include those structures and vehicles which typically contain human beings for extended periods of time, in accordance with the basic rationale of the crime.

Night. This definition is taken from the New York Revised Penal Law and the Model Penal Code. Darkness facilitates commission of the offense, increases the alarm of the victim, and hampers identification of suspects. Such darkness occurs at some time during the hour following sunset. The prior Connecticut law defines "nighttime" as when there is not enough daylight to discern the features of another. State v. Morris, 47 Conn. 179 (1879). The new definition roughly pins the time period to the hour of actual darkness without requiring the factfinder to go through the artificial task of deciding whether or not it was dark enough to discern one's features.

Enter or remain unlawfully. The purpose of this definition is to make clear that only the kind of entry or remaining which is likely to terrorize occupants is prohibited by the crime of burglary. Thus, when the building is, at the time, open to the public, or the actor is otherwise licensed or privileged to be

there, the element of terror is missing and the requirement is not met. This does not mean, however, that an initial lawful entry followed by an unlawful remaining would be excused. For example, A enters an office building during business hours--a lawful entry since the building is open to the public--and remains, perhaps hidden, after the building is closed, with intent to steal. A is guilty of burglary. This is the kind of situation which previously had to be covered by the judicial device of deciding that entry with illegal intent and breaking out satisfied the "breaking and entering" element. State v. Ward, 43 Conn. 489 (1876).

Section 104. This section makes it an affirmative defense to prosecution for burglary that the building was abandoned. The reason for this is that, since the rationale of the crime is the protection of likely occupants from terror, the defendant should have the opportunity to show that, due to the abandonment of the premises, there was no likelihood of such terror. This does not mean, however, that an unlawful entry into an abandoned building would go unpunished. The actor might still be guilty of attempted theft.

Section 105. This section is comparable to section 52. (Note: The Commission has recommended that this section be repealed.)

Section 106. This section is taken largely from the New York law, with the sole addition of the element of manufacturing. It accomplishes the same purpose as the prior section 53-72 in more concise and precise language.

Section 107. This section is the most serious degree of the crime of trespass. It aims at the situation where the actor enters or remains in premises in defiance of an order not to enter, or to leave, personally communicated to him by an authorized person. Two elements are important to note here: (1) any premises are protected by this section; (2) the order must be personally communicated to the actor.

Section 108. This section aims at unlawful intrusion into a building. As is explained the Commission's 1967 Report, this section fills a glaring gap in the present Connecticut law, which does not penalize trespass into one's home, unless there is intent to commit a crime therein or unless it is in defiance of an order to leave. It is also expected that this offense will serve the same purpose as the prior "breaking and entering without consent" section: a section to deal with cases where the prosecution may have difficulty proving intent to commit a crime.

Section 109. This section, which is the least serious form of trespass, aims at the intrusion into premises which are posted,

fenced or otherwise enclosed in a manner designed to exclude intruders. It should be noted that unfenced and unenclosed open premises are not protected. It may be argued that an intrusion into such premises, where the actor knows that he is not licensed or privileged to do so, is a wilful violation and should be punished. The Commission, however, rejected that argument and adopted the following line of reasoning. Where the actor damages the property of another on which he is trespassing, he is civilly liable and may also be guilty of criminal mischief. Similarly, where he trespasses in a building or on premises manifestly meant to exclude outsiders, the owner's interest in the privacy of his own property justifies criminal penalties. Where, however, the premises are open, such as a field or lawn, the offense to the owner is quite minor and technical, and the behavior not dangerous, and if the owner desires protection it is not too much to ask him to post or enclose his property. This section also covers intrusion into premises appurtenant to state institutions.

Section 110. Affirmative defenses. Abandonment. It is an affirmative defense to prosecution for criminal trespass that the building was abandoned. The reason for this is related to the rationale of the crime. The rationale is to protect one's property from unwanted intruders. Where, however, the building is truly abandoned--and the defendant has the burden of proof thereon--

the "owner's" interest in the security of his property is also abandoned, and the actor's conduct does not come within the rationale of the crime. It may be argued that the notion of abandonment of a building, being real estate, is fanciful and unrealistic. There are two answers to this: (1) it is true that most of what we think of as buildings could never be truly abandoned, since they would still stand in someone's name and incur taxes, but certainly shacks and like structures can be truly abandoned; (2) the statutory definition of "building" includes many types of vehicles which can easily be abandoned.

Premises Open to Public. It is an affirmative defense to prosecution for criminal trespass that the premises were open to the public and that the actor complied with all "lawful" conditions concerning access to the premises. The principal purpose of this provision is to bar criminal prosecution for presence in a place where the public is generally invited. The defense is not meant to sanction disorderly conduct, nor to preclude resort to civil remedies for trespass, including whatever privilege there may be to bar entry or eject. In the "sit-in" controversies, the provision would make it an explicit issue whether the conditions imposed on access were "lawful." This would leave such problems to the courts to work out on a case by case basis rather than to attempt to answer such difficult problems in advance. The condi-

tions might be unlawful by virtue of federal law, statutory or common law requirements concerning public places, or for other reasons.

Reasonable Belief. This provision is taken largely from the Model Penal Code. It provides a defense where the actor reasonably believes that the owner, or another authorized person, would have licensed him to enter or remain, or where he otherwise reasonably believes he is licensed to do so. Its purpose is to relieve from criminal liability one who is, in a sense, an innocent intruder. For example, A knows that B owns certain premises, and A reasonably but mistakenly believes, through his relationship with B, that B would let him enter the premises if asked. In such a case, A is not the kind of wilful intruder that the criminal law contemplates, and should have the opportunity to prove his reasonable belief. Another example: A enters land formerly owned by B, who is his friend; unknown to A, B has sold his land to C, who does not know A. In such a case, A should have the opportunity to prove his reasonable belief that he was licensed to enter.

Sections 111-114. General Comments. The primary rationale of these sections is the protection of human life or safety. Thus, the various grades of arson differ depending on the degree of risk to human life. And the offense is limited to situations where either life is actually endangered, or a building, which is

defined to include structures typically containing human beings, is endangered. The secondary rationale is the protection of particularly cherished property. Thus, arson in the third degree and reckless burning deal with danger to buildings of another.

Section 111. This section is aimed at the situation where, when the fire or explosion is started, a person is in or near the building and is thus placed in great danger. Note that there is no requirement in this section that the building be that of another. This is consistent with the rationale stated above. This section is concerned mainly with serious risks to the life or safety of others.

Section 112. This section is aimed at two types of situations. First, it aims at the situation in which the actor burns or explodes another's building. Second, it aims at the typical "arson for insurance" situation, where the actor burns or explodes a building in order to collect insurance. In either case, however an essential element is danger to another person or another building. This requirement stems from the basic rationale behind the law of arson: protection of human life and safety. The inclusion of danger to another building (even if owned by the actor) is justified by the fact that buildings typically contain

human beings, and thus danger to another building is likely to endanger another person's life or safety.

Section 113. This is essentially the same provision as is contained in the New York proposal. It is aimed at the reckless destruction of the building of another by intentionally starting a fire or causing an explosion. At this grade of offense, the secondary rationale of arson--protection of particularly cherished property--becomes more prominent. This section deals with destruction of another's building without regard to risk to human life or safety.

Section 114. Whereas arson in the third degree deals with the actual destruction of or damage to the building of another by recklessness, this section deals with recklessly endangering the building of another.

Section 115. Subsection (1) deals with intentional damage to tangible property of another in an amount exceeding \$1,500. Subsection (2) deals with intentional interruption of modes of public utilities, transportation and communication. There are four essential elements in the subsection. The first element is intent. There must be an "intent to cause an interruption or impairment of service rendered to the public". The second element is that the actor must act without reasonable ground for doing so.

The third element is damage. There must be damage to or tampering with tangible property of the listed public services. The list is intentionally general and contains language which will include other, perhaps as yet unknown, types of services which, because of their "public" nature, should be entitled to the same protection without the necessity of future statutory amendment. The fourth element is that the actor "thereby causes an interruption or impairment of service rendered to the public". Thus this subsection aims at the intentional damage to public services which result in an actual interruption or impairment of such service. (Note: The Commission has recommended that this section be amended to include damaging or tampering with fire or police alarm equipment.)

Section 116. This section parallels section 115. Subsection (1) deals with damage to property of more than \$250. Subsection (2) deals with the risk, rather than the actuality, of an interruption or impairment of public services of transportation, power or communications.

Section 117. This section deals with intentional or reckless damage to property in an amount no more than \$250, with situations where there is no actual damage but there is danger of damage from the actor's tampering with property, and with damage to property by criminal negligence involving certain inherently destructive

forces, such as fire, explosives, etc.

Sections 118-129. General Comments. These sections cover the various larceny offenses. They are based on the New York Revised Penal Law and the Model Penal Code. They must be read in light of the definitions contained in section 118, particularly the definitions of property, deprive or appropriate. The degree of larceny is, for the most part, determined by the value of the property taken or, in some cases, by the way in which it is taken. It is not, generally, determined by the kind of property. Thus, for example, there is no longer a specific offense of car theft. There is no longer a separate offense of shoplifting. (Note: The Commission has recommended a general revision of the larceny sections, involving the following changes. First, all the definitions are put in one place, section 53a-118(a). Second, the separate offense of shoplifting is put back into the statute in language comparable to prior section 53-63, with the exception that the second presumption in section 53-63--namely, that the presence of concealed goods on the person is prima facie evidence of intentional concealment--is deleted. Third, first degree larceny is raised to a class C felony and is broadened to include any kind of extortion, and second degree larceny is raised to a class D felony. Fourth, misuse of credit cards is eliminated from the theft of services subsection, and a broad credit card offense

statute is incorporated based on prior sections 53-380--53-388, enacted by the 1969 General Assembly.)

Section 119. This section sets out the basic general definition of larceny: a wrongful taking, obtaining or withholding of property with intent to deprive or appropriate. This definition is purposely broad and is meant to encompass the myriad ways in which property may be stolen. The question of wrongfulness is meant to incorporate and to be read in the light of the common law standards enunciated in such cases as State v. Banet, 140 Conn. 118 (1953) and State v. Sawyer, 95 Conn. 34 (1920). Subsections (1) - (8), it should be noted, are not exclusive. They are not meant to limit the broad definition set out in the first paragraph of this section, but are meant as certain specific ways of committing the offense. Subsection (2) substantially restates prior section 53-360, deleting the so-called "bad check" portion of that section, which is now covered by section 128. Subsection (3) expands the existing scope of larceny to encompass acquisitions of property through fraudulent promises made without any intention of performance. This section, however, provides that non-performance of a promise means nothing in itself and that "fraudulent intent" must be established by evidence rendering the conclusion a "moral certainty".

Subsection (6) substantially restates prior section 53-364.

Subsections (7) and (8) refer to the subsequent sections 120 and 126 and, by doing so, are meant to make clear that the crimes of theft of services and receiving stolen property are forms of the general crime of larceny.

Section 121. This section sets out the ways in which the value of the property is determined. The principal method of valuation is, of course, by reference to its market value, or if that cannot be ascertained, its replacement cost.

Section 122. This section provides that larceny is first degree where it takes place under certain conditions of particularly intimidating extortion, or where the value of the property exceeds \$2,000.

Section 123. Second degree larceny involves property of the value of more than \$500.

Section 124. This section provides that larceny is third degree when any of five requirements are met: (1) the value of the property exceeds \$50; (2) the property consists of public records; (3) the property consists of secret scientific or technical information; (4) the property is taken from another's person; (5) the property is taken by extortion.

Section 125. Larceny is of the fourth degree when the value of the

property is \$50 or less.

Section 126. This section makes major changes in the prior law regarding receiving stolen property (Section 53-65). First, it makes clear that if the actor initially receives the property innocently, subsequently learns it is stolen and retains it thereafter, he is guilty. This was not clear under prior law. Second, the element of concealment, a requirement under prior law, is eliminated. Under this section it will be a factor relevant on the issue of the actor's guilty knowledge. Third, the receiver is treated, not as a principal to the theft itself, but as a separate offender. Thus, he must be charged as such. Fourth, the actor's guilty intent is satisfied if he knows or believes that the property "has probably been stolen." Fifth, the section makes clear that lending on the security of the property is receiving.

Section 127. This section substantially restates prior section 53-366.

Section 128. This section expounds on prior section 53-361. Principal differences, however, are that it specifically does not apply to a post-dated check, and that presumption of knowledge does not apply unless payment was refused within 30 days of issue.

Section 133. This section defines robbery: a larceny accompanied by force or threat. Thus, reference must be made to sections 118

and 119 for the definition of larceny. The basic rationale is protection against the terror of the forcible taking.

The prior law (sections 53-67, 57-14 and 53-28) adopted the common law definition of robbery: the felonious taking from the person or presence of another by force or intimidation. See State v. Velicka, 143 Conn. 368 (1956); 77 CJS 446. This may have excluded from the robbery ambit a variety of forcible thefts, such as the following: A forces B to telephone his wife and direct her to take money from his safe and deliver it to A's agent. This section eliminates any possible common law "from the person and in the presence" requirement and expands the definition to cover such a case.

Section 134. Simple robbery is raised to robbery in the first degree on the basis of any of three aggravating factors: causing serious physical injury, being armed with a deadly weapon (i.e. a pistol), or being armed with and threatening the use of a dangerous instrument (i.e. a club). Therefore, bare possession of a "deadly weapon" is sufficient for the crime, whereas use or threatened use of a dangerous instrument actually possessed is required. Reference must be made to section 3 for the definition of deadly weapon and dangerous instrument.

Section 135. Robbery in the second degree makes the presence of

an accomplice an aggravating factor. The rationale is that the accomplice is equal to a person armed and therefore would generate a higher degree of fear in the victim. Robbery in the second degree is also aimed at circumstances where the actor or accomplice, although not armed with a deadly instrument, purports or represents to be so armed and threatens its use. For example, the actor threatens to use what appears to be a gun he holds in his hand; in reality the gun is only a toy pistol.

Section 137. This section adopts a comprehensive definition in specifying what may be the subject of forgery. "Written instrument" encompasses every kind of document and other items deemed susceptible of deceitful use in a "forgery" sense, the main requirement being that it be "capable of being used to the advantage or disadvantage of some person". Distinctions are drawn between the terms "complete written instrument" and "incomplete written instrument". The key terms of this section are "falsely make", "falsely complete" and "falsely alter", which collectively constitute the crime of forgery.

Section 138. This section is the most serious of the forgery offenses. It applies when the forged instrument is money, stamps and comparable instruments, or stocks or other instruments representing an interest in or claim against an organization.

Section 139. This section includes certain important documents not covered by section 138. The reason for the exception is that forgery of narcotic prescriptions is covered by the Drug Dependency Act.

Section 140. This is the basic forgery section. The second "alter" in the section is an inadvertent error; it should read "issue", so that issuing or possessing forged material, with the requisite intent, is also prohibited. Cf. section 141. (Note: The Commission has recommended that this error be corrected.)

Section 142. This section encompasses fraudulent misrepresentation and simulation of antiques, rare books and comparable matter. It includes the issuing or possessing of such objects, as well as the making or altering of them.

