PROPOSED CRIMES CODE FOR PENNSYLVANIA

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
Harrisburg, Pennsylvania
1967

The Joint State Government Commission was created by Act of 1937, July 1, P. L. 2460, as last amended 1959, December 8, P. L. 1740, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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[3] Resigned.
[4] Retired.
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FOREWORD

In 1966 the Chairman of the Joint State Government Commission issued a report to the General Assembly which contained the following statement concerning the penal laws of Pennsylvania:

"House Bill No. 2272, a proposed 'act to consolidate, amend, and revise the penal laws of the Commonwealth,' which was introduced on December 8, 1965, embodies the recommendations of the Commission developed in response to Senate Resolution No. 15, Session of 1963.

"The fact that a bill of some 190 pages dealing with a subject which is 'the keystone of effective law enforcement' could be designed and drafted within the short span of but two years is attributable to a number of factors: some adventitious and some implicit in established Commission procedures.

"In the first place, contemporary Pennsylvania penal law which is based upon the code of 1860 (Act of 1860, March 31, P. L. 382) somewhat modified and broadened by the consolidation of several crimes acts in the code of 1939 (Act of 1939, June 24, P. L. 872) was intensively reviewed by the Commission over the period 1945–1951. The Commission recommendations were embodied in bills which passed both houses of the General Assembly twice. And, since then the Commission has kept the proposed act up-to-date by the inclusion of all subsequent amendments to the Penal Code.

"Second, the American Law Institute, after some ten years of deliberation commencing in 1952, published a *Model Penal Code* in 1962, and the Pennsylvania Bar Association created a committee for the specific purpose of evaluating the applicability of the provisions of the model code to Pennsylvania law.

"Last, but not least, when proceeding to implement Senate Resolution No. 15 of the Session of 1963, the Commission succeeded in obtaining the wholehearted cooperation of the legislative members and advisors who had participated in the preparation of the codes proposed in 1947, 1949, and 1951.

"House Bill No. 2272, Printer's No. 3026, represents the culmination of the joint effort of the task force and advisors collaborating throughout 1963–1965 with the Pennsylvania Bar Association.

"In addition to streamlining the criminal law, the bill treats the whole subject from a modern point of view, discarding the obsolete

and introducing new approaches to meet present-day conditions. In House Bill No. 2272, crimes are defined and penalties are determined according to a consistent pattern. Among the more significant provisions are those setting forth general principles of liability, justification and responsibility, and the treatment of inchoate crimes. In addition, crimes are classified in broad categories which include murder, three degrees of felonies, three degrees of misdemeanors and summary offenses, with penalties appropriate to the seriousness of each class of crime.

"The Commission is in the process of preparing, for the use of the General Assembly, informative notes relating to the organization of the material contained in the proposed code, source material, and Pennsylvania annotations."

The Proposed Crimes Code will be the subject of consideration by the General Assembly at its regular session in 1967.

While this monumental task is nearing completion, the very nature of the proposal demands most critical examination. It is hoped that the text of the code will be studied in detail so that the General Assembly in its consideration of the subject may have the benefit of criticism and suggestion when the matter is before it in the regular session of 1967.

Suggestions, criticisms, and recommendations regarding the Proposed Crimes Code may be addressed to the Joint State Government Commission, Post Office Box 1361, Harrisburg, Pennsylvania, 17120.

AN ACT

To consolidate, amend, revise and reenact the penal laws of the Commonwealth.

AN ACT

To consolidate, amend, revise and reenact the penal laws of the Commonwealth.

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REPEALS

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I

PRELIMINARY PROVISIONS

SECTION 101. *Short Title.*—This act shall be known and may be cited as the "Crimes Code."

SECTION 102. *Effective Date.*—This act shall take effect the first day of January, 1968.

SECTION 103. *Offenses Committed Prior to Effective Date.*—(a) Except as provided in subsection (b) of this section, the code does not apply to offenses committed prior to its effective date and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this code were not in force. For the purposes of this section, an offense was committed prior to the effective date of the code if any of the elements of the offense occurred prior thereto.

(b) In any case pending on or after the effective date of the code, involving an offense committed prior to such date:

(1) procedural provisions of the code shall govern, insofar as they are justly applicable and their application does not introduce confusion or delay;

(2) provisions of the code according a defense or mitigation shall apply, with the consent of the defendant;

(3) the court, with the consent of the defendant, may impose sentence under the provisions of the code applicable to the offense and the offender.

Comment: *Subsection (a)*: This subsection does not change existing law. Section 104 of The Penal Code (1939, June 24, P. L. 872, as amended hereinafter referred to as "The Penal Code of 1939") (18 P. S. § 4104) provides that the act shall not apply to offenses committed before the effective date of this act. Such a provision is necessary in order to eliminate any constitutional objection, i.e., *ex post facto* legislation. Penal statutes cannot be construed to apply retroactively.

Subsection (b)(1): This subsection does not change existing law. Generally, and under existing law, a statute which relates to procedure is not considered to be *ex post facto* and may be applied to

offenses committed prior to the effective date of the statute. *Commonwealth v. Kalck*, 239 Pa. 533 (1913); *Beck v. Finnefrock, No. 2*, 72 Pa. Superior Ct. 544 (1919).

Subsection (b)(2) and (3): These clauses are new and are intended to afford a defendant who is being prosecuted for a crime committed prior to the effective date of the Code, opportunity to utilize new or different defenses authorized by the Code, and new or different sentences authorized by the Code for the offense involved.

SECTION 104. *Territorial Applicability.*—(a) Except as otherwise provided in this section, a person may be convicted under the law of this Commonwealth of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

(1) either the conduct which is an element of the offense or the result which is such an element occurs within this Commonwealth; or

(2) conduct occurring outside the Commonwealth is sufficient under the law of this Commonwealth to constitute an attempt to commit an offense within the Commonwealth; or

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

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

(5) the offense consists of the omission to perform a legal duty imposed by the law of this Commonwealth with respect to domicile, residence or a relationship to a person, thing or transaction in the Commonwealth; or

(6) the offense is based on a statute of this Commonwealth which expressly prohibits conduct outside the Commonwealth when the conduct bears a reasonable relation to a legitimate interest of this Commonwealth and the actor knows or should know that his conduct is likely to affect that interest.

(b) Subsection (a)(1) does not apply when either causing a specified result or a purpose to cause or danger of causing such a result is an element of an offense and the result occurs or is designed

or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

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

(d) When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result," within the meaning of subsection (a)(1) and if the body of a homicide victim is found within the Commonwealth, it is presumed that such result occurred within the Commonwealth.

(e) This Commonwealth includes the land and water and the air space above such land and water with respect to which the Commonwealth has legislative jurisdiction.

Comment: This section is derived from Section 1.03 of The American Law Institute, Model Penal Code, Proposed Official Draft, May 4, 1962 with Changes and Editorial Corrections, July 30, 1962 (hereinafter referred to as the Model Penal Code), and is largely declaratory of existing law. *Commonwealth ex rel. Mayernick v. Ashe,* 139 Pa. Superior Ct. 421 (1940); *Commonwealth v. Neubauer,* 142 Pa. Superior Ct. 528 (1940); *Commonwealth v. Schmunk,* 207 Pa. 544 (1904); *U.S. ex rel. Herge v. Commonwealth of Pennsylvania,* 89 F. Supp. 636 (W. D. Pa. 1950); *Commonwealth v. Heller,* 27 York Legal Record 12 (1913).

SECTION 105. *Purposes.*—The general purposes of this code are:

(1) to forbid and prevent conduct that unjustifiably inflicts or threatens substantial harm to individual or public interests;

(2) to subject to public control persons whose conduct indicates that they are disposed to commit crimes;

(3) to safeguard conduct that is without fault from condemnation as criminal;

(4) to safeguard offenders against excessive, disproportionate or arbitrary punishment;

(5) to give fair warning of the nature of the conduct declared

to constitute an offense, and of the sentences that may be imposed on conviction of an offense;

(6) to differentiate on reasonable grounds between serious and minor offenses, and to differentiate among offenders with a view to a just individualization in their treatment.

Comment: This section is derived from Section 1.02(1) and (2) of the Model Penal Code.

There is no statement of purposes in The Penal Code of 1939 (18 P. S. § 4101, *et seq.*). Many Pennsylvania acts do, however, contain a statement of purposes. For example, Section 1 of the Act of 1941, August 6, P. L. 861 (61 P. S. § 331.1), which establishes the Pennsylvania Board of Parole, sets forth the general statement of public policy concerning parole, i.e., to guide and supervise the "rehabilitation, adjustment and restoration to social and economic life and activities. . . . "

This statement of purposes is intended to show that no single purpose dominates the Code. It is intended that in the administration of the Code recognition will be given to the multiplicity of purposes and to the fact that all of such purposes may not be applicable in a given case.

SECTION 106. *Principles of Construction.*—The provisions of the code shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this code and the special purposes of the particular provision involved. The discretionary powers conferred by the code shall be exercised in accordance with the criteria stated in the code and, insofar as such criteria are not decisive, to further the general purposes stated in this code.

