

# **Criminal Procedure Law of the People's Republic of China**

Criminal Procedure Law of the People's Republic of China - 1996

(Adopted by the Second Session of the Fifth National People's Congress on July 1, 1979, and amended pursuant to the Decision on Amending the Criminal Procedure Law of the People's Republic of China adopted by the Fourth Session of the Eighth National People's Congress on March 17, 1996)

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## **Part One General Provisions**

### **Chapter I Tasks and Fundamental Principles**

#### Article 1

Pursuant to the Constitution and for the purposes of guaranteeing the correct operation of the Criminal Law, punishing crime, protecting the public, safeguarding the security of the State and the public safety of society, and ensuring the socialist order, this Law is enacted.

#### Article 2

The tasks of the Criminal Procedure Law of the People's Republic of China shall be: to ensure accurate and prompt ascertainment of the facts of crimes, to correctly apply laws, to punish criminal offenders, to guarantee any innocent person from criminal prosecution, to educate citizens to voluntarily observe the law and actively struggle against criminal acts, so as to uphold the socialist legal system, to protect the citizens' rights of person, rights over their property, democratic rights and other rights, and to guarantee the smooth progress of the socialist modernization.

#### Article 3

The public security organs shall be responsible for the investigation, detention, execution of arrests and pre-trial examination in connection with criminal cases. The people's procuratorates shall be responsible for the procuratorial work, the approving of arrests, and the investigation and initiation of public prosecution in connection with cases accepted directly by them. The people's courts shall be responsible for the trial. No other organ, organization or person shall have the right to exercise such powers, unless the laws otherwise provide.

The people's courts, people's procuratorates and public security organs must, in conducting criminal proceedings, strictly adhere to this Law and the relevant provisions of other laws.

#### Article 4

Subject to the provisions of the law, the State security organs shall handle criminal cases endangering the State security and exercise the same functions and powers as the public security organs.

#### Article 5

The people's courts shall exercise independently the judicial powers as prescribed by the laws, the people's procuratorates shall exercise independently the procuratorial powers as prescribed by the laws, and they shall be free from any interference from any administrative organ, social organization or person.

#### Article 6

The people's courts, the people's procuratorates and the public security organs must, in conducting criminal proceedings, rely on the masses, stand on facts and under the laws. The law applies equally to all citizens, and no privilege whatsoever is permissible before the laws.

#### Article 7

The people's courts, the people's procuratorates and the public security organs shall, in conducting criminal proceedings, divide their functions and responsibilities, coordinate their efforts and check each other so as to ensure the correct and effective enforcement of the law.

#### Article 8

The people's procuratorates shall exercise legal supervision over criminal proceedings according to law.

#### Article 9

Citizens of any nationality shall have the right to use their respective native spoken and written

language in the proceedings. The people's court, the people's procuratorate or the public security organ shall provide translations for any party to the proceedings who is not familiar with the local spoken or written language commonly used.

In a place where people of a minority nationality live in a concentrated community or where a number of nationalities co-inhabit, hearings shall be conducted in the spoken language commonly used in the said place, and judgments, notices and other documents shall be issued in the written language commonly used in the said place.

#### Article 10

The people's courts shall, in trying cases, adopt the system whereby the second instance is final.

#### Article 11

All hearings in the people's courts shall be public, unless this Law provides otherwise. The defendants shall have the right to have access to defense, and the people's courts shall be obliged to guarantee their access to defense.

#### Article 12

Prior to a judgment rendered by the people's court according to law, no one may be convicted of guilty.

#### Article 13

The people's courts shall, in trying cases, adopt 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 guarantee the rights to action for participants in the proceedings as they are so entitled according to law.

With regard to cases of crimes committed by minors under 18 years old, the legal representatives of the crime suspects and defendants may be notified to be present at the time of interrogation and trial.

Participants in proceedings shall have the right to file charges against judicial, procuratorial and investigating personnel whose acts have infringed upon the citizens' rights to action or have caused personal insult thereto.

#### Article 15

Under any of the following circumstances, no criminal responsibility shall be investigated, or the case shall be dismissed if the criminal responsibility has already been investigated, or no prosecution shall be initiated, or the trial shall be arrested, or innocence shall be declared:

1. where the circumstance is obviously minor, has caused no serious harm and shall not be deemed as a crime;
2. where the time limitation for criminal prosecution of the crime has expired;
3. where exemption of criminal punishment has been granted by a special amnesty order;
4. where no complaint has been filed or the complaint has been withdrawn if the crime is to be dealt with only upon complaint according to the Criminal Law;
5. where the crime suspect or defendant is deceased; or
6. where exemption from investigation for criminal responsibility is so provided for by the law.

#### Article 16

The provisions of this Law shall apply to foreigners who commit crimes for which criminal responsibility should be investigated.

With regard to foreigners with diplomatic privileges and immunities who commit crimes for which criminal responsibility should be investigated, such cases shall be settled by means of diplomatic channels.

#### Article 17

Pursuant to international treaties to which the People's Republic of China has accredited or joined, or according to the principle of reciprocity, the judicial organs of our country and judicial organs of foreign countries may request from each other for criminal judicial assistance.

### **Chapter II Jurisdiction**

#### Article 18

Criminal cases shall be investigated by the public security organs, unless the law otherwise provides.

The people's procuratorate shall file a case for investigation of a crime of embezzlement and bribery, crime of dereliction of duty by a State functionary, crime infringing upon the citizen's right of the person committed by a State functionary by abusing his power as illegal detention, extorting confessions by torture, reprisal and calumny or illegal search, or crime infringing upon citizen's democratic right. With regard to any other serious criminal case committed by a State functionary by abusing his power, if it is necessary for the people's procuratorate to take cognizance of directly, the people's procuratorate may file the case for investigation upon the decision of the people's procuratorate at or above the provincial level.

Private cases shall be accepted by the people's courts directly.

#### Article 19

The basic people's courts shall have jurisdiction as courts of first instance over ordinary criminal cases, with the exception of those falling under the jurisdiction of the people's courts at higher levels as provided for by this Law.

#### Article 20

The intermediate people's courts shall have jurisdiction as courts of first instance over the following criminal cases:

1. counter-revolutionary cases and cases jeopardizing the State security;
2. ordinary criminal cases punishable by life imprisonment or the death sentence; and
3. criminal cases in which the offenders are foreigners.

#### Article 21

The high people's courts shall have jurisdiction as courts of first instance over major criminal cases that are of significance to an entire province (or municipality directly under the Central Government or autonomous region).

#### Article 22

The Supreme People's Court shall have jurisdiction as the court of first instance over major criminal cases that are of significance to the whole country.

#### Article 23

A people's court at the higher level may, when necessary, try a criminal case over which a people's court at the lower level shall have jurisdiction as the court of first instance; A people's court at the lower level which considers the circumstances of a criminal case of first instance to be major or complex and considers it to be appropriate to be tried by a people's court at the higher level 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 people's court in the place where the defendant

resides to try the case, that court may have jurisdiction over the case.

#### Article 25

A criminal case under the jurisdiction of several people's courts at the same level shall be tried by the people's court that first accepted it. The case may, when necessary, be transferred to the people's court in the principal place where the crime was committed for trial.

#### Article 26

A people's court at the higher level may appoint a people's court at the lower level to try a case over which jurisdiction is unclear, and may also instruct a people's court at the 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 laid down separately.

### **Chapter III Withdrawal**

#### Article 28

Under any of the following circumstances, a member of the judicial, procuratorial or investigating personnel shall voluntarily withdraw from the case, and any party concerned and its legal representative shall have the right to demand his withdrawal:

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

#### Article 29

No member of the judicial, procuratorial and investigating personnel may accept any treat or gift from the parties and persons entrusted by the parties, and meet, in violation of regulations, any party or any person entrusted by the party.

Any member of the judicial, procuratorial or investigating personnel who violates the provisions of the preceding paragraph, shall be investigated his legal responsibilities according to law. Any party and its legal representative shall have the right to demand his withdrawal.

#### Article 30

The withdrawal of a member of the judicial, procuratorial and investigating personnel shall be decided respectively by the president of a court, the chief procurator or the person in charge of the public security organ; the withdrawal of the president of a court shall be decided by the judicial committee of the court; and the withdrawal of the chief procurator or the person in charge of the public security organ shall be decided by the procuratorial committee of the people's procuratorate at the same level.

Prior to a withdrawal decision made on an investigating personnel, he may not suspend the investigations into the case.

If a decision is made to reject the request for withdrawal, the party concerned or its legal representative may apply for one reconsideration.

#### 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 Defense and Representation**

### **Article 32**

In addition to exercising the right to defend himself, a crime suspect or defendant also may entrust one or two persons as his defender(s). The following persons may be entrusted to serve as defenders:

1. lawyers;
2. persons recommended by the people's organization or the unit to which the crime suspect or defendant belongs; and
3. guardians and relatives and friends of crime suspects and defendants.

Persons still serving their criminal sentences or being deprived of or being restricted their freedom of the person according to law may not serve as defenders.

### **Article 33**

With regard to the case of public prosecution, the crime suspect shall have the right to appoint his defender as of the day on which the case is transferred for examination and prosecution. As for private cases, the defendants shall have the right to appoint their defendants at any time.

The people's procuratorate shall, within three days from the day on which the case files for examination and prosecution are received, inform the crime suspect his right to appoint the defender. The people's court shall, within three days from the day on which they decide to accept the private case, notify the defendant his right to appoint the defender.

### **Article 34**

With regard to a case in which the public prosecutor appears before the court to conduct a public prosecution, if the defendant has not yet entrusted any defender due to financial difficulty or any other reasons, the people's court may appoint a lawyer undertaking the duty of legal aid to provide defense thereto.

If a defendant is blind, deaf or mute, or is a minor, and has not entrusted a defender, the people's court shall designate a lawyer undertaking the duty of legal aid to provide defense thereto.

If a defendant could be sentenced to death, but has not entrusted a defender, the people's court shall designate a lawyer undertaking the duty of legal aid to provide defense thereto.