Sections 146-164. General Comments. These sections cover several forms of bribery, tampering with witnesses or evidence, perjury, false swearing, and rigging of sporting or other public contests. These sections are purposely broad and general. Their purpose is to prohibit all forms of corruption of the governmental process, of business or labor affairs, and of publicly exhibited contests. They make clear that the recipient is culpable as well as the donor. They broaden the field to cover all governmental officials--state or local--elected, appointed or advisory, whereas the prior law

was limited to the administration of justice and attempts to influence legislation. They also cover, for the first time, bribery of labor officials, and broaden the field of commercial bribery. They broaden the field of corruption of witnesses and tampering with evidence. Finally, they cover in broad, general terms, the area of corruption of public contests and reach, not only the willing recipients, but any knowing participant.

Sections 165-167. These sections, which are based on the New York revision, attempt to cover a serious gap in the prior law. While it is clear that a so-called "accessory before the fact," or aider and abettor, is criminally responsible under both prior law and the Code, it is probably also true that under prior law there was no offense covering the person who knowingly assisted the accused after the offense to escape apprehension, etc. These sections attempt to cover that conduct. The offense is limited, however, to cases in which the primary offender committed a felony, and is graded according to the seriousness of the felony.

Sections 168-174. These sections deal with the various forms of escape. Section 169 is the most serious form; it involves escape from a correctional institution. Section 170 involves such forms of escape as escape from a work detail outside the institution or failure to return from a work-release program. Section 171 involves

such acts as escape from an arrest or while being transported pursuant to a court order. Sections 172 and 173 deal with failing to appear in court while released on bond, own recognizance, promise to appear or any other procedure of law. Section 174 is essentially a restatement of prior section 53-162a.

Sections 175-178. These sections deal with rioting. They are based on the New York Revised Penal Law. The principal basic elements of the offense are tumultuous and violent conduct, and intentional or reckless creation of a grave risk of public alarm. The offense is raised to first degree status, under section 175, if there are seven or more participants and a non-participant suffers physical injury or substantial property damage occurs. The requirement under prior law (section 53-169) of reading the riot act is eliminated. Sections 177 and 178 are geared to the offenses created by sections 175 and 176 and are, in effect, inchoate offenses with respect to the latter.

Section 179 replaces and narrows the scope of prior section 53-44. The additional requirement that the advocacy be of "imminent" dangerous action is compelled by relevant constitutional doctrines of free speech.

Section 180. This section aims at three degrees of conduct which result in serious and often dangerous disruption of public services

such as police and fire departments. Subsection (1) deals principally with the bomb-scare situation. Subsection (2) aims at false reports to the police.

Sections 180-181. General Comments. These sections are a combination of the prior law (sections 53-174 and 53-175) and the New York Revised Penal Law. It should be noted that "public" is not defined. This is intentional. Its interpretation is left to the courts to work out on a case by case basis. It is not meant, however, to be limited to governmentally owned or controlled places; a restaurant or department store, for example, would be "public" within the contemplation of the term.

Section 180. It is an element of breach of peace that the actor act with the requisite intent or recklessness. See section 3 for the definition of recklessness. Subsections (a), (1), (4), (5) and (6) require publicity. As to subsection (6), it should be noted that it should be read as if the word "and" followed the word "public". That is, the condition created must be (1) public and (2) hazardous or physically offensive.

Section 182. Like breach of peace, disorderly conduct requires a specified intent or recklessness. Subsection (1) parallels subsection (1) of breach of peace, except that here there is no requirement of publicity. Subsection (4) is based on, but broader

than, prior section 53-172. Subsection (b) contemplates, in its reference to "a reasonable official request to disperse", that the request be lawful; that is, that it not be in violation of the actor's right or privilege to remain where he is.

Section 183. The basic rationale behind this section is the prohibition of acts which are intended to annoy, alarm, or harass an individual rather than the public in general. It expands prior section 53-174a, which was substantially limited in two respects: it did not cover any method of communication other than the telephone; and it did not include the single telephone call for the purpose of annoyance or harassment.

Subsection (1) restates a portion of the prior statute, and is aimed at indecent or obscene telephone calls. Subsection (2) is taken from the New York Revised Penal Law. It enlarges the scope of harassment to cover telegraph, mail or any other form of written communication. The reference in this subsection to "telephone" should read "telegraph"; the Commission has recommended that it be amended accordingly. Subsection (3) is limited to telephone communication and includes the single phone call made to harass, alarm or annoy.

Section 184. This section expands the definition of intoxication to include being under the influence of any substance to the

degree that the actor may endanger himself or endanger or annoy others. Subsection (b), which provides for commitment, is based on a proposal made by Attorneys Arthur B. LaFrance and Joanne S. Faulkner of the New Haven Legal Assistance Association, Inc. for the Alcohol and Drug Dependence Division of the Department of Mental Health. It should be read in the light of sections 17-155 (a)-(j), which it supplements. The purpose of subsection (d) is to make clear that a police officer may, without incurring civil liability for false arrest or imprisonment, bring an intoxicated person to an appropriate facility without the necessity of going through the procedure of making an arrest for the offense of intoxication. (Note: The Commission has recommended that this subsection be broadened to include civil facilities for drug dependent persons as well.)

Section 185. The rationale of this section is the protection of the peace and safety of school children. It replaces the prior, much broader loitering statutes (sections 53-177, 53-178 and 53-179). The reason for this position is that the principle of "loitering" as a criminal offense should be limited to situations of compelling need, since the prohibited activity does not involve any overt act and may allow for an unwarranted amount of police discretion. The section contemplates that the absence of a reason, relationship or license for the actor's presence is an element

of the offense and, as such, the burden of proof thereon would be on the prosecution. Otherwise a serious Constitutional problem would be raised.

It should be noted, in this connection, that the Code repealed the prior vagrancy statutes (sections 53-336 and 53-337).

Section 186. This section aims at the prohibition of public sexual conduct. This definition of "public", for these purposes, is related to the basic rationale of the offense: protection of the reasonable sensibilities of others from unwanted sexual display, amounting to gross flouting of community standards in respect to sexuality and nudity. The references to sexual intercourse and deviate sexual conduct should be read as incorporating the definitions contained in section 65.

Section 187. The basic rationale of this section is to proscribe unauthorized interception and divulgence of telephonic or telegraphic communications and also the unauthorized auditing of a conversation through the use of electronic equipment.

The term "wiretapping" embraces any surreptitious overhearing or recording of a telephonic or telegraphic communication by means of any instrument, device or equipment. An unintentional overhearing, e.g., by means of a malfunctioning of telephone equipment, does not constitute "wiretapping." The "mechanical overhearing of

a conversation" must be by means of any instrument, device or equipment and must be without the consent of at least one party to the conversation. The reasoning behind the requirement that the overhearing be by a person not present at the conversation is to limit the offense to situations in which the speakers had no reason to know that they could or might be overheard.

The purpose of subsection (b) is to make clear that this is strictly an offense against the right to privacy from intrusion by non-law enforcement persons or agencies, but does not attempt to resolve the difficult questions involved in the area of authorized wiretapping or eavesdropping by law enforcement officials.

Section 190. This section makes clear that bigamy includes both one who "marries" and one who "purports to marry" illegally. It also makes clear that it encompasses both a bigamous marriage solemnized in this state and cohabitous relationship in this state preceded by a bigamous marriage elsewhere.

The affirmative defense is designed to protect an innocent party acting reasonably and without criminal intent.

Section 191. This section essentially restates prior section 53-223. The only change is to substitute "engaged in sexual intercourse" for the archaic and ambiguous "carnally know each other."

Sections 193-198. These sections deal with control of obscene material. They are meant to incorporate and refer to the applicable Constitutional decisions. See, e.g., Roth v. United States, 354 U.S. 476 (1956), A Book Named "John Cleland's Memoirs of a Woman of Pleasure v. Attorney General of Massachusetts, 383 U.S. 413 (1966), Ginsburg v. United States, 383 U.S. 463 (1966) and Mishkin New York, 383 U.S. 502 (1966).

Sections 193 (b) and 196 deal with the issue of obscenity as to minors (a "minor" being for these purposes someone less than seventeen). They are taken practically verbatim from the only statute of this kind to have withstood Constitutional attack, the New York law which was upheld in Ginsburg v. New York, 390 U.S. 629 (1968). It should be noted that a requirement of obscenity as to minors is that the promotion of the material be for a monetary consideration.

Sections 199-210. These sections essentially restate prior sections 53-224 (b) - (m).

**Connecticut Legislative Histories**

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**Legislative History  
of  
“An Act Concerning Revision and Codification  
of the Substantive Criminal Law.  
This act shall be known as the  
Penal Code”**

**Public Act 69-828  
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**Transcript of the second hearing  
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April 27, 1964  
in New Haven.**

COMMISSION TO REVISE THE CRIMINAL STATUTES OF THE STATE

April 27, 1964

New Haven

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JUN 15 1964

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CONNECTICUT

PRESENT: Rep. Robert J. Testo, Chairman; Sen. Morgan K. McGuire,  
Professor Thomas L. Archibald, Professor Richard C.  
Donnelly; Judge John Alexander, Mr. Gorman, Mr. Tierney,  
David M. Borden, Executive Director.

PROFESSOR DONNELLY PRESIDING

This is the second hearing held by the Commission to Revise the Criminal Statutes of the state. The first hearing was held on April 6 at Hartford. The hearing this afternoon is primarily for judges and other court personnel, although anyone else here is welcome to appear before us. At these two hearings we've been concerned chiefly with the substantive provisions of the Connecticut code, Title 53 dealing with offenses against public and private property. If anyone present desires to comment on those provisions of the statute, we'd be happy to hear from them. On the other hand, do not feel constrained to confine your remarks to property offenses if there is anything else in the criminal code that you would like to call our attention to, we'd be glad to hear from you. Is there anyone present now who would like to address the Commission?

JUDGE ALEXANDER: Thank you, I'll state my name, I am John Alexander of Windsor. I'm a Judge of the Circuit Court, speaking solely as an individual, not presuming to speak for the court as such.

I don't know whether this is entirely within the purview of this Commission, but I had discussed it informally with David Borden and Professor Donnelly and they thought you might be interested in this. I have in mind the question of search and seizure, particularly as embodied in Section 54-33a. The problem which I raise is as to a search warrant issued to search the person; in other words, a search warrant issued to search the garments and the person of John Jones, for example. Let's assume that all the other statutory requirements are fulfilled; in other words, that the officer who obtained the warrant had reasonable cause to believe that the person had some illegal matter on his person. Section 54-33a provides that upon complaint on oath of any state's attorney or prosecuting attorney to a judge of the Circuit Court that any property possessed, controlled, designed or intended for use which is or has been used or which may be used as a means of committing any criminal offense...and then it goes on to say, which has been stolen or embezzled, is within or upon any place or thing--that's what the statute says. On the representation that this illegal material is upon any place or thing, the court may issue a warrant commanding the officer to enter into or upon such place or thing, search the same, and take into his custody all such property named in the warrant. Now, you notice that that doesn't include the search of a person. Paradoxically enough, the next Section, 54-33b, goes on, and it says that the officer serving such warrant may, if he has reason to believe that any property described in such warrant is concealed in the garments of any person in or upon

such place or thing, search such person for the purpose of seizing the same.

You can see that it's conceivable that a person might be searched and not even be named in a warrant; in other words, that the officer is empowered to search the premises at 50 Main Street in New Haven and while they are searching for any material, he sees a person on the premises whom he believes has illegal material on him--for example, policy slips--he may search that person, even though there's no warrant issued permitting that search. This is merely a right incidental to the original permission given in the warrant to search a place or a thing.

This is something that has come up in court, and I think it's something the Legislature may want to consider and to spell out, perhaps, a little more clearly just what they have in mind. It would seem to me that the Legislature intended to permit the search of a person when it allows it as an incidental right, as it does in Section 54-33b. However, in the main part of the statute there's no right given to search the person. In a case that was argued in the Circuit Court the prosecution argued that the person was a thing or that the person's garments were a thing, but when you read Section 54-33b, it's pretty clear that that was not intended because it talks about when you in such place or thing, you may search a person. The person's garments are not a thing within the meaning of the statute, it seems to me.

At any rate, I understand that the federal rule, which is Rule 41, I understand it specifically mentions and permits the search of a person. Why it was omitted, I don't know. There may be good reason for it, but I think this is something worthy of consideration.

I have one other thing, which I understand may have been mentioned by Judge Rubinow, and that is the question of a second bond in a bindover situation. If that's been mentioned, I won't bother talking about that.

CHAIRMAN: It was mentioned, but we'd be glad to have your comments.

JUDGE ALEXANDER: Well, at any rate, the concrete situation--and it's quite a prevalent one--is where a young boy, for example, is charged with burglary, which is a bindover offense. The family gets up the bond premium which may be sizeable, it could run to \$100 or \$200, which guarantees his appearance before the Circuit Court. That could be a matter of only a week or two weeks and then at the hearing in the Circuit Court he's bound over again. He's bound over and a new bond is set. Then an entirely new premium is required by the bondsman. I did speak to the personnel at the New Haven Circuit Court and they assure me that these bondsmen are getting two premiums, for this one situation. They are perhaps justified legally because the statute does talk about a bond being set and it reads as though it's a brand new bond at the bindover proceeding in the Circuit Court. That Section is Section 54-1a. Along at the end of the statute it talks about "The court shall order that the accused enter into a recognizance", and I think it reads,--we've always required a brand new bond. It would seem to me that if some provision could be made that the bond originally given would carry over and guarantee the man's appearance for the Superior Court. It may be that that is an idea that

Judge Rubinow may have called to your attention. The first matter that I discussed--the question of the search and seizure--I'm pretty sure he did not discuss with you because when I spoke to him about it the other day it would seem to be a problem of first impression with him. Thank you very much.

REP. TESTO: I think the problem mentioned at our last hearing was on bench warrants. I guess the problem would still be there--is it the same problem in your eyes. Do you know what I mean? When you have a man arrested and bond put up for him in Circuit Court and then subsequently there would be a bench warrant?

JUDGE ALEXANDER: It could be the same problem.....Yes, I would say that it would be substantially the same problem, yes.

CHAIRMAN: Are there any other questions? There are a couple of questions I'd like to ask you, Judge. As I understand you on this first point of search and seizures, you don't feel that the incidental power to search the person of a person ..... arrested is sufficient?

JUDGE ALEXANDER: No, I don't. This situation I have in mind is where the person is standing on the street, such as the concrete case we had and the question is, can you just come up to him and search him right there.

CHAIRMAN: Without making an arrest? Then if you make an arrest, you have the power to search the person.

JUDGE ALEXANDER: Yes, but that isn't the situation we have in mind. As you see the person on the street, he may have policy slips on him, but there is nothing about his conduct at that time that would lead you to believe that you'd be justified in making an arrest. That's when you're acting under speedy information that is incidental to a lawful arrest. No, I don't think--that was argued by the prosecutor, but I don't think he was very serious about that.

QUESTION: It would be your suggestion then that the person be included in the statute authorizing the warrant...  
(Question not recorded.)

JUDGE ALEXANDER: Yes, this would be more restrictive even. If the officer goes into a place as he has been authorized to enter, he can search anyone there whom he has reason to believe has illegal material on him.

