

**Criminal Procedure Law of the People's Republic of China on Entry and Exit of Aliens**

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(Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, and revised in accordance with the Decision on Revising the Criminal Procedure Law of the People's Republic of China adopted at the Fourth Session of the Eighth National People's Congress on March 17, 1996)

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## PART ONE GENERAL PROVISIONS

## CHAPTER I AIM AND BASIC PRINCIPLES

Article 1 This Law is enacted in accordance with the Constitution and for the purpose of ensuring correct enforcement of the Criminal Law, punishing crimes, protecting the people, safeguarding State and public security and maintaining socialist public order.

Article 2 The aim of the Criminal Procedure Law of the People's Republic of China is: to ensure accurate and timely ascertainment of facts about crimes, correct application of law, punishment of criminals and protection of the innocent against being investigated for criminal responsibility; to enhance the citizens' awareness of the need to abide by law and to fight vigorously against criminal acts in order to safeguard the socialist legal system, to protect the citizens' personal rights; their property rights, democratic rights and other rights; and to guarantee smooth progress of the cause of socialist development.

Article 3 The public security organs shall be responsible for investigation, detention, execution of arrests and preliminary inquiry in criminal cases. The People's Procuratorates shall be responsible for procuratorial work, authorizing approval of arrests, conducting investigation and initiating public prosecution of cases directly accepted by the procuratorial organs. The People's Courts shall be responsible for adjudication. Except as otherwise provided by law, no other organs, organizations or individuals shall have the authority to exercise such powers.

In conducting criminal proceedings, the People's Courts, the People's Procuratorates and the public security organs must strictly observe this Law and any relevant stipulations of other laws.

Article 4 State security organs shall, in accordance with law, handle cases of crimes that endanger State security, performing the same functions and powers as the public security organs.

Article 5 The People's Courts shall exercise judicial power independently in accordance with law and the People's Procuratorates shall exercise procuratorial power independently in accordance with law, and they shall be free from interference by any administrative organ, public organization or individual.

Article 6 In conducting criminal proceedings, the People's Courts, the People's Procuratorates and the public security organs must rely on the masses, base themselves on facts and take law as the criterion. The law applies equally to all citizens and no privilege whatsoever is permissible before law.

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Article 7 In conducting criminal proceedings, the People's Courts, the People's Procuratorates and the public security organs shall divide responsibilities, coordinate their efforts and check each other to ensure the correct and effective enforcement of law.

Article 8 The People's Procuratorates shall, in accordance with law, exercise legal supervision over criminal proceedings.

Article 9 Citizens of all nationalities shall have the right to use their native spoken and written languages in court proceedings. The People's Courts, the People's Procuratorates and the public security organs shall provide translations for any party to the court proceedings who is not familiar with the spoken or written language commonly used in the locality.

Where people of a minority nationality live in a concentrated community or where a number of nationalities live together in one area, court hearings shall be conducted in the spoken language commonly used in the locality, and judgments, notices and other documents shall be issued in the written language commonly used in the locality.

Article 10 In trying cases, the People's Courts shall apply the system whereby the second instance is final.

Article 11 Cases in the People's Courts shall be heard in public, unless otherwise provided by this Law. A defendant shall have the right to defence, and the People's Courts shall have the duty to guarantee his defence.

Article 12 No person shall be found guilty without being judged as such by a People's Court according to law.

Article 13 In trying cases, the People's Courts shall apply the system of people's assessors taking part in trials in accordance with this Law.

Article 14 The People's Courts, the People's Procuratorates and the public security organs shall safeguard the procedural rights to which participants in proceedings are entitled according to law.

In cases where a minor under the age of 18 commits a crime, the criminal suspect and the legal representative of the defendant may be notified to be present at the time of interrogation and trial.

Participants in proceedings shall have the right to file charges against judges, procurators and investigators whose acts infringe on their citizen's procedural rights or subject their persons to indignities.

Article 15 In any of the following circumstances, no criminal responsibility shall be investigated; if investigation has already been undertaken, the case shall be dismissed, or prosecution shall not be initiated, or the handling shall be terminated, or innocence shall be declared:

- (1) if an act is obviously minor, causing no serious harm, and is therefore not deemed a crime;
- (2) if the limitation period for criminal prosecution has expired;
- (3) if an exemption of criminal punishment has been granted in a special amnesty decree;
- (4) if the crime is to be handled only upon complaint according to the Criminal Law, but there has been no complaint or the complaint has been withdrawn;
- (5) if the criminal suspect or defendant is deceased; or
- (6) if other laws provide an exemption from investigation of criminal responsibility.

Article 16 Provisions of this Law shall apply to foreigners who commit crimes for which criminal responsibility should be investigated.

If foreigners with diplomatic privileges and immunities commit crimes

for which criminal responsibility should be investigated, those cases shall be resolved through diplomatic channels.

Article 17 In accordance with the international treaties which the People's Republic of China has concluded or acceded to or on the principle of reciprocity, the judicial organs of China and that of other countries may request judicial assistance from each other in criminal affairs.

## CHAPTER II JURISDICTION

Article 18 Investigation in criminal cases shall be conducted by the public security organs, except as otherwise provided by law.

Crimes of embezzlement and bribery, crimes of dereliction of duty committed by State functionaries, and crimes involving violations of a citizen's personal rights such as illegal detention, extortion of confessions by torture, retaliation, frame-up and illegal search and crimes involving infringement of a citizen's democratic rights --

committed by State functionaries by taking advantage of their functions and powers -- shall be placed on file for investigation by the People's Procuratorates. If cases involving other grave crimes committed by State functionaries by taking advantage of their functions and powers need be handled directly by the People's Procuratorates, they may be placed on file for investigation by the People's Procuratorates upon decision by the People's Procuratorates at or above the provincial level.

Cases of private prosecution shall be handled directly by the People's Courts.

Article 19 The Primary People's Courts shall have jurisdiction as courts of first instance over ordinary criminal cases; however, those cases which fall under the jurisdiction of the People's Courts at higher levels as stipulated by this Law shall be exceptions.

Article 20 The Intermediate People's Courts shall have jurisdiction as courts of first instance over the following criminal cases:

- (1) counterrevolutionary cases and cases endangering State security;
- (2) ordinary criminal cases punishable by life imprisonment or the death penalty; and
- (3) criminal cases in which the offenders are foreigners.

Article 21 The Higher People's Courts shall have jurisdiction as courts of first instance over major criminal cases that pertain to an entire province (or autonomous region, or municipality directly under the Central Government).

Article 22 The Supreme People's Court shall have jurisdiction as the court of first instance over major criminal cases that pertain to the whole nation.

Article 23 When necessary, People's Courts at higher levels may try criminal cases over which People's Courts at lower levels have jurisdiction as courts of first instance; If a People's Court at a lower level considers the circumstances of a criminal case in the first instance to be major or complex and to necessitate a trial by a People's Court at a higher level, it may request that the case be transferred to the People's Court at the next higher level for trial.

Article 24 A criminal case shall be under the jurisdiction of the People's Court in the place where the crime was committed. If it is more appropriate for the case to be tried by the People's Court in the place where the defendant resides, then that court may have jurisdiction over the case.

Article 25 When two or more People's Courts at the same level have jurisdiction over a case, it shall be tried by the People's Court that first accepted it. When necessary the case may be transferred for trial to the People's Court in the principal place where the crime was committed.

Article 26 A People's Court at a higher level may instruct a People's Court at a lower level to try a case over which jurisdiction is unclear and may also instruct a People's Court at a lower level to transfer the case to another People's Court for trial.

Article 27 The jurisdiction over cases in special People's Courts shall be stipulated separately.

## CHAPTER III WITHDRAWAL

Article 28 In any of the following situations, a member of the judicial, procuratorial or investigatory personnel shall voluntarily withdraw, and the parties to the case and their legal representatives shall have the right to demand his withdrawal:

- (1) if he is a party or a near relative of a party to the case;
- (2) if he or a near relative of his has an interest in the case;
- (3) if he has served as a witness, expert witness, defender or agent ad litem in the current case; or
- (4) if he has any other relations with a party to the case that could affect the impartial handling of the case.

Article 29 Judges, procurators or investigators shall not accept invitations to dinner or presents from the parties to a case or the persons entrusted by the parties and shall not in violation of regulations meet with the parties to a case or the persons entrusted by the parties.

Any judge, procurator or investigator who violates the provisions in the preceding paragraph shall be investigated for legal responsibility. The parties to the case and their legal representatives shall have the right to request him to withdraw.

Article 30 The withdrawal of a judge, procurator and investigator shall be determined respectively by the president of the court, the chief procurator, and the head of a public security organ; the withdrawal of the president of the court shall be determined by the court's judicial committee; and the withdrawal of the chief procurator or the head of a public security organ shall be determined by the procuratorial committee of the People's Procuratorate at the corresponding level.

An investigator may not suspend investigation of a case before a decision is made on his withdrawal.

If a decision has been made to reject his application for withdrawal, the party or his legal representative may apply for reconsideration once.

Article 31 The provisions of Articles 28, 29 and 30 of this Law shall also apply to court clerks, interpreters and expert witnesses.

#### CHAPTER IV DEFENCE AND REPRESENTATION

Article 32 In addition to exercising the right to defend himself, a criminal suspect or a defendant may entrust one or two persons as his defenders. The following persons may be entrusted as defenders:

- (1) lawyers;
- (2) persons recommended by a public organization or the unit to which the criminal suspect or the defendant belongs; and
- (3) guardians or relatives and friends of the criminal suspect or the defendant.

Persons who are under criminal punishment or whose personal freedom is deprived of or restricted according to law shall not serve as defenders.

Article 33 A criminal suspect in a case of public prosecution shall have the right to entrust persons as his defenders from the date on which the case is transferred for examination before prosecution. A defendant in a case of private prosecution shall have the right to entrust persons as his defenders at any time.

A People's Procuratorate shall, within three days from the date of receiving the file record of a case transferred for examination before prosecution, inform the criminal suspect that he has the right to entrust persons as his defenders. A People's Court shall, within three days from the date of accepting a case of private prosecution, inform the defendant that he has the right to entrust persons as his defenders.

Article 34 If a case is to be brought in court by a public prosecutor and the defendant involved has not entrusted anyone to be his defender due to financial difficulties or other reasons, the People's Court may designate a lawyer that is obligated to provide legal aid to serve as a defender.

If the defendant is blind, deaf or mute, or if he is a minor, and thus has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender.