### **Article 35**

The responsibility of the defender shall be: to present, according to facts and the law, materials and opinions to prove the innocence or pettiness of the crime of the crime suspect or the defendant, or to prove to mitigate or exempt his criminal responsibility, and to safeguard the legitimate rights and interests of the crime suspect and the defendant.

### **Article 36**

A defense lawyer may, from the day on which the people's procuratorate begins to examine and prosecute the case, consult, make abstracts of or reproduce the indictment and technical appraisal materials of the case, may meet and correspond with the crime suspect in custody. Any other defender, with permission of the people's procuratorate, also may consult, make abstracts of or reproduce the aforesaid materials, and meet and correspond with the crime suspect in custody.

A defense lawyer may, from the day on which the people's court accepts to hear the case, consult, make abstracts of or reproduce the materials of the facts of the crime charged against in the case, may meet and correspond with the defendant in custody. Any other defender, with permission of the people's court, also may consult, make abstracts of or reproduce the aforesaid materials, and meet and correspond with the defendant in custody.

### **Article 37**

A defense lawyer may, with the consent of the witness or any other unit or person concerned,

gather therefrom materials related to the case, also may apply to the people's procuratorate or people's court to gather therefrom and order for evidence, or apply to the people's court to notify the witness to appear before the court to testify.

A defense lawyer, with permission of the people procuratorate or the people's court and with the consent of the victim or his near relative and the consent of the witnesses provided by the victim, may gather therefrom materials related to the case.

#### Article 38

A defense lawyer or any other defender may not help a crime suspect or defendant to collude to make his confessions tally, or to conceal, destroy or make false evidence, may not coerce or induce the witness to change his testimony or to make false testimony or to conduct any act that interrupts the prosecution activities of the judicial organ.

If any person violates a provision of the preceding paragraph, legal responsibility shall be investigated according to law.

#### Article 39

In the course of trial, a defendant may refuse to have his defender continue to defend him, and also may entrust his defense to another defender.

#### Article 40

A victim and his legal representative or near relative of a public prosecution case and the parties and their legal representatives of incidental civil proceedings shall have the right to entrust agents ad litem from the day on which the case is transferred for examination and prosecution. A private prosecutor and his legal representative of a private prosecution case and the parties and their legal representatives of incidental civil proceedings shall have the right to entrust their agents ad litem at any time.

The people's procuratorate shall, within three days from the day on which the case files for examination and prosecution are received, notify the victim and his legal representative or near relative and the parties and their legal representatives of incidental civil proceedings their rights to entrust agents ad litem. The people's court shall, within three days from the day on which it decides to accept the private case, notify the private prosecutor and his legal representative and the parties and their legal representatives of incidental civil proceedings their rights to entrust agents ad litem.

#### Article 41

The entrustment of agents ad litem shall be governed with the reference to the provisions of Article 32 of this Law.

## **Chapter V Evidence**

#### Article 42

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

Evidence includes the following seven categories:

1. material or documentary evidence;
2. testimony of witnesses;
3. statements of victims;
4. statements and apologia of the crime suspects and defendants;
5. conclusions of expert witnesses;
6. written records of inquests and examination; and
7. video and audio materials.

Any of the above-listed evidences must be verified to be true before it can be used as the basis for settling the case.

#### Article 43

Judicial, procuratorial and investigating personnel must, in accordance with the statutory procedures, gather various kinds of evidences that can be used to prove the guilt or innocence of crime suspects and defendants and the gravity of the crimes. It shall be strictly forbidden to extort confessions by torture or to collect evidences by coercion, inducement, deceit or any other unlawful means. It must be guaranteed that all citizens who are involved in a case or who have information about the case to objectively and fully provide evidence, and with the exception of special circumstances, they may be brought in to assist the investigations.

#### Article 44

Warrants of arrest submitted for approval by the public security organs, the bills of prosecution by the people's procuratorates and judgments rendered by the people's courts must be faithful to facts. Any one who intentionally conceals facts shall be investigated for responsibility.

#### Article 45

The people's courts, the people's procuratorates and the public security organs shall have the power to gather and obtain evidences from relevant units and persons. Units and persons involved shall provide evidence truthfully.

Evidences involving State secrets shall be kept confidential.

Any one who falsifies, conceals or destroys an evidence, regardless of which side of a case he belongs to, must be investigated and brought before the law.

#### Article 46

In settling any case, stress and emphasis must be given to evidences, investigation and study, and oral confessions shall not be readily depended on. Any defendant cannot be found guilty and sentenced to criminal punishment if there is only his statement but no other evidence to support; Notwithstanding, a defendant still may be found guilty and sentenced to criminal punishment if evidences are sufficient and reliable, even without his statement.

#### Article 47

The testimony of witnesses must be questioned and cross-examined in the courtroom by the public prosecutor, the victim, the defendant and the defenders, should the testimonies of witnesses of all sides have been heard and verified can they be used as the basis for settling the case. If the court finds through investigation that a witness has intentionally given false testimony or concealed a criminal evidence, it shall deal with the matter according to law.

#### Article 48

Every person who has information about a case shall have the duty to testify.

Persons with physical or mental defects, minors who cannot distinguish right from wrong or persons who cannot properly express themselves shall be disqualified as witnesses.

#### Article 49

The people's courts, the people's procuratorates and the public security organs shall guarantee the safety of witnesses and their near relatives.

Where a threat, insult, beating or revenge committed against the witness or his near relative constitutes a crime, criminal responsibility shall be investigated according to law; if the circumstance is not yet subjected to criminal punishment, a penalty of public security management may be meted out thereto according to law.

## **Chapter VI Compulsory Measures**

### **Article 50**

The people's court, the people's procuratorate and the public security organ may, in light of the circumstances of a case, issue a warrant to compel the appearance of the crime suspect or defendant, release him upon bail pending trial or subject him to residential surveillance.

### **Article 51**

Under any of the following circumstances, the people's court, the people's procuratorate and the public security organ may subject the crime suspect or defendant to release upon bail pending trial or to residential surveillance:

1. if he could be sentenced to punishment of control, criminal detention or could be subjected to accessory punishment separately; or
2. if a sentence at or above termed imprisonment could be meted out thereto and the adoption of the release upon bail pending trial or residential surveillance would not likely cause the occurrence of a social danger.

The release upon bail pending trial and residential surveillance shall be executed by the public security organ.

### **Article 52**

Crime suspects and defendants already taken into custody, their legal representatives and near relatives shall have the right to apply for their release upon bail pending trial.

### **Article 53**

When a people's court, people's procuratorate and public security organ decide to grant the release upon bail pending trial to a crime suspect or defendant, they shall order him to provide a guarantor or deposit a security.

### **Article 54**

A guarantor must satisfy the following requirements:

1. being not related to the present case;
2. being capable of executing the obligation and responsibility under the guarantee;
3. enjoying political rights, and freedom of the person not being restricted; and
4. having a permanent domicile and regular income.

### **Article 55**

A guarantor must be under the following duties:

1. supervising the guaranteed in observing the provisions of Article 56 of this Law;
2. reporting without delay to the executing organ when he finds that the guaranteed is likely to commit or has already committed an act in violation of a provision of Article 56 of this Law.

Where the guaranteed has an act in violation of a provision of Article 56 of this Law, but the guarantor fails to make a prompt report, a fine shall be imposed on the guarantor, if a crime is constituted, criminal responsibility shall be investigated according to law.

### **Article 56**

A crime suspect or defendant being released upon bail pending trial must observe the following provisions:

1. may not leave the city or county in which he resides without approval of the executing organ;
2. shall appear before the court whenever being summoned;
3. may not interrupt in any manner the witness to testify; and
4. may not destroy or falsify any evidence or collude to make confession tally.

If a crime suspect or defendant being released upon bail pending trial violates a provision of the preceding paragraph and has already deposited a security, the security shall be confiscated, and

in light of different circumstances, he shall be instructed to write a statement of repentance, deposit a security or provide a guarantor again, or be subject to residential surveillance or be arrested. If the crime suspect or defendant did not violate the provisions of the preceding paragraph during the period of release upon bail pending trial, the security shall be returned when the period ends.

#### Article 57

A crime suspect or defendant being placed under residential surveillance must observe the following provisions:

1. may not leave the residence without approval of the executing organ, or may not leave the designated residence without approval if he does not have a permanent domicile;
2. may not meet any other person without approval of the executing organ;
3. shall appear before the court whenever being summoned;
4. may not interrupt in any manner the witness to testify; and
5. may not destroy or falsify any evidence or collude to make confession tally.

A crime suspect or defendant being placed under residential surveillance who violates a provision of the preceding paragraph shall be arrested under a serious circumstance.

#### Article 58

The maximum period for release upon bail pending trial granted by the people's court, people's procuratorate and public security organ may not exceed 12 months, and the maximum period for residential surveillance may not exceed six months.

During the period of release upon bail pending trial or residential surveillance, the investigations, prosecution and trial of the case may not be suspended. If it has been found that no criminal responsibility shall be investigated or the time limit for release upon bail pending trial or residential surveillance has expired, it shall be discharged promptly. In that case the person being released upon bail pending trial or placed under residential surveillance as well as the relevant units shall be promptly notified thereof.

#### Article 59

An arrest of a crime suspect or a defendant must be approved by a people's procuratorate or decided by a people's court, and shall be executed by a public security organ.

#### Article 60

When facts prove that a crime suspect or defendant has committed a crime and he could be sentenced to a criminal punishment of not less imprisonment, and if such measures as releasing upon bail pending trial or placing under residential surveillance would not be sufficient to prevent the occurrence of danger to society and an arrest is necessary, the crime suspect or defendant shall be arrested without delay according to law.

A crime suspect or defendant being arrested who is suffering from serious illness or is a pregnant woman or a woman breast-feeding her own baby may be allowed to be subjected to such measures as release upon bail pending trial or residential surveillance.