CHAIRMAN: Just one final question, Judge, in your service have you really encountered any difficult problems in the property crimes--I mean, distinctions between larceny and false pretenses, the meaning of forgery, counterfeiting and frauds and so forth? Have there been any difficult problems that have come before you as a judge?

JUDGE ALEXANDER: No, I can't say any marked problems, Professor Donnelly. It seems to me--as I remarked to you before the hearing....

CHAIRMAN: Is there anyone else who would like to be heard? Mr. Gorman? We've just got started and the main thing we're concerned with today--although we're willing to talk about other things--is chiefly concerned with property offenses, what defects there are in the Connecticut law, what problems confront judges, prosecutors, defense counsel, in dealing with these offenses. The call of the hearing was to deal with the substantive provisions in Title 53, Chapters 940 and 941, Sections 53-42 through 53-142; also Chapters 947 and 948, Sections 53-346 through 53-379, entitled "Offenses against Public and Private Property, Forgery, Counterfeiting, Frauds and False Pretenses".

ARTHUR T. GORMAN, County Court House, New Haven, State's Attorney's Office. With me is Assistant State's Attorney, Mr. George Tierney. This morning I got a call from Bill Fitzgerald, State's Attorney in Waterbury. Bill is our senior State Attorney, President of the State Attorneys Association and he asked me to come this afternoon and see just what was going on and how we can be of assistance to the committee. We have in the summer recess a meeting of state's attorneys and all assistants and it's our hope that during this meeting this year we will be able to give you the benefit of the problems we have come face to face with and any suggestions that we feel would help in correcting any defects that we have seen. This is the way we intended to approach this. It isn't of any help to you today--I grant that, but I believe you're just starting out. I'm sure the various state's attorneys' offices have had many experiences that we can bring to your attention which present problems and suggestions for correction.

CHAIRMAN: Our plan was that we thought it would be advisable to take up property offenses first, as a possible basis for change and recodification. We'd certainly find it most helpful to have what your group can present later on.

MR. GORMAN: We discussed it at length this past summer and I'm sure this year we will come up with whatever we can to be helpful. I think that we certainly, after our meeting or at our meeting agree to have a committee--say, of the state's attorneys meet with your commission. I think we'd be more than happy to do this and I think it would be helpful to you people to hear the problems we have come face to face with. I'm sure you have no idea of the actual problems we face. I definitely will follow through for you.

Just a week or two ago I was up to State Prison on sentence review. There were five state's attorneys there and we were talking about this as to how best to get to you gentlemen the things that we felt needed attention. It was the thought that at our meeting this summer when we get everybody together. Somebody suggested that it would be helpful to have some of our group meet with you people.

CHAIRMAN: Would it be better, from your point of view, to take up specific areas of the criminal law, such as property offenses and then maybe later on, crimes of violence, or go clear across the board at once and try to consider a great variety of types of crimes?

MR. GORMAN: We'd be happy to do it any way which will help to do it because the boys are very anxious to get to the powers that be in the Legislature. Don't think that we're trying to jam something through. It's just that we feel there are flaws that can be corrected, not so much in sentence, but in interpretation. George, do you want to add anything?

MR. TIERNEY: No, I think Professor Donnelly was indicating areas not to frighten everybody out of the picture by saying let's cover the whole works. I think the lack of uniformity in sentence, for example. Of course that's a judicial prerogative to the judicial aspect. But I think at our meeting where we kick around these things after having had a preliminary consideration in our own offices as to what seems to be required. And of course we're not the end all. I think Professor Donnelly's point is well taken that you sometimes lose everything when you use a shotgun.

CHAIRMAN: Well, that was our view--that it would be better to focus on one or two at a time.

MR. GORMAN: Before the meeting, we'd be glad to meet with your group to get our plans worked out so we can then meet with your committee and give you the benefit of what we have.

REP. TESTO: I think that if there is anything that needs immediate action, that can be taken care of legislatively....

MR. GORMAN: I think any of the state's attorneys would be happy to talk with any of you gentlemen, because we want to get to the Legislature any way--let's face it--it's been our feeling over the years that the minute the state's attorneys are asked for something, we have an axe to grind. We don't want to approach it in that way. We want to present it through you gentlemen after sitting down and reasoning it out and let's see if you agree with us. That's our feeling, and if so, let's get some immediate legislation and then let's get all these statutes revised that need revision.

SENATOR MCGUIRE: Mr. Gorman, do you feel that it's wise to try to codify the entire criminal law the way that it's being done in New York and in some of the other states?

MR. GORMAN: That's a hard question to answer. There are a lot of statutes that are perfectly all right--there isn't any question about that, and then there are other statutes--a lot of them--that need some revision. For instance, the robbery statutes. I think they have had need of attention for a long time--assault with intent to rob, robbery, robbery with violence. Think of assault with intent to rob, this can bring in a lot of violence on the assault. So you do just as much damage on an assault with intent to rob as you do with an actual robbery with violence. Up until just a couple of years ago, the robbery statute, seven year maximum, was mandatory state prison. Robbery with violence was 25 years maximum, but no mandatory state prison. There are many features of

the thing that, I think, require a second look.

CHAIRMAN: I think what Senator McGuire was getting at: do you think it would be better to take up these things piecemeal, or to try to wait and have a systematic over-all codification, something along the lines of the American Law Institute or Illinois, or the New York proposal and so forth?

MR. GORMAN: I think that piecemeal could be taken up those things which we might feel need some fairly prompt attention because the other is going to be a fairly lengthy undertaking. I've run into situations like this: we have a lot of vending machines.....people break into these machines and take money. I don't think you can get in under the B and E section and yet they'll go along knocking them off one right after the other. I've had them where there are 30 or 40 of them involved. What are you going to charge them with? Theft? Theft of what? \$45 and six months and that's it. I feel that this is something that's grown into existence--vending machines, and it's something that needs some consideration. That happened to pop into my mind. You should be able to charge them with breaking and entering, but I don't think they are the type of structure that are included under the breaking and entering. I'd like to have a crime that fitted the facts. If a group is going out to break open 20 or 30 machines in a night, for example, laundromat--you can walk in and open every machine inside the place, there is no breaking and entering--the place is wide open--and yet they can do a whale of a lot of damage and yet you can't charge them with a felony, and I think we should be in a position to. This is from practical experience that you bump into. That's just one and there are a lot more that are of a more serious nature. I'm not prepared to talk on them at the moment.

CHAIRMAN: That's the sort of thing that we're very interested in, this whole breaking and entering. I suppose it developed initially with breaking into the home...

MR. GORMAN: That's right. They have included a car--now that's fine and dandy, but here are the laundromats, the coin machines, how much is inside--\$15 or \$20. So if you charge them with each one, what is the penalty. It doesn't amount to a row of pins because you can't get in under a breaking and entering statute. Of course we've had crimes where they hit the telephone booths--I think we had one where they must have hit 30 of them--rip off the phones and everything. Well, they've got a public utility where if you break into any public utility, there's a two-year maximum. So I was able to go in under the conspiracy statute there. Now this group came from the west coast to the east coast, breaking open telephone booths, this was their specialty, they lived on it. Most places would charge them for theft of \$15 or \$20, and it went on. Finally, we caught up with them here and gave them the full treatment on a conspiracy to commit a

felony and they were incarcerated for a substantial period of time. Conspiracy to commit an assault--these gang things where 6 or 8 or 10 fellows jump one individual and practically kill him. Where a whole gang does this, I think it should be conspiracy to commit an assault which would carry a greater penalty than the one permitted under the present statute, that is, the penalty of misdemeanor.

CHAIRMAN: We know we're putting you on the spot without preparation, but a point that came up at our last hearing was whether the theft statute is sufficiently discriminatory in automobile theft cases? That is, distinguishing between a juvenile who takes an automobile for joy riding purposes for two or three hours and plans to return it, and the person who really steals an auto for the purpose of engaging in a serious crime or for the purpose of retaining possession of the vehicle for an extended period of time? Do you agree with that?

MR. GORMAN: I have no fault to find with the existing statutes on using without permission and theft of motor vehicle, and there is a very definite distinction between the two, in my opinion. Right along, it's been my opinion and my policy, where they take a car and go out of state, I charge them with theft. If they strip a car, I charge them with theft. If they take a car and go for a ride and you get your car back that day or the next day, this is using without permission, if they keep it within the area. Even where they take cars and try to get away and they have races and so forth and the police try to intercept them, it's still using without permission, as far as I am concerned. But you have your second offense bit on that which takes care of that situation, it's a ten-year maximum. So that I have no fault to find with the theft of motor vehicle or using without permission at the present time.

SEN. MCGUIRE: It seems to me that what this Commission is trying to do is to do away with a lot of differences and they are trying to cover every possible set of facts.

MR. GORMAN: In other words, create larger maximums so that the court can take care of...in other words, I gather that you want a statute which would permit the court to handle a lot of situations? So that you would have to have a high maximum to handle the more serious ones and leave it to the discretion of the court to digest the facts and to impose the proper penalty.

SEN. MCGUIRE: Be that as it may, would you as a state's attorney encounter difficulty in working under a new set of ground rules?

MR. GORMAN: I feel this: that a lot of latitude should be allowed the court--that's my opinion--in the question of sentencing. And that's what you are asking me pretty much in substance here, aren't you?

SEN. MCGUIRE: Yes, I've gone even further than that...

MR. GORMAN: Whether or not the statutes should be such that they have that power? Let's take the narcotics statute. The Legislature has taken a lot of power away from the court. There's no question about that, and I can't say that I'm thoroughly in accord with this. I know the Legislature and I'm not critical of it. It considers narcotics as a serious offense. It is, and I think that can be indicated by the maximum statute rather than saying that it's got to be a five-year minimum. Let's say you can impose a five-year minimum for possession and yet on the question of a user, then it can be anything up to five years. Now, this line of distinction between possessor and user is a very, very thin line because most users are selling on the side, too, in order to feather their nests. So when do you charge user and when do you charge possession? Of course if you charge possession, it's got to be a five-year minimum.

SEN. MCGUIRE: I still don't make myself clear. You have just mentioned that there is no specific statute--at least you don't find a specific statute to cover coin machines. My point is this: would it be better, in your opinion, to get a broad about everything, or should we, on the other hand, try to draw statutes that could cover cranberry bogs and coin machines?

MR. GORMAN: It's rather hard to answer the question. I think I see where you're headed..

CHAIRMAN: Could I just amplify that a moment? On this law of theft, would it be better to have a general, comprehensive theft statute covering all of the types of theft, the deprivation of property and perhaps grade the offense in terms of the value of the property taken, rather than to have the kind of provisions that are now on the statutes--theft of a horse or a mule as a separate offense. Shouldn't specific things be eliminated?

MR. GORMAN: As far as I am concerned, yes. I see no gain by having all these separate statutes.

SENATOR MCGUIRE: On the contrary, though, the only reason that they seem to be of little use at the moment is because of the change in the nature of our society. At one time, they were good. Now this coin machine thing wouldn't be written unless it's good, but that has nothing to do with criminality as such. It's just a set of facts.

MR. GORMAN: Well, you're breaking and entering something. Now, the breaking and entering statute refers to certain things. The limitation is there. There never used to be such a thing as the breaking and entering of an automobile, that was not included, but that has been included in recent years. That was a revision that's now included.

CHAIRMAN: The fact of breaking and entering is indicative of a state of mind that applies regardless of what the thing is that's broken into.

MR. GORMAN: They break and enter a coin machine just the same as they break and enter an automobile in order to take something

of value out.

CHAIRMAN: And that's the measure of culpability, it's the breaking and entering rather than...

MR. GORMAN: That's right. And under the ~~last~~ statute you have very definite limitations as to the amount ..... I'm not suggesting a new breaking and entering statute, I'm suggesting some slight amendments to the existing one--that's all I'm suggesting. I don't want separate statutes for coin machines of anything of that nature. I just want something that includes them. I just want some slight amendments whereby new situations can be included. I don't want to monopolize this.

CHAIRMAN: We've found it very helpful. Mr. Borden is Research Director of the Commission and is doing most of the research. I just wonder whether you have anything to put forth, Mr. Borden?

MR. BORDEN: (First part not recorded). .... It seemed to me that the breaking and entering itself was not the real problem but the fact that it was a series of breaking and entering, a series of car thefts, or a series of petty thefts of women's handbags and it seems that we would deal with that kind of thing in terms of conspiracy...

MR. GORMAN: But conspiracy to do what? Because you've got to consider what your penalty provision is on the statutes. You've got a conspiracy to commit crimes of theft of less than \$15, and you may not be able to prove how much came out of a particular coin machine. Then you've got a maximum of thirty days that you can get under conspiracy. So you've got to have some sort of a felony in there because, believe me, when these boys go off on a rampage taking coin machine places apart, they can do a whale of a lot of business in one night or in a series of a few nights. You finally catch up with them. Is it a thirty-day crime? Not in my book, it isn't. What's your penalty for \$15?

MR. BORDEN: Thirty days on each count, though.

MR. GORMAN: On each count of what?

MR. BORDEN: Of theft.

MR. GORMAN: Yes, but how many can you prove? You know they are in and out of several of them there.

MR. BORDEN: What happens to the person who only broke into one? I mean as far as the penalty?

MR. GORMAN: Well, let me tell you, when he's been in on a lot and you can prove he's been in on them, but you can't prove the amount, then you've got problems. He has \$100 in his pocket and he's knocked over about twelve coin machines, how much came out of any one, if any?

You've got problems. I don't think it's the intent of the Legislature to give these people that advantage. You know they broke into them, they admit it, but how much out of any particular machine. I don't think they should be able to hide behind those technicalities. I've run into it a few times and I thought, some day I'm going to bring this up. I just happened to think of it today, and you got it.

CHAIRMAN: Thank you very much. Is there anyone else who would like to talk to the Commission.

WILLIAM L. TIERNEY, JR.: I am the prosecutor from the First Circuit. we meet quite frequently, generally either with the state's attorneys or some judges, and it has been our policy to discuss these things in our own group and then generally Judge Rubinow has been the liaison for the prosecutors and the court or the court itself to bring these matters up in the Legislature, and I think that is how the changes in the speeding law and the drunk driving law and the various changes that have come up this time were presented insofar as the Circuit Court is concerned. So I'm not in that position to speak here, but I feel very much as Mr. Gorman does, that there are an awful lot of things--not specifically on this one subject--that one prosecutor experiences in one place and another in another place that can be well thrashed out at these prosecutors' meetings and submitted to your committee.

Just one thing that Mr. Gorman suggested--that if a man takes a car and goes over the state line, at that point he feels that he stolen the car. That might be your thought in New Haven, but in Greenwich everybody goes to Port Chester, these kids that steal cars go down to some saloon in Port Chester so it really wouldn't be a workable thing, but it might be a very workable thing for a prosecutor in the Circuit Court in Hartford to adopt the same attitude. So we hope that we will be able to work some of these things out and submit them to you. I think this is a very fine suggestion and I'm glad Mr. Gorman brought it up.

CHAIRMAN: We'll be glad to work with your group the same as with Mr. Gorman's. Anyone else who has comments to make?

MR. GORMAN: May I ask what the ultimate plan is of your committee? Where are you headed?

CHAIRMAN: I think Chairman Testo should answer that.