Comment: This section is derived from Section 1.02(3) of the Model Penal Code.

This section changes existing law. Section 1104 of The Penal Code of 1939 (18 P. S. § 5104) provides that penal acts are to be strictly "pursued." A similar provision is in the Statutory Construction Act (1937, May 28, P. L. 1019), Article IV, Section 58 (46 P. S. § 558). The legislature may change the rule of strict construction. See *Luick v. Luick*, 164 Pa. Superior Ct. 378 (1949).

There is no valid reason why penal statutes should not be reasonably construed according to the "fair import of their terms. . . . "

Such a rule is appropriate for a modern penal code which carefully defines crimes and defenses rather than leaving their definition to several centuries of common law.

It should be emphasized that the discretionary powers are to be exercised in accordance with criteria stated in the Code.

SECTION 107. *Classes of Crime.*—(a) An offense defined by this code for which a sentence of death or of imprisonment is authorized constitutes a crime. The classes of crime are:

(1) murder;
(2) felony of the first degree;
(3) felony of the second degree;
(4) felony of the third degree;
(5) misdemeanor of the first degree;
(6) misdemeanor of the second degree;
(7) misdemeanor of the third degree.

(b) A crime is a murder if it is so designated in the code or if a person convicted of criminal homicide may be sentenced to death or to a term of life imprisonment.

(c) A crime is a felony of the first degree if it is so designated in the code or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which, apart from the extended term, is not more than twenty (20) years but is in excess of ten (10) years.

(d) A crime is a felony of the second degree if it is so designated in the code or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which, apart from the extended term, is not more than ten (10) years but is in excess of seven (7) years.

(e) A crime is a felony of the third degree if it is so designated in the code or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which, apart from the extended term, is not more than seven (7) years but is in excess of five (5) years.

(f) A crime declared to be a felony, without specification of degree, is of the third degree.

(g) A crime is a misdemeanor of the first degree if it is so designated in the code or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which, apart

from the extended term, is not more than five (5) years but is in excess of one (1) year.

(h) A crime is a misdemeanor of the second degree if it is so designated in the code or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which, apart from the extended term, is not more than one (1) year but is in excess of six (6) months.

(i) A crime is a misdemeanor of the third degree if it is so designated in the code or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which, apart from the extended term, is not more than six (6) months.

(j) A crime declared to be a misdemeanor, without specification of degree, is of the second degree.

(k) An offense defined by this code constitutes a summary offense if:

(1) it is so designated in this code, in a statute other than this code, or

(2) if no other sentence than a fine, or imprisonment in default of payment of a fine, or fine and forfeiture or other civil penalty is authorized upon conviction.

A summary offense does not constitute a crime and conviction of a summary offense shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(l) Any offense declared by law to constitute a crime, without specification of the class thereof, is a misdemeanor of the first degree, if the maximum sentence does not make it a felony under this section.

(m) An offense hereafter defined by any statute of this Commonwealth other than this code shall be classified as provided in this section.

Comment: This section is derived generally from the Model Penal Code. See Section 1.04 of the Model Penal Code. However, in this Code, murder is a separate class; there are three classes of misdemeanors and the Pennsylvania "summary offense" is retained since it is well established in existing law.

This section changes existing law under which there is no general classification of crimes. Each section of The Penal Code of 1939 (18 P. S. § 4101, *et seq.*) states or fails to state whether the crime is a felony, misdemeanor or summary offense. Classification of crimes is constitutional in Pennsylvania. The separation of crimes into sum-

mary offenses, misdemeanors and felonies and the application of different rules to each class is a matter for the legislature; and the only inquiry is whether the classification is patently arbitrary and utterly lacking in rational justification. See *Commonwealth v. Giaccio,* 415 Pa. 139 (1964), rev'd on other grounds, 382 U.S. 399 (1966); *Commonwealth v. Cano,* 389 Pa. 639 (1957), cert. denied, 355 U.S. 182 (1957).

The classes of crimes established by this section may be summarized as follows: (1) where the maximum sentence that may be imposed is five years or more, the crime is a felony, and (2) where the maximum sentence is five years or less, the crime is a misdemeanor.

An offense is a summary offense when so designated by this Code or another statute.

Subsection (e) is intended to make it clear that all undesignated crimes are misdemeanors unless the maximum sentence which may be imposed is more than five years. For example, if certain conduct is designated as being a crime and the maximum sentence which may be imposed is two years, the crime is a misdemeanor unless the legislature specifically designates otherwise.

"Extended terms" are additional sentences which may be imposed when circumstances warrant. See Sections 604, 606, 701, and 702 of this Code.

The system of classifying crimes is advantageous since all aspects of sentencing can be dealt with in one article of the Code. In addition, it is intended to aid in the imposition of more uniform sentences.

SECTION 108. *All Crimes Defined by Statute; Application of General Provisions.*—(a) No conduct constitutes a crime unless it is a crime under this code or another statute of this Commonwealth.

(b) The provisions of Article 1, section 107(k) of this code are applicable to offenses defined by other statutes, unless this code otherwise provides.

(c) This section does not affect the power of a court to declare forfeitures or to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree, nor does it bar, suspend, or otherwise affect any right of liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in such civil action or matter constitutes an offense defined in this code.

Comment: This section is derived from Section 1.05 of the Model Penal Code. Subsection (c) is a combination of the Model Penal Code

provision and Section 5.10(3) of the Proposed New York Penal Law (1964).

Subsection (a) changes existing law by abolishing common law offenses. Section 1101 of The Penal Code of 1939 (18 P. S. § 5101) preserves common law offenses not specifically provided for by the act. The change is intended to eliminate uncertainty arising from undefined areas of possible criminality and to provide in one code all general criminal offenses. A code cannot truly be a "criminal code" if it leaves undefined areas of criminality; such a code would unfairly deny notice of illegality. Except for some general provisions, this Code does not apply to or include offenses in other distinct areas of the law, where an offense is defined and the penalty therefor is provided, such as the Vehicle Code, Liquor Code, etc.

Subsection (c): Existing law is generally in accord. The Penal Code of 1939 (18 P. S. § 4101, *et seq.*) does not affect the power of a court to punish for contempt or to employ any sanction in connection with the enforcement of a civil order or judgment or decree. See Section 1102 of said code (18 P. S. § 5102) which provides that the act "shall not affect any civil rights or remedies now existing by virtue of the common or statute law."

SECTION 109. *Time Limitations.*—(a) A prosecution for murder may be commenced at any time.

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

(1) a prosecution for a felony of the first degree must be commenced within six (6) years after it is committed;

(2) a prosecution for any other felony must be commenced within three (3) years after it is committed;

(3) a prosecution for a misdemeanor of the first or second degree must be commenced within two (2) years after it is committed;

(4) a prosecution for a misdemeanor of the third degree or a summary offense must be commenced within six (6) months after it is committed.

(c) If the period prescribed in subsection (b) has expired, a prosecution may nevertheless be commenced for:

(1) any offense a material element of which is either fraud or a breach of fiduciary obligation within one (1) year after discovery of the offense by an aggrieved party or by a person who has legal duty to represent an aggrieved party and who is himself not a party

to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three (3) years; and

(2) any offense committed by a public officer or employe in the course of or in connection with his office or employment at any time when the defendant is in public office or employment or within two (2) years thereafter, but in no case shall this provision extend the period of limitation otherwise applicable by more than three (3) years.

(d) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(e) A prosecution is commenced either when an indictment is found or when a warrant or summons is issued, provided that such warrant or summons is executed without unreasonable delay.

(f) The period of limitation does not run:

(1) during any time when the accused is continuously absent from the Commonwealth or has no reasonably ascertainable place of abode or work within the Commonwealth, but in no case shall this provision extend the period of limitation otherwise applicable by more than three (3) years; or

(2) during any time when a prosecution against the accused for the same conduct is pending in this Commonwealth.

Comment: This section is derived from Section 1.06 of the Model Penal Code.

Subsection (a): Under existing law there is no time limitation on the commencement of prosecutions for murder and voluntary manslaughter. Act of 1860, March 31, P. L. 427, § 77, as amended 1939, April 6, P. L. 17, § 1 (19 P. S. § 211).

Subsection (b): This subsection generally changes the time limitations under existing law. The above act of 1860, as amended, establishes a five-year limitation period for treason, arson, sodomy, buggery, robbery, burglary, perjury, counterfeiting, forgery, and uttering or publishing a bank note, check or draft knowing the same to be counterfeited or forged, and establishes a two-year limitation period for all other felonies and for all misdemeanors, except perjury. Prosecution for misdemeanors committed by officers of a corporation may be commenced within six years. Act of 1878, June 12, P. L. 196, § 6, as amended. 1945, May 16, P. L. 582, No. 283, § 1 (19 P. S. § 213).

The Act of 1877, March 23, P. L. 26, Section 1 (19 P. S. § 212) provides a five-year limitation period for forgery whether the same be a misdemeanor or felony. All summary offenses, where the act creating the offense does not specify otherwise, must be prosecuted within two years. Act of 1785, March 26, 2 Sm. L. 299, § 6, extended, 1842, July 16, P. L. 374, § 55, and 1845, Feb. 26, P. L. 69, § 1 (12 P. S. § 44).