If there is the possibility that the defendant may be sentenced to death and yet he has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender.

Article 35 The responsibility of a defender shall be to present, according to the facts and law, materials and opinions proving the innocence of the criminal suspect or defendant, the pettiness of his

crime and the need for a mitigated punishment or exemption from criminal responsibility, thus safeguarding the lawful rights and interests of the criminal suspect or the defendant.

Article 36 Defence lawyers may, from the date on which the People's Procuratorate begins to examine a case for prosecution, consult, extract and duplicate the judicial documents pertaining to the current case and the technical verification material, and may meet and correspond with the criminal suspect in custody. Other defenders, with permission of the People's Procuratorate, may also consult, extract and duplicate the above-mentioned material, meet and correspond with the criminal suspect in custody.

Defence lawyers may, from the date on which the People's Court accepts a case, consult, extract and duplicate the material of the facts of the crime accused in the current case, and may meet and correspond with the defendant in custody. Other defenders, with permission of the People's Court, may also consult, extract and duplicate the above-mentioned material, and may meet and correspond with the defendant in custody.

Article 37 Defence lawyers may, with the consent of the witnesses or other units and individuals concerned, collect information pertaining to the current case from them and they may also apply to the People's Procuratorate or the People's Court for the collection and obtaining of evidence, or request the People's Court to inform the witnesses to appear in court and give testimony.

With permission of the People's Procuratorate or the People's Court and with the consent of the victim, his near relatives or the witnesses provided by the victim, defence lawyers may collect information pertaining to the current case from them.

Article 38 Defense lawyers and other defenders shall not help the criminal suspects or defendants to conceal, destroy or falsify evidence or to tally their confessions, and shall not intimidate or induce the witnesses to modify their testimony or give false testimony or conduct other acts to interfere with the proceedings of the judicial organs.

Whoever violates the provisions of the preceding paragraph shall be investigated for legal responsibility according to law.

Article 39 During a trial, the defendant may refuse to have his defendant continue to defend him and may entrust his defence to another defender.

Article 40 A victim in a case of public prosecution, his legal representatives or near relatives, and a party in an incidental civil action and his legal representatives shall, from the date on which the case is transferred for examination before prosecution, have the right to entrust agents ad litem. A private prosecutor in a case of private prosecution and his legal representatives, and a party in an incidental civil action and his legal representatives shall have the right to entrust agents ad litem at any time.

The People's Procuratorate shall, within three days from the date of receiving the file record of a case transferred for examination before prosecution, notify the victim and his legal representatives or near relatives and the party in an incidental civil action and his legal representatives that they have the right to entrust agents ad litem. The People's Court shall, within three days from the date of accepting a case of private prosecution, notify the private prosecutor and his legal representatives and the party in an incidental civil action and his legal representatives that they have the right to entrust agents ad litem.

Article 41 With regard to entrusting of agents ad litem, the provisions of Article 32 of this Law shall be applied mutatis mutandis.

## CHAPTER V EVIDENCE

Article 42 All facts that prove the true circumstances of a case shall be evidence.

There shall be the following seven categories of evidence:

- (1) material evidence and documentary evidence;
- (2) testimony of witnesses;
- (3) statements of victims;
- (4) statements and exculpations of criminal suspects or defendants;
- (5) expert conclusions;
- (6) records of inquests and examination; and
- (7) audio-visual materials.

Any of the above evidence must be verified before it can be used as the basis for deciding cases.

Article 43 Judges, procurators and investigators must, in accordance with the legally prescribed process, collect various kinds of evidence that can prove the criminal suspect's or defendant's guilt or innocence and the gravity of his crime. It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. Conditions must be guaranteed for all citizens who are involved in a case or who have information about the circumstances of a case to objectively and fully furnish evidence and, except in special circumstances, they may be brought in to help the investigation.

Article 44 The public security organ's requests for approval of arrest, the People's Procuratorate's bills of prosecution and the People's Court's written judgments must be faithful to the facts. The responsibility of anyone who intentionally conceals the facts shall be investigated.

Article 45 The People's Courts, the People's Procuratorates and the public security organs shall have the authority to collect or obtain evidence from the units and individuals concerned. The units and individuals concerned shall provide truthful evidence.

Evidence involving State secrets shall be kept confidential.

Anyone that falsifies, conceals or destroys evidence, regardless of

which side of a case he belongs to, must be investigated under law.

Article 46 In the decision of all cases, stress shall be laid on evidence, investigation and study; credence shall not be readily given to oral statements. A defendant cannot be found guilty and sentenced to a criminal punishment if there is only his statement but no evidence; the defendant may be found guilty and sentenced to a criminal punishment if evidence is sufficient and reliable, even without his statement.

Article 47 The testimony of a witness may be used as a basis in deciding a case only after the witness has been questioned and cross-examined in the courtroom by both sides, that is, the public prosecutor and victim as well as the defendant and defenders, and after the testimonies of the witnesses on all sides have been heard and verified. If a court discovers through investigation that a witness has intentionally given false testimony or concealed criminal evidence, it shall handle the matter in accordance with law.

Article 48 All those who have information about a case shall have the duty to testify.

Physically or mentally handicapped persons or minors who cannot distinguish right from wrong or cannot properly express themselves shall not be qualified as witnesses.

Article 49 The People's Courts, the People's Procuratorates and the public security organs shall insure the safety of witnesses and their near relatives.

Anyone who intimidates, humiliates, beats or retaliates against a witness or his near relatives, if his act constitutes a crime, shall be investigated for criminal responsibility according to law; if the case is not serious enough for criminal punishment, he shall be punished for violation of public security in accordance with law.

#### CHAPTER VI COMPULSORY MEASURES

Article 50 The People's Courts, the People's Procuratorates and the public security organs may, according to the circumstances of a case, issue a warrant to compel the appearance of the criminal suspect or defendant, order him to obtain a guarantor pending trial or subject him to residential surveillance.

Article 51 The People's Courts, the People's Procuratorates and the public security organs may allow criminal suspects or defendants under any of the following conditions to obtain a guarantor pending trial or subject them to residential surveillance:

- (1) They may be sentenced to public surveillance, criminal detention or simply imposed with supplementary punishments; or
- (2) They may be imposed with a punishment of fixed-term imprisonment at least and would not endanger society if they are allowed to obtain a guarantor pending trial or are placed under residential surveillance.

The public security organs shall execute the decision on allowing a criminal suspect or defendant to obtain a guarantor pending trial or on subjecting him to residential surveillance.

Article 52 A criminal suspect or defendant in custody and his legal representatives or near relatives shall have the right to apply for obtaining a guarantor pending trial.

Article 53 If the People's Courts, the People's Procuratorates or the public security organs decide to allow a criminal suspect or defendant to obtain a guarantor pending trial, they shall order the criminal suspect or defendant to provide a guarantor or pay guaranty money.

Article 54 A guarantor must be a person who meets the following conditions:

- (1) to be not involved in the current case;
- (2) to be able to perform a guarantor's duties;
- (3) to be entitled to political rights and not subjected to restriction of personal freedom; and
- (4) to have a fixed domicile and steady income.

Article 55 A guarantor shall perform the following duties:

- (1) to see to it that the person under his guarantee observes the provisions of Article 56 of this Law; and
- (2) to promptly report to the executing organ when finding that the person under his guarantee may commit or has already committed acts in violation of the provisions of Article 56 of this Law.

If the guarantor fails to report promptly when the person under his guarantee has committed an act in violation of the provisions of Article 56 of this Law, he shall be fined. If the case constitutes a crime, criminal responsibility shall be investigated according to law.

Article 56 A criminal suspect or defendant who has obtained a guarantor pending trial shall observe the following provisions:

- (1) not to leave the city or county where he resides without permission of the executing organ;
- (2) to be present in time at a court when summoned;
- (3) not to interfere in any form with the witness when the latter gives testimony; and

(4) not to destroy or falsify evidence or tally confessions.

If a criminal suspect or defendant who has obtained a guarantor pending trial violates the provisions of the preceding paragraph, the guaranty money paid shall be confiscated. In addition, in light of specific circumstances, the criminal suspect or defendant shall be ordered to write a statement of repentance, pay guaranty money or provide a guarantor again, or shall be subjected to residential surveillance or arrested. If a criminal suspect or defendant is found not to have violated the provisions in the preceding paragraph during the period when he has obtained a guarantor pending trial, the guaranty money shall be returned to him at the end of the period.

Article 57 A criminal suspect or defendant under residential surveillance shall observe the following provisions:

(1) not to leave his domicile without permission of the executing organ or, if he has no fixed domicile, not to leave the designated residence without permission;

(2) not to meet with others without permission of the executing organ;

(3) to be present in time at a court when summoned;

(4) not to interfere in any form with the witness when the latter gives testimony; and

(5) not to destroy or falsify evidence or tally confessions.

If a criminal suspect or defendant under residential surveillance violates the provisions of the preceding paragraph and if the case is serious, he shall be arrested.

Article 58 The period granted by a People's Court, People's Procuratorate or public security organ to a criminal suspect or defendant for awaiting trial after obtaining a guarantor shall not exceed twelve months; the period for residential surveillance shall not exceed six months.

During the period when the criminal suspect or defendant is awaiting trial after obtaining a guarantor or when he is under residential surveillance, investigation, prosecution and handling of the case shall not be suspended. If it is discovered that the criminal suspect or the defendant should not be investigated for criminal responsibility or when the period for awaiting trial after obtaining a guarantor or the period of residential surveillance has expired, such period shall be terminated without delay. The person who has obtained a guarantor pending trial or who is under residential surveillance and the units concerned shall be notified of the termination immediately.

Article 59 Arrests of criminal suspects or defendants shall be subject to approval by a People's Procuratorate or decision by a People's Court and shall be executed by a public security organ.

Article 60 When there is evidence to support the facts of a crime and the criminal suspect or defendant could be sentenced to a punishment of not less than imprisonment, and if such measures as allowing him to obtain a guarantor pending trial or placing him under residential surveillance would be insufficient to prevent the occurrence of danger to society, thus necessitating his arrest, the criminal suspect or defendant shall be immediately arrested according to law.

If a criminal suspect or defendant who should be arrested is seriously ill or is a pregnant woman or a woman breast-feeding her own baby, he or she may be allowed to obtain a guarantor pending trial or be placed under residential surveillance.