REP. TESTO: The purpose of the Commission is to study the criminal laws of the State of Connecticut and to revise them and to report back to the '65 Legislature as to all our study brings out. So we decided to take it in Titles because, as you know, it's a very big, tedious job. We have a director, who is Dave Borden, who is doing the research. We've asked the judges to come in and we've asked you to come in. Frankly speaking, the interest is not there so it looks as if we're going to have to do most of it ourselves. We plan by '65 to come forward with a good recommendation on these Titles that we're studying, in other words, the stealing of swine and things like this could be let out. This is the feeling, I think, of the committee. We're studying the other codes--the A.L.I. and the New York proposal, Louisiana, Illinois--we're not going to take them either. We feel that this is a study that is unique to Connecticut and we're going to handle it that way. We've finally come forward with something on these two

Titles, we'll tell the Legislature what we've done, make recommendations. I don't know--we haven't had any executives yet--but if we feel the work should continue and we can do some good in codifying, if this is to be part of it, or revising--certainly that is going to be part of it--that the Commission is again to go on. So this is our plan. We have caused some concern, we know, with the judiciary and with the state's attorney's office. Frankly, I think the judiciary is concerned that we're tampering with something that is perhaps better left not tampered with. This is all right, this is good criticism, and we think that the state's attorney's office has to be concerned that we don't do this. That's why you are here; that's why your representative was in Hartford. We welcome them. We welcome your opinions, the value of your experiences. You see, we are a creature of the Legislature. You people work with these laws much more than we do--some of us practice law and some of us don't. These are your working tools, so you say, why are they concerned? You should be concerned, and we want to do the right thing--that's why we have invited you.

MR. GORMAN: You've answered my question very nicely. Now let me speak for the state's attorneys. I'm sure they are going to be more than happy to give you the benefits of what they can give you.....I think the present movement, they're not sure where it is going, or how it is going or anything of that nature, but there is no feeling--let me tell you, I was with five state's attorneys just last week at the prison--there is no feeling on the part of these gentlemen that they are against this Commission--they are fully in favor of it, and they want to be as helpful as they can to the Commission in bringing about what we feel are good changes if changes are necessary, and we know that they are. Of course, unfortunately, as you go around and meet with nobody showing up, so it doesn't mean a whole of a lot..

REP. TESTO: I don't think that's so, Mr. Gorman, because the little bit that we got in Hartford from Judge Rubinow and a prosecutor I believe, from New London, and the little bit again--and I don't say it derogatorily--that you gave us certainly shows us that we're on the right track. You see, we don't know, we were given the Commission, we were named on the Commission, so you just don't take all these laws and come out with a commercial code, so to speak, you know what I mean? We want to do the right thing, but the fact that you have shown us that there might be small problems shows us that there are problems and that there is some work that can be done and done well, and we hope to do it well. So we appreciate your coming and we understand that it isn't....

MR. GORMAN: Well, I'm glad I came. It's pretty hard to get our gang together because somebody's on trial for a murder case or something....

REP. TESTO: Well, this is a problem, isn't it, with almost everything--you run into those who are concerned with narcotics, everybody's too busy to do something about it. And I don't mean to say that you're too busy to do something about it. And I don't mean that you're too busy to come and say, well, I've heard these Titles and this is what I think should be done. That would take an awful lot of your time, we understand that.

That's why we're paying Mr. Borden to do it.

MR. GORMAN: In the summertime when we get together and we really get a chance to kick these things around....

REP. TESTO: Now, you've been around a long time, Mr. Gorman, and you know what we're trying to do, since I've told you, what would be your opinion--not that this is going to be a fight--but if we had put on this Commission, if it is re-activated a member from the state's attorney's office in the State of Connecticut and also, let's say, a member of the judiciary, or wouldn't it be any good?

MR. GORMAN: I think it would be helpful.

REP. TESTO: It would? O.K. I thought you said awful.

MR. GORMAN. No, I think it would be helpful. They would feel they had representation. They would feel they were speaking to someone in their own organization and they would also have more knowledge of what's being done. At least, this would be my opinion. Do you feel that way, George?

MR. TIERNEY: I suggest it probably would be wise not to have a judicial member. They know I'd say this any way. I don't think the atmosphere of your Commission would be the same...

MR. GORMAN: You're talking about the Supreme Court, George?

MR. TIERNEY: Yes.

MR. GORMAN: I think that if you want to change something here, if you want to correct, you want to improve, I think you should be free to do that, even with the state's attorneys on. He's just one horse.

MR. TIERNEY: Once some years ago I appeared before a Legislative Committee to speak for alcoholic testing and I received a wonderful ovation. And I said, thanks for this ovation because .....in a later edition your committee will squelch this bill before it gets away.

MR. GORMAN: This is fine. I don't want a one-way street, but let's get on the committee people that can help--I'm sure the prosecutor's office and the Circuit Court, the public defenders--I'm in favor of the ones that are down there in the line throwing the punches. They could be a lot of help to you. You will also arouse the interest of all of those organizations.

SEN. MCGUIRE: I might state for the record that I was talking with Allyn Brown this morning and he's preparing for trial again tomorrow. He won't be here, but he also suggested that as a result of your meeting this summer

that they would have a list, perhaps, of things to go over with us. It might be well for us to speak with the state's attorneys at that time.

MR. GORMAN: That's right, but there again, I'm sure that Allyn-- unless of course you briefed him in--is not aware of just exactly what this group is out to do or doing.

SEN. MCGUIRE: Well, he has a pretty good idea of what it is because I know him and I've talked with him on the phone..

MR. GORMAN: All right, you've briefed him in, I haven't talked to anybody until today, but until we sit down here today and kick this thing around do I begin to see what's going on.

CHAIRMAN: Is there any other business to come before the Commission? If not, we will stand adjourned.

**16.**

**“Analysis of arson:  
Connecticut law, Model Penal Code  
and proposed New York Code”**

**[by]**

**Commission to Revise the Criminal Statutes of the State.  
1964.**

*Commission to Revise the Criminal Statutes of the State, 1964*

Analysis of Arson: Connecticut Law, Model Penal Code and  
Proposed New York Code

A. Connecticut Law: See Appendix A,

- |          |          |           |
|----------|----------|-----------|
| 1. 53-82 | 5. 53-86 | 9. 53-90  |
| 2. 53-83 | 6. 53-87 | 10. 53-42 |
| 3. 53-84 | 7. 53-88 | 11. 53-80 |
| 4. 53-85 | 8. 53-89 | 12. 53-11 |

B. Model Penal Code

1. Section 220.1 See Appendix A

C. New York: See Appendix A

D. Possible Defects in Connecticut Law

1. The criminal state of mind required by Sections 53-82--53-85 is "wilfully and maliciously". This is quite vague, artificial and inexact. For example, the Court has held that "malice need not be express, but may be implied; it need not take the form of malevolence or ill will, but it is sufficient if one deliberately and without justification or excuse sets out to burn the dwelling house of another." State v. Pisano, 107 Conn. 630 (1928). The Court here has employed a familiar judicial device in accepting "implied" malice as meeting the statutory requirement, and then has gone on to define malice, which ordinarily would include some element of malevolence or ill will, as "deliberately and without justification or excuse". The term, "wilfully," is left undefined, and is subject to the same vagueness and inexactitude as is "maliciously". The Model Penal Code's use of the terms, "purposely", and "recklessly", which are defined in Section 2.08 in more precise terms having reference to the kinds of behavior which society should prevent, are preferable. This analysis, however, will not examine in detail the mens rea

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elements of the crimes discussed.

2. Sections 53-82--53-84 appear to grade the offense by the type of property burned (or attempted to be burned). 53-82 deals with vessels, dwelling houses, churches, schools, theaters, auditoriums, assembly halls, or other structures used for public gatherings (and kitchens, shops, garages, barns, stables or other structures adjoining or belonging to these named structures) regardless of whether they are finished or unfinished, occupied or vacant. 53-83 deals with any building, vessel or structure not named in 53-82. 53-84 deals with burning the personal property of another worth more than \$25.

This gradation reveals the rationales behind these three sections. On one hand, the differentiation by types of property indicates that what is being deterred or punished is deprivation of property. On the other hand, the fact that 53-82 provides the most severe penalties for burning of types of property likely to be occupied by human beings indicates that what is being deterred or punished by this section is danger to the person. This second rationale is undercut, however, by the fact that 53-82 applies to those types of property whether they are finished or unfinished, occupied or vacant. Furthermore, this section does not, apparently, cover such analogous structures as factories and office buildings, the burning of which would involve similar great risk to large concentrations of people. Such a burning would fall within 53-83, which carries a much lighter sentence. Thus, burning a factory would be regarded less seriously than burning a suburban garage, even one unattached to the house. Section 53-11 raises a further complication by providing for life imprisonment for anyone "who endangers the life of another by wilfully burning any building or vessel". Note that this section requires that it be "wilfully", not "wilfully

and maliciously", and that one's life need only be "endangered". This seems a disproportionate penalty even for such a serious risk, at least when the person's life was only endangered by his nearness to the fire and was not lost.

3. 53-84 prohibits burning another's personal property worth more than \$25 and carries a penalty of imprisonment of from six months to three years. This provision creates absurd inconsistencies. First, there seems to be no criminological reason for focusing on burning, without regard to the risks involved in burning, of another's personal property. For example, burning another's expensive camera in an incinerator should be treated no differently from stealing it and selling it to a "fence" or throwing it into the river. What is socially harmful here is the permanent deprivation of one's property, and not the way it is disposed of. Secondly, 53-84 is inconsistent with 53-63, the larceny section. The person who burns the camera in the incinerator would be subject to a minimum sentence of six months and maximum of three years, under 53-84. The person who steals the same camera would be subject to imprisonment of not more than five years (no minimum) or not more than a \$500 fine or both, if the camera was worth more than \$50 but less than \$2,000, and would be subject to imprisonment of not more than six months or not more than a \$100 fine, or both, if the camera was worth less than \$50 but more than \$15.

4. 53-86 prohibits any person from "wilfully and with intent to injure, prejudice or defraud another", burning any "building, structure or personal property", whether his own or that of another, which property is insured against fire. The section carries a penalty of imprisonment from six months to five years. Although aimed primarily at the person who burns his own property in order fraudulently to collect on his fire insurance, it is so loosely drafted that it covers much

more than is justified. In effect, it makes it a special crime, regardless of the risks created or the type of property burned, to burn insured property. It creates, in effect, a crime against fire insurance companies. For example, the language of this section would cover the case in which A intentionally burns in an incinerator B's \$20 camera which is covered by B's comprehensive homeowner's policy. A would be subject to imprisonment of from six months to five years. Yet, if there were no insurance covering the camera, A would not even come within Section 53-84 (burning personal property of more than \$25 value), and would come within Section 53-126, which prohibits wilful injury to another's personal property not otherwise specified in the statutes and which carries a penalty of not more than a \$100 fine or not more than six months imprisonment or both.

5. The purpose of Sections 53-88, 53-89 and 53-90 appears to be to deal with situations where there is a risk of damage to property by the negligent or reckless use of fire. The defect in these sections, however, is that they are poorly drafted to carry out their purpose. They are too specific. For example, 53-89 prohibits fires in a woodland within twenty feet of combustible material. Section 53-88 deals only with unauthorized fires on land. Such specificity is wooden and unworkable.

A wiser way to deal with these problems is to frame the statute in terms (1) having reference to the type of behavior which we want to prevent, e.g., purposeful, reckless or negligent damage to property, and (2) which will include all other possible means of creating risk of destruction, such as explosion, flood, etc., and will also include all the types of property to be protected from the risk of damage. Both the Model Penal Code and the Proposed New York Penal Code take this approach by creating the crime of "criminal mischief".

I propose to deal with these problems in a subsequent analysis paper, they also involve the sections of the Connecticut statutes dealing with "wilful injury" to a host of specified types of property.

6. Section 53-80 deals with explosives. On principle, the use of explosives should be treated essentially the same as the use of fire, since the risks created by each are essentially the same--the risk of sudden, complete destruction of property or personal injury, and the risk of the destructive agent spreading beyond human control. Yet this section contains material differences from the arson sections. First, the mens rea element here is defined as "wilfully", not "wilfully and maliciously", as in arson. Secondly, the penalty differs: there is no mandatory minimum sentence of two years here, and there is an alternative (or additional ) fine of not more than \$5,000. Thirdly, the language of this section dealing with behavior preliminary to the actual causing of the explosion--e.g., manufacturing explosives knowing or having reason to believe they will be used criminally, or encouraging or inciting such use, or contributing money for such purpose--is much different and goes much further than the corresponding language of sections 53-85 and 53-87, which are the "attempted arson" statutes. Both the Model Penal Code and the New York proposal deal with such matters in separate, general sections concerning criminal attempt, criminal solicitation, and the like.

E. Analysis of Model Penal Code: Section 220.1

1. Section 220.1 is divided into three distinct offenses:
  - (1) Arson
  - (2) Reckless Burning or Exploding
  - (3) Failure to Control or Report Dangerous Fire

(a) Arson

1. Arson here includes exploding as well as burning, following the example of Louisiana, Wisconsin and the New York proposal. La. Rev. Stat. Ann. sec. 14-51; Wis. Stat. Ann. sec. 943.02 (1958); N.Y. Proposed Bill sec. 155. The rationale is that both burning and exploding involve the likelihood of extensive property destruction accompanied by danger to life, and that explosions frequently lead to fires, just as fires sometimes cause explosions. Model Penal Code, Tent. Draft #11, p. 38 (1960).

2. This subsection is framed in terms of starting a fire or causing an explosion. The Connecticut sections speak in terms of setting fire to or burning or causing to be burned particular property. The result of this difference in language is that, under the Code, the actor is guilty of arson even though the fire is extinguished before anything is actually burned. In effect, the attempt is punishable equally with the completed offense. Model Penal Code Tent. Draft #11, p. 38 (1960). In contrast, the Connecticut "attempt" section, 53-85, carries a much less severe sentence than does the completed arsonous crime.

3. The rationale of the subsection is aimed at the protection of substantial specially cherished property, the burning of which would typically endanger life. Model Penal Code Tent. Draft #11, p. 39 (1960). Thus, arson concerns destroying "a building or occupied structure of another", and "occupied structure" is defined in subsection (4) to include structures which typically house or contain people, whether or not a person is actually present at the time of the fire. It might be argued that arson should only concern itself with danger to the person and should be framed accordingly. This would require the prosecution to charge and prove that a person was

actually endangered in each case, and would also eliminate the rationale based on the permanent deprivation of property. Furthermore, almost any illegal or careless burning endangers life to some extent, since firemen and onlookers are drawn to the scene, and it does not seem just to submit any such burning to the severe sanction provided by this subsection. It might also be argued that proof of occupancy, or of likelihood of occupancy, should be required as to "buildings" as well as other structures. The Code takes the position, however, that it is so highly probable that a building is used by human beings in such a way that it is dangerous to burn or explode it, that it is pointless to require proof thereof, and some possibilities of defense remain in the opportunity to interpret "building" to exclude a structure clearly incapable of occupancy. Model Penal Code Tentative Draft #11, p. 39 (1960).