Subsection (c)(1): There is no similar provision in existing law. Apparently the statute would not be tolled under Pennsylvania law. See *Commonwealth ex rel. Whitaker v. The Sheriff,* 3 Brewst. 394 (1869). See also *Commonwealth v. Shoener,* 216 Pa. 71 (1906), which held under the facts of the case that the statute of limitations began to run from the date of demand under a statute making it an offense to fail to pay over public moneys.

Subsection (c)(2): This subsection changes the existing limitations statute which provides that in cases of offenses by public officers, the prosecution may be commenced within two years after the officer or public employe leaves office or public employment, but in no event more than six years from the time of the commission of the offense. Act of 1860, March 31, P. L. 427, § 77, as amended 1939, April 6, P. L. 17, § 1 (19 P. S. § 211).

Subsection (d): Existing law is generally in accord. A conspiracy renewed by repetitions may be prosecuted, and indictment found, at any time within two years after commission of the last offense. *Commonwealth v. Dunie,* 172 Pa. Superior Ct. 444 (1953). The same result has been reached for continuing offenses. *Commonwealth v. Heller,* 80 Pa. Superior Ct. 366 (1923), aff'd, 277 Pa. 539 (1923). The time starts to run on the day after the commission of the offense. *Commonwealth v. Kuhn,* 200 Pa. Superior Ct. 649 (1963).

Subsection (e): Generally, under the existing limitations statute, Act of 1860, March 31, *supra,* the prosecution is commenced when a true bill is found. *Commonwealth v. Haas,* 57 Pa. 443 (1868). But see *Commonwealth v. O'Gorman,* 146 Pa. Superior Ct. 553 (1941), where it was held that a prosecution for failure to support a child born out of wedlock was commenced when the information was filed before a justice of the peace. This subsection adds to existing law the provision that the issuance of a warrant or summons commences the prosecution. The Model Penal Code provides that the issuance of a "warrant or other process" is sufficient to commence the prosecution.

Subsection (f): Under the Act of 1860, *supra,* the statute does not run against a person who was not "an inhabitant of this state, or usual resident therein, during the said respective terms for which he shall be subject and liable to prosecution"; in such case the prosecution

may be commenced "within a similar space of time, during which he shall be an inhabitant of, or usually resident within this state." It has been held that the statute does not run in favor of one who conceals himself in Pennsylvania to avoid prosecution. *Commonwealth v. Weber,* 259 Pa. 592 (1918). Existing law is generally in accord except that the three-year maximum or the extension of the limitation period is new. Existing law is in accord with Subsection (f)(2).

SECTION 110. *When Prosecution Barred by Former Prosecution for the Same Offense.*—When a prosecution is for a violation of the same provision of the statutes and is based upon the same facts as a former prosecution, it is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

(b) The former prosecution was terminated, after the indictment had been found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two cases failure to enter judgment must be for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

(1) the defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination;

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

Comment: This section is derived from Section 1.08 of the Model Penal Code.

Subsection (*a*): Existing law is in accord. In *Commonwealth v. Day,* 114 Pa. Superior Ct. 511 (1934), where the defendants were acquitted of the charge of fraudulent conversion and convicted of the charge of larceny by bailee, which conviction was set aside and a new trial ordered, the defendants could not be tried again on fraudulent conversion charges. Where a person is tried and acquitted of a crime which is a constituent of another crime, he may not be prosecuted for the greater crime. *Commonwealth v. Thatcher,* 364 Pa. 326 (1950). See also the Act of 1860, March 31, P. L. 427, Section 51 (19 P. S. § 831), which provides, *inter alia,* that if a person is tried for a misdemeanor and the same facts amount to a felony, he may not be later prosecuted for the felony.

Subsection (*b*): There apparently is no existing law on this point, which establishes the principle of *res judicata.* Such a principle applies in the civil law and this subsection makes it applicable to the criminal law as well. Any final judgment or order, including pre-trial judgments, should bar a subsequent prosecution for the same offense.

Subsection (*c*): Existing law is in accord. A former conviction of the accused bars a later prosecution of him for the same offense. See the Act of 1860, March 31, P. L. 427, Section 30 (19 P. S. § 464) which provides for the sufficiency of a plea of *autrefois* convict. In *Commonwealth v. Balles,* 163 Pa. Superior Ct. 467 (1948), the court held that the plea of *autrefois* convict applied only to the conviction followed by judgment.

Subsection (*d*): This subsection does not make any substantial change in existing law. *Commonwealth v. Kent,* 355 Pa. 146 (1946); *Commonwealth v. Davis,* 266 Pa. 245 (1920); *Commonwealth v. Friedman,* 94 Pa. Superior Ct. 491 (1928). Cf. *Commonwealth v. Baker,* 413 Pa. 105 (1964).

SECTION 111. *When Prosecution Barred by Former Prosecution for Different Offense.*—Although a prosecution is for a violation of a different provision of the statutes than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal or in a conviction as defined in section 110 and the subsequent prosecution is for:

(1) any offense of which the defendant could have been convicted on the first prosecution; or

(2) any offense for which the defendant should have been tried on the first prosecution under section 109 unless the court ordered a separate trial of the charge of such offense; or

(3) the same conduct unless (i) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or (ii) the second offense was not consummated when the former trial began.

(b) The former prosecution was terminated, after the indictment was found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

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

Comment: This section is derived from Section 1.09 of the Model Penal Code.

Under existing law, if two crimes arise out of the same facts and one does not involve the other (i.e., one is not a step to the other), then a prosecution of one has no bearing on the other and the defendant may be prosecuted for the other regardless of the outcome of the first prosecution. *Commonwealth v. Leib,* 76 Pa. Superior Ct. 413 (1921). In other words, if the offenses are distinct and separate, the outcome of a trial of the prosecution of one has no bearing on the

subsequent prosecution of the other. See *Commonwealth v. Comber,* 374 Pa. 570 (1953). This section modifies present law by specifying the circumstances under which a prosecution is barred by a previous prosecution for a different offense. The existing nebulous law of merger is abandoned.

SECTION 112. *Former Prosecution in Another Jurisdiction: When a Bar.*—When conduct constitutes an offense within the concurrent jurisdiction of this Commonwealth and of the United States or another state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this Commonwealth under the following circumstances:

(a) The first prosecution resulted in an acquittal or in a conviction as defined in section 110 and the subsequent prosecution is based on the same conduct unless:

(1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or

(2) the second offense was not consummated when the former trial began.

(b) The former prosecution was terminated, after the indictment was found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

Comment: This section is derived from Section 1.10 of the Model Penal Code.

This section changes existing law, under which, if the same act constitutes offenses against both the federal and state governments, both governments may prosecute and punish. *Abbate v. United States,* 359 U.S. 187 (1959); *Bartkus v. Illinois,* 359 U.S. 121 (1959). *Commonwealth ex rel. Garland v. Ashe,* 344 Pa. 407 (1942) (assault against federal officer); *Commonwealth v. Carter,* 187 Pa. Superior Ct. 159 (1958) (acquittal in court of one "sovereign" is no bar to prosecution by other "sovereign"). See also *Levy Motor Vehicle Operator License Case,* 194 Pa. Superior Ct. 390 (1961). There is no

logical reason why an acquittal or conviction of the same crime in another jurisdiction should not be as conclusive as within the same jurisdiction.

SECTION 113. *Former Prosecution Before Court Lacking Jurisdiction or When Fraudulently Procured by the Defendant.*—A prosecution is not a bar within the meaning of sections 110, 111, and 112 under any of the following circumstances:

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

(b) The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence which might otherwise be imposed; or

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

Comment: This section is derived from Section 1.11 of the Model Penal Code.

Subsection (a): Existing law is in accord. *Commonwealth v. Klaiman,* 46 D. & C. 585 (1942); *Commonwealth v. Adams,* 26 D. & C. 380 (1936).

Subsection (b): This subsection clarifies existing law. See *Commonwealth v. Bolton,* 64 P. L. J. 305 (1915) where the defendant had himself prosecuted and fined before a justice of the peace, but the court refused a plea of *autrefois* convict. *Commonwealth v. Kroekel,* 121 Pa. Superior Ct. 423 (1936) where the court held that a verdict of not guilty was a bar to a subsequent prosecution for the same offense even though fraud was committed upon the court and the verdict of not guilty was obtained by coercion.

Subsection (c): Existing law is in accord. *Commonwealth ex rel. Davis v. Baldi,* 181 Pa. Superior Ct. 251 (1956).

SECTION 114. *Proof Beyond a Reasonable Doubt; Burden of Proving Fact When Not an Element of an Offense; Presumptions.*—(a) No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed. This subsection does not:

(1) require the disproof of a defense unless and until there is evidence supporting such defense; or

(2) apply to any defense which the code or another statute plainly requires the defendant to prove by a preponderance of evidence.

(b) When the application of the code depends upon the finding of a fact which is not an element of an offense, unless the code otherwise provides:

(1) the burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and

(2) the fact must be proved to the satisfaction of the court or jury, as the case may be.