Article 61 Public security organs may initially detain an active criminal or a major suspect under any of the following conditions:

(1) if he is preparing to commit a crime, is in the process of committing a crime or is discovered immediately after committing a crime;

(2) if he is identified as having committed a crime by a victim or an eyewitness;

(3) if criminal evidence is found on his body or at his residence;

(4) if he attempts to commit suicide or escape after committing a crime, or he is a fugitive;

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- (5) if there is likelihood of his destroying or falsifying evidence or tallying confessions;
- (6) if he does not tell his true name and address and his identity is unknown; and
- (7) if he is strongly suspected of committing crimes from one place to another, repeatedly, or in a gang.

Article 62 When a public security organ is to detain or arrest a person in another place, it shall inform the public security organ in the place where the person to be detained or arrested stays, and the public security organ there shall cooperate in the action.

Article 63 The persons listed below may be seized outright by any citizen and delivered to a public security organ, a People's Procuratorate or a People's Court for handling:

- (1) any person who is committing a crime or is discovered immediately after committing a crime;
- (2) any person who is wanted for arrest;
- (3) any person who has escaped from prison; and
- (4) any person who is being pursued for arrest.

Article 64 When detaining a person, a public security organ must produce a detention warrant.

Within 24 hours after a person has been detained, his family or the unit to which he belongs shall be notified of the reasons for detention and the place of custody, except in circumstances where such notification would hinder the investigation or there is no way of notifying them.

Article 65 A public security organ shall interrogate a detainee within 24 hours after detention. If it is found that the person should not have been detained, he must be immediately released and issued a release certificate. If the public security organ finds it necessary to arrest a detainee when sufficient evidence is still lacking, it may allow the detainee to obtain a guarantor pending trial or place him under residential surveillance.

Article 66 When a public security organ wishes to arrest a criminal suspect, it shall submit a written request for approval of arrest together with the case file and evidence to the People's Procuratorate at the same level for examination and approval. When necessary, the People's Procuratorate may send procurators to participate in the public security organ's discussion of a major case.

Article 67 The chief procurator shall make the decision on a People's Procuratorate's examination and approval of the arrest of a criminal suspect. Major cases shall be submitted to the procuratorial committee for discussion and decision.

Article 68 After a People's Procuratorate has examined a case with respect to which a public security organ has submitted a request for approval of arrest, it shall decide according to the circumstances of the case either to approve the arrest or disapprove the arrest. If it decides to approve the arrest, the public security organ shall execute it immediately and inform the People's Procuratorate of the result without delay. If the People's Procuratorate disapproves the arrest, it shall give its reasons therefor; and if it deems a supplementary investigation necessary, it shall at the same time notify the public security organ of the need.

Article 69 If the public security organ deems it necessary to arrest a detainee, it shall, within three days after the detention, submit a request to the People's Procuratorate for examination and approval. Under special circumstances, the time limit for submitting a request for examination and approval may be extended by one to four days.

As to the arrest of a major suspect involved in crimes committed from one place to another, repeatedly, or in a gang, the time limit for submitting a request for examination and approval may be extended to 30 days.

The People's Procuratorate shall decide either to approve or disapprove the arrest within seven days from the date of receiving the written request for approval of arrest submitted by a public security organ. If the People's Procuratorate disapproves the arrest, the public security organ shall, upon receiving notification, immediately release the detainee and inform the People's Procuratorate of the result without delay. If further investigation is necessary, and if the released person

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meets the conditions for obtaining a guarantor pending trial or for residential surveillance, he shall be allowed to obtain a guarantor pending trial or subjected to residential surveillance according to law.

Article 70 If the public security organ considers the People's Procuratorate's decision to disapprove an arrest to be incorrect, it may request a reconsideration but must immediately release the detainee. If the public security organ's opinion is not accepted, it may request a review by the People's Procuratorate at the next higher level. The People's Procuratorate at the higher level shall immediately review the matter, decide whether or not to make a change and notify the People's Procuratorate at the lower level and the public security organ to implement its decision.

Article 71 When making an arrest, a public security organ must produce an arrest warrant.

Within 24 hours after an arrest, the family of the arrested person or the unit to which he belongs shall be notified of the reasons for arrest and the place of custody, except in circumstances where such notification would hinder the investigation or there is no way of notifying them.

Article 72 Interrogation must be conducted within 24 hours after the arrest, by a People's Court or People's Procuratorate with respect to a person it has decided to arrest, and by a public security organ with respect to a person it has arrested with the approval of the People's Procuratorate. If it is found that the person should not have been arrested, he must be immediately released and issued a release certificate.

Article 73 If a People's Court, a People's Procuratorate or a public security organ finds that the compulsory measures adopted against a criminal suspect or defendant are inappropriate, such measures shall be cancelled or modified without delay. If a public security organ releases a person arrested or substitute the measure of arrest with a different measure, it shall notify the People's Procuratorate that approved the arrest.

Article 74 If a case involving a criminal suspect or defendant in custody cannot be closed within the time limit stipulated by this Law for keeping the criminal suspect or defendant under custody for the sake of investigation, for conducting examination before prosecution, or for the procedure of first or second instance and thus further investigation, verification and handling are needed, the criminal suspect or defendant may be allowed to obtain a guarantor pending trial or subjected to residential surveillance.

Article 75 If the compulsory measures adopted by a People's Court, a People's Procuratorate or a public security organ exceed the time limit prescribed by law, the criminal suspect or defendant, his legal representatives, near relatives, or the lawyers or other defenders entrusted by the criminal suspect or defendant shall have the right to demand cancellation of the compulsory measures. The People's Court, the People's Procuratorate, or the public security organ shall release the criminal suspect or defendant when the compulsory measures adopted against him have exceeded the time limit prescribed by law, terminate the period for awaiting trial after obtaining a guarantor or for residential surveillance, or take different compulsory measures according to law.

Article 76 If in the process of examining and approving arrests, a People's Procuratorate discovers illegalities in the investigatory activities of a public security organ, it shall notify the public security organ to make corrections, and the public security organ shall notify the People's Procuratorate of the corrections it has made.

## CHAPTER VII INCIDENTAL CIVIL ACTIONS

Article 77 If a victim has suffered material losses as a result of the defendant's criminal act, he shall have the right to file an incidental civil action during the course of the criminal proceeding.

If losses have been caused to State property or collective property, the People's Procuratorate may file an incidental civil action while initiating a public prosecution.

When necessary, the People's Court may seal up or distrain upon the property of the defendant.

Article 78 An incidental civil action shall be heard together with the criminal case. Only for the purpose of preventing excessive delay in a trial of the criminal case may the same judicial organization, after completing the trial of the criminal case, continue to hear the incidental civil action.

## CHAPTER VIII TIME PERIODS AND SERVICE

Article 79 Time periods shall be calculated by the hour, the day and the month.

The hour and day from which a time period begins shall not be counted as within the time period.

A legally prescribed time period shall not include travelling time. Appeals or other documents that have been mailed before the expiration of the time period shall not be regarded as overdue.

Article 80 When a party cannot meet a deadline due to irresistible causes or for other legitimate reasons, he may, within five days after the obstacle is removed, apply to continue the proceedings that should have been completed before the expiration of the time period.

A People's Court shall decide whether or not to approve the application described in the preceding paragraph.

Article 81 Summons, notices and other court documents shall be delivered to the addressee himself; if the addressee is absent, the documents may be received on his behalf by an adult member of his family or a responsible person of his unit.

If the addressee or a recipient on his behalf refuses to accept the documents or refuses to sign and affix his seal to the receipt, the person serving the documents may ask the addressee's neighbours or other witnesses to the scene, explain the situation to them, leave the documents at the addressee's residence, record on the service certificate the particulars of the refusal and the date of service and sign his name to it; the service shall thus be deemed to have been completed.

## CHAPTER IX OTHER PROVISIONS

Article 82 For the purpose of this law, the definitions of the following terms are:

(1) "Investigation" means the specialized investigatory work and related compulsory measures carried out according to law by the public security organs and People's Procuratorates in the process of handling cases.

(2) "Parties" means victims, private prosecutors, criminal suspects, defendants and the plaintiffs and defendants in incidental civil actions.

(3) "Legal representatives" means the parents, foster parents or guardians of a person being represented and representatives of the State organ or public organization responsible for that person's protection;

(4) "Participants in the proceedings" means the parties, legal representatives, agents ad litem, defenders, witnesses, expert witnesses and interpreters;

(5) "agents ad litem" means persons entrusted by victims in cases of public prosecution and their legal representatives or near relatives and by private prosecutors in cases of private prosecution and their legal representatives to participate in legal proceedings on their behalf, and persons entrusted by parties in incidental civil actions and their legal representatives to participate in legal proceedings on their behalf.

(6) "Near relatives" means a person's husband or wife, father, mother,

sons, daughters, and brothers and sisters born of the same parents.

## PART TWO FILING A CASE, INVESTIGATION, AND INITIATION OF PUBLIC PROSECUTION

### CHAPTER I FILING A CASE

Article 83 The public security organs or the People's Procuratorates shall, upon discovering facts of crimes or criminal suspects, file the cases for investigation within the scope of their jurisdiction.

Article 84 Any unit or individual, upon discovering facts of a crime or a criminal suspect, shall have the right and duty to report the case or provide information to a public security organ, a People's Procuratorate or a People's Court.

When his personal or property rights are infringed upon, the victim shall have the right to report to a public security organ, a People's Procuratorate or a People's Court about the facts of the crime or bring a complaint to it against the criminal suspect. [Unofficial English translation, original Chinese] (In case of discrepancy between the English translation and 12 the original Chinese text, the Chinese text shall prevail.)

The public security organ, the People's Procuratorate or the People's Court shall accept all reports, complaints and information. If a case does not fall under its jurisdiction, it shall refer the case to the competent organ and notify the person who made the report, lodged the complaint or provided the information. If the case does not fall under its jurisdiction but calls for emergency measures, it shall take emergency measures before referring the case to the competent organ.

Where an offender delivers himself up to a public security organ, a People's Procuratorate or a People's Court, the provisions of the third paragraph shall apply.

Article 85 Reports, complaints and information may be filed in writing or orally. The officer receiving an oral report, complaint or information shall make a written record of it, which, after being read to the reporter, complainant or informant and found free of error, shall be signed or sealed by him or her.

The officer receiving the complaint or information shall clearly explain to the complainant or the informant the legal responsibility that shall be incurred for making a false accusation. However, a complaint or information that does not accord with the facts, or even a mistaken complaint shall be strictly distinguished from a false accusation, as long as no fabrication of facts or falsification of evidence is involved.