4. This subsection also includes destroying or damaging any property--not just buildings or occupied structures--whether one's own or another's, to collect insurance for such loss. But it provides that there is an affirmative defense to this charge if the burning or exploding did not recklessly endanger any building or occupied structure of another or place any other person in danger of death or bodily injury. Thus, the affirmative defense in the subsection properly pinpoints the real social evil of insurance fires--i.e., the risk of danger to others' property or lives--and relegates the non-dangerous insurance fires to the area of fraud, where they belong. It is questionable, however, whether there should be such a separate crime as burning or exploding to collect insurance. A strong argument against the Code's provision runs as follows: if the "insurance burning or exploding" recklessly endangers a building, occupied structure or another's person, it comes within subsection (2) Reckless Burning or Exploding. If it does not so endanger, and

does not involve the destruction of a building or occupied structure of another, the only one harmed by the behavior is the defrauded insurer, in which case it should be covered by the fraud sections, since the rationale of arson does not apply. In this connection, it should be noted that the New York proposal does not contain such a provision, the only one seemingly applicable therein being Section 180.55 (Preventing A False Insurance Claim). An answering argument is as follows: insured property presents a particular temptation and makes arson for insurance quite frequent, and therefore dangerous. Furthermore, if to collect the insurance, one burns or explodes the property in a safe manner, but is not successful in collecting, he would neither be guilty of arson, reckless burning, nor fraud, since he didn't collect. Thus, he would go free merely because he wasn't more clever than the insurance investigators. The answer to this is that the law of attempted fraud would apply, and he would not go free. At any rate, it seems to me, in light of these arguments, that if insurance fires are made a crime, they be graded less seriously than arson. See comment 6 below.

5. This subsection deals with property "of another". Section 53-82 of the Connecticut statutes includes one's own property.

6. This subsection makes arson a second degree felony, which carries a minimum sentence of 1-3 years and a maximum of 10 years.

(b) Reckless Burning or Exploding

1. This subsection deals with purposely starting a fire or causing an explosion, whether on one's own or on another's property, and thereby recklessly endangering another person or the building or occupied structure of another. It has two separate parts which are drafted in two separate ways. The first part, paragraph (a), is drafted in terms specifically referring to endangering another's life

or body. Thus, prosecution under this paragraph would require proof in each instance that the life or safety of someone, other than the accused, was endangered by the accused's reckless behavior. The second part, paragraph (b), refers to endangering a building or occupied structure of another, which is the same type of property referred to in subsection (1), the arson subsection. Thus, this subsection can be viewed generally as covering the situation where an individual is reckless in starting a fire and (1) endangers structures likely to contain people, whether people are present or not, or (2) endangers human life or safety.

It is arguable that danger to human life or safety is the primary evil of criminal burning or exploding, and that therefore the more severe subsection, i.e., the arson subsection, should be drafted in terms specifically referring thereto. The Code takes the position, however, that this would be inconsistent with other Code provisions (1) making recklessness of personal safety, unaccompanied by actual injury, a misdemeanor (Section 211.2), and (2) making "assault", which is defined as recklessly causing bodily injury, a misdemeanor. Model Penal Code Tent. Draft #11, pp. 37, 41 (1960). Indeed, it can be argued that the Code is internally inconsistent by thus making reckless burning, without actual injury, which only endangers bodily safety, a second degree felony, and recklessly causing bodily injury a misdemeanor.

In this connection, it should be noted that the New York Proposal comes very close to grading the burning offenses in terms of danger to human life or safety. First degree arson, carrying a penalty of up to 25 years, occurs when one intentionally starts a fire in or explodes a building, even his own, while another person is present in the building and the actor is either aware of his presence

or the circumstances are such that the presence of a person therein is a reasonable possibility. N.Y. Proposed Bill, Sec. 155.15. Second degree arson, carrying a penalty of up to 15 years, occurs when one starts a fire in or explodes a building of another and there was a reasonable possibility that doing so might endanger another's personal safety or another building. Y.Y. Proposed Bill, Sec 155.10. Third degree arson, carrying a penalty of up to 4 years, occurs when one intentionally starts a fire or causes an explosion and thereby recklessly damages the building of another. N.Y. Proposed Bill, Sec. 155.05. Reckless burning, carrying a penalty of up to 1 year, occurs when one intentionally starts a fire or causes an explosion and thereby recklessly endangers the building of another. N.Y. Proposed Bill, Sec. 155.20.

I prefer the basic grading set-up of the New York proposal to that of the Model Penal Code for the reason that it more effectively carries out the relative priorities of the two rationales behind the arson laws: protection of human life or safety, and protection against permanent deprivations of particularly cherished property. First and second degree arson are drafted in terms of human safety, and third degree and reckless burning in terms of damage or risk of damage to another's property. I think, however, that both the first and second degree arson sections could be re-drafted to pinpoint more closely the fact that the basic purpose of the sections is to protect human life or safety. For example, the first degree section requires that a person be "in" the building, yet a person could be just outside the building and be in essentially the same danger from the fire or explosion as the person in the building. Such a contingency could be covered by language such as, "another person in such circumstances as to subject him to substantial risk of injury". Furthermore, the

knowledge or other state of mind required in both the first and second degree sections should be clarified.

It should be noted that both the Model Penal Code and the New York proposal limit both arson and reckless burning to situations of danger to the person or to structures likely to be occupied by persons. The New York definition of building includes essentially what is termed "occupied structure" by the Model Penal Code. N.Y. Proposed Bill, Sec. 155.00.

(c) Failure to Control or Report Dangerous Fire

This subsection penalizes the failure to take reasonable measures to report or control a fire when an individual is under some legal duty to do so or was responsible in certain ways for its starting. Traditionally, Anglo-American law has not penalized omissions. Section 2.01 (3) of the Code restricts crimes of omission to failure to perform a legally required act. There is occasional legislation penalizing the failure to control a fire originating on the defendant's premises, e.g., Mass. Ann. Laws ch. 266 sec. 8 (1946); N.Y. Pen. Law sec. 1900 (3). See Model Penal Code Tent. Draft #11, p. 42 (1960). It should be noted that New York, which is cited here as presently having such a provision, has omitted this subsection from its proposed bill.

F. QUESTIONS TO BE DECIDED

1. What basic grading scheme should be employed:

The alternatives are:

- (a) the present Connecticut scheme--grading according to burning specified types of property;
- (b) the Model Penal Code scheme--grading according to whether the behavior is purposeful or reckless, and according to whether the property is the kind typically

occupied by persons, without regard, in the most serious grade, to whether life is actually endangered, with a less serious grade for when life or such property is endangered recklessly;

(c) the New York proposal scheme--grading according to whether life is actually endangered, with lesser grades for when:

- (1) property typically occupied is burned and a person might have been endangered, and
- (2) when property typically occupied is burned and no one might have been endangered, and with an even lesser grade for burning which recklessly endangers the building of another.

2. Should the statute be framed in terms of "sets fire to" or "starts a fire"? In short, should the crime here include the attempt, with the criminal preliminary preparations to be dealt with in the general attempt sections?
3. Should "causing an explosion" be included, or should this be treated separately?
4. Should arson for insurance be specified, and if so, at what grade? The Model Penal Code does, and the New York proposal does not, specify this behavior.
5. If the New York proposal scheme be adopted, should the most serious grade be amended to include situations when someone is not "in" the building, but is close enough thereto to subject him to essentially the same risks?
6. If the New York proposal scheme be adopted, with reference to the most serious grade, how much knowledge should be required of the actor that someone is or may be in or near the building? This question goes to the phrasing of clause (b) of Section 155.15, Arson in the First Degree.

7. Should arson or reckless burning be limited to situations where either life is endangered or buildings (or typically occupied structures) are damaged (or endangered), or should it also include, as do the Connecticut statutes, other property?
8. Should the principle of criminal omission--Failure to Control or Report Dangerous Fire--be recognized, as in subsection (3) of the Model Penal Code, or should it be rejected, as in the New York proposal?
9. Should the burning of public buildings be treated differently from that of private buildings, as does Connecticut Section 53-42? Neither the Model Penal Code nor the New York proposal make such a distinction.

17.

**Appendix A: Connecticut Law,  
Sect. 53-82:  
Arson, vessels; dwellings and public buildings**

[by]

**Commission to Revise the Criminal Statutes of the State.  
1964.**

JUN 15 1964

HARTFORD  
CONNECTICUT

APPENDIX A - CONNECTICUT LAW

Sec. 53-82. Arson; vessels; dwellings and public buildings. Any person who, wilfully and maliciously, sets fire to or burns or causes to be burned, or aids, counsels or procures the burning of, any vessel or dwelling house, or any church, school, theater, auditorium, assembly hall or other structure used for public gatherings, whether finished or unfinished, occupied, unoccupied or vacant, or any kitchen, shop, garage, barn, stable or other structure that is parcel thereof, or belonging to or adjoining thereto, whether the encumbered or insured property of himself or the property of another, shall be guilty of arson and shall be imprisoned in the State Prison not less than two years nor more than twenty years. (1949 Rev., S. 8418; 1957, P.A. 167).

Sec. 53-83. Arson; burning of other buildings or vessels. Any person who, wilfully and maliciously, sets fire to or burns or causes to be burned, or aids, counsels or procures the burning of any building, vessel or structure, whether the encumbered or insured property of himself or the property of another, not included or described in section 53-82, shall be guilty of arson and shall be imprisoned not less than six months nor more than ten years. (1949 Rev., S. 8419).

Sec. 53-84. Arson; burning of personal property. Any person who, wilfully, and maliciously, sets fire to or burns or causes to be burned, or aids, counsels or procures the burning of, any personal property of the value of twenty-five dollars or more belonging to another person shall be guilty of arson and shall be imprisoned not less than six months nor more than three years. (1949 Rev., S. 8420).

Sec. 53-85. Arson; attempt to burn buildings, vessels or personal property. Any person who, wilfully and maliciously, attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in section 53-83 or 53-84, or who commits any act preliminary thereto or in furtherance thereof, shall be guilty of arson and shall be fined not more than one thousand dollars or imprisoned not less than six months nor more than two years or be both fined and imprisoned. (1949 Rev., S 8421).

Sec. 53-86; Burning insured property. Any person who, wilfully and with intent to injure, prejudice or defraud another, sets fire to or burns, or attempts to set fire to or burn, or who causes to be burned, or aids, counsels or procures the burning of, any building, structure or personal property, whether the property of himself or another, which is, at the time, insured by any person, company or corporation against loss or damage by fire, shall be guilty of a felony and shall be imprisoned not less than six months nor more than five years. (1949 Rev., S. 8422).

Sec. 53-87; Placing inflammable material near buildings. The placing or distributing of any inflammable, explosive or combustible material or substance or any device in or near any building or property mentioned in sections 53-82 to 53-86, inclusive, with intent to wilfully or maliciously set fire to or burn the same, or to procure the setting fire to or burning of the same, shall, for the purposes of said sections, constitute an attempt to burn such building or property. (1949 Rev., Sc. 8423).

Sec. 53-88. Kindling fires without permission. No person shall a fire upon public land without authority, nor upon the land of another without permission of the owner thereof or his agent. (1949

Rev., S 8424).

Sec. 53-89. Prohibition of fires on woodland. No person shall kindle, or authorize another to kindle, a fire in his woodland, unless all combustible materials for the space of twenty feet surrounding the place where such fire is kindled have been removed, nor shall any such fire be left until extinguished or safely covered. (1949 Rev. S. 8425).

Sec. 53-90. Fires kindled by cigars or burning substances. No person shall throw down or drop a lighted match, cigar, cigarette or other burning substance in combustible material or in close proximity thereto. Any person who violates any provision of this section shall, if no fire is kindled, be fined not more than twenty-five dollars. Any person who violates any provision of this section and thereby kindles a fire and any person who violates any provision of section 53-88 or 53-89 shall be fined not more than five hundred dollars or imprisoned not more than six months or both. (1949 Rev., S 8426).

Sec. 53-42. Destroying magazines of provisions or public buildings. Any person who wilfully burns or destroys any magazine of provisions or of military or naval stores, belonging to this state or subject to its jurisdiction, or any public building, shall be imprisoned in the State Prison not more than ten years. (1949 Rev., S. 8380).

Sec. 53-80. Explosives intended for injury of person or property. Any person who manufactures, transports, has or disposes of any explosive material or compound, knowing, intending or having reason to believe that the same is to be used for the injury of any person, property, or, directly or indirectly, encourages, incites or advocates any such use of any explosive material or compound, or solicits or contributes money for any such purpose, or wilfully causes or attempts

to cause any injury to person or property, by the use of any explosive compound, shall be fined not more than five thousand dollars or imprisoned not more than twenty years, or both. (1949 Rev., S. 8417).

Sec. 53-11. Homicide or injuries to person punishable by imprisonment for life. Any person who commits murder in the second degree, or who endangers the life of another by wilfully burning any building or vessel, or who, of malice aforethought, and by lying in wait, cuts out or disables the tongue of another, or puts out the eye or eyes of another, so that the person is thereby made blind, or cuts off all or any of the privy members of another, shall be imprisoned in the State Prison during his life. (1949 Rev., S. 8352).

MODEL PENAL CODE · ARSON AND RELATED OFFENSES

## Section 220.1 Arson and Related Offenses

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

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

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

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

(a) places another person in danger of death or bodily injury; or

(b) places a building or occupied structure of another in danger of damage or destruction.

(3) Failure to Control or Report Dangerous Fire. A person who knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when he can do so without substantial risk to himself, or to give a prompt fire alarm, commits a misdemeanor if: (a) he knows that he is under an official, contractual, or other legal duty to prevent or combat the fire; or (b) the fire was started, albeit lawfully, by him or with his assent, or on property in his custody or control.

(4) Definitions. "Occupied structure" includes a ship, trailer, sleeping car, airplane or other vehicle, structure or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present. Property is that of another, for the purposes of this section, if anyone other than the actor has a possessory or proprietary interest therein.

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

NEW YORK PROPOSAL: ARSON

ARTICLE 155: ARSON

Section

- 155.00 Arson; definition of term
- 155.05 Arson in the third degree
- 155.10 Arson in the second degree
- 155.15 Arson in the first degree
- 155.20 Reckless burning

155.00 Arson; definition of term. As used in this article, "building", in addition to its ordinary meaning, includes any structure, vehicle or water-craft used for overnight lodging of persons, or used by persons for carrying on business therein. Where a building consists of two or more units separately secured or occupied, each unit shall be deemed a separate building.

155.05 Arson in the third degree.

1. A person is guilty of arson in the third degree when he recklessly causes destruction or damage to a building by intentionally starting a fire or causing an explosion.

2. It is an affirmative defense to a prosecution under this section that no person other than the actor had a possessory or proprietary interest in the building.

Arson in the third degree is a class E felony.

155.10 Arson in the second degree.

1. A person is guilty of arson in the second degree when, with intent to destroy or damage a building, he starts a fire or causes an explosion.

2. It is an affirmative defense to a prosecution under this section that (a) no person other than the actor had a possessory or proprietary interest in the building, and (b) his sole intent was to destroy or damage the building for a lawful and proper purpose, and (c) there was no reasonable possibility that such act might endanger the life or safety of another person or damage another building.

Arson in the second degree is a class C felony.