(c) When the code establishes a presumption with respect to any fact which is an element of an offense, it has the following consequences:

(1) when there is evidence of the facts which give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact; and

(2) when the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

(d) A presumption not established by the code or inconsistent with it has the consequences otherwise accorded it by law.

Comment: This section is derived from Section 1.12 of the Model Penal Code. The Model Penal Code reference to and definition of "affirmative defense" were deleted because of the difficulty which would occur in distinguishing between the Commonwealth's burden of showing the defendant's guilt beyond a reasonable doubt and the defendant's burden of proving his affirmative defense by a preponderance of the evidence. Such a provision would only serve to perpetuate the existing confusion.

Existing law is in a state of confusion concerning the matters covered by Subsections (a) and (b). *Commonwealth v. Sauders,* 390 Pa. 379 (1957); *Commonwealth v. Viscuso,* 82 Pa. Superior Ct. 403 (1923). It is intended by this section to clarify existing law. Under

Subsection (a) it is clear that the Commonwealth is required to disprove a defense if there is evidence supporting such defense. The burden always rests on the Commonwealth.

Existing law is generally in accord with Subsection (c). *Commonwealth v. Gibbs,* 366 Pa. 182 (1950); *Commonwealth v. Green,* 294 Pa. 573 (1929); *Commonwealth v. Stosny,* 152 Pa. Superior Ct. 236 (1943).

SECTION 115. *General Definitions.*—In this code, unless a different meaning plainly is required:

(1) "Act" or "action" means a bodily movement whether voluntary or involuntary.

(2) "Actor" includes, where relevant, a person guilty of an omission.

(3) "Acted" includes, where relevant, "omitted to act."

(4) "Administrative proceeding" has the meaning specified in section 2001 for the purposes of Articles XX, XXI, XXII, and XXIII.

(5) "Adulterated" has the meaning specified in section 1707 for the purposes of that section.

(6) "Agent" has the meaning specified in section 207 for the purposes of Article II.

(7) "Approval" has the meaning specified in section 2008 for the purposes of that section.

(8) "Article" has the meaning specified in section 1611 for the purposes of that section.

(9) "Benefit" has the meaning specified in section 2001 for the purposes of Articles XX, XXI, XXII, and XXIII.

(10) "Bodily injury" has the meaning specified in section 901 for the purposes of Articles IX, X, XI, XII, XIV, and XVI.

(11) "Bucket-shop" has the meaning specified in section 2638 for the purposes of sections 2638, 2639, 2640, and 2641.

(12) "Claim" has the meaning specified in section 2628 for the purposes of that section.

(13) "Cohabit" means to live together under the representation or appearance of being married.

(14) "Collection agency" has the meaning specified in section 2628 for the purposes of that section.

(15) "Committed person" has the meaning specified in section 1104 for the purposes of Article XI.

(16) "Conduct" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions.

(17) "Copy" has the meaning specified in section 1611 for the purposes of that section.

(18) "Corporation" has the meaning specified in section 207 for the purposes of Article II.

(19) "Credit card" has the meaning specified in section 1706 for the purposes of that section.

(20) "Creditor" has the meaning specified in section 2628 for the purposes of that section.

(21) "Crime of violence" has the meaning specified in section 2601 for the purposes of that section.

(22) "Deadly force" has the meaning specified in section 311 for the purposes of Article III.

(23) "Deadly weapon" has the meaning specified in section 901 for the purposes of Articles IX, X, XI, and XII.

(24) "Dealer" has the meaning specified in section 1609 for the purposes of that section.

(25) "Debtor" has the meaning specified in section 2628 for the purposes of that section.

(26) "Deprive" has the meaning specified in section 1601 for the purposes of Article XVI.

(27) "Desecrate" has the meaning specified in section 2409 for the purposes of that section.

(28) "Deviate sexual intercourse" has the meaning specified in section 1201 for the purposes of Articles XII and XXV.

(29) "Disapproval" has the meaning specified in section 2008 for the purposes of that section.

(30) "Divulge" has the meaning specified in section 2412 for the purposes of that section.

(31) "Dwelling" has the meaning specified in section 311 for the purposes of Article III.

(32) "Element of an offense" means (i) such conduct or (ii) such attendant circumstances or (iii) such a result of conduct as

(a) is included in the description of the forbidden conduct in the definition of the offense; or

(b) establishes the required kind of culpability; or

(c) negatives an excuse or justification for such conduct; or

(d) negatives a defense under the statute of limitations; or

(e) establishes jurisdiction or venue.

(33) "Emergency" has the meaning specified in section 2643 for the purposes of that section.

(34) "Fiduciary" includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(35) "Financial institution" has the meaning specified in section 1601 for the purposes of Article XVI.

(36) "Firearm" has the meaning specified in section 2601 for the purposes of that section.

(37) "Food order" has the meaning specified in section 2629 for the purposes of that section.

(38) "Fully automatic firearm" has the meaning specified in section 701 for the purposes of that section.

(39) "Government" has the meanings specified in sections 1601 and 2001 for the purposes of Article XVI and Articles XX, XXI, XXII, and XXIII, respectively.

(40) "Harm" has the meaning specified in section 2001 for the purposes of Articles XX, XXI, XXII, and XXIII.

(41) "High managerial agent" has the meaning specified in section 207 for the purposes of Article II.

(42) "House of prostitution" has the meaning specified in section 2502 for the purposes of that section.

(43) "Human being" has the meaning specified in section 901 for the purposes of Articles IX, X, XI, and XII.

(44) "Immovable property" has the meaning specified in section 1601 for the purposes of Article XVI.

(45) "Inmate" has the meaning specified in section 2502 for the purposes of that section.

(46) "Instrument of crime" has the meaning specified in section 506 for the purposes of that section.

(47) "Intentionally" or "with intent" means purposely.

(48) "Intoxication," "self-induced intoxication" and "pathological intoxication" have the meanings specified in section 208 for the purposes of that section.

(49) "Knowingly" has the meaning specified in section 202 and equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(50) "Material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with: (i) the harm or evil incident to conduct, sought to be prevented by the law defining the offense; or (ii) the existence of a justification or excuse for such conduct.

(51) "Mislabeled" has the meaning specified in section 1707 for the purposes of that section.

(52) "Motor vehicle" has the meaning specified in section 2615 for the purposes of that section.

(53) "Movable property" has the meaning specified in section 1601 for the purposes of Article XVI.

(54) "Negligently" has the meaning specified in section 202 and equivalent terms such as "negligence" or "with negligence" have the same meaning.

(55) "Night" has the meaning specified in section 1401 for the purposes of Article XIV.

(56) "Obtain" has the meaning specified in section 1601 for the purposes of Article XVI.

(57) "Occupied structure" has the meanings specified in section 1301 and section 1401 for the purposes of section 1301 and Article XIV, respectively.

(58) "Offensive weapon" has the meaning specified in section 507 for the purposes of that section.

(59) "Official detention" has the meaning specified in section 2211 for the purposes of that section.

(60) "Official proceeding" has the meaning specified in section 2001 for the purposes of Articles XX, XXI, XXII, and XXIII.

(61) "Omission" means a failure to act.

(62) "Party line" has the meaning specified in section 2643 for the purposes of that section.

(63) "Party official" has the meaning specified in section 2001 for the purposes of Articles XX, XXI, XXII, and XXIII.

(64) "Pecuniary benefit" has the meaning specified in section 2001 for the purposes of Articles XX, XXI, XXII, and XXIII.

(65) "Person," "he" and "actor," except as provided in sections 2412, 2601, and 2628, include any natural person and, where relevant, a corporation or an unincorporated association.

(66) "Possession" has the meaning specified in section 306(b) for the purposes of section 306(a).

(67) "Private place" has the meaning specified in section 2412 for the purposes of that section.

(68) "Property" has the meaning specified in section 1601 for the purposes of Article XVI.

(69) "Property of another" has the meaning specified in section 1601 for the purposes of Article XVI.

(70) "Public" has the meaning specified in section 2402 for the purposes of that section.

(71) "Public place" has the meaning specified in section 2502 for the purposes of that section.

(72) "Public servant" has the meaning specified in section 2001 for the purposes of Articles XX, XXI, XXII, and XXIII.

(73) "Purposely" has the meaning specified in section 202 and equivalent terms such as "with purpose," "designed" or "with design" have the same meaning.

(74) "Reasonably believes" or "reasonable belief" designates a belief which the actor is not reckless or negligent in holding.

(75) "Recklessly" has the meaning specified in section 202 and equivalent terms such as "recklessness" or "with recklessness" have the same meaning.

(76) "Representing" has the meaning specified in section 1611 for the purposes of that section.

(77) "Serious bodily injury" has the meaning specified in section 901 for the purposes of Articles III, IX, X, XI, XII, and XV.

(78) "Sexual activity" has the meaning specified in section 2502 for the purposes of that section.

(79) "Sexual contact" has the meaning specified in section 1201 for the purposes of Article XII.

(80) "Sexual intercourse" has the meaning specified in section 1201 for the purposes of Article XII.