The public security organs, the People's Procuratorates and the People's Courts shall insure the safety of reporters, complainants and informants as well as their near relatives. If the reporters, complainants or informants wish not to make their names and acts of reporting, complaining or informing known to the public, these shall be kept confidential for them.

Article 86 A People's Court, People's Procuratorate or public security organ shall, within the scope of its jurisdiction, promptly examine the materials provided by a reporter, complainant or informant and the confession of an offender who has voluntarily surrendered. If it believes that there are facts of a crime and criminal responsibility should be investigated, it shall file a case. If it believes that there are no facts of a crime or that the facts are obviously incidental and do not require investigation of criminal responsibility, it shall not file a case and shall notify the complainant of the reason. If the complainant does not agree with the decision, he may ask for reconsideration.

Article 87 Where a People's Procuratorate considers that a case should be filed for investigation by a public security organ but the latter has not done so, or where a victim considers that a case should be filed for investigation by a public security organ but the latter has not done so and the victim has brought the matter to a People's Procuratorate, the People's Procuratorate shall request the public security organ to state the reasons for not filing the case. If the People's Procuratorate considers that the reasons for not filing the case given by the public security organ are untenable, it shall notify the public security organ to file the case, and upon receiving the notification, the public security organ shall file the case.

Article 88 As to a case of private prosecution, the victim shall have the right to bring a suit directly to a People's Court. If the victim is dead or has lost his ability of conduct, his legal representatives and near relatives shall have the right to bring a suit to a People's Court. The People's Court shall accept it according to law.

## CHAPTER II INVESTIGATION

### SECTION 1 GENERAL PROVISIONS

Article 89 With respect to a criminal case which has been filed, the public security organ shall carry out investigation, collecting and obtaining evidence to prove the criminal suspect guilty or innocent or to prove the crime to be minor or grave. Active criminals or major suspects may be detained first according to law, and criminal suspects who meet the conditions for arrest shall be arrested according to law.

Article 90 After investigation, the public security organ shall start preliminary inquiry into a case for which there is evidence that supports the facts of the crime, in order to verify the evidence which has been collected and obtained.

### SECTION 2 INTERROGATION OF THE CRIMINAL SUSPECT

Article 91 Interrogation of a criminal suspect must be conducted by the investigators of a People's Procuratorate or public security organ. During an interrogation, there must be no fewer than two investigators participating.

Article 92 A criminal suspect who need not be arrested or detained may be summoned to a designated place in the city or county where the criminal suspect stays for interrogation, or he may be interrogated at his residence. However, the interrogators shall produce their papers issued by a People's Procuratorate or a public security organ.

The time for interrogation through summons or forced appearance shall not exceed 12 hours. A criminal suspect shall not be detained under the disguise of successive summons or forced appearance.

Article 93 When interrogating a criminal suspect, the investigators shall first ask the criminal suspect whether or not he has committed any criminal act, and let him state the circumstances of his guilt or explain his innocence; then they may ask him questions. The criminal suspect shall answer the investigators' questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case.

Article 94 During the interrogation of a criminal suspect who is deaf or mute, an officer who has a good command of sign language shall participate, and such circumstances shall be noted in the record.

Article 95 The record of an interrogation shall be shown to the criminal suspect for checking; if the criminal suspect cannot read, the record shall be read to him. If there are omissions or errors in the record, the criminal suspect may make additions or corrections. When the criminal suspect acknowledges that the record is free from error, he shall sign or affix his seal to it. The investigators shall also sign the record. If the criminal suspect requests to write a personal statement, he shall be permitted to do so. When necessary, the investigators may also ask the criminal suspect to write a personal statement.

Article 96 After the criminal suspect is interrogated by an investigation organ for the first time or from the day on which compulsory measures are adopted against him, he may appoint a lawyer to provide him with legal advice and to file petitions and complaints on his behalf. If the criminal suspect is arrested, the appointed lawyer may apply on his behalf for obtaining a guarantor pending trial. If a case involves State secrets, the criminal suspect shall have to obtain the approval of the investigation organ for appointing a lawyer.

The appointed lawyer shall have the right to find out from the investigation organ about the crime suspected of, and may meet with the criminal suspect in custody to enquire about the case. When the lawyer meets with the criminal suspect in custody, the investigation organ may, in light of the seriousness of the crime and where it deems it necessary, send its people to be present at the meeting. If a case involves State secrets, before the lawyer meets with the criminal suspect, he shall have to obtain the approval of the investigation organ.

### SECTION 3 QUESTIONING OF THE WITNESSES

Article 97 Investigators may question a witness at his unit or residence, but they must produce a certificate issued by a People's Procuratorate or public security organ. When necessary, they may also notify the witness to give testimony at the People's Procuratorate or public security organ.

Witnesses shall be questioned individually.

Article 98 When a witness is questioned, he shall be instructed to provide evidence and give testimony truthfully and shall be informed of the legal responsibility that shall be incurred for intentionally giving false testimony or concealing criminal evidence.

When a witness under the age of 18 is questioned, his legal representative may be notified to be present.

Article 99 The provisions of Article 95 of this Law shall also apply to the questioning of witnesses.

Article 100 The provisions of all articles in this Section shall apply to the questioning of victims.

### SECTION 4 INQUEST AND EXAMINATION

Article 101 Investigators shall conduct an inquest or examination of the sites, objects, people and corpses relevant to a crime. When necessary, experts may be assigned or invited to conduct an inquest or examination under the direction of the investigators.

Article 102 Each and every unit and individual shall have the duty to preserve the scene of a crime and to immediately notify a public security organ to send officers to hold an inquest.

Article 103 To conduct an inquest or examination, the investigators must have papers issued by a People's Procuratorate or a public security organ.

Article 104 If the cause of a death is unclear, a public security organ shall have the power to order an autopsy and shall notify the family members of the deceased to be present.

Article 105 An examination may be conducted of the person of the victim or criminal suspect in order to ascertain some of his characteristics or physiological condition, or the circumstances of the injury.

If a criminal suspect refuses to be examined, the investigators, when they deem it necessary, may conduct a compulsory examination.

Examination of the persons of women shall be conducted by female officers or doctors.

Article 106 A record shall be made of the circumstances of an inquest or examination, and it shall be signed or sealed by the participants in the inquest or examination and the eyewitnesses.

Article 107 If, in reviewing a case, a People's Procuratorate deems it necessary to repeat an inquest or examination that has been done by a public security organ, it may ask the latter to conduct another inquest or examination and may send procurators to participate in it.

Article 108 When necessary and with the approval of the director of a public security bureau, investigative experiments may be conducted in order to clarify the circumstances of a case.

In conducting investigative experiments, it shall be forbidden to take any action which is hazardous, humiliating to anyone, or offensive to public morals.

## SECTION 5 SEARCH

Article 109 In order to collect criminal evidence and track down an offender, investigators may search the person, belongings and residence of the criminal suspect and anyone who might be hiding a criminal or criminal evidence, as well as other relevant places.

Article 110 Any unit or individual shall have the duty, as required by the People's Procuratorate or the public security organ, to hand over material evidence, documentary evidence or audio-visual material which may prove the criminal suspect guilty or innocent.

Article 111 When a search is to be conducted, a search warrant must be shown to the person to be searched.

If an emergency occurs when an arrest or detention is being made, a search may be conducted without a search warrant.

Article 112 During a search, the person to be searched or his family members, neighbours or other eyewitnesses shall be present at the scene.

Searches of the persons of women shall be conducted by female officers.

Article 113 A record shall be made of the circumstances of a search, and it shall be signed or sealed by the investigators and the person searched or his family members, neighbours or other eyewitnesses. If the person searched or his family members have become fugitives or refuse to sign or affix their seals to the record, this shall be noted in the record.

## SECTION 6 SEIZURE OF MATERIAL EVIDENCE AND DOCUMENTARY EVIDENCE

Article 114 Any articles and documents discovered during an inquest or search that may be used to prove a criminal suspect's guilt or innocence shall be seized. Articles and documents which are irrelevant to the case may not be seized.

Seized articles and documents shall be properly kept or sealed for safekeeping and may not be utilized or damaged.

Article 115 All seized articles and documents shall be carefully checked by the investigators jointly with the eyewitnesses and the holder of the articles; a detailed list shall be made in duplicate on the spot and shall be signed or sealed by the investigators, the eyewitnesses and the holder. One copy of the list shall be given to the holder, and the other copy shall be kept on file for reference.

[Unofficial English translation, original Chinese] (In case of discrepancy between the English translation and 15 the original Chinese text, the Chinese text shall prevail.)

Article 116 If the investigators deem it necessary to seize the mail or telegrams of a criminal suspect, they may, upon approval of a public security organ or a People's Procuratorate, notify the post and telecommunications offices to check and hand over the relevant mail and telegrams for seizure.

When it becomes unnecessary to continue a seizure, the post and telecommunications offices shall be immediately notified.

Article 117 The People's Procuratorates and the public security organs may, as required by investigation of crimes, inquire into or freeze criminal suspects' deposits or remittances according to regulations.

If the deposits or remittances of the criminal suspects have been frozen, they shall not be frozen for a second time.

Article 118 If any seized articles, documents, mail, telegrams or frozen deposits and remittances are proved through investigation to be truly irrelevant to a case, the seizure and freeze shall be cancelled within three days, and the things shall be returned to their original owners or the original post and telecommunications offices.

## SECTION 7 EXPERT EVALUATION

Article 119 When certain special problems relating to a case need to be solved in order to clarify the circumstances of the case, experts shall be assigned or invited to give their evaluations.

Article 120 After evaluating a matter, the experts shall write a conclusion of expert evaluation and affix his signature to it.

Reverification necessitated by disputes over medical verification of personal injuries and medical verification of mental illness shall be conducted by a hospital designated by a people's government at the provincial level. After verification, the expert shall make a conclusion in writing, to which his signature and the hospital's seal shall be affixed.

If an expert intentionally makes a false verification, he shall assume legal responsibility.

Article 121 The investigation organ shall notify the criminal suspect and the victim of the conclusion of the expert verification which will be used as evidence in his case. A supplementary expert verification or another expert verification may be conducted upon application submitted by the criminal suspect or the victim.

Article 122 The period during which the mental illness of a criminal suspect is under verification shall not be included in the period of time for handling the case.

## SECTION 8 WANTED ORDERS

Article 123 If a criminal suspect who should be arrested is a fugitive, a public security organ may issue a wanted order and take effective

measures to pursue him for arrest and bring him to justice.