155.15 Arson in the first degree

A person is guilty of arson in the first degree when, with intent to destroy or damage a building, he starts a fire or causes an explosion, and when (a) another person is present in such building at the time, and (b) the actor is either aware of that fact or the circumstances are such as to render the presence of a person therein a reasonable possibility.

Arson in the first degree is a class B felony.

155.20 Reckless burning

A person is guilty of reckless burning when he intentionally starts a fire or causes an explosion, whether on his own property or another's, and thereby recklessly places a building of another in danger of destruction or damage.

Reckless burning is a class A misdemeanor.

18.

**Minutes of the  
Commission to Revise the Criminal Statutes of the State.**

- *Thursday, August 10, 1967, 1:30 p.m., Attorney General's Office.*
- *Monday, October 9, 1967, 3:00 p.m., Judiciary Room.*
- *Monday, November 13, 1967, 3:00 p.m., Attorney General's Office.*
- *Monday, January 8, 1968 at 2:00 p.m., Attorney General's Office at the State Capitol.*
- *Monday, January 29, 1968 at 1:00 p.m., Speaker's Room.*
- *Tuesday, February 13, 1968, 1:00 p.m., Speaker's Room.*
- *Monday, May 27, 1968 at 1:00 p.m. in the Speaker's Room.*

*Continued*  
COMMISSION TO REVISE THE CRIMINAL STATUTES *of the State*

The Commission organized in accordance with Special Act No. 338  
at a meeting held on Thursday, August 10, 1967 at 1:30 o'clock p.m. in  
the Attorney General's Office at the State Capitol.

Present: Senators Alfano, Hull and Jackson; Representatives William E. Strada,  
Jr., John A. Carrozzella, Robert J. Testo, Francis J. Collins and Chief  
Prosecuting Attorney Arnold Markle.

Atty. David Borden and Andrew Cretella were also present, both having  
worked with the previous Commission.

Speaker Robert J. Testo was unanimously elected Chairman and Senator  
Jay Jackson was unanimously elected Vice-Chairman.

Chairman Testo called upon Atty. David Borden to explain how the previous  
two commissions had proceeded and copies of the report of the 1965 Commission  
were distributed to the new members. Atty. Borden explained that the Commission  
had completed about two-thirds of the work on the revision of the criminal  
laws and were now also charged with revising the criminal procedures. He  
was of the opinion that with sufficient staff the work could be completed  
during this interim.

Chairman Testo appointed Senator Jackson, Representative Carrozzella  
and himself as a budget committee to work out a budget for the interim  
and report back to the next meeting.

Chairman Testo suggested that if there were no objections Atty. Borden  
be retained as Executive Director and Atty. Andrew Cretella be retained as  
a Research Assistant. As there were no objections they were so named.  
Additional personnel was discussed but no decisions reached.

The meeting adjourned at 2:40 p.m. and Chairman Testo called for a  
brief meeting of the Budget Committee immediately following.

Lucille M. Dow, Acting Secretary

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COMMISSION TO REVISE THE CRIMINAL STATUTES OF THE STATE

October 9, 1967

Minutes of a meeting of the Commission to Revise the Criminal Statutes of the State, held in the Judiciary room on Monday, October 9, 1967 at 3:00 o'clock, p.m.

Present: Rep. Testo, Chairman; Senator Jay W. Jackson, Vice-Chairman; Senator Alfano; Rep. Collins; Atty. Gilman; Hon. John D. LaBelle; Professor Goldstein; Atty. Borden, Director of Research; Research Assistants, Attorneys Ford and Cretella; Laura Pope from the Legislative Commissioner's office and Atty. Richard Bowers and Mrs. Evelyn Warren.

Chairman Testo introduced Atty. Richard Bowers of Old Mystic, Conn. and Mrs. Evelyn Warren.

Atty. Bowers gave each member a copy of his prepared statement "Common Sense About Connecticut Criminal Laws on Abortion," and spoke on the subject of whether Connecticut Criminal Laws should continue to force women to carry to birth an unwanted pregnancy by outlawing practically all abortions. He gave his reasons why Connecticut should legalize abortion in certain instances.

Mrs. Evelyn Warren came as a representative of the Planned Parenthood League of Greater Hartford and spoke for a few minutes on some of her experiences with the league in this country and overseas. She is a firm believer in limiting number of children per family and feels that abortions are right and necessary in certain instances.

Chairman Testo thanked them both for their presentations and assured them that the committee would read their material. He then turned the meeting over to Director Borden who told the committee that the questions held over from the last meeting would be taken up.

The following questions were decided regarding the death penalty:

- (a) Should the death penalty apply to felony murder as well as intentional murder?

YES.

- (b) Should the death penalty be retained only for certain types of murder, e.g. prison guard, policeman on duty, mass murder?

This question was deferred to the next meeting. If it is voted YES, (a) above will be reconsidered.

- (c) Under what circumstances, other than jury recommendation of life, will life imprisonment be imposed?

The New York provision is to be adopted.

- (d) What changes, if any, are necessary in the present jury hearing statute re penalty?

NONE. If Mr. Borden finds any in drafting the proposed revision, he will bring them to the attention of the commission.

- (e) Should the three judge court statute conform to that of the jury statute?

YES.

Discussion on Laura Pope's report on The Connecticut Abortion Statutes study was postponed until the next meeting. The commission felt that Rep. Carrozzella should be present when this topic is being studied as he recently had attended a meeting on the subject in Washington, D. C.

The commission is to meet again on Monday, November 13, 1967 at 3:00 p.m. in the Attorney General's office.

The meeting adjourned at 4:50 p.m.

Ann Cutt  
Secretary

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COMMISSION TO REVISE THE CRIMINAL STATUTES OF THE STATE

November 13, 1967

Minutes of a meeting of the Commission to Revise the Criminal Statutes of the State, held in the Attorney General's room on Monday, November 13, 1967 at 3:00 p.m.

Present: Rep. Testo, Chairman; Senator Jackson, Vice-Chairman; Senator Alfano; Representatives Strada, Carrozzella, Collins; Executive Director Borden; Professors Goldstein and Archibald; State's Attorney LaBelle; Chief Prosecuting Attorney Markle; Attorneys Cretella, Gilman, Stewart, Klau, Egan, Ford; Mrs. Laura Pope from the Legislative Commissioner's office and Atty. Richard Neier from the Legislative Council.

Chairman Testo opened the meeting at 3:05 p.m. and turned it over to Executive Director Borden who informed the members that one question on capital punishment, "Should there be a limitation on the death penalty to certain specified cases of murder, such as prison guard, policeman on duty, mass murderer?" should be the first matter on the agenda. At the first meeting Senator Jackson had made this proposal, which the Commission had not yet specifically considered.

Atty. Gilman moved that death penalty as we adopted it should apply only to specific cases of murder such as prison guard, policeman on duty and mass murderer. He also read a statement from the President's Commission on complete abolition of the death penalty.

The Commission took a vote on Atty. Gilman's motion and it failed.

Mr. Borden then turned the discussion over to Laura Pope who made a study on abortion and prepared questions for the committee to discuss.

The Commission voted to recommend changes in the present Connecticut abortion law which allows abortions only where "necessary to save the life of the mother or the unborn child." (Question A-1 and 2 (b).)

Professor Goldstein proposed that the law be changed to allow abortion by individual choice within the first 16 to 20 weeks of the pregnancy and, thereafter, for the present Connecticut law to apply. Implicit in this proposal was that the abortion must be performed by a qualified medical person. This proposal was in accordance with one made by Father Drynan, Dean of the Boston College Law School. This proposal was defeated 5 to 4.

The Commission then passed questions B 1, 2 and 3 and moved to consideration of question B 4.

It was voted that the abortion statute should be amended to permit abortion in cases of rape, incest, and females 16 or under. No special provision is needed for statutory rape, since the 16 or under provision covers that case.

The procedures involved in authorizing abortions in these cases will be considered later.

On question B 5, the Commission felt that more medical testimony and information is needed.

Mr. Borden was requested to arrange for medical testimony for the Commission's benefit at the next meeting.

The meeting adjourned at 5:10 p.m.

Ann Cutt  
Secretary

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C 869m  
1967/68

COMMISSION TO REVISE THE CRIMINAL STATUTES OF THE STATE

January 8, 1968

Minutes of a meeting of the Commission to Revise the Criminal Statutes of the State, held in the Attorney General's office of the State Capitol on Monday, January 8, 1968 at 2:00 p.m.

Present: Rep. Testo, Chairman; Senator Jackson, Vice-Chairman; Senator Hull, Rep. Collins, Professors Archibald and Goldstein, State's Attorney LaBelle, Atty. Gilman, staff members Executive Director Borden, Attorneys Klau, Cretella, Ford and Eagan.

Atty. Cretella's name was omitted as having been present at the last meeting on December 7, 1967.

The meeting opened at 2:10 p.m. with Chairman Testo presiding. He turned discussion over to Director Borden who asked the members to turn to the further questions on abortion that were previously mailed to them.

After considerable discussion the following decisions were voted on:

Abortions must be performed by licensed physicians.

Abortions must be performed in accredited hospitals - except in case of emergency when hospital facilities are unavailable.

Prior hospital committee action should be required. Mr. Borden is to draft the proposal where an exception is to be made in cases of emergency.

The number of members on hospital committee should be not less than 3.

The statute should not define the formal requirements of the hospital committee.

The statute should not require unanimity on the decision re abortion.

In rape and incest cases, the committee voted to follow the California procedure, i.e., hospital committee to notify State's Attorney or Asst. State's Attorney, who certifies probable cause or not within 15 days (California has 5 days). Certification of District Attorney where offense occurred. Where the offense occurred outside of Connecticut, if the applicant resided in Connecticut at the time of the offense, the certification must be by the State's Attorney of the hospital's jurisdiction.

No abortions after the 20th week for cases of rape, incest and under 16.

No limitation where life of mother is in question.

Requirement of consent - signature of girl and either parent or guardian if the girl is 14 or over; in the case of an incompetent, the signature of the conservator of the person.

Unnecessary to define pregnancy.

There should be a residency requirement.

Saving clauses should be included exempting hospital or employee on moral/religious grounds and civil immunity for refusal to perform.

No provision for intentional pretended illegal abortions.

There should be a special provision making it murder where the woman dies as a result of an illegal intentional real or pretended abortion - manslaughter in the \_\_\_\_\_ degree.

The commission also voted to eliminate the present Connecticut language concerning saving the life of the child in the "necessity" clause.

The meeting adjourned at 4:15 p.m. because of the intense cold in the meeting room. A short meeting of the staff was held in Director Borden's office immediately after adjournment. The committee will meet again in about three weeks and notices will be sent later.

Ann Gutt, Secretary

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COMMISSION TO REVISE THE CRIMINAL STATUTES OF THE STATE

January 29, 1968

Minutes of a meeting of the Commission to Revise the Criminal Statutes of the State, held in the Speaker's room on Monday, January 29, 1968 at 1:00 p.m.

Present: Rep. Testo, Chairman; Senator Jackson, Vice-Chairman; Senator Hull, Rep. Carrozzella, Professor Archibald, State's Attorney LaBelle, Chief Prosecuting Attorney Markle, Atty. George Gilman, Executive Director Borden and staff members Richard Stewart, F. Owen Egan and Arnold Klau.

Chairman Testo opened the meeting at 1:15 p.m. and turned it over to Mr. Borden for discussion. Mr. Borden asked the members to turn to pages 55 through 57 of the abortion report--the peripheral questions on abortion.

Under Section "G" - the commission voted as follows:

G-2 through 8 will be included; G-1 to be held in abeyance until final decision is made on the inchoate crimes.

H and I - The New York approach, putting the burden on the prosecution of proving illegal intent, is to be adopted.

J - Language "so called monthly regulators" to be eliminated.

K - The staff is to draft a section prohibiting the concealment of the delivery of newborn infants, whether born dead or alive, and this to be done in connection with examination of the present status on removal and concealment of corpses.

Death penalty provisions:

- (1) No specific language referring to rebutting hearsay statements.
- (2) There should be specific language permitting the State's Attorney, defendant and his counsel to present argument.
- (3) No provision regarding charge to the jury or length of imprisonment and parole release.

Kidnapping:

- (1) The present form of Sections 53-24-26 and 27 is to be changed.
  - (a) The staff is to redraft the New York proposal in line with suggested changes made at the meeting, broadening the defense of kidnapping and making clear in that definition that the language "likely to be found" is to be determined from the point of view of the people likely to be looking for the child.

The meeting adjourned at 4:25 p.m.

Ann Gutt, Secretary

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COMMISSION TO REVISE THE CRIMINAL STATUTES OF THE STATE

February 13, 1968

Minutes of a meeting of the Commission to Revise the Criminal Statutes of the State, held in the Speaker's room on Tuesday, February 13, 1968 at 1:00 p.m.

Present: Senator Jackson, Vice-Chairman; Senator Hull, Executive Director Borden; Attorneys Cretella and Klau; Professor Goldstein, Representatives Collins and Carrozzella, State's Attorney LaBelle and Chief Prosecuting Attorney Markle.

The meeting opened at 1:15 p.m. with Senator Jackson presiding. Executive Director Borden asked the committee to turn to the Xerox'd material on "Kidnapping" - Sec. 135.05 - Revised Penal Law.

The Commission voted to continue going through the New York Code as a basis for drafting a "kidnapping" statute and made the following decisions:

- (1) The definitions as revised by the staff were adopted with the exception that the following language in the definition of "restrain" is to be deleted: "and with knowledge that the restriction is unlawful."
- (2) 135.10 - first degree unlawful imprisonment:  
The word "serious" is deleted and the word "substantial" is to be added before the word "risk."
- (3) 135.15 - this defense is to be deleted.
- (4) 135.25 - first degree kidnapping - the following changes are to be made:
  - (a) "or political" is to be deleted from 2 (d).
  - (b) eliminate the 12 hour period.
- (5) 135.30 - to be deleted.
- (6) 135.35, paragraph 3, eliminate sub-paragraph "A."
- (7) 135.40 - eliminate paragraph (1) and tie in paragraph (2) to our penalty provisions under murder.
- (8) Sections 135.45, 135.50 and 135.55 are to be adopted as drafted in the New York code.

The meeting adjourned at 3:45 p.m.

The next meeting will be on February 26, 1968 at 1:00 p.m. We will be considering "Breach of Peace" and "Disorderly Conduct."

Ann Gutt, Secretary

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COMMISSION TO REVISE THE CRIMINAL STATUTES OF THE STATE

May 27, 1968

Minutes of a meeting of the Commission to Revise the Criminal Statutes of the State, held on Monday, May 27, 1968 at 1:00 p.m. in the Speaker's room.

Present: Chairman Testo, Vice-chairman Jackson, Senator Hill, Representatives Carrozzella and Strada, Prof. Archibald, Atty. Gilman and staff members David Borden, Exec. Director and Atty. Klau.