(81) "Special influence" has the meaning specified in section 2008 for the purposes of that section.

(82) "Statement" has the meaning specified in section 2101 for the purposes of Article XXI.

(83) "Statute" includes the Constitution and a local law or ordinance of a political subdivision of the Commonwealth.

(84) "Trade secret" has the meaning specified in section 1611 for the purposes of that section.

(85) "Trailer" has the meaning specified in section 2615 for the purposes of that section.

(86) "Unlawful force" has the meaning specified in section 311 for the purposes of Article III.

(87) "Unlawfully" has the meaning specified in section 2212 for the purposes of that section.

(88) "Weapon" has the meaning specified in section 506 for the purposes of that section.

(89) "Wholesome recreation" has the meaning specified in section 2614 for the purposes of that section.

(90) "Writing" has the meaning specified in section 1701 for the purposes of that section.

Comment: In addition to defining terms used throughout the Code, this section is intended as a reference to all terms defined in the Code, many of which apply only to specific articles and are therein defined.

Section 103 of The Penal Code of 1939 (18 P. S. § 4103) defines the following words and terms: "Assignation," "Bucket-shop," "Carnal knowledge," "Day-time," "Escape," "Faith," "Machine Gun," "Magistrate," "Night-time," "Offense," "Person," and "Prostitution." Section 101 of the Statutory Construction Act (1937, May 28, P. L. 1019), Article VIII, as amended (46 P. S. § 601), defines "Convict," "Crime," "Nighttime," etc.

SECTION 116. *Severability.*—If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances shall not be affected thereby and to this end the provisions of this act are declared to be severable.

Comment: The inclusion of a severability section is necessary in view of the language of the court in *Willcox v. Penn Mutual Life Insurance Co.*, 357 Pa. 581 (1947).

ARTICLE II

CULPABILITY

SECTION 201. *Requirement of Voluntary Act; Omission as Basis of Liability; Possession as an Act.*—(a) A person is not guilty

of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

(b) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

(1) the omission is expressly made sufficient by the law defining the offense; or

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

(c) Possession is an act, within the meaning of this section, if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

Comment: This section is derived from Section 2.01 of the Model Penal Code. Generally, this section codifies existing law.

Subsection (a): Section 103 of The Penal Code of 1939 (18 P. S. § 4103) defines "Offense" as "any act or omission punishable on indictment or information or on summary conviction." There must be an act or omission in order to have a crime. *Commonwealth v. Forker,* 11 D. & C. 543 (1927). The cases apparently assume that the act must be voluntary. See *Respublica v. McCarty,* 2 Dall. 86 (1781).

Subsection (b): Various Pennsylvania statutory provisions make it a crime to fail to do something. See, e.g., Section 727 of The Penal Code of 1939 (18 P. S. § 4727) which makes it a crime to neglect to maintain a child, and also Section 649 of said act (18 P. S. § 4649) which imposes criminal liability on a minor for failure to divulge information as to where he obtained cigarettes. There is a dearth of Pennsylvania case law on this subject.

Subsection (c): There is no similar definition of "possession" under existing law. It would appear that under existing law the word is defined as a condition, rather than an act.

SECTION 202. *General Requirements of Culpability.*—(a) *Minimum Requirements of Culpability.* Except as provided in section 205, a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

(b) *Kinds of Culpability Defined.*

(1) Purposely. A person acts purposely with respect to a material element of an offense when: (i) if the element involves the

nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and (ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(2) Knowingly. A person acts knowingly with respect to a material element of an offense when: (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(3) Recklessly. A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

(4) Negligently. A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(c) *Culpability Required Unless Otherwise Provided.* When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

(d) *Prescribed Culpability Requirement Applies to All Material Elements.* When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(e) *Substitutes for Negligence, Recklessness and Knowledge.* When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts

purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

(f) *Requirement of Purpose Satisfied if Purpose Is Conditional.* When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

(g) *Requirement of Knowledge Satisfied by Knowledge of High Probability.* When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.

(h) *Requirement of Wilfulness Satisfied by Acting Knowingly.* A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(i) *Culpability as to Illegality of Conduct.* Neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense or the code so provides.

(j) *Culpability as Determinant of Grade of Offense.* When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

Comment: This section is derived from Section 2.02 of the Model Penal Code.

Section 205 referred to in Subsection (a) deals with the inapplicability of culpability requirements.

The purpose of this section is to clearly define the various mental states upon which criminal liability is to be based. Under existing law the words "wilfully" or "maliciously" are used in many cases. See, e.g., Section 713 of The Penal Code of 1939 (18 P. S. § 4713) (Maiming

by means of explosives). However, these words have no settled meaning. In some instances there is no expressed requirement concerning the existence of *mens rea.* See, e.g., The Penal Code of 1939, Section 708 (18 P. S. § 4708), making assault and battery a crime. These defects in existing law are remedied by this section which sets forth and defines the culpability requirements and eliminates the obscurity of the terms "malice" and "wilful."

"Negligently," as used in Subsection (b)(4), is intended to mean *criminal negligence.*

SECTION 203. *Causal Relationship Between Conduct and Result; Divergence Between Result Designed or Contemplated and Actual Result or Between Probable and Actual Result.*—(a) Conduct is the cause of a result when:

(1) it is an antecedent but for which the result in question would not have occurred; and

(2) the relationship between the conduct and result satisfies any additional causal requirements imposed by the code or by the law defining the offense.

(b) When purposely or knowingly causing a particular result is an element of an offense, the element is not established if the actual result is not within the purpose or the contemplation of the actor unless:

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

(2) the actual result involves the same kind of injury or harm as that designed or contemplated and is not too remote or accidental in its occurrence to have a bearing on the actor's liability or on the gravity of his offense.

(c) When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which he should be aware unless:

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

(2) the actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a bearing on the actor's liability or on the gravity of his offense.

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

Comment: This section is derived from Section 2.03 of the Model Penal Code.

Subsection (a)(1) establishes the "but-for" test of causation. Under existing law causation is established if the actor commits an act or sets off a chain of events from which in the common experience of mankind the result is natural or reasonably foreseeable. *Commonwealth v. Bolish,* 381 Pa. 500 (1955). In *Commonwealth v. Root,* 403 Pa. 571 (1961), the court held that the tort concept of proximate cause is not proper in prosecutions for criminal homicide (involuntary manslaughter); a more direct causal connection is required. If an intervening and superseding act occurs, this will break the chain of causation; but if such intervening agency was foreseeable, then the actor is not relieved from responsibility. *Commonwealth v. Almeida,* 362 Pa. 596 (1949), cert. denied, 339 U.S. 924 reh. denied, 339 U.S. 950 (1950), cert. denied, 340 U.S. 867 (1950). But see *Commonwealth v. Redline,* 391 Pa. 486 (1958). Where defendant intended to kill one person but kills another, he is criminally responsible for the result. *Commonwealth v. Breyessee,* 160 Pa. 451 (1894). Where two persons acting in concert, each inflicted a mortal wound on decedent, they both may be convicted. *Commonwealth v. Kostan,* 349 Pa. 560 (1944).

This section makes no substantial change in existing law. It is intended to codify, simplify and clarify the law of causation.

SECTION 204. *Ignorance or Mistake.*—(a) Ignorance or mistake as to a matter of fact or law is a defense if:

(1) the ignorance or mistake negatives the purpose, knowledge, belief, recklessness or negligence required to establish a material element of the offense; or

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

(b) Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the

defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and degree of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

(c) A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:

(1) the statute or other enactment defining the offense is not known to the actor and has not been published or otherwise reasonably made available prior to the conduct alleged; or

(2) he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in: (i) a statute or other enactment; (ii) a judicial decision, opinion or judgment; (iii) an administrative order or grant of permission; or (iv) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.

(d) The defendant must prove a defense arising under subsection (c) of this section by a preponderance of evidence.

Comment: This section is derived from Section 2.04 of the Model Penal Code.

Subsection (*a*): Under existing law a bona fide and reasonable belief in the existence of facts, which would render an act innocent if they did exist, is a good defense. *Commonwealth v. Bollinger,* 197 Pa. Superior Ct. 492 (1962). Where mistake of fact is not based upon reasonable grounds, it is not a defense even though the belief in its existence is bona fide; but in such a case, the belief may reduce the offense. *Commonwealth v. Miller,* 313 Pa. 567 (1934). If defendant, because of a mistake of fact, did not have the necessary *mens rea,* he is not guilty of the crime. *Commonwealth v. Wilson,* 266 Pa. 236 (1920). Generally speaking, ignorance or mistake of law is no defense. *Commonwealth v. Mittelman,* 154 Pa. Superior Ct. 572 (1944). But see *Commonwealth v. Shaffer,* 32 Pa. Superior Ct. 375 (1907). Consequently, this subsection changes existing law somewhat by extending the rule to ignorance or mistake of law and by eliminating the requirement that the ignorance or mistake be "reasonable."

Subsection (*b*): There is no similar provision in existing law. The purpose of this subsection is to prevent a defendant from being acquitted by raising the defense of ignorance or mistake, if the defend-

ant would have been guilty of another offense if the situation had been as he supposed.