Public security organs at any level may directly issue wanted orders

within the areas under their jurisdiction; they shall request a higher-

level organ with the proper authority to issue such orders for areas beyond their jurisdiction.

## SECTION 9 CONCLUSION OF INVESTIGATION

Article 124 The time limit for holding a criminal suspect in custody during investigation after arrest shall not exceed two months. If the case is complex and cannot be concluded within the time limit, an extension of one month may be allowed with the approval of the People's Procuratorate at the next higher level.

Article 125 If due to special reasons, it is not appropriate to hand over a particularly grave and complex case for trial even within a relatively long period of time, the Supreme People's Procuratorate shall submit a report to the Standing Committee of the National People's Congress for approval of postponing the hearing of the case.

[Unofficial English translation, original Chinese] (In case of discrepancy between the English translation and 16 the original Chinese text, the Chinese text shall prevail.)

Article 126 With respect to the following cases, if investigation cannot be concluded within the time limit specified in Article 124 of this Law, an extension of two months may be allowed upon approval or decision by the People's Procuratorate of a province, autonomous region or municipality directly under the Central Government:

- (1) grave and complex cases in outlying areas where traffic is most inconvenient;
- (2) grave cases that involve criminal gangs;
- (3) grave and complex cases that involve people who commit crimes from one place to another; and
- (4) grave and complex cases that involve various quarters and for which it is difficult to obtain evidence.

Article 127 If in the case of a criminal suspect who may be sentenced to fixed-term imprisonment of ten years at least, investigation of the case can still not be concluded upon expiration of the extended time limit as provided in Article 126 of this Law, another extension of two months may be allowed upon approval or decision by the People's Procuratorate of a province, autonomous region or municipality directly under the Central Government.

Article 128 If during the period of investigation a criminal suspect is found to have committed other major crimes, the time limit for holding the criminal suspect in custody during investigation shall be recalculated, in accordance with the provisions of Article 124 of this Law, from the date on which such crimes are found.

If a criminal suspect does not tell his true name and address and his identity is unknown, the time limit for holding him in custody during investigation shall be calculated from the date on which his identity is found out. However, before then, the investigation into his crime and obtaining of evidence shall not be ceased. If the facts of a crime are clear and the evidence is reliable and sufficient, the case may, by the name given by the criminal suspect himself, be transferred to a People's Procuratorate for examination and prosecution.

Article 129 After a public security organ has concluded its investigation of a case, the facts should be clear and the evidence reliable and sufficient and, in addition, it shall make a written recommendation for prosecution, which shall be transferred, together with the case file and evidence, to the People's Procuratorate at the same level for examination and decision.

Article 130 If it is discovered during investigation that a criminal suspect's criminal responsibility should not have been investigated, the case shall be dismissed; if the criminal suspect is under arrest, he shall be released immediately and issued a release certificate, and the People's Procuratorate which originally approved the arrest shall be notified.

#### SECTION 10 INVESTIGATION OF CASES DIRECTLY ACCEPTED BY THE PEOPLE'S PROCURATORATES

Article 131 Investigation of cases directly accepted by the People's Procuratorates shall be governed by the provisions of this Chapter.

Article 132 If a case directly accepted by a People's Procuratorate conforms with the conditions provided in Article 60 and in sub-paragraph (4) or sub-paragraph (5) of Article 61 of this Law, thus arrest or detention of the criminal suspect is necessitated, the decision thereon shall be made by the People's Procuratorate and executed by a public security organ.

Article 133 A detainee in a case directly accepted by a People's Procuratorate shall be interrogated within 24 hours after the detention. If it is found that the person should not have been detained, he must be released immediately and issued a release certificate. If an arrest is necessitated but the evidence is insufficient, the detainee may be allowed to obtain a guarantor pending trial or be subjected to residential surveillance.

Article 134 If a People's Procuratorate deems it necessary to arrest a detainee in a case directly accepted by it, it shall make a decision thereon within 10 days after the detention. Under special circumstances, the time limit for deciding on an arrest may be extended by one to four days. If arrest is unnecessary, the detainee shall be released immediately; if the case requires further investigation and the detainee meets the conditions for obtaining a guarantor pending trial or for residential surveillance, he shall be allowed to obtain a guarantor pending trial or be subjected to residential surveillance according to law.

Article 135 After a People's Procuratorate has concluded its investigation of a case, it shall make a decision to initiate public prosecution, not to initiate a prosecution or to dismiss the case.

## CHAPTER III INITIATION OF PUBLIC PROSECUTION

Article 136 All cases requiring initiation of a public prosecution shall be examined for decision by the People's Procuratorates.

Article 137 In examining a case, a People's Procuratorate shall ascertain:

- (1) whether the facts and circumstances of the crime are clear, whether the evidence is reliable and sufficient and whether the charge and the nature of the crime has been correctly determined;
- (2) whether there are any crimes that have been omitted or other persons whose criminal responsibility should be investigated;
- (3) whether it is a case in which criminal responsibility should not be investigated;
- (4) whether the case has an incidental civil action; and
- (5) whether the investigation of the case is being lawfully conducted.

Article 138 A People's Procuratorate shall make a decision within one month on a case that a public security organ has transferred to it with a recommendation to initiate a prosecution; an extension of a half month may be allowed for major or complex cases.

If jurisdiction over a case to be examined and prosecuted by a People's Procuratorate is altered, the time limit for examination and prosecution shall be calculated from the date on which another People's Procuratorate receives the case after the alteration.

Article 139 When examining a case, the People's Procuratorate shall interrogate the criminal suspect and heed the opinions of the victim and of the persons entrusted by the criminal suspect and the victim.

Article 140 In examining a case, the People's Procuratorate may request a public security organ to provide the evidence that is essential to the trial in court.

In examining a case that requires supplementary investigation, the People's Procuratorate may remand the case to a public security organ for supplementary investigation or conduct the investigation itself.

In cases where supplementary investigation is to be conducted, it shall be completed within one month. Supplementary investigation may be conducted twice at most. When supplementary investigation is completed and the case is transferred to the People's Procuratorate, the time limit for examination and prosecution shall be recalculated by the

People's Procuratorate.

With respect to a case for which supplementary investigation has been conducted, if the People's Procuratorate still believes that the evidence is insufficient and the case does not meet the conditions for initiation of a prosecution, the People's Procuratorate may decide not to initiate a prosecution.

Article 141 When a People's Procuratorate considers that the facts of a criminal suspect's crime have been ascertained, that the evidence is reliable and sufficient and that criminal responsibility should be investigated according to law, it shall make a decision to initiate a prosecution and shall, in accordance with the provisions for trial jurisdiction, initiate a public prosecution in a People's Court.

Article 142 If a criminal suspect is found to be under one of the circumstances provided in Article 15 of this Law, the People's Procuratorate shall make a decision not to initiate a prosecution.

With respect to a case that is minor and the offender need not be given criminal punishment or need be exempted from it according to the Criminal Law, the People's Procuratorate may decide not to initiate a prosecution.

With respect to a case for which the People's Procuratorate has decided not to initiate a prosecution, the People's Procuratorate shall, at the same time, cancel the seizure or freeze of the property or things of value seized or frozen during [Unofficial English translation, original Chinese] (In case of discrepancy between the English translation and 18 the original Chinese text, the Chinese text shall prevail.)

the period of investigation. If the person against whom prosecution is not to be initiated need be given administrative penalty or administrative sanction or his illegal gains need be confiscated, the People's Procuratorate shall make suggestions to such an effect and transfer the case to the competent organ for handling. The competent organ shall, without delay, inform the People's Procuratorate of how it has handled the case.

Article 143 A decision not to initiate a prosecution shall be announced publicly, and the decision shall, in written form, be delivered to the person who is not to be prosecuted and his unit. If the said person is in custody, he shall be released immediately.

Article 144 With respect to a case transferred by a public security organ for prosecution, if the People's Procuratorate decides not to initiate a prosecution, it shall deliver the decision in writing to the public security organ. If the public security organ considers that the decision not to initiate a prosecution is wrong, it may demand reconsideration, and if the demand is rejected, it may submit the matter to the People's Procuratorate at the next higher level for review.

Article 145 If the People's Procuratorate decides not to initiate a prosecution with respect to a case that involves a victim, it shall send the decision in writing to the victim. If the victim refuses to accept the decision, he may, within seven days after receiving the written decision, present a petition to the People's Procuratorate at the next higher level and request the latter to initiate a public prosecution. The People's Procuratorate shall notify the victim of its decision made after reexamination. If the People's Procuratorate upholds the decision not to initiate a prosecution, the victim may bring a lawsuit to a People's Court. The victim may also bring a lawsuit directly to a People's Court without presenting a petition first. After the People's Court has accepted the case, the People's Procuratorate shall transfer the relevant case file to the People's Court.

Article 146 If the person against whom a People's Procuratorate decides, in accordance with the provisions of the second paragraph of Article 142 of this Law, not to initiate a prosecution still refuses to accept the decision, he may present a petition to the People's Procuratorate within seven days after receiving the written decision. The People's Procuratorate shall make a decision to conduct a reexamination, notify the person against whom no prosecution is to be initiated and at the same time send a copy of the decision to the public security organ.

## PART THREE TRIAL

### CHAPTER I TRIAL ORGANIZATIONS

Article 147 Trials of cases of first instance in the Primary and Intermediate People's Courts shall be conducted by a collegial panel composed of three judges or of judges and people's assessors totalling three. However, cases in which summary procedure is applied in the Primary People's Courts may be tried by a single judge alone.

Trials of cases of first instance in the Higher People's Courts or the Supreme People's Court shall be conducted by a collegial panel composed of three to seven judges or of judges and people's assessors totalling three to seven.

When performing their functions in the People's Courts, the people's assessors shall enjoy equal rights with the judges.

Trials of appealed and protested cases in the People's Courts shall be conducted by a collegial panel composed of three to five judges.

The members of a collegial panel shall be odd in number.

The president of the People's Court or the chief judge of a division shall designate one judge to be the presiding judge of the collegial panel. If the president of the court or the chief judge of a division participates in a trial, he himself shall serve as the presiding judge.

Article 148 If opinions differ when a collegial panel conducts its deliberations, a decision shall be made in accordance with the opinions of the majority, but the opinions of the minority shall be entered in the records. The records of the deliberations shall be signed by the members of the collegial panel.

Article 149 After the hearings and deliberations, the collegial panel shall render a judgment. With respect to a difficult, complex or major case, on which the collegial panel considers it difficult to make a decision, the collegial panel shall refer the case to the president of the court for him to decide whether to submit the case to the judicial committee for discussion and decision. The collegial panel shall execute the decision of the judicial committee.