Rep. Testo, Chairman, conducted the meeting. The Commission continued the consideration of the principles of Liability and Defenses and voted as follows:

1. Entrapment is to be a defense, not an affirmative defense, and is to be formulated in accordance with present Connecticut case law.
2. Consideration of the insanity defense and post-acquittal commitment proceedings was left to next time, with the hope that Professor Goldstein will be able to participate in the decisions.
3. The Commission then considered the defense of "Justification", as set out in Article 35 of the New York Revised Penal Law, and decided to adopt the New York provisions as follows:

- (a) 35.05 - only paragraph 1 is to be adopted.
- (b) 35.10 - paragraphs 1, 3, 4, and 5 are to be adopted. As to paragraph 2, Mr. Borden will obtain information on the present rules and regulations.
- (c) 35.15 - as to paragraph 1, present Connecticut case law is to be formulated.

As to paragraph 2, dwelling is to be defined as in "Burglary" and the phrase "place of work" is to be inserted after the word "dwelling."

Section a (ii) is left open until final consideration of section 35.30.

Sections b and c of paragraph 2 are adopted. Also, the present rule allowing use of physical force to resist an illegal arrest is to be changed.

- (d) Section 35.20 is to be adopted.
- (e) Section 35.25 is to be adopted.
- (f) As to 35.30 (a), paragraph 1 is to be adopted in its entirety.
  - (b) as to paragraph 2, the present Connecticut rule of *Martyn v. Donlin* is to be formulated.
  - (c) Paragraph 3 is to be left out.
  - (d) Paragraph 4 is to be adopted with the exception of final "unless" clause.

- (e) Paragraph 5 is to be adopted.
- (f) Paragraph 6 is to be adopted.
- (g) Paragraph 7 is to be adopted with the inclusion of the words "deadly physical force."

The Commission voted to meet again on Monday, June 10, 1968 at 1:00 p.m. in the Speaker's room.

The meeting adjourned at 3:45 p.m.

Ann Gutt, Secretary

19.

**List of Members  
Commission to Revise the Criminal Statutes of the State.**

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COMMISSION TO REVISE THE CRIMINAL STATUTES OF THE STATE

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Jay W. Jackson 3 Forest Hills Drive West Hartford, Conn. 06117	523-9512 (R) 249-6271 (B)	Andrew Cretella, Esq. 137 Elm Street Bridgeport, Conn.	335-2594 (B) 268-7886 (R)
T. Clark Hull 187 Kohanza Street Danbury, Conn. 06810	743-1295 (R) 743-2721 (B)	Hon. John LaBelle State's Attorney Court House 95 Washington Street Hartford, Conn.	525-1131 (B)
William E. Strada, Jr. 37 Wilson Street Stamford, Conn. 06902	325-1708 (R) 327-0420 (B)	Hon. George Gilman Thayer Bldg. Norwich, Connecticut	889-3355 (B) 887-0856 (R)
John A. Carrozzella 176 Long Hill Road Wallingford, Conn. 06492	269-1934 (R) 269-7761 (B)	Hon. David Borden, Exec. Director 111 Pearl Street Hartford, Conn.	522-7119 (B) 232-8373 (R)
Francis J. Collins Whisconier Hill Brockfield Center, Conn. 06805	775-9328 (R) 744-2150 (B)		
Robert J. Testo 1115 Main Street Bridgeport, Conn.	374-0011 (R) 334-6134 (B)		
Senator Charles Alfano 100 Constitution Plaza Hartford, Conn.	668-2640 (R) 527-9243 (B)		
Prof. Abraham S. Goldstein 545 Ellsworth Ave. New Haven, Conn. (Res. 57 Pardee Pl. New Haven)	387-4937		
Prof. Thomas L. Archibald University of Conn. Law School 39 Woodland Street Hartford, Conn.	527-2149		

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*F. Owen Ragan  
40 Russ St.  
Hartford, Conn.  
249-6271*

*G. Parsfield Ford  
855 Main St.  
Bridgeport, Conn.*

20.

**Call of Meeting  
Commission to Revise the Criminal Statutes of the State.**

- *Monday, January 29, 1968, Speaker's Room at the Capitol*
- *Monday, January 8, 1968 at 2:00 p.m. in the Attorney General's Office at the Capitol.*
- *Thursday, December 7, 1967 at 2:00 p.m. in the Attorney General's Office at the State Capitol. 2<sup>nd</sup> Notice.*
- *Thursday, December 7, 1967 at 1:00 p.m. in the Attorney General's Office at the State Capitol.*
- *November 13, 1967 at 3:00 p.m. (issued November 2, 1967)*
- *Monday, November 13, 1967 at 3:00 p.m., Attorney General's Office in the State Capitol (issued October 31, 1967)*

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State of Connecticut

GENERAL ASSEMBLY

STATE CAPITOL

HARTFORD, CONNECTICUT 06115

January 16, 1968

Memo to: Members of the Commission to Revise the Criminal Statutes of the State

From: David M. Borden, Exec. Director

Subject: Call of meeting

The next meeting of the commission will be held on Monday, January 29, 1968 at 1:00 p.m. in the Speaker's room at the Capitol.

We will complete the peripheral questions on abortion; consider kidnapping and complete these few questions on death penalty procedures.

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## State of Connecticut

GENERAL ASSEMBLY  
STATE CAPITOL  
HARTFORD, CONNECTICUT 06115

December 28, 1967

Memo to: Members of the Commission to Revise the  
Criminal Statutes of the State

From: David M. Borden, Executive Director

Subject: Call of Meeting

The next meeting of the Commission to Revise the Criminal  
Statutes will be held on Monday, January 8, 1968 at 2:00 p.m.  
in the Attorney General's office at the Capitol.

We hope to complete the revision of the abortion laws. Please  
bring your materials with you.

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State of Connecticut

GENERAL ASSEMBLY

STATE CAPITOL

HARTFORD, CONNECTICUT 06115

November 28, 1967

MEMO FROM: David Borden, Executive Director  
TO: Members of the Commission to Revise the Criminal  
Statutes of the State  
SUBJECT: 2nd Notice of Meeting

The next meeting of the Commission will be on Thursday, December 7, 1967  
at 2:00 p.m. in the Attorney General's office at the State Capitol.

Please note that the time has been changed from 1:00 p.m. to 2:00 p.m.

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State of Connecticut

GENERAL ASSEMBLY

STATE CAPITOL

HARTFORD, CONNECTICUT 06115

November 15, 1967

MEMO FROM: David Borden, Executive Director

TO: Members of the Commission to Revise the Criminal Statutes of the State

SUBJECT: Call of Meeting

The next meeting of the Commission will be on Thursday, December 7, 1967 at 1:00 p.m. in the Attorney General's office at the State Capitol. We will be continuing our consideration of abortion revision.

In response to the Commission's request, I have invited Dr. Marvin Grody, a prominent Hartford obstetrician and gynecologist, to meet with us at that time. Dr. Grody will give us information on therapeutic abortion and will answer any questions we have.

Please try to attend. Dr. Grody is making a special effort to meet with us on his day off and a full house will be appreciated.

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State of Connecticut  
GENERAL ASSEMBLY  
STATE CAPITOL  
HARTFORD, CONNECTICUT 06115

November 2, 1967

Memo to: Members of the Commission to Revise  
the Criminal Statutes of the State

From: David Borden, Exec. Director

At the meeting set for November 13, 1967 at 3:00 p.m., before we take up the questions on abortion, we will consider one question remaining on capital punishment: Should there be a limitation on the death penalty to certain specified cases of murder, such as prison guard, policeman on duty, mass murderer?

Please refer to the minutes of our October 9 meeting, questions (a) and (b).

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State of Connecticut

GENERAL ASSEMBLY  
STATE CAPITOL  
HARTFORD, CONNECTICUT 06115

October 31, 1967

Memo to: COMMISSION TO REVISE THE CRIMINAL STATUTES OF THE STATE  
From: David Borden, Executive Director  
Subject: Call of Meeting

There will be a meeting of the Commission on Monday, November 13, 1967, at 3:00 p.m., in the Attorney General's office at the State Capitol.

The questions concerning abortion (pages 53-58 of the Abortion Report) will be considered.

Please bring the Xerox'd copies of the California, Colorado and No. Carolina abortion reform laws which have been mailed to you on Oct. 16, 1967.

21.

**Transcript of hearing  
held by the  
Commission to Revise the Criminal Statutes  
on June 13, 1968  
at 11:00 a.m.**

JSK  
MONDAY  
11:00 A.M.

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Presiding Chairman: Representative John A. Carrozzella

Members Present: Senator T. Clark Hull  
Senator Jay Jackson  
Senator Raymond C. Lyddy  
Representative Edward F. Bradley

Chairman John A. Carrozzella: Ladies and gentlemen, I would like for a moment to speak to you and give you the purpose of the hearing this morning. I speak in my capacity first as Chairman of Judiciary, and secondly as a member of the Criminal Commission. The Criminal Commission was instituted as a result of legislation which was enacted in the 1963 General Assembly. The purpose of the Commission was to codify the Criminal Statute Laws of the state of Connecticut. The 1965 session and the 1967 session of the General Assembly continued the Commission up to the present date. Needless to say, the job has been of monumental proportions. The Commission has worked hard and has given to the General Assembly two reports which are available here in the front, one which was given to the 65 session and one which was given to the 67 session. It is anticipated that the work of the Commission will be completed prior to the convening of the 69 session, and it is hoped that the 69 session will then take affirmative action in the adoption of a Criminal Code in the state of Connecticut. It is the purpose of our hearing this morning, and I am sorry there are not more people here to give their testimony before us. We felt, as members of the Interim Judiciary Committee that we would have a public hearing now in an effort to save time during the 1969 session. The purpose, of course, of a public hearing is to give the Committee the ultimate views of the public so that the Committee can take those views into account when it finally passes on the legislation. The Judiciary Committee will ultimately pass on this proposed Criminal Code. As you will note, everything that is being said today will be taken down on records and will be available to the Committee for study in 1969. Now, I would like to point out that there are members of the Criminal Commission who are also members of the Judiciary Committee. Seated to my left is Senator Clark Hull, who is a member of both Committees, and also Senator Jay Jackson, who is in the yellow coat down there. I would like to call at this time the first speaker who is David Borden, our Executive Director. David was appointed by the 63 Commission in that capacity and he has served up until the present time. I would note for the record that David has done a herculean job in preparing the reports that are before us today for hearing, and is doing a superhuman job on the report that will be submitted to the 69 session. I might also state for the record that because of David's work, because of the work of his staff, the state of Connecticut has been able to complete a task in six years with an expenditure of under

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\$100,000, in comparison to the state of New York which did this very same thing a few years ago, spent six years, had eleven full time members on its staff, and spent in excess of \$1,000,000. I think the reason for the difference is because of Mr. Borden's work on this Committee. David, would you make your remarks, please, and I would ask that anyone else that wishes to speak, sign the speaker's list, or if you do not desire, you may come forward as I call you.

David Borden: Thank you very much, Chairman Carrozzella. For those members of the Judiciary Committee who are not on the Commission for revising the Criminal Statutes, I would like to begin by giving a little bit of the background and the makeup and work of the Commission. The Commission is composed of eight legislators, two law professors, one is from the Yale University Law School, and one from the University of Connecticut Law School, one public defender, George Gilman.....

Chairman Carrozzella: David, would you speak closer to the microphone so that everybody can hear?

Mr. Borden: ....one public defender, George Gilman, from New London County, John LaBelle, State's Attorney of Hartford County, and Arnold Markle, who is the Chief Prosecutor of the Circuit Court.....

Senator T. Clark Hull: David, I think the members of the Commission have sufficient background.....illegible.....

Mr. Borden: The list on page 3 of the report is the former Commission.... there are, if I can speak from memory, the Chairman is House Speaker Robert Testo, the Vice-Chairman is Representative Carrozzella, the other members are Senator Hull, Senator Jackson, Representative Collins from Brookfield, Professor Archibald from the University of Connecticut, Professor Abe Goldstein from Yale Law School, Senator Pauliso from Hartford.....I mentioned Chief Prosecutor Arnold Markle from the Circuit Court system....my memory fails me on the other members of the Commission from the Legislature. The purpose of the Commission throughout its tenure has been to draft a complete substantive Criminal Code for the state of Connecticut. Now this is something, in effect, which has never been done. We have, and have been working in this state under a patchwork system a list of statutes, many of which bear very little rational connection to the other statutes, many of them covering the same areas in different language, with different penalties and different procedures. We've been working on this, as Representative Carrozzella has said, since late in 1963 and early in 1964. It took the American Law Institute eleven years to complete practically the same job it took New York six years. The Commission has decided there is a need for a rational coherent code in the state of Connecticut. What we are working under now is antiquated, is archaic, and in many cases is even unintelligible. The Commission decided that the present state of the statutes protects neither the interests of society adequately, nor in

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many cases, the interests of the individual, and it has therefore been the aim of the Commission to draft a coherent rational Criminal Code, reflecting an informed and enlightened outlook, and reconciling both the demands of order in the society and of liberty to the individual. What I hope to do this morning in a brief presentation is to present the highlights of what our proposal will be to the Legislature in 1969. Most of what I am talking about is contained in the two reports which you have before you. There are more proposals which will be made which do not appear in these reports since they have been arrived at by the Commission subsequent to the publication of these reports. In the area of sentencing, the Commission is proposing that more flexibility be given to the judge in sentencing. Now this is based on the theory that the judge who is imposing the sentence, is the one best suited to decide the sentence for the individual case. Rather than have the Legislature make mandatory provisions in advance which cannot possibly take into effect the varying circumstances of each individual case or each individual offense, the code will propose more options and leave more options open to the sentencing judge. One of the significant changes in this regard is a new concept in sentencing called "conditional discharge". Those of you who are attorneys are familiar with the concepts of sentencing "suspended" and the offender being placed on probation for a period of time, with conditions imposed on his release. Now, there is another concept which we have introduced and this is a "discharge charge", and this is a discharge of the offender after conviction with conditions imposed on his release, but without the necessity for supervision by a probation officer. This is to take into account the case of the individual who is entitled to some leniency for whom there is very little likelihood of recidivism, very little likelihood that he will be back in court, yet the court wishes to retain some control over him, some jurisdiction or control, so that if he should offend again, the court can bring him back in, and impose a sentence. Now this is, as I say, the concept of conditional discharge in which the court imposes conditions upon his release, without the necessity of burdening the probation system with someone whom they would likely not be willing to take, or rather not take because they don't think the probation supervision would be necessary. Another aim of the code in the sentencing area is greater uniformity in the sentences for different offenses....for the same offenses, rather. What we have now is a system whereby in any given area, you may have four or five different criminal offenses, all covering roughly the same conduct, yet their sentences may be quite different, and it becomes a matter of choice or accident whether a particular offender is sentenced under one or another statute. The code attempts to eliminate this lack of rationality and sets up a structure whereby the offenses are all categorized. Felonies are divided into A,B,C,D felonies, and each category rather than each offense has a sentence, a maximum and a minimum sentence limitation within which the court can impose a sentence. The aim of this is to balance the need for flexibility on the part of the judge, and at the same time give the judge guidance as to what the