Subsection (*c*): This subsection changes existing law which provides that ignorance of the law is no defense. This subsection is a limited exception to Section 202(i) which provides that knowledge of illegality is not an element of an offense.

Subsection (*d*): This is new. See Comment to Subsection (c).

SECTION 205. *When Culpability Requirements Are Inapplicable to Summary Offenses and to Offenses Defined by Other Statutes; Effect of Absolute Liability in Reducing Grade of Offense to Summary Offense.*—(a) The requirements of culpability prescribed by sections 201 and 202 do not apply to:

(1) summary offenses, unless the requirement involved is included in the definition of the offense or the court determines that its application is consistent with effective enforcement of the law defining the offense; or

(2) offenses defined by statutes other than the code, insofar as a legislative purpose to impose absolute liability for such offenses or with respect to any material element thereof plainly appears.

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

(1) when absolute liability is imposed with respect to any material element of an offense defined by a statute other than the code and a conviction is based upon such liability, the offense constitutes a summary offense; and

(2) although absolute liability is imposed by law with respect to one or more of the material elements of an offense defined by a statute other than the code, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes sufficient culpability and the classification of the offense and the sentence that may be imposed therefor upon conviction are determined by section 107 and Article VI of the code.

Comment: This section is derived from Section 2.05 of the Model Penal Code.

Section 107 of the Code and Article VI of the Code, referred to in Subsection (b)(2), provide for classes of crimes and sentencing.

Subsection (*a*): This subsection makes no change in existing

law. Whether criminal intent, under existing law, is a necessary ingredient of a statutory offense is a matter of construction, to be determined from the language of the statute and in view of its purpose and design. *Commonwealth v. Jackson,* 345 Pa. 456 (1942). Generally, no criminal intent is required for summary offenses.

Subsection (*b*): There is no similar provision in existing law. The purpose of this subsection is to "tone down" absolute or strict liability in penal law as a whole. Such liability cannot be readily defended where the offense carries a possible jail sentence.

SECTION 206. *Liability for Conduct of Another; Complicity.*— (a) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(b) A person is legally accountable for the conduct of another person when:

(1) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or

(2) he is made accountable for the conduct of such other person by the code or by the law defining the offense; or

(3) he is an accomplice of such other person in the commission of the offense.

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

(1) with the purpose of promoting or facilitating the commission of the offense, he: (i) solicits such other person to commit it; or (ii) aids or agrees or attempts to aid such other person in planning or committing it; or (iii) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or

(2) his conduct is expressly declared by law to establish his complicity.

(d) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(e) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless

such liability is inconsistent with the purpose of the provision establishing his incapacity.

(f) Unless otherwise provided by the code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(1) he is a victim of that offense; or

(2) the offense is so defined that his conduct is inevitably incident to its commission; or

(3) he terminates his complicity prior to the commission of the offense and (i) wholly deprives it of effectiveness in the commission of the offense; or (ii) gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

(g) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

Comment: This section is derived from Section 2.06 of the Model Penal Code.

The purpose of this section is to delineate the circumstances under which criminal liability may be based upon the conduct of another person. The section does not include accessories after the fact since such conduct would and should be dealt with as an interference with the course of justice. See Section 2206. Existing law provides for the punishment of principals in the second degree, accessories before the fact, accessories after the fact, and persons who "counsel, aid or abet the commission of any misdemeanor." The Penal Code of 1939, Section 1105 (18 P. S. § 5105), "Accomplices" are also covered. *Commonwealth ex rel. Butler v. Banmiller,* 190 Pa. Superior Ct. 474 (1959).

Subsections (a) and (b): Existing law is generally in accord.

Subsection (g): This subsection changes existing law. The change makes it possible that an accomplice may be prosecuted although the principal has been acquitted. It was held in *Commonwealth v. Minnich,* 250 Pa. 363 (1915) that one indicted exclusively as an accessory may not be convicted as an accessory until the guilt of the principal is first proved. See also *Commonwealth v. Ricci,* 89 D. & C. 187 (1954).

SECTION 207. *Liability of Corporations, Unincorporated Associations and Persons Acting, or Under a Duty to Act, in Their Behalf.*—(a) A corporation may be convicted of the commission of an offense if:

(1) the offense is a summary offense or the offense is defined by a statute other than the code in which a legislative purpose to impose liability on corporations plainly appears and the conduct is performed by an agent of the corporation acting in behalf of the corporation within the scope of his office or employment, except that if the law defining the offense designates the agents for whose conduct the corporation is accountable or the circumstances under which it is accountable, such provisions shall apply; or

(2) the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(3) the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment.

(b) When absolute liability is imposed for the commission of an offense, a legislative purpose to impose liability on a corporation shall be assumed, unless the contrary plainly appears.

(c) An unincorporated association may be convicted of the commission of an offense if:

(1) the offense is defined by a statute other than the code which expressly provides for the liability of such an association and the conduct is performed by an agent of the association acting in behalf of the association within the scope of his office or employment, except that if the law defining the offense designates the agents for whose conduct the association is accountable or the circumstances under which it is accountable, such provisions shall apply; or

(2) the offense consists of an omission to discharge a specific duty of affirmative performance imposed on associations by law.

(d) As used in this section:

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

(2) "Agent" means any director, officer, servant, employe or other person authorized to act in behalf of the corporation or

association and, in the case of an unincorporated association, a member of such association;

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

(e) In any prosecution of a corporation or an unincorporated association for the commission of an offense included within the terms of subsection (a)(1) or subsection (c)(1) of this section, other than an offense for which absolute liability has been imposed, it shall be a defense if the defendant proves by a preponderance of evidence that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission. This paragraph shall not apply if it is plainly inconsistent with the legislative purpose in defining the particular offense.

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

(2) Whenever a duty to act is imposed by law upon a corporation or an unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.

(3) When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the grade and the degree involved.

Comment: This section is derived from Section 2.07 of the Model Penal Code.

This section represents no radical departure from existing law and is intended to clarify existing law by spelling out the circumstances under which corporations and unincorporated associations may be criminally liable.

Generally speaking, existing law provides that a corporation may

be convicted of a crime where no *mens rea* is involved and where the penalty is one which could be made applicable to a corporation. Corporations have been prosecuted for maintaining a nuisance. *Commonwealth v. Lehigh Valley R. R.*, 165 Pa. 162 (1895). A corporation cannot be convicted of manslaughter. *Commonwealth v. Peoples Natural Gas Co.*, 102 P. L. J. 348 (1954). There apparently is no authority in Pennsylvania on the criminal responsibility of unincorporated associations.

SECTION 208. *Intoxication.*—(a) Except as provided in subsection (d) of this section, intoxication of the actor is not a defense unless it negatives an element of the offense.

(b) When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

(c) Intoxication does not, in itself, constitute mental disease within the meaning of section 401.

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

(e) Definitions. In this section unless a different meaning plainly is required:

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

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

(3) "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible.

Comment: This section is derived from Section 2.08 of the Model Penal Code.

Case law provides that voluntary intoxication is not a defense to a criminal charge except that it may reduce the crime of murder from first to second degree if it "clouds the intellect so as to deprive it of the power of deliberation or premeditation"; but it will not reduce

murder to second degree where the killing is committed in the perpetration of a robbery or burglary. *Commonwealth v. Simmons,* 361 Pa. 391 (1949), cert. denied, 338 U.S. 862, reh. denied, 338 U.S. 888 (1949). It would seem that involuntary intoxication may be a defense to criminal liability. Delirium tremens caused by intoxication may be a defense. *Commonwealth v. Crozier,* 1 Brewst. 349 (1867). This section delineates the defense.

SECTION 209. *Duress.*—(a) It is a defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

(b) The defense provided by this section is unavailable if the actor recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

(c) It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under this section. The presumption that a woman, acting in the presence of her husband, is coerced is abolished.

(d) When the conduct of the actor would otherwise be justifiable under section 302 this section does not preclude such defense.

Comment: This section is derived from Section 2.09 of the Model Penal Code.

Subsection (a): This subsection liberalizes existing law which provides that the coercion must be immediate and of such character as to induce a well-grounded fear of death or serious bodily injury. *United States v. Anthony,* 145 F. Supp. 323 (M. D. Pa. 1956). The "reasonable firmness" test is deemed more realistic than present law.

Subsection (b): There is no similar provision in existing law.

Subsection (c): This subsection changes existing law. See *Commonwealth v. Hand,* 59 Pa. Superior Ct. 286 (1915). Of course, a wife is entitled to show duress, as set forth in Subsection (a).

SECTION 210. *Military Orders.*—It is a defense that the actor, in engaging in the conduct charged to constitute an offense, does no more than execute an order of his superior in the armed services which he does not know to be unlawful.

Comment: This section is derived from Section 2.10 of the Model

Penal Code. It makes no substantial change in existing law. In *Commonwealth ex rel. Wadsworth v. Shortall,* 206 Pa. 165 (1903), the court held that where a soldier, in obedience to an order of his superior officer, commits an act, the soldier is not criminally liable therefor if the order is not expressly and clearly illegal on its face.