## CHAPTER II PROCEDURE OF FIRST INSTANCE

## SECTION 1 CASES OF PUBLIC PROSECUTION

Article 150 After a People's Court has examined a case in which public prosecution was initiated, it shall decide to open the court session and try the case, if the bill of prosecution contains clear facts of the crime accused and, in addition, there are a list of evidence and a list of witnesses as well as duplicates or photos of major evidence attached to it.

Article 151 After a People's Court has decided to open a court session, it shall proceed with the following work:

(1) to determine the members of the collegial panel;

(2) to deliver to the defendant a copy of the bill of prosecution of the People's Procuratorate no later than ten days before the opening of the court session. If the defendant has not appointed a defender, he shall be informed that he may appoint a defender or, when necessary, designate a lawyer that is obligated to provide legal aid to serve as a defender for him;

(3) to notify the People's Procuratorate of the time and place of the court session three days before the opening of the session;

(4) to summon the parties and notify the defenders, agents ad litem, witnesses, expert witnesses and interpreters, and deliver the summons and notices no later than three days before the opening of the court session; and

(5) to announce, three days before the opening of the session, the subject matter of the case to be heard in public, the name of the defendant and the time and place of the court session.

The circumstances of the above-mentioned proceedings shall be entered in the written record, which shall be signed by the judges and the court clerk.

Article 152 Cases of first instance in a People's Court shall be heard in public. However, cases involving State secrets or private affairs of individuals shall not be heard in public.

No cases involving crimes committed by minors who have reached the age of 14 but not the age of 16 shall be heard in public. Generally, cases involving crimes committed by minors who have reached the age of 16 but not the age of 18 shall also not be heard in public.

The reason for not hearing a case in public shall be announced in court.

Article 153 When a case of public prosecution is being tried in a People's Court, the People's Procuratorate shall send its procurators to the court to support the public prosecution. However, when a case is to be tried through summary procedure, the People's Procuratorate may send no procurators to the court, as provided by the provisions of Article 175 of this Law.

Article 154 When a court session opens, the presiding judge shall ascertain if all the parties have appeared in court and announce the subject matter of the case. He shall announce the roll, naming the members of the collegial panel, the court clerk, the public prosecutor, the defender, agent ad litem, the expert witnesses and the interpreter; he shall inform the parties of their right to apply for withdrawal of any member of the collegial panel, the court clerk, the public prosecutor, any expert witnesses or the interpreter; and he shall inform the defendant of his right to defence.

Article 155 After the public prosecutor has read out the bill of prosecution in court, the defendant and the victim may present statements regarding the crime accused in the bill of prosecution, and the public prosecutor may interrogate the defendant.

The victim, the plaintiff and defender in an incidental civil action and the agents ad litem may, with the permission of the presiding judge, put questions to the defendant.

The judges may interrogate the defendant.

Article 156 Before a witness gives testimony, the judges shall instruct him to give testimony truthfully and explain to him the legal responsibility that shall be incurred for intentionally giving false testimony or concealing criminal evidence. The public prosecutor, the parties, the defenders and agents ad litem, with the permission of the presiding judge, may question the

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witnesses and expert witnesses. If the presiding judge considers any questioning irrelevant to the case, he shall put a stop to it.

The judges may question the witnesses and expert witnesses.

Article 157 The public prosecutor and the defenders shall show the material evidence to the court for the parties to identify; the records of testimony of witnesses who are not present in court, the conclusions of expert witnesses who are not present in court, the records of inquests and other documents serving as evidence shall be read out in court. The judges shall heed the opinions of the public prosecutor, the parties, the defenders and the agents ad litem.

Article 158 During a court hearing, if the collegial panel has doubts about the evidence, it may announce an adjournment, in order to carry out investigation to verify the evidence.

When carrying out investigation to verify evidence, the People's Court may conduct inquest, examination, seizure, expert evaluation, as well as inquiry and freeze.

Article 159 During a court hearing, the parties, the defenders and agents ad litem shall have the right to request new witnesses to be summoned, new material evidence to be obtained, a new expert evaluation to be made, and another inquest to be held.

The court shall make a decision whether to grant the above-mentioned requests.

Article 160 With the permission of the presiding judge, the public prosecutor, the parties, the defenders and the agents ad litem may state their views on the evidence and the case, and they may debate with each other. After the presiding judge has declared conclusion of the debate, the defendant shall have the right to present a final statement.

Article 161 If any participant in the proceedings of a trial or bystander violates the order of the courtroom, the presiding judge shall warn him to desist. If any person fails to obey, he may forcibly be taken out of the courtroom. If the violation is serious, the person shall be fined not more than 1,000 yuan or detained not more than 15 days. The fine or detention shall be subject to approval of the president of the court. If the person under punishment is not satisfied with the decision on the fine or detention, he may apply to the People's Court at the next higher level for reconsideration. However, the execution of the fine or detention shall not be suspended during the period of reconsideration.

Whoever assembles a crowd to make an uproar or charges into the courtroom, or humiliates, slanders, intimidates or beats up judicial officers or participants in the proceedings, thereby seriously disturbing the order of the courtroom, which constitutes a crime, shall be investigated for criminal responsibility according to law.

Article 162 After a defendant makes his final statement, the presiding judge shall announce an adjournment and the collegial panel shall conduct its deliberations and, on the basis of the established facts and evidence and in accordance with the provisions of relevant laws, render one of the following judgments:

- (1) If the facts of a case are clear, the evidence is reliable and sufficient, and the defendant is found guilty in accordance with law, he shall be pronounced guilty accordingly;
- (2) If the defendant is found innocent in accordance with law, he shall be pronounced innocent accordingly;
- (3) If the evidence is insufficient and thus the defendant cannot be found guilty, he shall be pronounced innocent accordingly on account of the fact that the evidence is insufficient and the accusation unfounded.

Article 163 In all cases, judgments shall be pronounced publicly.

If the judgment on a case is pronounced in court, a written form of the judgment shall be delivered within five days to the parties and the People's Procuratorate that initiated the public prosecution. In cases where the judgment is pronounced later on a fixed date, a written form of the judgment shall be delivered immediately after the pronouncement to the parties and the People's Procuratorate that indicated the public prosecution.

Article 164 The written judgment shall be signed by the members of the collegial panel and by the court clerk, and the time limit for appeal and the name of the appellate court shall be clearly indicated therein.

Article 165 A hearing may be postponed if during a trial one of the

following situations affecting the conduct of the trial occurs:

- (1) if it is necessary to summon new witnesses, obtain new material evidence, make a new expert evaluation or hold another inquest;
- (2) if the procurators find that a case for which public prosecution has been initiated requires supplementary investigation, and they make a proposal to that effect; or
- (3) if the trial cannot proceed because a party applies for the withdrawal of a judicial officer.

Article 166 If the hearings of a case is postponed in accordance with the provisions of sub-paragraph (2) in Article 165 of this Law, the People's Procuratorate shall complete the supplementary investigation within one month.

Article 167 The court clerk shall make a written record of the entire court proceedings, which shall be examined by the presiding judge and then signed by him and the court clerk.

That portion of the courtroom record comprising the testimony of witnesses shall be read out in court or given to the witnesses to read. After the witnesses acknowledge that the record is free of error, they shall sign or affix their seals to it.

The courtroom record shall be given to the parties to read or shall be read out to them. If a party considers that there are omissions or errors in the record, he may request additions or corrections to be made. After the parties acknowledge that the record is free of error, they shall sign or affix their seals to it.

Article 168 A People's Court shall pronounce judgment on a case of public prosecution within one month or, one and a half months at the latest, after accepting it. Under one of the situations provided in Article 126 of this Law, the period may be extended by one more month upon approval or decision by the Higher People's Court of a province, autonomous region or municipality directly under the Central Government.

If jurisdiction of a People's Court over a case is altered, the time limit for handling the case shall be calculated from the date on which another People's Court receives the case after the alteration.

As to a case for which a People's Procuratorate has to conduct supplementary investigation, the People's Court shall start to calculate anew the time limit for handling the case after the supplementary investigation has been completed and the case has been transferred to it.

Article 169 If a People's Procuratorate discovers that in handling a case a People's Court has violated the litigation procedure prescribed by law, it shall have the power to suggest to the People's Court that it should set it right.

## SECTION 2 CASES OF PRIVATE PROSECUTION

Article 170 Cases of private prosecution include the following:

- (1) cases to be handled only upon complaint;
- (2) cases for which the victims have evidence to prove that those are minor criminal cases; and
- (3) cases for which the victims have evidence to prove that the defendants should be investigated for criminal responsibility according to law because their acts have infringed upon the victims' personal or property rights, whereas, the public security organs or the People's Procuratorates do not investigate the criminal responsibility of the accused.

Article 171 After examining a case of private prosecution, the People's Court shall handle it in one of the following manners in light of the different situations:

- (1) If the facts of the crime are clear and the evidence is sufficient, the case shall be tried at a court session; or

(2) In a case of private prosecution for which criminal evidence is lacking, if the private prosecutor cannot present supplementary evidence, the court shall persuade him to withdraw his prosecution or order its rejection.

If a private prosecutor, having been served twice with a summons according to law, refuses to appear in court without justifiable reasons, or if he withdraws from a court session without permission of the court, the case may be considered withdrawn by him.

If during the trial of a case the judges have doubts about the evidence and consider it necessary to conduct investigation to verify the evidence, the provisions of Article 158 of this Law shall apply.

Article 172 A People's Court may conduct mediation in a case of private prosecution; the private prosecutor may arrange a settlement with the defendant or withdraw his prosecution before a judgment is pronounced. Mediation shall not be conducted for cases stipulated in sub-paragraph (3) of Article 170 of this Law.

Article 173 In the process of the proceedings, the defendant in a case of private prosecution may raise a counterclaim against the private prosecutor. The provisions governing private prosecutions shall apply to counterclaims.

### SECTION 3 SUMMARY PROCEDURE

Article 174 The People's Court may apply summary procedure to the following cases, which shall be tried by a single judge alone:

(1) cases of public prosecution where the defendants may be lawfully sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or punished with fines exclusively, where the facts are clear and the evidence is sufficient, and for which the People's Procuratorate suggests or agrees to the application of summary procedure;

(2) cases to be handled only upon complaint; and

(3) cases prosecuted by the victims, for which there is evidence to prove that they are minor criminal cases.