#### Article 61

Under any of the following circumstances, a public security organ may initially detain an active offender or major suspect:

1. if he is plotting to commit a crime or is in the process of committing a crime or is discovered immediately after having committed a crime;
2. if he is identified as having committed a crime by the victim or by 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 the crime, or he is a fugitive;

5. if there is a possibility of destroying or falsifying evidence or colluding to make confessions tally;
6. if he refuses to give his real name and address, or his identity is unknown; or
7. if he is strongly suspected of flagrantly committing crimes, frequently committing crimes or committing crimes in gangs.

#### Article 62

When a public security organ carries out a detention or arrest in a place other than the place where it is located, it shall notify the public security organ in the place where the person to be detained or arrested resides, the latter shall cooperate and render assistance thereto.

#### Article 63

Any citizen may immediately seize and deliver to the public security organ, the people's procuratorate or the people's court for handling:

1. any person who is committing a crime or is discovered immediately after having committed a crime; or
2. any person who is on the wanted list; or
3. any person who has escaped from the prison; or
4. any person who is being pursued for arrest.

#### Article 64

When detaining a person, the public security organ must produce a warrant of detention.

The public security organ shall, within 24 hours after detaining a person, notify his family or the unit to which he belongs of the reasons for the detention and the place of custody, unless such notification would hinder the investigation or there is no way for making such notification.

#### Article 65

The public security organ shall interrogate and question the person detained within 24 hours after detention. If it is found that the person should not have been detained, the public security organ must release immediately and issue a release certificate to him. If the public security organ finds it necessary to arrest the person but evidence is still insufficient, the person may be released upon bail pending trial or be placed under residential surveillance.

#### Article 66

A public security organ intending to arrest a crime suspect shall submit a written request for approval of the arrest, together with the case files and evidence, to the people's procuratorate at the same level for examination and approval. The people's procuratorate may, when necessary, send its personnel to participate in the discussion of major cases at the public security organ.

#### Article 67

The decision on approval of arresting a crime suspect shall be made by the chief procurator of the people's procuratorate. In the case of a major case, the matter shall be submitted to the procuratorial committee to discuss and make decision thereon.

#### Article 68

The people's procuratorate shall, after examining the request for approval of arrest over a case submitted by the public security organ and in the light of the circumstances of the case, decide to approve or disapprove it. With respect to a decision approving the arrest, the public security organ shall immediately execute it, and notify timely the people's procuratorate of information on the execution. If the request is disapproved, the people's procuratorate shall explain the reasons, and shall notify the public security organ simultaneously if it is necessary to make a supplementary investigation.

#### Article 69

A public security organ which finds it necessary to arrest a person already detained shall, within three days after the detention, submit a request to the people's procuratorate for approval. Under a special circumstance, the time limit for submitting the request for approval may be extended by one to four days.

With regard to major suspects committing crimes from one place to another, repeatedly committing crimes or committing gang crime, the time limit for submitting requests for approval may be extended to 30 days.

A people's procuratorate shall, within seven days after receiving a request for approval of arrest submitted by the public security organ, decide either to approve or disapprove the arrest. If the people's procuratorate disapproves the arrest, the public security organ shall, upon receiving the notification of the decision, immediately release the person detained, and notify the people's procuratorate of information on the execution. If it is necessary to continue the investigations and the criteria for releasing upon bail pending trial or residential surveillance are satisfied, release upon bail pending trial or residential surveillance shall be adopted therefor according to law.

#### Article 70

A public security organ which believes the people's procuratorate's decision of disapproving the arrest is wrong may request for a reconsideration, and in that case it must immediately release the person already detained. If its opinion is not accepted, it may apply for a review to the people's procuratorate at the next higher level. The latter shall immediately review the application, decide whether or not to change the decision, and notify the people's procuratorate at the lower level and the public security organ to implement the review decision.

#### Article 71

The public security organ must produce a warrant of arrest when arresting a person.

A public security organ shall, within 24 hours after arresting a person, notify his family or the unit to which he belongs of the reasons for the arrest and the place of custody, unless such notification would hinder the investigation or there is no way for making such notification.

#### Article 72

A person arrested respectively by the decision of a people's court or a people's procuratorate, or a person arrested by a public security organ with approval of the people's procuratorate, must be interrogated and questioned within 24 hours after the arrest. If it is found that the person should not have been arrested, he must be immediately released and be issued a release certificate.

#### Article 73

If the people's court, people's procuratorate or public security organ finds that undue compulsory measures have been adopted against a crime suspect or defendant, it shall promptly cancel or make change thereof. A public security organ which releases a person already arrested or changes the measures of arrest shall notify the people's procuratorate which originally approved the arrest.

#### Article 74

If a case in which the crime suspect or defendant has been taken into custody could not be settled within the time limits prescribed by this Law for custody for investigation, examination for prosecution, first instance and second instance, and requires to continue the investigation and trial, the crime suspect or defendant may be subjected to release upon bail pending for trial or residential surveillance.

#### Article 75

If the compulsory measures taken by the people's court, people's procuratorate or public security organ go beyond the time limits under the law, the crime suspect, defendant, his legal

representative, his near relative, or lawyer or any other defender employed by the crime suspect or defendant shall have the right to request for the cancellation of such compulsory measures. The people's court, people's procuratorate or public security organ shall release the crime suspect or defendant on whom the compulsory measures taken have exceeded the time limits under the law, or remove the release upon bail pending trial or residential surveillance, or change the compulsory measures according to law.

#### Article 76

A people's procuratorate which, in the course of examining an arrest, finds that the public security organ has illegal circumstances in its investigating activities, shall notify the public security organ to make correction, and the latter shall notify the people's procuratorate of information in making correction.

### **Chapter VII Incidental Civil Actions**

#### Article 77

A victim suffering material loss as a result of the criminal act of a defendant shall have the right to file an incidental civil action in the criminal proceedings.

If the State- or collectively-owned property has sustained losses, the people's procuratorate may file an incidental civil action when initiating a public prosecution.

A people's court may, when necessary, seal up or distrain the property of the defendant.

#### Article 78

In incidental civil action shall be heard together with the criminal case. Only for the purpose of preventing excessive delay of the trial of the criminal case may the same judicial organization, after the close of 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 computed by the hour, the day and the month.

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

A statutory time period shall not include traveling time. Appeals or other documents that have been delivered to be mailed before the expiration of the time period shall not be regarded as overdue.

#### Article 80

A party who cannot meet the deadline due to irresistible causes or other proper reasons 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.

The people's court shall decide to approve or disapprove the application prescribed in the preceding paragraph.

#### Article 81

A summons, notice or any other court document shall be delivered to the addressee himself; if the addressee is absent, it may be delivered to his adult family member or a person in charge of the unit to which he belongs to receive on his behalf.

If the addressee or a receiver on his behalf refuses to accept the document or refuses to sign and affix seal on the receipt, the person delivering the document may ask the addressee's neighbors or other witnesses to the scene, explain the situation to them and leave the document at the

addressee's residence, record on the service certificate the reasons of the refusal and the date of service and sign his name, then the service shall be deemed as having been completed.

## **Chapter IX Other Provisions**

### **Article 82**

For the purposes of this Law, the meaning of the following terms shall be as follows:

1. "Investigation" means the specialized investigating work and related compulsory measures carried out according to law by the public security organs and people's procuratorates in the course of handling cases.
2. "A party" means the victim, private prosecutor, crime suspect, defendant or the plaintiff or defendant of an incidental civil action.
3. "A legal representative" means the parents, foster parents or guardian of the person being represented or the representative of the organ or organization responsible for the protection of the person.
4. "Participants in the proceedings" means the parties, legal representatives, agents ad litem, defenders, witnesses, expert witnesses and interpreters.
5. "Agents ad litem" means those persons participating in the proceedings as entrusted by and on the behalf of the victims and their legal representatives and near relatives of cases of public prosecution, and private prosecutors and their legal representatives, as well as those persons participating in the proceedings as entrusted by and on behalf of the parties and their legal representatives of incidental civil actions.
6. "Near relatives" means the husband, 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 organ or the people's procuratorate shall, when finding the fact of a crime or a crime suspect, file a case for investigation according to the scope of jurisdiction.

#### **Article 84**

Any unit or person shall, when finding the fact of a crime or a crime suspect, have the right and duty to report the case to or inform the public security organ, the people's procuratorate or the people's court.

A victim shall have the right to file a case to or bring an accusation to the public security organ, the people's procuratorate or the people's court on the fact of a crime or a crime suspect infringing his safety of the person or property.

A public security organ, people's procuratorate or people's court shall accept the complaint, accusation or crime-reporting. If the matter does not fall under its jurisdiction, it shall refer the matter to the appropriate organ to handle and shall notify the complainant, the accuser or the crime informer thereof; If the matter does not fall under its jurisdiction but emergency measures must be taken, it shall take emergency measures first and then refer the matter to the appropriate organ.

The provisions of Paragraph 3 shall apply to the offender's voluntary surrender to the public security organ, people's procuratorate or people's court.

#### Article 85

A complaint, accusation or crime-reporting may be filed in writing or orally. The person receiving an oral complaint, accusation or crime-reporting shall make a written record which, after being read to the complainant, accuser or informer and being found free of error, shall be signed or sealed by the complainant, accuser or the informer.

The person receiving an accusation or crime-reporting shall clearly explain to the accuser or the informer the legal responsibility for framing up a false accusation. However, as long as no fabrication of facts or falsification of evidence is involved, a complaint or accusation that does not accord with the facts, or even a mistaken complaint shall be strictly distinguished from a framed-up accusation.

The public security organ, people's procuratorate and people's court shall guarantee the safety of the complainant, accuser and informer as well as their near relatives. If a complainant, accuser or informer is unwilling to disclose his name and the act of complaint, accusation or crime-reporting, he shall be kept confidential.

#### Article 86

The people's court, people's procuratorate or public security organ shall, within the scope of its jurisdiction, promptly examine the materials of the complaints, accusations, crime-reporting and the confessions of offenders who have voluntarily surrendered, shall file a case if it believes that criminal responsibility should be investigated for the facts of the crime; and shall not file a case if it believes that there are no facts of a crime or that the facts are obviously minor and that no criminal responsibility shall be investigated, and shall notify the accuser of the reason for not filing a case. If the accuser disagrees with it, he may apply for a reconsideration.