Legislature's views are on a sentence on this type of offense, and at the same time allow for more even-handed treatment between one type of offender....one offender and another who are engaged in roughly the same conduct. In the area of assault, the Commission found that there was a rather serious gap between what is called Breach of Peace by Assault, and Assault with a Deadly Weapon. Breach of Peace by Assault is a very minor misdemeanor and it carries a rather limited sentence. Assault with a Deadly Weapon obviously is a very serious felony and carries a rather heavy sentence. Yet there was nothing in between Breach of Peace by Assault and Assault with a Deadly Weapon, and there were cases, and cases were pointed out to us by law enforcement officials where an assault could be committed with very serious consequences to the victim, and yet the most the offender could be charged with would be Breach of Peace by Assault because the instrument used was not a deadly weapon. The Committee in its drafting of the Assault section took into account this gap and is filling it and making more uniform the whole area by setting up the Assault section based not only the conduct involved by the defendant but the consequences of his conduct to the victim. One of the aggravating circumstances involved in raising an assault from one degree to another would be the seriousness of the injury incurred by the victim. In the area of homicide, a rather significant change is being proposed. The Commission is recommending that the distinction between first and second degree murder be abolished, that murder be of one degree and that the concepts of premeditation, malice and forethought be eliminated. The sole criteria for mental possibility in the area of homicide will be whether the individual had the intent to take a life, a homicidal intent. Now, going on from murder, manslaughter will be put into two degrees. There will be two degrees of manslaughter based on varying circumstances. Where the intent to take a life was not present but there may have been other aggravating circumstances or where there was intent but it was under such circumstances as to what would ordinarily drop it down from...now from first degree murder to second degree murder, maybe some mental instability, falling short of insanity, maybe a crime of passion situation, would drop it down from homicide to first degree manslaughter. Now the reason for this change from first and second degree murder to one degree murder is the feeling on the part of the Commission that the concepts of premeditation and malice are so cloudy and so vague and that the legal profession, judges, attorneys, defense and prosecution, have been struggling with them for so long without arriving at really a satisfactory definition for any of them, that at best they serve to confuse juries, and at worst, they didn't focus on the elements that were really in the minds of everyone concerned in a homicide trial, in a murder trial and that is where the death sentence should be imposed. The Commission decided to retain the split trial that we have if there is a conviction of murder, which would be one degree, there would then be a second hearing on whether the death sentence should be imposed, and I might

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add, parenthetically, that the Commission decided also to retain the death penalty. This does not appear in these reports, but it has been decided by the Commission. One change is being proposed in the split trial system and that is that the judge will have the opportunity, have the option to reject a jury's demand for the death penalty. It will be a second bite of the apple, so to speak. The question of death penalty will be submitted to the jury and their recommendation, if it is death, can be rejected by the court. He will have that discretion. This is one of the changes in homicide. Now, one of the other areas in which the Commission is proposing rather extensive changes is, and which when our report came out obtained rather widespread publicity, are the changes in the area of the sex offenses. The Commission decided to adopt the basic principle that consenting that sexual activity between consenting adults in private, whether heterosexual or homosexual, should be no business of the criminal law. That this conduct should not be a crime, as long as it does not involve corruption of the young, commercialized vice, or imposition of the will of one party upon the other. This involves the elimination of the offenses of lascivious carriage, fornication, and adultery, among others. It does not affect the offenses of indecent exposure, prostitution, forcible rape, or cases where one party is much older than another, even though there may be some physical consent. The Commission in drafting these sexual offenses took great pains to draw rational distinctions, to isolate those aggravating factors that were felt to be most important, and to make the degrees of offenses based on the aggravating factors. The age of consent was retained at sixteen, but an affirmative defense is being interposed, one which heretofore has not been recognized in Connecticut law but has been recognized in other states, and that is a reasonable mistake of age. The reason for this was that the Commission felt that with standards of conduct and dress as they sometimes are these days, that a conviction of rape for intercourse with a female under sixteen in some circumstances is unwarranted. This does not mean that anything listed is being encouraged, nor are the offenses being eliminated entirely, but the old notion of statutory rape is being severely modified so that consensual activity with a girl under age would still be an offense but would not be rape. It would be something called sexual misconduct, I believe, or sexual abuse, and it would be a misdemeanor. This is where actual consent is involved. One other factor involved in the sexual offense area and that is the degrees of offenses are drawn or based on the differences in ages between the participants. The Commission felt that there was a difference between a 17 year old and a 15 year old couple as opposed to a 21 and a 15 year old couple, so that differences are drawn based on the varying differences in ages of the two participants. I think that that completes the highlights of the Commission's proposals, and I'm hoping for questions from any of you ladies and gentlemen on any of these aspects or other aspects of the changes.

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Chairman Carrozzella: Thank you, Mr. Borden. Now, if any members of the Commission have any questions, I would appreciate it if they would speak into the microphone in asking the questions so that they can be on record.

Senator Hull: Very briefly, David, not putting you on the spot, but it may be helpful to the audience because this is a comprehensive subject, if you would point out the five or six major areas that aren't in here but that are now under consideration. Abortion comes to mind, Justification and homicide self-defense and the like, and maybe there are a half a dozen areas that we've been struggling with all spring that it may be of value to point out will be in the next report.

Mr. Borden: I'll be glad to.....as Senator Hull mentioned, the Commission has already completed work on abortion reform, has completed work on retention of the death penalty and the split trial procedure. We are presently in the process of drafting proposals on the whole concept of the justified use of force. This involves defining self-defense, defense of the person, defense of the home.....what degrees of force will be justified under Connecticut law. At the present time, there is very little law, case law or statutory law in Connecticut in this whole area.

Senator Hull: It comes to mind the right of the arresting officer to use force in certain circumstances, which is a major issue today....

Mr. Borden: Right.....in that respect the right of the arresting officer, the degree of force which he can use, and also the question of whether an individual has the right to use force to resist an illegal arrest. The concept of vagrancy has been dealt with in the Commission and the Commission has decided to eliminate the whole crime of vagrancy. The Breach of Peace statute is being refined somewhat.....

Chairman Carrozzella: David, could you give the Committee a time schedule as to the completion of the work by the Criminal Commission?

Mr. Borden: We expect to complete the code in the fall, by the fall. We have made arrangements with the West Publishing Company, as a service to the state of Connecticut, for them to publish our next report for the Legislature and the public, which will save the state a good deal of money, and they have asked to have this done by the fall. We expect that in the middle of late fall that the work will be completed in time for presentation to the Legislature. Now, we are also working on revision of the procedural code. The Commission was not authorized to go into this area until the last biennium. It was not part of our charge from the Legislature. We have started the work, we had hoped to complete it by this Legislature, I don't know whether we will be able to or not. I know that we will finish the substantive code by the fall and have it ready for the Legislature in the winter.

Chairman Carrozzella: Would the substantive changes be available for another hearing sometime in the fall? In other words, the final work being done by the Commission, would that be available for dissemination to the public so that another public hearing could be held at that time prior to the convening of the 69 session? What do you think?

Mr. Borden: Its hard to say definitely, but I would hope that by late November or early December, the printing would be done and we would have it ready for that....hopefully, I don't want to promise.

Chairman Carrozzella: Are there any other questions from the Committee?

Senator Raymond C. Lyddy: Senator Lyddy, David. The very first thing that you mentioned....the question of giving more option to the presiding judge. Do I understand that the Commission intends not to recommend or set for the particular offenses a minimum or maximum, or are you just concerned with the minimum.....in other words, where our statutes do say not less than or no more than....are you going to set, or are you contemplating setting minimums, or not setting minimums, or setting maximums or not setting maximums....can you elaborate a little bit on that?

Mr. Borden: Each category of offense has a maximum. Each category of felony has a minimum. However, one of the additional options given to the judge is to eliminate in certain felonies, and I believe its class C,D, Or E....or C or D, the last two or three categories of felony, the judge will have the option not to impose a minimum. Now, what this means in practical effect is that if a man is sentenced, rather than say two to ten, he's sentenced to not more than ten. The judge will have that option. If he sentences him to not more than ten, it means simply that there is an earlier opportunity for the parole board to look at it. It doesn't mean that he will necessarily serve less time, it means that he is eligible for parole at an earlier time, and again, the option of whether to impose a minimum or not will be up to the sentencing judge. He will be, as I say, each category has a maximum, each category has a minimum, and in two or three categories, the judge has the option to eliminate the minimum.

Senator Lyddy: So, you're really talking about the minimum rather than....

Mr. Borden: We are talking about the minimum. Now, another little wrinkle in here is that the minimum can be no more than, I believe its either half or one-third the maximum, if a minimum is imposed. The minimum can be no more than one-half the maximum. I drafted this some time ago and I haven't refreshed my memory on it. The purpose of this is that sentences that you have now, eight to ten, or nine to ten, their practical effect is to prohibit the parole board. This is really a direction that the parole board has very little to do with the individual offender. In effect, its telling the parole board that they

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can't look at the man for parole until a certain time. It doesn't mean that he has to be released. This is based on the theory that with better correctional facilities, which from what I read in the newspapers, from the new Commissioner, I think we're going to get them if they.....the state is better off in rehabilitating people if there are earlier chances, opportunities for release, and if the parole board has more flexibility in releasing, so this will mean that a sentence of fifteen years maximum, can't have a minimum of twelve or thirteen.....it means that the sentence would have to be no more than either five, or seven or eight, whatever it is.

Senator Lyddy: The parole board, I assume, has been consulted by your Commission to get their views on it as to whether or not they think they should have an earlier opportunity to view the party and the problem and the record.

Mr. Borden: Well, they haven't been consulted officially, but at least one member of the parole board is a member of the Commission.

Senator Lyddy: At least there is a knowledge on the part of the parole board that this is being considered, at least there is a member of the parole board on your.....

Mr. Borden: There is a member of the parole board.

Senator Lyddy: This question of changing the death penalty on the split trial situation.....not changing it, but giving the judge the option or opportunity to reject the decision of the jury.....again could you give me the rationale of that?

Mr. Borden: Well, this is....this whole area, obviously is a very difficult area. The rationale for that was...for that very limited point of whether the judge does have the option to reject...the rationale was that was to be simply a safety valve in that one or two or three situations possibly where the death penalty might be imposed by a jury inflamed by public passion or what have you.....by circumstances which necessarily affect a trial, affect the determination, and it was felt that this was a reasonable way of putting in this safety valve. New York adopted much the same provision in their....this trial.

Senator Lyddy: One other thing, and that is this question of the age of consent, and making some, I think you said, of the acts misdemeanors in the sexual offense category. You mentioned that the Commission had in mind the difference in ages. For instance, if the parties involved were fifteen and seventeen as against fifteen and twenty-one, or something of that sort. I have a reason for asking. Did the Commission or could you speak for any of them, did they feel that the question of consent or ability to consent varied greatly in, lets say, a youngster

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of 15 as to a youngster of 17? I don't know whether you personally can answer it, or from the discussions of the Commission.

Mr. Borden: I think if I can reconstruct what the discussions were at the time, the feeling was that a line had to be drawn somewhere. No matter what line you draw, its going to be arbitrary, as applied to any individual case, because obviously there can be a 15 year old who has... an individual 15 year old who has much more maturity and judgment than an individual 18 year old, but its very difficult to write a law based on that kind of consideration, and the more practical way to go about it was to draw the line, in effect leave the line at 16, but you would leave it to the circumstances. Pardon me?

Senator Lyddy: .....leave it to the circumstances?....the people involved? and so forth....

Mr. Borden: I'm not sure what you mean by that.

Senator Lyddy: Well, in other words, you're in effect saying that if you have an act between 15 and 17 year old people, as against a 15 and 21.....

Mr. Borden: They would be different offenses entirely....different offenses entirely.

Senator Lyddy: ....and this would depend upon the parties involved, the circumstances, etc.

Mr. Borden: Yes.

Senator Lyddy: One question...you didn't....are you going to elaborate on the question of abortion at all....Senator Hull mentioned it...I think we have people here who are interested in that, and I didn't know whether or not you were going to take it up at all.

Mr. Borden: I don't have the draft in front of me right now, but as my memory serves me, the Commission decided to recommend that Abortion be made legal, in addition to the present law which provides for a legal abortion where the life of the mother is endangered in the following cases: rape, incest, and where the mother is under 17 at the time of conception, at the time of abortion, and unmarried. Now, the Commission did not decide, and this was by a very close vote, to recommend legal abortion in the case of mental health of the mother, or the risk of a deformed baby being born, simply because again it is difficult to reconstruct why each member voted the way they did, but I think the feeling was that the probabilities were not strong enough in those cases to sanction the taking of the life of the fetus. Now, rather elaborate safeguards are written into the bill to make sure that advantage is not taken of these cases. A mechanism is set up for communication with the

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State's Attorney and a determination of probable cause as to whether there is evidence to believe that there was rape or incest. In the case where the State's Attorney finds no probable cause, there is provision for a prompt appeal for a private hearing to the court by the applicant. There are also provisions providing for immunity on the part of the hospitals and any staff member for refusing to take part in such a procedure. If there is any employee or doctor on a hospital staff who doesn't want to participate in one of these abortions, he can refuse and there can be no civil, criminal, or disciplinary consequences as a result to him. Again, this is a retracing of what will be a rather lengthy and complicated precise statute.

Senator Hull: It goes without saying that this will all be available, and there will be a full hearing on this later on. The only reason I pointed this subject out was so that those few brave souls who are here, and we appreciate it, will know what we're going to cover. That will be in the next written report, and I assume we'll have a full and perhaps well-attended session on some of the other subjects that aren't covered in our written report so far.

Chairman Carrozzella: Are there any other questions from the Committee? Representative Bradley from Waterbury.

Representative Edward F. Bradley: I presume you've covered this but you didn't mention it. Assuming one of the conditions present and there is going to be an abortion, is there any time limit after the conception of the.....

Mr. Borden: Again....no abortion except in the case of the life of the mother being endangered under any circumstances will be allowed after ....and I forget whether its the 24th week or the 22nd week....I'm advised that we said the 20th.

Chairman Carrozzella: Are there any other questions of the Committee? Now, if I can impose upon you, Mr. Borden, to stay with us, because I think we are going to depart a little bit. I want to have people from the public give their testimony if they care to do so, and also, if they have any questions, I would want you here to answer the questions of the public because I think you're most capable of doing this. Alright, now, is there anyone here who wishes to speak on this proposed revision as is before us today? Is there anyone here who has any questions of Mr. Borden insofar as it relates to his testimony or to any part of the two reports that are before you, that you all have copies of? Well, hearing no opinion from the public....

Senator Hull: ....and thats a pleasure for legislators, in a sense, we always like to hear from you but its a rare pleasure not to. I think we should point out for the benefit of our friends in the media that its difficult

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to get a large attendance at a hearing off season. There is no bulletin printed, people aren't thinking in legislative terms. Some 500 I think, isn't it, Mr. Carrozzella, letters were sent out to appropriate parties, but I do not wish it to be thought there is no interest in the state in this. There is a lot going on in early June in various other endeavors, and I would think, Mr. Carrozzella, that you and Mr. Pickett, or whoever the Chairman may be....there is an election next fall, that this will have to be put into the bulletin when people are thinking about legislative matters, and I'm hopeful we'll get a lot of questions then.

Chairman Carrozzella: I might say that we certainly intend to hold further hearings, and I would assume that the Judiciary Committee in 69 will hold a hearing on the entire code. Now, if there are no other comments from any members of the public who are here, or anyone else, we'll close the hearing. Thank you all for coming.

Meeting adjourned at 12:00 noon.