Article 175 For a case of public prosecution that is tried through summary procedure, the People's Procuratorate may send no procurators to the court. The defendant may present a statement and defend himself regarding the crimes accused in the bill of prosecution. In cases where the People's Procuratorate sends procurators to the court, the defendant and his defenders may, with permission of the judges, debate with the public prosecutor.

Article 176 In a case of private prosecution that is tried through summary procedure, after the bill of prosecution is read out, the defendant and his defenders may, with the permission of the judges, debate with the private prosecutor and his agents ad litem.

Article 177 Trial of cases through summary procedure shall not be subject to the provisions of Section 1 of this Chapter governing the procedures of interrogating the defendant, questioning the witnesses and expert witnesses, showing the evidence, and debating in court. However, before the judgment is pronounced, the final statement of the defendant shall be heard.

Article 178 For a case to be tried through summary procedure, the People's Court shall conclude it within 20 days after accepting it.

Article 179 If in the course of trying a case the People's Court discovers that the summary procedure is not appropriate for the case, it shall try it anew in accordance with the provisions in Section 1 or Section 2 of this Chapter.

### CHAPTER III PROCEDURE OF SECOND INSTANCE

Article 180 If the defendant, private prosecutor or their legal representatives refuse to accept a judgment or order of first instance made by a local People's Court at any level, they shall have the right to appeal in writing or orally to the People's Court at the next higher level. Defenders or near relatives of the defendant may, with the consent of the defendant, file appeals.

A party to an incidental civil action or his legal representative may file an appeal against that part of a judgment or order of first instance made by a local People's Court at any level that deals with the incidental civil action.

[Unofficial English translation, original Chinese] (In case of discrepancy between the English translation and 23 the original Chinese text, the Chinese text shall prevail.)

A defendant shall not be deprived on any pretext of his right to appeal.

Article 181 If a local People's Procuratorate at any level considers that there is some definite error in a judgment or order of first instance made by a People's Court at the same level, it shall present a protest to the People's Court at the next higher level.

Article 182 If the victim or his legal representative refuses to accept a judgment of first instance made by a local People's Court at any level, he shall, within five days from the date of receiving the written judgment, have the right to request the People's Procuratorate to present a protest. The People's Procuratorate shall, within five days from the date of receiving the request made by the victim or his legal representative, decide whether to present the protest or not and give him a reply.

Article 183 The time limit for an appeal or a protest against a judgment shall be 10 days and the time limit for an appeal or a protest against an order shall be five days; the time limit shall be counted from the day after the written judgment or order is received.

Article 184 If a defendant, private prosecutor, or a plaintiff or defendant in an incidental civil action files an appeal through the People's Court which originally tried the case, the People's Court shall within three days transfer the petition of appeal together with the case file and the evidence to the People's Court at the next higher level; at the same time it shall deliver duplicates of the petition of appeal to the People's Procuratorate at the same level and to the other party.

If a defendant, private prosecutor, or a plaintiff or defendant in an incidental civil action files an appeal directly to the People's Court of second instance, the People's Court shall within three days transfer the petition of appeal to the People's Court which originally tried the case for delivery to the People's Procuratorate at the same level and to the other party.

Article 185 If a local People's Procuratorate protests against a judgment or order of first instance made by the People's Court at the same level, it shall present a written protest through the People's Court which originally tried the case and send a copy of the written protest to the People's Procuratorate at the next higher level. The People's Court which originally tried the case shall transfer the written protest together with the case file and evidence to the People's Court at the next higher level and shall deliver duplicates of the written protest to the parties.

If the People's Procuratorate at the next higher level considers the protest inappropriate, it may withdraw the protest from the People's Court at the same level and notify the People's Procuratorate at the next lower level.

Article 186 A People's Court of second instance shall conduct a complete review of the facts determined and the application of law in the judgment of first instance and shall not be limited by the scope of appeal or protest.

If an appeal is filed by only some of the defendants in a case of joint crime, the case shall still be reviewed and handled as a whole.

Article 187 A People's Court of second instance shall form a collegial panel and open a court session to hear a case of appeal. However, if after consulting the case file, interrogating the defendant and heeding the opinions of the other parties, defenders and agents ad litem, the collegial panel thinks the criminal facts are clear, it may open no court session. A People's Court of second instance shall open a court session to hear a case protested by a People's Procuratorate.

When a People's Court of second instance opens a court session to hear a case of appeal or protest, it may do so in the place where the case occurred or in the place where the People's Court which originally tried the case is located.

Article 188 With respect to both cases protested by a People's Procuratorate and cases of public prosecution tried by a People's Court of second instance in a court session, the People's Procuratorate at the same level shall send its procurators to the court. The People's Court of second instance must, 10 days before opening of the court session, notify the People's Procuratorate to examine the case files.

Article 189 After hearing a case of appeal or protest against a judgment of first instance, the People's Court of second instance shall handle it in one of the following manners in light of the different situations:

(1) if the original judgment was correct in the determination of facts and the application of law and appropriate in the meting out of punishment, the People's Court shall order rejection of the appeal or protest and affirm the original judgment.

(2) if the original judgment contained no error in the determination of facts but the application of law was incorrect or the punishment was inappropriately meted out, the People's Court shall revise the judgment.

(3) if the facts in the original judgment were unclear or the evidence insufficient, the People's Court may revise the judgment after ascertaining the facts, or it may rescind the original judgment and remand the case to the People's Court which originally tried it for retrial.

Article 190 In the trial of a case appealed by a defendant, or his legal representative, defender or near relative, the People's Court of second instance may not increase the criminal punishment on the defendant.

The restriction laid down in the preceding paragraph shall not apply to cases protested by a People's Procuratorate or cases appealed by private prosecutors.

Article 191 If a People's Court of second instance discovers that when hearing a case, a People's Court of first instance violates the litigation procedures prescribed by law in one of the following ways, it shall rule to rescind the original judgment and remand the case to the People's Court which originally tried it for retrial:

- (1) violating the provisions of this Law regarding trial in public;
- (2) violating the withdrawal system;
- (3) depriving the parties of their litigation rights prescribed by law or restricting, such rights, which may hamper impartiality of a trial;
- (4) unlawful formation of a judicial organization; or
- (5) other violations against the litigation procedures prescribed by law which may hamper impartiality of a trial.

Article 192 The People's Court which originally tried a case shall form a new collegial panel for the case remanded to it for retrial, in accordance with the procedure of first instance. With respect to the judgment rendered after the retrial, an appeal or protest may be lodged in accordance with the provisions of Article 180, 181 or 182 of this Law.

Article 193 After a People's Court of second instance has reviewed an appeal or protest against an order of first instance, it shall order rejection of the appeal or protest or rescind or revise the original order respectively with reference to the provisions of Article 189, 190 or 192 of this Law.

Article 194 The People's Court which originally tried a case shall calculate the time limit anew for the trial of the case remanded to it by the People's Court of second instance from the date of receiving the case remanded.

Article 195 A People's Court of second instance shall try cases of appeal or protest with reference to the procedure of first instance, in addition to applying the provisions in this Chapter.

Article 196 After accepting a case of appeal or protest, a People's Court of second instance shall conclude the trial of the case within one month, or one and a half months at the latest. Under one of the situations provided in Article 126 of this Law, the period may be extended by one month upon the approval or decision by the Higher People's Court of a province, autonomous region or municipality directly under the Central Government. However, with respect to cases of appeal or protest accepted by the Supreme People's Court, the matter shall be decided by the Supreme People's Court itself.

Article 197 All judgments and orders of second instance and all judgments and orders of the Supreme People's Court are final.

Article 198 The public security organs, People's Procuratorates and People's Courts shall have the property, things of value of the criminal suspects and defendants, as well as the fruits accruing therefrom, that they have seized or frozen well kept for examination. No units or individuals shall misappropriate them or dispose of them without authorization. The lawful property of the victims shall be returned to them without delay. Prohibited articles and perishable things shall be disposed of in accordance with the relevant regulations of the State.

Things that serve as tangible evidence shall be transferred together

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with the case, but for things that are unsuitable to be transferred,

their inventory and photos and other documents of certification shall be transferred together with the case.

After a judgment rendered by the People's Court becomes effective, all the seized or frozen illicit money and goods as well as the fruits accruing therefrom, except those that are returned to the victim according to law, shall be confiscated and turned over to the State Treasury.

Any judicial officer who embezzles or misappropriates or disposes of the seized or frozen illicit money and goods as well as the fruits accruing therefrom without authorization shall be investigated for criminal responsibility according to law; if the offence does not constitute a crime, he shall be given administrative sanction.

#### CHAPTER IV PROCEDURE FOR REVIEW OF DEATH SENTENCES

Article 199 Death sentences shall be subject to approval by the Supreme People's Court.

Article 200 A case of first instance where an Intermediate People's Court has imposed a death sentence and the defendant does not appeal shall be reviewed by a Higher People's Court and submitted to the Supreme People's Court for approval. If the Higher People's Court does not agree with the death sentence, it may bring the case up for trial or remand the case for retrial.

Cases of first instance where a Higher People's Court has imposed a death sentence and the defendant does not appeal, and cases of second instance where a death sentence has been imposed shall all be submitted to the Supreme People's Court for approval.

Article 201 A case where an Intermediate People's Court has imposed a death sentence with a two-year suspension of execution, shall be subject to approval by a Higher People's Court.

Article 202 Reviews by the Supreme People's Court of cases involving death sentences and reviews by a Higher People's Court of cases involving death sentences with a suspension of execution shall be conducted by collegial panels each composed of three judges.

#### CHAPTER V PROCEDURE FOR TRIAL SUPERVISION

Article 203 A party or his legal representative or his near relative may present a petition to a People's Court or a People's Procuratorate regarding a legally effective judgment or order, however, execution of the judgment or order shall not be suspended.

Article 204 If a petition presented by a party or his legal representative or his near relative conforms to any of the following conditions, the People's Court shall retry the case:

- (1) There is new evidence to prove that the confirmation of the facts in the original judgment or order is definitely wrong;
- (2) The evidence upon which the condemnation was made and punishment meted out is unreliable and insufficient, or the major pieces of evidence for supporting the facts of the case contradict each other;
- (3) The application of law in making the original judgment or order is definitely incorrect; or
- (4) The judges in trying the case committed acts of embezzlement, bribery, or malpractices for personal gain, or bended the law in making judgment.

Article 205 If the president of a People's Court at any level finds some definite error in a legally effective judgment or order of his court as to the determination of facts or application of law, he shall refer the matter to the judicial committee for handling.