#### Article 87

If the people's procuratorate considers the public security organ should have filed a case for investigation but has not yet filed the case, or the victim thinks the public security organ should have filed a case for investigation but has not yet filed the case and raises the matter to the people's procuratorate, the people's procuratorate shall demand the public security organ to give the reasons for not filing the case. If the people's procuratorate believes the reasons as not justified, it shall notify the public security organ to file the case, and the latter shall file it after receiving the notification.

#### Article 88

With regard to a case of private prosecution, the victim shall have the right to directly initiate an action to the people's court. If the victim has died or lost his capacity of conduct, the legal representative or any near relative of the victim shall have the right to initiate an action to the people's court. The people's court shall accept the case according to law.

## **Chapter II Investigation**

### **Section 1 General Rules**

#### Article 89

The public security organ shall conduct investigation into a criminal case already put on file, gather and acquire evidence and materials proving the crime suspect to be guilty or innocent, and to have minor crime or serious crime. It may first detain active offenders and major crime suspects according to law, and shall arrest those crime suspects subjected to the requirements of arrest according to law.

#### Article 90

The public security organ shall, after investigations, carry out pre-trial examination over those cases for which evidence proves the facts of the crimes, and verify the evidence and materials already gathered and acquired.

## **Section 2 Interrogation of Crime Suspects**

### **Article 91**

The interrogation of crime suspects must be conducted by the investigating personnel of the people's procuratorates or public security organs. During an interrogation, the number of investigating personnel may not be less than two.

### **Article 92**

With regard to a crime suspect not necessary to be arrested or detained, he may be summoned to the designated place of the city or county in the place where he resides to be interrogated, or may be interrogated in his residence, and in that case the investigating personnel shall produce their certificates issued by the people's procuratorate or public security organ.

One summons or subpoena may not last for a time period exceeding 12 hours. It is forbidden to confine crime suspects in a disguised manner as using consecutive summons or subpoena.

### **Article 93**

When interrogating a crime suspect, the investigating personnel shall first ask the crime suspect whether or not he has any criminal act, and allow him to state the circumstances of his guilt or give the explanation on his innocence, and then they may ask him questions. The crime suspect shall truthfully answer the questions raised by the investigating personnel. However, he shall have the right to refuse to answer any question irrelevant to the case.

### **Article 94**

When interrogating a crime suspect who is deaf or mute, a person who has a good command of sign language shall participate, and such circumstances shall be noted in the written record.

### **Article 95**

The written record of an interrogation shall be presented to the crime suspect for checking, or shall be read to the crime suspect if he cannot read. If the written record contains any omission or error, the crime suspect may make additions or corrections. When the crime suspect acknowledges that the written record is free from error, he shall sign or affix his seal on it. The investigating personnel also shall sign their names on the written record. If the crime suspect requests to write the confession statement personally, he shall be permitted to do so. The investigating personnel also may, when necessary, demand the crime suspect to write the confession statement personally.

### **Article 96**

A crime suspect may, after being interrogated for the first time or from the day on which compulsory measures are taken against him, hire a lawyer to offer him with legal consultancy or to act on his behalf in making appeal or accusation. If a crime suspect has already been arrested, the lawyer so hired may apply for his release upon bail pending trial. With respect to cases involving State secrets, if the crime suspects intend to hire lawyers, they shall seek the approval from the investigating organs.

A lawyer so entrusted shall have the right to know the crime to be charged against the crime suspect from the investigating organ, may meet the crime suspect already taken into custody and get information pertaining the case from the crime suspect. When a lawyer meets a crime suspect already taken into custody, personnel from the investigating organ may, in light of the

circumstances of the case and needs, be assigned to be present. With respect to a case involving State secrets, a lawyer intending to meet the crime suspect already taken into custody shall seek the approval from the investigating organ.

### **Section 3 Questioning of the Witnesses**

#### Article 97

When questioning a witness, the investigators may go to conduct the questioning at the unit to which the witness belongs or the residence of the witness, but must produce a certificate issued by the people's procuratorate or public security organ. When necessary, they also may notify the witness to give testimony at the people's procuratorate or public security organ.

The questioning of witnesses shall be conducted individually.

#### Article 98

When questioning a witness, he shall be told to provide evidence and give testimony truthfully, and be told of the legal responsibility for intentionally giving false testimony or concealing criminal evidence.

When a witness not up to 18 years old 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 the witnesses.

#### Article 100

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

### **Section 4 Inquest and Examination**

#### Article 101

Investigating personnel shall conduct an inquest or examination on the sites, objects, people and corpses pertaining to a crime. Persons with specialized knowledge may, when necessary, be assigned or invited to conduct the inquest or examination under the direction of the investigating personnel.

#### Article 102

All units and persons shall have the duty to preserve the scene of a crime and to immediately notify the public security organ to send personnel to conduct an inquest.

#### Article 103

Investigating personnel must, in performing an inquest and examination, carry certificates issued by the people's procuratorate or the public security organ.

#### Article 104

With regard to a corpse for which the cause of death is unclear, the 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

For the purpose of ascertaining some characteristics, the conditions of injury or physiological condition of the victim or crime suspect, an examination of the person may be conducted.

If the crime suspect refuses such an examination, the investigating personnel may, if they deem it necessary, conduct a compulsory examination.

Examination of the person of women shall be conducted by female personnel or physicians.

#### Article 106

The circumstances of inquests and examinations shall be entered into written records, which shall be signed or affixed their seals by the persons participating in the inquests and examinations and eyewitnesses.

#### Article 107

If a people's procuratorate, in reviewing and examining a case, finds it necessary to do the public security organ's inquest or examination again, it may ask the public security organ to do so and may send procuratorial personnel to participate.

#### Article 108

For the purpose of ascertaining the circumstances of a case, investigative experiments, if necessary, may be conducted with the approval of the director of a public security bureau. In investigative experiments, it shall be forbidden to take any action which is sufficient to cause a hazard, humiliation to human dignity, or is morally offensive.

### **Section 5 Search**

#### Article 109

For the purposes of collecting criminal evidence and tracking down a criminal offender, the investigating personnel may search the person, belongings and residence of the crime suspects and persons who might hide the criminal offender or criminal evidence, as well as other relevant places.

#### Article 110

All units and persons shall have the duty to surrender, at the request of the people's procuratorate or public security organ, any material evidence, documentary evidence and audio and video materials that may be used to prove the guilt or innocence of the crime suspect.

#### Article 111

When conducting a search, a search warrant must be produced to the person to be searched. In making an arrest or detention under emergency, a search may be carried out without a search warrant.

#### Article 112

When conducting a search, the person to be searched or his family members, neighbors or other eyewitnesses shall be present at the scene.

Search of the persons of women shall be conducted by female personnel.

#### Article 113

The circumstances of a search shall be entered into a written record, which shall be signed or affixed with seals by the investigating personnel and the person being searched or his family members, neighbors or other eyewitnesses. If the person being searched or his family members are fugitives or refuse to sign or affix their seals on the written record, the matter shall be noted in the written record.

### **Section 6 Seizure of Material Evidence and Documentary Evidence**

#### Article 114

All articles and documents found in the course of an inquest and search, which may be used to prove the guilt or innocence of the crime suspect, shall be seized; articles and documents irrelevant to the case may not be seized.

All articles and documents so seized shall be properly kept or sealed up, and may not be utilized, damaged or destroyed.

#### Article 115

All articles and documents so seized shall be accurately checked by the investigating personnel together with the eyewitnesses and the holder, a detailed list of such articles and documents shall be made in duplicate on the spot, which shall be signed or affixed with their seals by the investigating personnel, 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.

#### Article 116

When the investigating personnel deem it necessary to seize the mail or telegrams of the crime suspect, they may, with the approval of the public security organ or the people's procuratorate, notify the post and telecommunications organ to hand over relevant mail and telegrams to be seized.

When it becomes unnecessary to continue such seizure, the post and telecommunications organ concerned shall be immediately notified.

#### Article 117

A people's procuratorate or public security organ may, in light of the needs for investigating a crime, inquire into or freeze the deposit savings or money orders of a crime suspect in accordance with the regulations.

If the deposit savings or money order of a crime suspect has already been frozen, it may not be frozen again.

#### Article 118

If the articles, documents, mail or telegrams so seized, or deposit savings or money order frozen, are found and proved to be irrelevant to the case, the seizure or freeze shall be removed, and they shall be returned to their original holder or the original post and telecommunications organ within three days.

### **Section 7 Expert Evaluation**

#### Article 119

For the purpose of clarifying the circumstances of a case, persons with specialized knowledge shall be assigned or invited to make an evaluation thereon when some special problems relating to the case need to be solved.

#### Article 120

The expert witnesses shall, after making the evaluation, write an expert conclusion and sign it. The reevaluation over a controversial medical evaluation over injury to the person as well as medical evaluation on mental disorder shall be conducted by hospitals authorized by the people's government at or above the provincial level. Expert witnesses shall, after making an evaluation, write an expert conclusion, which shall be signed by the expert witnesses and be affixed with official seals of the hospitals.

Any expert witness who intentionally makes a false evaluation shall assume legal responsibility therefrom.

#### Article 121

The investigating organ shall notify the crime suspect and the victim of the expert conclusions to be used as evidence. If the crime suspect or the victim makes an application, additional expert evaluation or new expert evaluation may be conducted.

#### Article 122

The period in which an expert evaluation is conducted on a crime suspect for mental disorder shall not be computed in the case-handling period.

### **Section 8 Wanted Orders**

#### Article 123

If a crime suspect who should be arrested is still a fugitive, the public security organ may issue a wanted order, and take effective measures to pursue for the arrest of the suspect and bring him to justice.

A public security organ at any level may directly issue wanted orders within the area under its jurisdiction; and shall apply to the organ at the higher level with the power of decision to issue such wanted orders for areas beyond its jurisdiction.