SECTION 211. *Consent.*—(a) *In General.* The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(b) *Consent to Bodily Injury.* When conduct is charged to constitute an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:

(1) the bodily injury consented to or threatened by the conduct consented to is not serious; or

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

(3) the consent establishes a justification for the conduct under Article III of the code.

(c) *Ineffective Consent.* Unless otherwise provided by the code or by the law defining the offense, assent does not constitute consent if:

(1) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(2) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

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

(4) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

Comment: This section is derived from Section 2.11 of the Model Penal Code.

Subsection (a): This subsection makes no substantial change in existing law. Generally speaking, under existing law consent of the victim of the crime is no defense. However, one of the elements of

many crimes is lack of consent of the victim; as to such crimes, consent naturally would be a defense. For example, one of the elements of rape is lack of consent; accordingly, consent of the woman would be a defense. *Commonwealth v. Wert,* 70 Dauph. 167 (1957).

Subsection (*b*): Generally speaking, existing law is in accord.

Subsection (*c*): Existing law is in accord. Consent to intercourse by a woman who is insane does not constitute a defense if the defendant knew she was insane. *Commonwealth v. Stephens,* 143 Pa. Superior Ct. 394 (1941). Consent obtained through fraud or deception is no defense. *Commonwealth v. Morgan,* 162 Pa. Superior Ct. 105 (1948), rev'd on other grounds, 358 Pa. 607 (1948). See also *Commonwealth v. Gregory,* 132 Pa. Superior Ct. 507 (1938).

SECTION 212. *De Minimis Infractions.*—The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

(1) was within a customary license or tolerance, neither expressly negatived by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense; or

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

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

The court shall not dismiss a prosecution under clause (3) of this section without filing a written statement of its reasons.

Comment: This section is derived from Section 2.12 of the Model Penal Code. There is no similar provision in existing law. In connection with this point, however, the provision that penal acts are to be strictly pursued [The Penal Code of 1939, § 1104 (18 P. S. § 5104)] works in favor of defendants, along similar lines. See *Commonwealth v. Glover,* 397 Pa. 543 (1959).

The purpose of this section is to remove petty infractions from the category of criminal conduct.

SECTION 213. *Entrapment.*—(a) A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting such offense by either:

(1) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(2) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

(b) Except as provided in subsection (c) of this section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried by the court in the absence of the jury.

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

Comment: This section is derived from Section 2.13 of the Model Penal Code and is generally in accord with existing law.

Existing law of entrapment is set forth in *Commonwealth v. Conway,* 196 Pa. Superior Ct. 97 (1961), where the court briefly discussed the Model Penal Code provision and concluded at page 103:

> "The defense of entrapment in Pennsylvania, as derived from our cases in the light of the other authorities just mentioned, arises only when a law enforcement officer, by employing methods of persuasion or inducement which create a substantial risk that persons not otherwise ready to commit the criminal act will do so, actually induces such a person to commit the act."

The court went on to say that the defense is available where there is a defendant not disposed to commit the crime and "police conduct likely to entrap the innocently disposed." Under Pennsylvania law, the defense is submitted to the jury when the foregoing elements are present. *Commonwealth v. Conway, supra.*

ARTICLE III

GENERAL PRINCIPLES OF JUSTIFICATION

SECTION 301. *Justification a Defense; Civil Remedies Unaffected.*—(a) In any prosecution based on conduct which is justifiable under this article, justification is a defense.

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

Comment: This section is derived from Section 3.01 of the Model Penal Code and is generally in accord with existing law.

Under existing law, justification is a defense. *Commonwealth v. Mitchell,* 181 Pa. Superior Ct. 225 (1956). (Self-defense). The defense of justification generally arises in cases of homicide and assault. In *Commonwealth v. Capalla,* 322 Pa. 200 (1936), the court stated that a killing committed to protect one's life or limb, or to save one's self from great bodily harm, or under circumstances reasonably giving rise to fear of such injuries unless one kills his assailant, is justifiable.

The purpose of Subsection (b) is to make it clear that Article III does not create privileges in the civil law. Available civil remedies are not affected. It is not intended by this subsection to cover the situation where the civil law grants a broader privilege than this article.

SECTION 302. *Justification Generally: Choice of Evils.*—(a) Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable: Provided, That,

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

(2) neither the code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(3) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

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

Comment: This section is derived from Section 3.02 of the Model Penal Code.

The Pennsylvania cases seem to hold that a person's conduct is justified if he acts on the basis of a reasonable belief and if he acts reasonably. *Commonwealth v. Mitchell,* 181 Pa. Superior Ct. 225 (1956).

This section provides statutory authority for the defense and defines it more specifically than existing law. Generally speaking, this section adopts the principle that properly conceived necessity justifies conduct which would otherwise constitute an offense. The defense is not limited to the situation where the harm or evil to be avoided is death or bodily injury.

See Comment to Section 301.

SECTION 303. *Execution of Public Duty.*—(a) Except as provided in subsection (b) of this section, conduct is justifiable when it is required or authorized by:

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

(2) the law governing the execution of legal process; or

(3) the judgment or order of a competent court or tribunal; or

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

(5) any other provision of law imposing a public duty.

(b) The other sections of this article apply to:

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

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

(c) The justification afforded by subsection (a) of this section applies:

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

(2) when the actor believes his conduct to be required or authorized to assist a public officer in the performance of his duties, notwithstanding that the officer exceeded his legal authority.

Comment: This section is derived from Section 3.03 of the Model Penal Code.

Existing law does not set forth general principles as to when the execution of a public duty justifies conduct which would otherwise be criminal. Most of the cases involve conduct of police officers. See Comment to Section 307. A constable, distraining for rent, may use

whatever force may be necessary for the purpose. *Commonwealth v. McStay,* 8 Phila. 609 (1871). On the other hand, a constable is liable where he uses more force than necessary in eviction proceedings. *Warcho v. Rogers,* 70 P. L. J. 671 (1922).

This section is intended to more clearly define and codify the circumstances under which execution of a public duty justifies otherwise criminal conduct.

SECTION 304. *Use of Force in Self-Protection.*—(a) *Use of Force Justifiable for Protection of the Person.* Subject to the provisions of this section and of section 309, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

(b) *Limitations on Justifying Necessity for Use of Force.*

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

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

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

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

(b) the actor has been unlawfully dispossessed of the property and is making a reentry or recaption justified by section 306; or

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

(2) The use of deadly force is not justifiable under this section unless the actor believes that such force is necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat; nor is it justifiable if:

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

(ii) the actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto

or by complying with a demand that he abstain from any action which he has no duty to take, except that:

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

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

(3) Except as required by subsections (b)(1) and (b)(2) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do or abstaining from any lawful action.

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

Comment: This section is derived from Section 3.04 of the Model Penal Code, and makes no substantial change in existing law. The intent of this section is to codify existing case law pertaining to "self-defense" and to cover in a single rule the law governing the use of defensive force against both attack and in crime prevention. See Section 307(e)(1).

In *Commonwealth v. Mitchell,* 181 Pa. Superior Ct. 225 (1956), the court held that if a person has a reasonable and well-grounded belief that he is actually in danger of losing his life, or of receiving great bodily harm, he is justified in defending himself regardless of whether the danger was real or apparent. In defending himself, a person cannot use excessive force. *Commonwealth v. Sacco,* 98 Pa. Superior Ct. 347 (1930). If the force used in self-defense is not excessive, but results in death, the defendant is not guilty of criminal homicide. Before using force dangerous to life in order to defend him-

self, a person must have no probable means of escape; he must "retreat to the wall." *Commonwealth v. Collazo,* 407 Pa. 494 (1962). A person is not required to retreat if he is attacked in his own home. *Commonwealth v. Fraser,* 369 Pa. 273 (1952). But where the deceased and the defendant both had a right to be in the home where the killing occurred, the ordinary rules as to self-defense are applicable. *Commonwealth v. Johnson,* 213 Pa. 432 (1906). A policeman is not required to retreat when he is not exceeding his authority. *Commonwealth v. Crowley,* 26 Pa. Superior Ct. 124 (1904). In *Commonwealth v. Sacco, supra,* the court stated that an aggressor cannot avail himself of the defense of self-defense.

Under Subsection (b)(1)(i) the actor may use force if the arresting police officer unlawfully uses or threatens deadly force. In addition, the actor may use force to resist an illegal arrest by a person not known to be a police officer.

SECTION 305. *Use of Force for the Protection of Other Persons.*—(a) Subject to the provisions of this section and of section 309, the use of force upon or toward the person of another is justifiable to protect a third person when:

(1) the actor would be justified under section 304 in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect; and

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

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

(b) Notwithstanding subsection (a) of this section:

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

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

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

Comment: This section is derived from Section 3.05 of the Model Penal Code, and makes no substantial change in existing law.

Under existing law the same rules generally apply to conduct in defense of others as apply to conduct in defense of one's self. *Commonwealth v. Russogulo,* 263 Pa. 93 (1919). See also *Commonwealth v. Paese,* 220 Pa. 371 (1908).