If the Supreme People's Court finds some definite error in a legally effective judgment or order of a People's Court at any lower level, or if a People's Court at a higher level finds some definite error in a legally effective judgment or order of a People's Court at a lower level, it shall have the power to bring the case up for trial itself or may direct a People's Court at a lower level to conduct a retrial.

[Unofficial English translation, original Chinese] (In case of discrepancy between the English translation and 26 the original Chinese text, the Chinese text shall prevail.)

If the Supreme People's Procuratorate finds some definite error in a legally effective judgment or order of a People's Court at any level, or if a People's Procuratorate at a higher level finds some definite error in a legally effective judgment or order of a People's Court at a lower level, it shall have the power to present a protest to the People's Court at the same level against the judgment or order in accordance with the procedure for trial supervision.

With respect to a case protested by a People's Procuratorate, the People's Court that has accepted the protest shall form a collegial panel for retrial; if the facts, on the basis of which the original judgment was made, are not clear or the evidence is not sufficient, it may direct the People's Court at the lower level to try the case again.

Article 206 A new collegial panel shall be formed for the retrial of a case by a People's Court in accordance with the procedure for trial supervision. If the case was originally one of first instance, it shall be tried in accordance with the procedure of first instance and the new judgment or order may be appealed or protested. If the case was originally one of second instance or was brought up for trial by a People's Court at a higher level, it shall be tried in accordance with the procedure of second instance and the judgment or order rendered shall be final.

Article 207 With respect to a case retried by a People's Court in accordance with the procedure for trial supervision, it shall conclude the trial within three months from the day on which it makes the decision to bring the case up for trial itself or on which the decision is made for it to retry the case. If it is necessary to extend the time limit, the period shall not exceed six months.

The provisions of the preceding paragraph shall apply to the time limit for the trial of a protested case that is accepted by a People's Court and is to be tried by it in accordance with the procedure for trial supervision. Where it is necessary to direct a People's Court at a lower level to try a protested case again, a decision to such an effect shall be made within one month from the day on which the protested case is accepted; the provisions of the preceding paragraph shall apply to the time limit for the trial of the case by the People's Court at the lower level.

#### PART FOUR EXECUTION

Article 208 Judgments and orders shall be executed after they become legally effective.

The following judgments and orders are legally effective:

- (1) judgments and orders against which no appeal or protest has been filed within the legally prescribed time limit;
- (2) judgments and orders of final instance; and
- (3) judgments of the death penalty approved by the Supreme People's Court and judgments of the death penalty with a two-year suspension of execution approved by a Higher People's Court.

Article 209 If a defendant in custody is given the verdict of not guilty or exempted from criminal punishment by a People's Court of first instance, he shall be released immediately after the judgment is pronounced.

Article 210 When a judgment of the death penalty with immediate execution is pronounced or approved by the Supreme People's Court, the President of the Supreme People's Court shall sign and issue an order to execute the death sentence.

If a criminal sentenced to death with a two-year suspension of execution commits no intentional offense during the period of suspension of the sentence and his punishment should therefore be commuted according to law on expiration of such period, the executing organ shall submit a written recommendation to a Higher People's Court for an order; if there is verified evidence that the criminal has committed intentional offense and his death sentence should therefore be executed, the Higher People's Court shall submit the matter to the Supreme People's Court for examination and approval.

Article 211 After receiving an order from the Supreme People's Court to execute a death sentence, the People's Court at a lower level shall cause the sentence to be executed within seven days. However, under one of the following conditions the People's Court at a lower level shall suspend execution and immediately submit a report to the Supreme People's Court for an order:

- (1) If it is discovered before the execution of the sentence that the judgment may contain an error;

(2) If, before the execution of the sentence, the criminal exposes major criminal facts or renders other significantly meritorious service, thus the sentence may need to be revised; or

(3) If the criminal is pregnant.

If the reason given in sub-paragraph (1) or (2) of the preceding paragraph which caused the suspension of the sentence has disappeared, the sentence may be executed only after a report is submitted to the President of the Supreme People's Court for him to sign and issue another order for execution of the death sentence. If execution is suspended for the reason given in sub-paragraph (3) of the preceding paragraph, a request shall be submitted to the Supreme People's Court for it to alter the sentence according to law.

Article 212 Before a People's Court causes a death sentence to be executed, it shall notify the People's Procuratorate at the same level to send an officer to supervise the execution.

A death sentence shall be executed by such means as shooting or injection.

A death sentence may be executed on the execution ground or in a designated place of custody.

The judicial officer directing the execution shall verify the identity of the criminal, ask him if he has any last words or letters and then deliver him to the executioner for execution of the death sentence. If it is discovered before the execution that there may be an error, the execution shall be suspended and a report submitted to the Supreme People's Court for an order.

Executions of death sentences shall be announced but shall not be held in public.

After a death sentence is executed, the court clerk on the scene shall prepare a written record of it. The People's Court that caused the death sentence to be executed shall submit a report on the execution to the Supreme People's Court.

After a death sentence is executed, the People's Court that caused the death sentence to be executed shall notify the family members of the criminal.

Article 213 When a criminal is handed over for execution of his criminal punishment, the People's Court that caused the sentence to be executed shall deliver the relevant legal documents to a prison or other executing organ.

A criminal sentenced to death with a two-year suspension of execution, or life imprisonment, or fixed-term imprisonment shall, according to law, be handed over by a public security organ to a prison for execution of his criminal punishment. As to a criminal sentenced to fixed-term imprisonment, if the remaining term of sentence is not more than one year before he is handed over for execution of his criminal punishment, the sentence shall be executed by a detention house instead. As to a criminal sentenced to criminal detention, the sentence shall be executed by a public security organ.

As to a juvenile delinquent, his criminal punishment shall be executed in a reformatory for juvenile delinquents.

An executing organ shall take a criminal into custody without delay and notify the family members of the criminal.

A criminal sentenced to fixed-term imprisonment or criminal detention, upon completion of execution of the sentence, shall be issued a certificate of release by the executing organ.

Article 214 A criminal sentenced to fixed-term imprisonment or criminal detention, under either of the following conditions, may be permitted to temporarily serve his sentence outside prison:

(1) If the criminal is seriously ill and needs to be released on parole for medical treatment; or

(2) If the criminal is pregnant or is breast-feeding her own baby.

If a criminal to be released on parole for medical treatment may endanger the community or if a criminal injures himself or makes himself disabled, he may not be released on parole for medical treatment.

If a criminal is truly ill seriously and must be released on parole for medical treatment, a supporting document prepared by the hospital designated by a people's government at the provincial level shall be needed, and the matter shall be subject to examination and approval according to the procedure prescribed by law.

If it is found that a criminal released on parole for medical treatment does not meet the conditions for release on parole for medical treatment or the criminal has gravely violated the regulations regarding such release, he shall be taken back to prison without delay.

As to a criminal sentenced to fixed-term imprisonment or criminal detention who is unable to look after himself in everyday life, if his service of sentence outside prison would not endanger the community, he may be permitted to serve his sentence outside prison temporarily.

If a criminal is permitted to serve his sentence outside prison temporarily, the sentence shall be executed by the public security organ in the place where the criminal resides, the executing organ shall exercise strict control and supervision over him and the grass-roots organizations or the unit where the criminal originally belonged shall assist in supervision.

Article 215 The organ that approved the temporary service of sentence outside prison shall send a copy of its decision on the approval to a People's Procuratorate. If the People's Procuratorate considers the temporary service of sentence outside prison improper, it shall within one month from the date of receiving the notification, submit its recommendation in writing to the organ that approved the temporary service of sentence outside prison, which shall, upon receiving the written recommendation of the People's Procuratorate, reexamine its decision without delay.

Article 216 As soon as the conditions under which a criminal is permitted to serve his sentence outside prison temporarily cease to exist, if the criminal's term of sentence has not expired, he shall be taken back to prison without delay.

If a criminal dies during the period in which he is serving his sentence outside prison temporarily, the prison shall be informed thereof without delay.

Article 217 A criminal who has been sentenced to imprisonment with a suspension of execution shall be placed by the public security organ under the observation of his unit or a grass-roots organization.

A criminal released on parole shall be supervised by a public security organ during the test period of parole.

Article 218 Sentence of public surveillance or deprivation of political rights that has been imposed on a criminal shall be executed by a public security organ. After the sentence is served, the executing organ shall notify the criminal himself and publicly announce to the people concerned that public surveillance is ended or that his political rights are restored.

Article 219 If a criminal sentenced to a fine fails to pay the fine within the time limit, the People's Court shall compel him to pay. If he has true difficulty in paying because he has suffered an irresistible disaster, an order may be made to reduce the fine or exempt him from payment.

Article 220 All judgments on confiscation of property, whether imposed as a supplementary punishment or independently, shall be executed by the People's Courts; when necessary, the People's Courts may execute such judgments jointly with the public security organs.

Article 221 If a criminal commits a crime again while serving his sentence, or if a criminal act that is discovered was not known at the time of judgment, he shall be transferred by the executing organ to a People's Procuratorate for handling.

If a criminal sentenced to public surveillance, criminal detention, fixed-term imprisonment or life imprisonment shows true repentance or renders meritorious service while serving his sentence and should be granted a commutation of sentence or be released on parole according to law, the executing organ shall submit a written recommendation to a People's Court for examination and an order.

Article 222 If a People's Procuratorate considers that the order on commutation of sentence or on parole made by a People's Court is

improper, it shall, within 20 days from the date of receiving a copy of the written order, submit a written recommendation to the People's Court for correction. The People's Court shall, within one month from the date of receiving the recommendation, form a new collegial panel to handle the case and render a final order.

[Unofficial English translation, original Chinese] (In case of discrepancy between the English translation and 29 the original Chinese text, the Chinese text shall prevail.)

Article 223 If, during execution of a criminal punishment, the prison or any other executing organ believes that there is an error in the judgment or the criminal lodges a petition, it shall refer the matter to the People's Procuratorate or the People's Court that pronounced the original judgment for handling.

Article 224 The People's Procuratorates shall supervise the execution of criminal punishments by executing organs to see if the execution conforms to law. If they discover any illegalities, they shall notify the executing organs to correct them.

#### SUPPLEMENTARY PROVISIONS

Article 225 The security departments of the Army shall exercise the power of investigation with respect to criminal offences that have occurred in the Army.

Crimes committed by criminals in prison shall be investigated by the prison.

The handling of criminal cases by the security departments of the Army and by prisons shall be governed by the relevant provisions of this Law.