### **Section 9 Conclusion of Investigation**

#### Article 124

The time limit for holding a crime suspect in custody during investigation after his arrest may not exceed two months. If a case is complex and the investigation cannot be concluded within that 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, a particularly grave and complex case is not suitable to be handed over for trial within a relatively long period of time, the Supreme People's Procuratorate shall request the Standing Committee of the National People's Congress for an approval of postponing the hearing of the case.

#### Article 126

With regard to the following cases, if the investigation cannot be concluded within the time limit set out in Article 124 of this Law, an extension of two months may be allowed with the approval or decision of the people's procuratorate of the province, autonomous region or municipality directly under the Central Government:

1. grave and complex cases in the remote areas where communications is extremely inconvenient;
2. major cases involving criminal gangs;
3. major and complex cases in which offenders commit crimes from one place to another; or
4. major and complex cases which involve a wide range of aspects and for which the obtaining of evidence is difficult.

#### Article 127

If a crime suspect might be sentenced to an imprisonment for a term exceeding 10 years, and the investigations still cannot be concluded at the expiration of the extended time limit set out in Article 126, an additional extension of two months may be allowed with the approval or decision of the people's procuratorate of the province, autonomous region or municipality directly under the Central Government.

#### Article 128

If, during the period of investigation, a crime suspect is found to have committed any other major crime, the time limit for holding him in custody shall be re-computed pursuant to the provisions of Article 124 from the day on which such crime is found.

If a crime suspect does not give his true name or address or his identity is unknown, the time limit for holding him in custody shall be computed from the day on which his identity is ascertained, however, the investigating and obtaining of evidence on his crime shall not be suspended. If the facts of his crime are clear and the evidence is reliable and sufficient, the case may be transferred to the people's procuratorate for examination and prosecution by the name he gave.

#### Article 129

When a public security organ concludes the investigation, it shall make sure that the basic facts of the case is clear and the evidence reliable and sufficient, shall write a recommendation for prosecution, and transfer the case, together with case files and evidences, to the people's procuratorate at the same level for examination and decision.

#### Article 130

If, in the course of investigation, it is found that a crime suspect should not be investigated for criminal responsibility, the case shall be discharged; the crime suspect who has already been arrested shall be promptly released and be issued a release certificate, and the people's procuratorate which originally approved the arrest shall be notified thereof.

### **Section 10 Investigations of Cases Directly Accepted by the People's Procuratorates**

#### Article 131

The provisions of this Chapter shall apply to the investigations of cases directly accepted by the people's procuratorates.

#### Article 132

If, in a case directly accepted by a people's procuratorate falling under the circumstances provided for in Article 60 or 61 (4) or (5) of this Law, the arrest or detention of the crime suspect is needed, a decision shall be made by the people's procuratorate and be executed by the public security organ.

#### Article 133

The person detained in any case directly accepted by the people's procuratorate shall be interrogated and questioned within 24 hours after the detention is made. When it is found that the person should not have been detained, he must be released promptly and be issued a release certificate. If an arrest is needed but the evidence is still insufficient, release upon bail pending trial or residential surveillance may be adopted.

#### Article 134

If a people's procuratorate deems it necessary to arrest the person detained in a case it has accepted directly, a decision thereon shall be made within 10 days. Under special circumstances, the time limit for deciding on an arrest may be extended by one to four days. If an arrest is unnecessary, the person detained shall be released promptly; If further investigation is required and the person detained meets the requirements for release upon bail pending trial or residential surveillance, the person shall be allowed to be released upon bail pending trial or be placed under residential surveillance according to law.

#### Article 135

With regard to a case on which investigation has been concluded by the people's procuratorate, the people's procuratorate shall make a decision to initiate a public prosecution, not to prosecute or discharge the case.

### **Chapter III Initiation of Public Prosecution**

#### **Article 136**

Every case requiring the initiation of public prosecution shall be examined and decided by the people's procuratorate.

#### **Article 137**

A people's procuratorate must, when examining a case, ascertain:

1. whether or not the facts and circumstances of the crime are clear, whether or not the evidence is reliable and sufficient, and whether or not the nature and charge determined against the crime are correct;
2. whether or not there is any other crime that has omitted or other persons against whom criminal responsibility shall be investigated;
3. whether or not it is a case for which criminal responsibility should not be investigated;
4. whether or not the case has an incidental civil action; and
5. whether or not the investigating activities are conducted lawfully.

#### **Article 138**

The people's procuratorate shall make a decision within one month on a case that the public security organ has transferred thereto for prosecution; With regard to a major and complex case, an extension of half a month may be allowed.

In the event that the jurisdiction of a case the people's procuratorate has examined and prosecuted is changed, the time limit for examination and prosecution shall be computed from the day on which the people's procuratorate receives the case after such a change has been made.

#### **Article 139**

The people's procuratorate shall, when examining cases, interrogate and question the crime suspects, and solicit opinions from the victims and persons entrusted by the crime suspects and victims.

#### **Article 140**

When examining a case, the people's procuratorate may request the public security organ to provide evidence and materials required by court hearing.

In examining a case requiring supplementary investigation, the people's procuratorate may remand the case to the public security organ for supplementary investigation or conduct the investigation itself.

With respect to a case requiring supplementary investigation, such investigation shall be concluded within one month. Supplementary investigation may be conducted no more than two times. When a case is transferred to a people's procuratorate after the supplementary investigation has been concluded, the people's procuratorate shall recalculate the time limit for examination and prosecution.

If a people's procuratorate still deems that the evidence is insufficient and that the case fails to meet the requirements for initiation of prosecution after supplementary investigation has been concluded, it may make a decision not to initiate a prosecution.

#### **Article 141**

When a people's procuratorate believes that the facts of a crime committed by the crime suspect have been ascertained, that the evidence is reliable and sufficient and that criminal responsibility shall be investigated according to law, the people's procuratorate shall make a decision to initiate a prosecution, and shall, in accordance with the provisions on trial jurisdiction, initiate a public prosecution in the people's court.

#### **Article 142**

Where a crime suspect has any of the circumstances laid down in Article 15 of this Law, the people's procuratorate shall make a decision not to initiate a prosecution.

With regard to a case under which the circumstance of the crime is of a minor nature and which shall, according to the provisions of the Criminal Law, not be given a criminal punishment or be exempted from criminal punishment, the people's procuratorate may make a decision not to initiate a prosecution.

Where a people's procuratorate has decided not to initiate prosecution on a case, the people's procuratorate shall simultaneously remove the distraint or freeze over the properties distrained or frozen during the course of investigation. In case that the person against whom no prosecution is to be initiated needs to be given an administrative penalty or administrative disciplinary measure, or needs to have his unlawful income confiscated, the people's procuratorate shall produce a procuratorial suggestion and transfer the person to the competent department concerned for handling.

The competent department shall timely notify the people's procuratorate of the handling results.

#### Article 143

A decision not to initiate prosecution shall be made open to the public, and the written decision not to initiate prosecution shall be delivered to the person against whom no prosecution is to be initiated and the unit to which he belongs. If the person against whom no prosecution is to be initiated is still kept in custody, he shall be promptly released.

#### Article 144

If a people's procuratorate decides not initiate a prosecution on a case transferred thereto by a public security organ for prosecution, the people's procuratorate shall deliver the written decision not to initiate prosecution to the public security organ. If the public security organ believes that the decision not to initiate prosecution is wrong, it may request a reconsideration, if such request is denied, it may apply to the people's procuratorate at the next higher level for a review.

#### Article 145

If a decision not to initiate prosecution on a case involving victim(s) is made, the people's procuratorate shall send the written decision to the victim(s). If the victim disagrees with the decision, the victim may, within seven day from receiving the written decision, present a petition to the people's procuratorate at the next higher level and apply for the initiation of a public prosecution. The people's procuratorate shall notify the victim of the decision of reexamination. Where the people's procuratorate affirms the decision not to initiate prosecution, the victim may bring the matter before a people's court. The victim also may directly bring the matter before a people's court without undergoing the procedure of presenting a petition. When a people's court agrees to accept the case, the people's procuratorate shall transfer materials related to the case to the people's court.

#### Article 146

If a person against whom no prosecution is to be initiated refuses to accept the decision not to initiate prosecution made by a people's procuratorate in accordance with the provisions of Paragraph 2 of Article 142 of this Law, he may, within seven days after receiving the decision, present a petition to the people's procuratorate. The people's procuratorate shall make a decision of reexamination, notify thereof to the person against whom no prosecution is to be initiated and send a copy of the decision to the public security organ simultaneously.

## **Part Three Trial**

### **Chapter I Trial Organizations**

#### Article 147

The trial of a case of first instance in a basic or intermediate people's court shall be conducted by a collegial panel composed of three judges or of judge(s) and people's assessor(s), totaling three, notwithstanding, a case to which summary procedure is applied by a basic people's court may be tried by a single judge independently.

The trial of a case of first instance in a high people's court or the Supreme People's Court shall be conducted by a collegial panel composed of three to seven judges or of three to seven persons of judges and people's assessors.

The people's assessors shall, when performing their duties and functions in the people's courts, have equal rights with the judges.

The trial of an appealed or protested case in a people's court shall be conducted by a collegial panel composed of three to five judges.

A collegial panel shall have an odd number of members.

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

#### Article 148

If, at the time when a collegial panel conducts a deliberation, the opinions differ, a decision shall be made according to the opinions of the majority, however, the opinions of the minority shall be entered into the written record. The written record of the deliberations shall be signed by the members of the collegial panel.

#### Article 149

The collegial panel shall, after court hearing and deliberation, render a judgment. With regard to a difficult, complex or major case, if the collegial panel considers it difficult to make a decision thereon, the collegial panel shall refer the case to the president of the court to decide to submit the case to the judicial committee for discussion and decision. The collegial panel shall execute the decision made by the judicial committee.

## **Chapter II Procedure of First Instance**

### **Section 1 Cases of Public Prosecution**

#### Article 150

A people's court, after examining a case under which public prosecution was initiated and if the bill of prosecution contains clear facts of the crime charged against and is attached with a list of evidence, name list of witnesses, and photocopies or photos of major evidence, shall decide to open the court session and try the case.

#### Article 151

A people's court shall proceed with the following work after it has decided to open the court session:

1. to determine the members of the collegial panel;
2. to deliver a copy of the bill of prosecution submitted by the people's procuratorate at least 10 days prior to the opening of the court session to the defendant. If the defendant has not yet entrusted a defender, the people's court shall notify the defendant that he may entrust a defender, or designate a defense lawyer who undertakes the responsibility of legal aid for the defendant if

it is necessary;

3. to notify the people's procuratorate of the time and place of the court session three days prior to the opening of the court session;

4. to summon the parties, notify the defenders, agent ad litem, witnesses, expert witnesses and interpreters, and the summons and notification shall be sent thereto at least three days prior to the opening of the court session; and

5. to announce in advance the subject matter of the case to be heard openly, the name of the defendant, and the time and place of the court session.

The aforesaid activities shall be entered into the written records, which shall be signed by the judicial personnel and the court clerk.

#### Article 152

The hearing of cases of first instance in the people's courts shall be public. However, cases involving State secrets or personal privacy may not be heard in public.

No cases involving crimes committed by minors who are between 14 and 16 years old may be heard in public. Cases involving crimes committed by minors who are between 16 and 18 years old shall generally not be heard in public.

With respect to a case not to be heard in public, the reason therefor shall be announced at the opening of the court hearing.

#### Article 153

When a people's court tries a case of public prosecution, the people's procuratorate shall send its personnel to the court to support the public prosecution, however, if summary procedure is applied to the case in accordance with the provisions of Article 175 of this Law, the people's procuratorate is not required to send its personnel to appear before the court.

#### Article 154

At the time when a court session opens, the presiding judge shall ascertain whether the parties have appeared before the court, announce the subject matter of the case; shall announce the name list of the members of the collegial panel, court clerk, public prosecutor, defender, agent ad litem, expert witnesses and the interpreter; shall inform the parties of their right to apply for the withdrawal of any member of the collegial panel, the court clerk, the public prosecutor, the expert witness or the interpreter; and shall notify the defendant of his right to defense.

#### Article 155

After the public prosecutor reads out the bill of prosecution in the court, the defendant and victim may make their respective statements on the crimes charged against in the bill of prosecution, and the public prosecutor may interrogate and question the defendant.

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

Judicial personnel also may interrogate and question the defendant.

#### Article 156

When a witness makes testimony, the judicial personnel shall inform the witness to provide testimony truthfully and the legal responsibility for intentionally giving false testimony or concealing evidence of the crime. The public prosecutor, the parties and the defenders and agents ad litem may, with permission of the presiding judge, put questions to the witnesses or expert witnesses. If the presiding judge considers any question as irrelevant to the case, he shall order a stop to the questioning.

Judicial personnel may interrogate and question the witnesses and expert witnesses.

#### Article 157

The public prosecutor and defender shall present material evidence to the court and have the parties to identify. The written records of testimony of witnesses who fail to appear before the court, the conclusions of expert witnesses, the written records of inquests as well as other documents serving as evidence shall be read out in court. The judicial personnel shall solicit opinions of the public prosecutor, the parties and the defenders as well as agents ad litem.

#### Article 158

If, in the course of a court hearing, the collegial panel has any doubt about the evidence, it may announce an adjournment, and carry out investigations and verification of the evidence.

The people's court may, in investigating into and verifying evidence, conduct inquest, examination, seizure, evaluation and inquiry and impose a freeze thereon.

#### Article 159

In the course of a court hearing, the parties, defenders and agents ad litem shall have the right to request new witnesses to appear before the court, to obtain new material evidence, and apply for the evaluation or inquest to be done once again.

The court shall make a decision whether or not to grant approval to the aforesaid applications.

#### Article 160

The public prosecutor, the parties, and the defenders and agents ad litem may, with permission of the presiding judge, express their opinions on the evidence and the circumstance of the case, and may debate with each other. After the presiding judge declares the conclusion of the court debate, the defendant shall have the right to make a final statement.

#### Article 161

If, in the course of the trial, any participant or by-stander in the proceedings disrupts the order of the courtroom, the presiding judge shall, by warning, order him to stop. If the person fails to obey the order, he may be forced out of the courtroom; if the circumstance is serious, a fine not exceeding 1,000 yuan or a detention not exceeding 15 days may be imposed thereon. Such a fine or detention must be subject to the approval of the president of the court. If the person being so punished disagrees with the decision on the fine or detention, he may apply to the people's court at the next higher level for a reconsideration. The execution thereof shall not be suspended during the period of reconsideration.

Any one who assembles a crowd to make an uproar or charges the courtroom, or insults, slanders, menaces or beats up the judicial personnel or the participant in the proceedings, and thereby seriously disturbing the order of the courtroom and constituting a crime, shall be investigated for criminal responsibility according to law.

#### Article 162

After the defendant has made his final statement, the presiding judge shall announce an adjournment, and the collegial panel shall conduct deliberations and render one of the following judgments on the basis of the facts and evidences already ascertained and relevant provisions of laws:

1. a judgment of guilty if facts of the crime are clear, the evidence is reliable and sufficient, and the defendant is found guilty according to law;
2. a judgment of innocence if the defendant is found innocent according to law; or
3. a judgment of innocence for lacking of evidence and crime accused not able to be determined if the evidences are so insufficient that the defendant cannot be found guilty.

#### Article 163

All pronouncements of judgments shall be public.

If the judgment of a case is pronounced in court, the written judgment shall be sent within five

days to the parties and the people's procuratorate which initiated the public prosecution; If the judgment of a case is pronounced later at a fixed interval, the written judgment shall be delivered immediately after the pronouncement to the parties and the people's procuratorate that initiated the public prosecution.

#### Article 164

A written judgment shall be signed by members of the collegial panel and by the court clerk and shall clearly indicate the time limit for making appeal and the name of the court to which the appeal shall be made.

#### Article 165

The hearing may be postponed if any of the following circumstances affecting the trial occurs during the trial:

1. if it is necessary to notify new witnesses to appear before the court, collect new material evidence, make the expert evaluation or inquest once more;
2. if members of the procuratorial personnel find it is necessary to make supplementary investigation in the case on which a public prosecution has been initiated, and thus make a proposal to do so;
3. if the trial cannot proceed because a party applies for a withdrawal.

#### Article 166

If the hearing of a case is postponed pursuant to the provisions of Article 165 (2) of this Law, the people's procuratorate shall conclude supplementary investigations within one month.

#### Article 167

The entire court proceedings shall be entered into written records by the court clerk, and such records shall, after being examined by the presiding judge, be signed by the presiding judge and the court clerk.

The portion of the written records on the testimony of witnesses shall be read out in court or be given to the witnesses to read. The witnesses shall, after they acknowledge that the records are free from error, sign or affix their seals onto the records.

The written records shall be given to the parties to read or be read out to them. If any party considers that there are omissions or errors in the records, the party may request to make additions or corrections. The parties shall, after acknowledging that the records are free from error, sign or affix their seals onto the records.

#### Article 168

The people's court shall, after taking cognizance of a case of public prosecution for trial, pronounce a judgment on the case of public prosecution within one month or, one and a half months at the maximum. Under any of the circumstances provided in Article 126 of this Law, the period may be extended by one month with the approval or decision of the high people's court of the province, autonomous region or municipality directly under the Central Government.

With regard to a case over which the jurisdiction of the people's court has changed, the time limit for the trial of the case shall be computed from the day on which the people's court having the jurisdiction receives the case after the change is made.

With respect to a case for which the people's procuratorate makes a supplementary investigation, the time limit for the trial of the case by the people's court shall be computed again from the day after the supplement investigation is concluded and the case is transferred to the people's court.

#### Article 169

A people's procuratorate which finds any violation of the procedures prescribed by the law in trial activities of a people's court shall have the right to put forward its opinion for making

correction to the people's court.

## **Section 2 Cases of Private Prosecution**

### **Article 170**

Cases of private prosecution include the following:

1. cases that shall be handled only upon complaint;
2. criminal cases under which the victims have evidences and are minor;
3. cases under which the victims have evidences proving that the defendants have committed acts infringing their rights to person and property and that criminal responsibility shall be investigated according to law, but the public security organs or the people's procuratorates are not to investigate the criminal responsibility of the defendants.

### **Article 171**

The people's court may, after making examinations on cases of private prosecution, deal with them separately according to the following circumstances:

1. to open a court hearing if the facts of the crime are clear and the evidence thereon is sufficient;
2. to persuade the private prosecutor to withdraw the prosecution, or to make a ruling of its rejection thereon, if the evidence of the case is lacking but the private prosecutor fails to provide any supplementary evidence.

A case shall be deemed as being withdrawn if the private prosecutor refuses to appear before the court without justified reasons after being summoned twice according to law or if the private prosecutor withdraws during a court session without the permission of the court.

Where the judicial personnel, in the course of court hearing, have suspicions against evidence, whereby investigations and verifications are required to be conducted, the provisions of Article 158 of this Law shall apply thereto.

### **Article 172**

The people's court may conduct mediation in cases of private prosecution; the private prosecutor may, prior to the pronouncement of a judgment, reconciliatory with the defendant on their own initiative, or withdraw the prosecution.

### **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 on private prosecutions shall apply to counterclaims.

## **Section 3 Summary Procedure**

### **Article 174**

The people's court may apply the summary procedure to the following cases, which shall be tried by a single judge alone:

1. cases of public prosecution in which a fixed-term imprisonment not exceeding three years, criminal detention, confinement or exclusive fines could be meted out, for which the facts of the cases are clear and evidences are sufficient, and to which the people's procuratorate suggests or approves the application of summary procedure;
2. cases which shall be dealt with only upon complaint; and
3. minor criminal cases over which the victims have evidences to so prove and prosecuted against.

#### Article 175

With respect to a case of public prosecution to which summary procedure is to apply in the trial, the people's procuratorate is not required to send its personnel to the court. The defendant may present a statement or defend himself on the crime charged with in the bill of prosecution. If the people's procuratorate sends its personnel to the court, the defendant and his defender may, with the permission of the judicial personnel, debate with the public prosecutor.

#### Article 176

Where the trial of a case of private prosecution is conducted by applying the summary procedure, the defendant and his defender may, after the bill of prosecution is read out and with the permission of the judicial personnel, debate with the private prosecutor and his agent ad litem.

#### Article 177

Where cases are heard by applying the summary procedure, such cases shall not be restricted by the provisions of Section 1 of this Chapter on the procedures of the interrogation of the defendant, questioning of the witnesses and expert witnesses, presentation of evidences and court debate. Notwithstanding, the final statement of the defendant shall be heard prior to the pronouncement of the judgment.

#### Article 178

Where the summary procedure is applied to the trial of a case, the people's court shall conclude the trial of the case within 20 days after taking cognizance of it.

#### Article 179

A people's court which, in the course of trial, finds that it is inappropriate to apply the summary procedure, shall try the case again according to the provisions provided for in Section 1 or 2 of this Chapter.

### **Chapter III Procedure of Second Instance**

#### Article 180

A defendant, private prosecutor or his legal representative who refuses to accept the judgment or ruling of first instance of a local people's court at any level shall have the right to appeal in writing or orally to the people's court at the next higher level. The defender or near relatives of the defendant may, with the consent of the defendant, file an appeal.

A party to an incidental civil action or his legal representative may file an appeal on the portion of the judgment or ruling of first instance of a local people's court that involves the incidental civil action.

Under no excuse may the right to appeal of the defendant be deprived.

#### Article 181

A local people's procuratorate at any level which believes that there is a definite error in the judgment or ruling of first instance of the people's court at the same level shall present a protest to the people's court at the next higher level.

#### Article 182

A victim or his legal representative who refuses to accept the judgment of first instance of a local people's court at any level shall have the right, within five days after receiving the written judgment, to apply to the people's procuratorate to file a protest. The people's procuratorate shall, within five days after receiving such application, make a decision whether or not to file a protest and give a reply to the applicant.

#### Article 183

The time limit for making an appeal or a protest for not accepting a judgment shall be 10 days, and the time limit for making an appeal or a protest for not accepting a ruling shall be five days, computing from the second day from the day on which the written judgment or ruling is received.

#### Article 184

Where a defendant, private prosecutor, or a plaintiff or defendant of an incidental civil action files an appeal by the channel of the people's court which originally tried the case, it shall, within three days, transfer the petition of appeal, together with the case files and the evidences, to the people's court at the next higher level, and shall, at the same time, deliver duplicates of the petition of appeal to the people's procuratorate at the same level as well as to the party on the other side.

Where a defendant, private prosecutor, or a plaintiff or defendant of an incidental civil action files an appeal directly to the people's court of second instance, it shall, within three days, send the petition of appeal to the people's court which originally tried the case for delivering to the people's procuratorate of the same level and to the party on the other side.

#### Article 185

A protest to be lodged by the local people's procuratorate at any level against the judgment or ruling of first instance of the people's court of the same level shall be presented through the people's court which originally tried the cases, and the copies of the written protest shall be sent 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 files and evidences, to the people's court at the next higher level, and shall deliver duplicates of the written protest to the parties.

The people's procuratorate at the higher level which considers a protest as inappropriate may withdraw the protest from the people's court of the same level, and notify the people's procuratorate at the lower level.

#### Article 186

The people's court of second instance shall carry out comprehensive examination and review of the facts ascertained and the application of law in the judgment of first instance and, shall not be restricted by the scope of appeal or protest.

Where only some of the defendants in a case of joint crime make an appeal, an examination and review of the whole case shall be conducted and the case shall be dealt with as a whole.

#### Article 187

The people's court of second instance shall form a collegial panel and open a court session to hear the case of appeal. Where the collegial panel believes that the facts of the crime are clear after consulting case files, interrogating and questioning the parties, defenders and agents ad litem, it may decide not to open a court session. With respect to a case against which a protest is lodged by the people's procuratorate, the people's court of second instance shall open a court session to hear the case.

When a people's court of second instance opens a court session to hear a case of appeal or protest, the trial thereon may be conducted in the place where the case occurred or where the people's court which originally tried the case is located.

#### Article 188

With respect to a case protested by the people's procuratorate or a case of public prosecution for which the people's court of second instance is to open a court session, the people's procuratorate of the same level shall send its personnel to the court. The people's court of second instance must notify the people's procuratorate 10 days prior to the opening of the court session to examine and consult the case files.

#### Article 189

With respect to a case of appeal or protest for not accepting the judgment of first instance, the people's court of second instance shall, after hearing, deal with it separately according to the following provisions:

1. to rule to reject the appeal or protest and affirm the original judgment if the original judgment was correct in the ascertainment of facts and the application of law, and appropriate in the sentencing;
2. to rule to revise the original judgment if the original judgment had no error in the ascertainment of facts but the application of law was incorrect or the sentencing was inappropriate; or
3. to rule to revise the original judgment after the facts are ascertained if the facts in the original judgment are unclear or the evidence therein was insufficient; also may rule to rescind the original judgment and remand the case to the people's court which originally tried the case for a retrial.

#### Article 190

The people's court of second instance may not, when trying a case appealed by a defendant, or his legal representative, defender or near relative, aggravate the criminal punishment on the defendant.

Protests lodged by the people's procuratorates or appeals made by private prosecutors shall not be governed by the provisions of the preceding paragraph.

#### Article 191

The people's court of second instance which finds that the hearing of a people's court of first instance falls under any of the following circumstances which violates the litigation procedures provided for by laws shall rule to rescind the original judgment and remand the case to the people's court which originally tried the case for a retrial:

1. violating a provision of this Law on open trial;
2. violating the withdrawal system;
3. depriving of or restricting the litigation right of a party, and thus being sufficient to affect the impartiality of the trial;
4. the composition of the judicial organization does not conform to the law; or
5. any other violations of litigation procedures provided for by laws that might affect the impartiality of the trial.

#### Article 192

The people's court which originally tried the case shall form a new collegial panel to, in accordance with the procedures of first instance, conduct a retrial of the case remanded thereto. With respect to the judgment of retrial, appeal or protest may be made or lodged pursuant to the provisions of Articles 180, 181 and 182 of this Law.

#### Article 193

With respect to a case of appeal or protest against the ruling of first instance, the people's court of second instance shall, after examination and review and by a ruling, reject the appeal or protest, or cancel or revise the original ruling respectively with the reference to the provisions of Articles 189, 191 and 192 of this Law.

#### Article 194

With respect to a case remanded by the people's court of second instance for retrial, the people's court which originally tried the case shall, from the day following receipt of it, recalculate the time limit for trial.

#### Article 195

Unless this Chapter provides otherwise, the people's courts of second instance shall try cases of appeal or protest with the reference to the provisions on the procedures of first instance.

#### Article 196

A people's court of second instance shall, after accepting a case of appeal or protest, conclude the trial thereof within one month, or one and a half months at the latest. Under any of the circumstances provided for in Article 126 of this Law, the time limit may be extended by one month with the approval or decision of the high people's court of a province, autonomous region or municipality directly under the Central Government. The Supreme People's Court shall decide such time limits for the trial of cases of appeal or protests it accepted.

#### Article 197

All judgments and rulings of second instance and of the Supreme People's Court shall be final.

#### Article 198

The public security organs, people's procuratorates and people's courts shall properly maintain and safekeep the properties and yields accruing therefrom distrained or frozen from the crime suspects and defendants for the purpose of checking and examination. No unit or person may misappropriate or dispose of them without authorization. All legitimate properties of the victims shall be returned to them without any delay. All illegal articles and goods not suitable to be kept for a long time shall be governed by the relevant regulations of the State.

All goods in kind that are to be used as evidence shall be transferred with the cases, or a detailed list and photographs or other testimonial documents of those not suitable to be transferred shall be transferred along with.

When the judgment rendered by the people's court takes effect, the illicit money and goods distrained or frozen as well as the yields accruing therefrom shall, with the exception of those that shall be returned to the victim according to law, be confiscated and turned over to the State Treasury.

Where a judicial personnel embezzles, misappropriates or disposes of on his own any illicit money or goods or yields accruing therefrom, criminal responsibility shall be investigated according to law; if no crime is constituted, a discipline shall be given therefor.

### **Chapter IV Procedure for Review of Death Sentence**

#### Article 199

Death sentences must be subject to the approval of the Supreme People's Court.

#### Article 200

With respect to a case of first instance in which an intermediate people's court has passed a death sentence, if the defendant does not appeal, the sentence shall be examined by a high people's court and be reported to the Supreme People's Court for approval. If the high people's court does not agree with the death sentence thereto, it may bring the case up for trial or remand the case for a retrial.

All cases of first instance in which the high people's courts have passed death sentences and the defendants do not appeal, and all cases of second instance in which death sentences has been passed, must be reported to the Supreme People's Court for approval.

#### Article 201

A case in which the intermediate people's court has passed a death sentence with a two-year suspension of execution shall be approved by the high people's court.

## Article 202

When the Supreme People's Court reviews a case involving a death sentence or a high people's court reviews a case involving a death sentence with a suspension of execution, such review shall be carried out by a collegial panel composed of three judges.

## **Chapter V Procedure for Trial Supervision**

### Article 203

A party or his legal representative or near relative may file a petition to a people's court or people's procuratorate against a legally effective judgment or ruling, notwithstanding, the execution of the judgment or ruling may not be suspended.

### Article 204

Where a petition filed by a party or his legal representative or near relative conforms to any of the following circumstances, the people's court shall try the case again:

1. there is new evidence which is sufficient to prove that the facts ascertained in the original judgment or ruling are not true to the reality;
2. the evidences on which the crime was determined and punishment meted out are uncertain or insufficient, or the major evidences used to prove the facts of the case contradict each other;
3. the original judgment or ruling contains definite error in the application of law; or
4. the judicial personnel, when trying the case, has committed an act as embezzlement, taking bribery, abusing power for personal gains or bending the law in making the judgment.

### Article 205

The president of a people's court at any level who finds a definite error in a legally effective judgment or ruling made by the court in the ascertainment of facts or the application of law must submit the case to the judicial committee for handling.

The Supreme People's Court which finds a definite error in a legally effective judgment or ruling made by a people's court at any lower level, or a people's court at the higher level which finds a definite error in a legally effective judgment or ruling made by a people's court at any lower level, shall have the power to bring the case up for trial by itself or order the people's court at the lower level to conduct a retrial.

The Supreme People's Procuratorate which finds a definite error in a legally effective judgment or ruling of a people's court at any level, or a people's procuratorate at the higher level which finds a definite error in a legally effective judgment or ruling made by a people's court at the lower level, shall have power to lodge to the people's court at the same level a protest against the judgment or ruling pursuant to the procedure for trial supervision.

With respect to a case against which a people's procuratorate has lodged a protest, the people's court that has accepted the protest shall form a collegial panel for trial again, or if the facts in the original judgment is unclear and the evidence therein is insufficient, it may order the people's court at the lower level to conduct a retrial.

### Article 206

With respect to a case to be retried by a people's court pursuant to the procedure for trial supervision, a new collegial panel shall be formed. If the case was originally one of first instance, it shall be tried in accordance with the procedures of first instance, and the new judgment or ruling 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 ruling thus rendered shall be final.

#### Article 207

A case retried by a people's court pursuant to the procedure for trial supervision shall be settled within three months from the day on which the decision to retry the case or to bring the case up for trial itself is made, and if the time limit needs to be extended, the maximum time limit may not exceed six months.

The provisions of the preceding paragraph shall apply to the time limit for the trial of a case of protest accepted by the people's court pursuant to the procedure for trial supervision; where it is necessary to order the people's court at the lower level to try the case again, a decision thereof shall be made within one month from the day on which the protest is received, and 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 rulings shall be executed after they become legally effective.

The following judgments and rulings are legally effective:

1. judgments and rulings against which no appeal or protest has been made at the expiration of the time limit prescribed by law;
2. final judgments and rulings; and
3. judgments of death sentence approved by the Supreme People's Court and judgments of death sentence with a two-year suspension of execution approved by the high people's courts.

#### Article 209

If a people's court of first instance gives a judgment of innocence or exemption from criminal punishment to a defendant, the defendant, if still in custody, shall be released immediately after the pronouncement of the judgment.

#### Article 210

If the Supreme People's Court passes or approves a judgment of death punishment with immediate execution, the president of the Supreme People's Court shall sign and issue an order to execute the death sentence.

With respect to a criminal offender who was sentenced to death with a two-year suspension of execution, if he commits no new crime during the period of suspension and the punishment therefor shall be extenuated after the period of suspension expires, the executing organ shall submit a written recommendation to the high people's court for decision; if he commits new crime which has been ascertained and the death sentence thus should be executed, the high people's court shall submit it to the Supreme People's Court for approval.

#### Article 211

The people's court at the lower level shall execute the death sentence within seven days after receiving the order to execute from the Supreme People's Court. However, if any of the following circumstances is found, the execution shall be suspended and the circumstance shall be immediately reported to the Supreme People's Court for decision:

1. if, before the execution, it is found that the judgment may contain an error;
2. if, before the execution, the criminal offender reports or exposes major facts of the crime or renders other significantly meritorious service, and thus the death sentence may be revised; or
3. if the criminal offender is pregnant.

If the circumstance in the preceding paragraph (1) or (2) which has caused the suspension of the

death sentence has ceased to exist, the death sentence may be executed only after it has reported to the president of the Supreme People's Court to sign and issue a new order to execute the death sentence; if execution is suspended due to the circumstance in the preceding paragraph (3), it shall be reported to the Supreme People's Court to revise the sentence according to law.

#### Article 212

Before a people's court executes a death sentence, it shall notify the people's procuratorate at the same level to send personnel to supervise the execution.

Death sentences shall be executed by means of shooting or injection.

Death sentences may be executed at the execution ground or in designated places of custody.

The judicial personnel directing the execution shall verify the identity of the criminal offender, ask him if he has any last words or letters, and then deliver him to the executioner for the death sentence. If, before the execution, it is found that there may be an error, the execution shall be suspended and the matter shall be reported to the Supreme People's Court for decision.

Execution of death sentences shall be announced to the public, but shall not be held in public.

The attending court clerk shall, after the execution of a death sentence, make a written record thereon. 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.

The people's court that caused the death sentence to be executed shall, after the execution, notify the family of the criminal offender.

#### Article 213

When a criminal offender is handed over for execution of his criminal punishment, the people's court that causes the sentence to be executed shall deliver relevant legal documents to the prison or any other executing organ.

With respect to a criminal offender who is sentenced to death with a two-year suspension of execution, life imprisonment or fixed-term imprisonment, the public security organ shall hand over him to the prison for execution of his criminal punishment according to law. With respect to a criminal offender who is sentenced to fixed-term imprisonment, if the remaining length of sentence is not exceeding one year before he is handed over for execution of his criminal punishment, the detention house shall execute the punishment. With respect to a criminal offender who is sentenced to criminal detention, the public security organ shall execute the punishment.

With respect to juvenile delinquents, their criminal punishment shall be executed in the correctional centers for juvenile delinquents.

The executing organ shall take criminal offenders into custody without delay and notify their families.

With respect to a criminal offender who was sentenced to fixed-term imprisonment or criminal detention, the executing organ shall, upon the completion of the execution of his punishment, issue a certificate of completion of sentence and release to him.

#### Article 214

Under any of the following circumstances, a criminal offender who is sentenced to fixed-term imprisonment or criminal detention may be permitted to temporarily serve his sentence outside prison:

1. if the criminal offender is seriously ill and needs to be released on parole for the purpose of medical treatment; or
  2. if the criminal offender is a pregnant woman or a woman who is breast-feeding her own baby.
- A criminal offender applying to be released on parole for medical treatment who may endanger

the society or may injure or disable himself may not be released on parole for medical treatment. If a criminal offender is really seriously ill and must be released on parole for medical treatment, a hospital designated by the people's government at the provincial level shall issue a documentary certificate, and the matter shall be examined and approved according to procedures laid down by the law. If a criminal offender released on parole for medical treatment is found as not conforming to the requirements for release on parole for medical treatment or he has seriously violated a provision on release on parole for medical treatment, he must be taken back into prison without delay.

With respect to a criminal offender who was sentenced to fixed-term imprisonment or criminal detention, if he could not look after himself in daily life and if the application of serving his sentence outside prison would not endanger the society, he may be permitted to temporarily serve his sentence outside prison.

With respect to a criminal offender temporarily serving his sentence outside prison, the public security organ in the place where he lives shall execute the sentence, and the executing organ shall exercise strict control and supervision over him, and the local grassroots organization or the unit to which he belonged shall assist in such supervision.

#### Article 215

The organ which has approved the temporary service of sentence outside prison shall send a copy of its decision on the approval to the people's procuratorate. If the people's procuratorate considers the temporary service of sentence outside prison as inappropriate, it shall, within one month from the day on which the notification is received, deliver its opinion in writing to the organ which has approved the temporary service of sentence outside prison, and the latter shall, upon receiving such a written opinion from the people's procuratorate and without any delay, examine and verify again the decision it made.

#### Article 216

After the circumstance for which a criminal offender was permitted to temporarily serve his sentence outside prison has disappeared and if the length of his sentence has not yet expired, the criminal offender shall be taken back into prison without any delay.

If a criminal offender died during the period of his temporary service of sentence outside prison, the prison shall be informed thereof without any delay.

#### Article 217

With respect to a criminal offender who has been sentenced to imprisonment with a suspension of execution, the public security organ shall hand him over to the unit or grassroots organization to which he belonged for observation.

With respect to a criminal offender who is released on parole, the public security organ shall supervise him during the probation period for parole.

#### Article 218

Sentences of public surveillance or deprivation of political rights that have been imposed on criminal offenders shall be executed by the public security organ. When such a sentence has been completed, the executing organ shall notify the criminal offender himself, and announce to the masses concerned the ending of public surveillance or the restoration of his political rights.

#### Article 219

If a criminal offender being imposed a fine fails to pay the fine within the time limit, the people's court shall compel him to pay; if he has true difficulties in paying the fine due to the suffering of an unavoidable disaster, it may be ruled to reduce or exempt the fine.

#### Article 220

All sentences of confiscation of property shall, whether imposed as a supplementary punishment or an independent punishment, be executed by the people's court; and the people's court may execute such judgments jointly with the public security organ if it is necessary to do so.

#### Article 221

If a criminal offender commits a new crime during the period of serving his sentence, or if his criminal act that was unknown at the time when the judgment was made is found, the executing organ shall transfer him to the people's procuratorate for handling.

With respect to a criminal offender who was sentenced to public surveillance, criminal detention, fixed-term imprisonment or life imprisonment, if he shows true repentance or renders meritorious service during the period of serving his sentence and he shall be granted an extenuation of punishment or be released on parole according to law, the executing organ shall submit a written recommendation to the people's court for examination and ruling thereon.

#### Article 222

A people's procuratorate which considers the ruling of the people's court on extenuation of punishment or on parole as inappropriate shall, within 20 days from receiving the copy of the written ruling, submit a written recommendation for correction to the people's court. The latter shall, within one month following receipt of such a recommendation for correction, form a new collegial panel to hear the case and render a final ruling.

#### Article 223

If, during the execution of a criminal punishment, a prison or any other executing organ believes that there is an error in the judgment or the criminal offender makes a petition, the matter shall be referred to the people's procuratorate or to the people's court originally heard the case for handling.

#### Article 224

The people's procuratorate shall supervise the executing organ's activities in executing criminal punishment to see if such activities conform to the law. If it finds any law-violation activity, it shall notify the executing organ to make correction.

#### Supplementary Provisions

#### Article 225

The security department of the army shall exercise the power of investigation on criminal cases occurring within the army.

Cases in which criminal offenders commit crimes in prison shall be investigated by the prisons. The relevant provisions of this Law shall apply to the handling of criminal cases by the security department of the army and by the prisons.