Generally speaking, this section justifies the actor's use of force to defend third parties, including strangers, under the same circumstances and to the same extent that he would be justified in doing so to defend himself.

SECTION 306. *Use of Force for the Protection of Property.*—(a) *Use of Force Justifiable for Protection of Property.* Subject to the provisions of this section and section 309, the use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

(1) to prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible movable property: Provided, That, such land or movable property is, or is believed by the actor to be, in his possession or in the possession of another person for whose protection he acts; or

(2) to effect an entry or reentry upon land or to retake tangible movable property: Provided, That, the actor believes that he or the person by whose authority he acts or a person from whom he or such other person derives title was unlawfully dispossessed of such land or movable property and is entitled to possession, and: Provided, further, That, (i) the force is used immediately or on fresh pursuit after such dispossession; or (ii) the actor believes that the person against whom he uses force has no claim of right to the possession of the property and, in the case of land, the circumstances, as the actor believes them to be, are of such urgency that it would be an exceptional hardship to postpone the entry or reentry until a court order is obtained.

(b) *Meaning of Possession.* For the purposes of subsection (a) of this section:

(1) a person who has parted with the custody of property to another who refuses to restore it to him is no longer in possession,

unless the property is movable and was and still is located on land in his possession;

(2) a person who has been dispossessed of land does not regain possession thereof merely by setting foot thereon;

(3) a person who has a license to use or occupy real property is deemed to be in possession thereof except against the licensor acting under claim of right.

(c) *Limitations on Justifiable Use of Force.*

(1) Request to Desist. The use of force is justifiable under this section only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor believes that: (i) such request would be useless; or (ii) it would be dangerous to himself or another person to make the request; or (iii) substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.

(2) Exclusion of Trespasser. The use of force to prevent or terminate a trespass is not justifiable under this section if the actor knows that the exclusion of the trespasser will expose him to substantial danger of serious bodily injury.

(3) Resistance of Lawful Reentry or Recaption. The use of force to prevent an entry or reentry upon land or the recaption of movable property is not justifiable under this section, although the actor believes that such reentry or recaption is unlawful, if: (i) the reentry or recaption is made by or on behalf of a person who was actually dispossessed of the property; and (ii) it is otherwise justifiable under subsection (a)(2) of this section.

(4) Use of Deadly Force. The use of deadly force is not justifiable under this section unless the actor believes that:

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

(ii) the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either:

(a) has employed or threatened deadly force against or in the presence of the actor; or

(b) the use of force other than deadly force to prevent the commission or the consummation of the crime would expose the

actor or another in his presence to substantial danger of serious bodily injury.

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

(e) *Use of Device to Protect Property.* The justification afforded by this section extends to the use of a device for the purpose of protecting property only if:

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

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

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

(f) *Use of Force to Pass Wrongful Obstructor.* The use of force to pass a person whom the actor believes to be purposely or knowingly and unjustifiably obstructing the actor from going to a place to which he may lawfully go is justifiable: Provided, That,

(1) the actor believes that the person against whom he uses force has no claim of right to obstruct the actor; and

(2) the actor is not being obstructed from entry or movement on land which he knows to be in the possession or custody of the person obstructing him, or in the possession or custody of another person by whose authority the obstructor acts, unless the circumstances, as the actor believes them to be, are of such urgency that it would not be reasonable to postpone the entry or movement on such land until a court order is obtained; and

(3) the force used is not greater than would be justifiable if the person obstructing the actor were using force against him to prevent his passage.

Comment: This section is derived from Section 3.06 of the Model Penal Code, and is intended to define more precisely the circumstances under which force may be used to protect property.

Under existing law a person may order a trespasser from his

premises, but has no right to follow him until an attack is made upon himself so as to make it necessary to kill the trespasser in self-defense. *Tiffany v. Commonwealth,* 121 Pa. 165 (1888). Apparently one may use as much force as may be necessary to eject a trespasser but is not justified in inflicting serious bodily harm. In *Commonwealth v. Pipes,* 158 Pa. 25 (1893), the court indicated that a person may use deadly force where a felony was being attempted on his property. Where the owner reasonably believes that the trespasser intended to commit a felony "by force and surprise," he may be justified in inflicting serious bodily harm. See *Commonwealth v. Duerr,* 158 Pa. Superior Ct. 484 (1946). In *Commonwealth v. Emmons,* 157 Pa. Superior Ct. 495 (1945), which involved defense of personal property, the court stated that only in extreme cases may a person inflict great bodily harm or endanger human life in protecting personal property, and that while a person may use as much force as may be necessary in defense of his property, he may not inflict great bodily harm or endanger life unless the intruder uses force. Where two persons each claim the same personal property, the fact that one takes it into his possession does not justify the other in committing an assault to prevent the taking. *Commonwealth v. Concordia,* 42 Berks 119 (1949).

This section deals with the use of force against persons to protect property. See Section 310 which deals with the use of force against property.

SECTION 307. *Use of Force in Law Enforcement.*—(a) *Use of Force Justifiable to Effect an Arrest.* Subject to the provisions of this section and of section 309, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(b) *Limitations on the Use of Force.*

(1) The use of force is not justifiable under this section unless: (i) the actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and (ii) when the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

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

(i) the arrest is for a felony; and

(ii) the person effecting the arrest is authorized to act as a

peace officer or is assisting a person whom he believes to be authorized to act as a peace officer; and

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

(iv) the actor believes that:

(a) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or

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

(c) *Use of Force to Prevent Escape from Custody.* The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

(d) *Use of Force by Private Person Assisting an Unlawful Arrest.*

(1) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful: Provided, That, he does not believe the arrest is unlawful.

(2) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful: Provided, That, (i) he believes the arrest is lawful; and (ii) the arrest would be lawful if the facts were as he believes them to be.

(e) *Use of Force to Prevent Suicide or the Commission of a Crime.*

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

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

(ii) the use of deadly force is not in any event justifiable under this subsection unless:

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

(b) the actor believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.

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

Comment: This section is derived from Section 3.07 of the Model Penal Code.

Under case law a policeman is justified in committing an assault when making a lawful arrest, provided the force used is reasonable. *Commonwealth v. Jayne* 11 Pa. Superior Ct. 459 (1899). In *Commonwealth v. Sadowsky,* 80 Pa. Superior Ct. 496 (1923), the court held that a bystander who is asked and assists a police officer is not guilty of assault and battery for acts committed while assisting the officer, even though the officer has no authority. A police officer is not justified in killing a fleeing person unless the person has in fact committed a felony. *Commonwealth v. Duerr,* 158 Pa. Superior Ct. 484 (1946). An officer may not kill a person who has committed a misdemeanor and is fleeing from arrest. *Commonwealth v. Loughhead,* 218 Pa. 429 (1907).

This section is intended to overrule *Commonwealth v. Duerr, supra* and to establish rational guidelines to govern use of force in law enforcement.

Under Subsection (a) the justification is based upon the actor's belief in the necessity for the use of such force to effect a lawful arrest. The force is justified even though the arrest is illegal, if the actor believes the arrest is legal. See, however, Section 309(a).

Subsection (c) is intended to make it clear that a police officer or other authorized person has no greater right to use force to prevent the escape of a person in custody than in making the arrest initially, except in cases of escape from a penal institution.

SECTION 308. *Use of Force by Persons with Special Responsibility for Care, Discipline or Safety of Others.*—The use of force upon or toward the person of another is justifiable if:

(1) the actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian or other responsible person and: (i) the force is used for the purpose of safeguarding or promoting the welfare of the minor, including the preventing or punishment of his misconduct; and (ii) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress or gross degradation; or

(2) the actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and: (i) the actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and (ii) the degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under subsection (1)(ii) of this section; or

(3) the actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person; and: (i) the force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his misconduct, or, when such incompetent person is in a hospital or other institution for his care and custody, for the maintenance of reasonable discipline in such institution, and (ii) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme or unnecessary pain, mental distress, or humiliation; or

(4) the actor is a doctor or other therapist or a person assisting him at his direction; and: (i) the force is used for the purpose of

administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and (ii) the treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent or guardian or other person legally competent to consent in his behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent; or

(5) the actor is a warden or other authorized official of a correctional institution; and: (i) he believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution, unless his belief in the lawfulness of the rule or procedure sought to be enforced is erroneous and his error is due to ignorance or mistake as to the provisions of the code, any other provision of the criminal law or the law governing the administration of the institution; and (ii) the nature or degree of force used is not forbidden by law; and (iii) if deadly force is used, its use is otherwise justifiable under this article; or

(6) the actor is a person responsible for the safety of a vessel or an aircraft or a person acting at his direction; and: (i) he believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order, unless his belief in the lawfulness of the order is erroneous and his error is due to ignorance or mistake as to the law defining his authority; and (ii) if deadly force is used, its use is otherwise justifiable under this article; or

(7) the actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train or other carrier or in a place where others are assembled; and: (i) he believes that the force used is necessary for such purpose; and (ii) the force used is not designed to cause death, or known to create a substantial risk of causing death, bodily injury, or extreme mental distress.

Comment: This section is derived from Section 3.08 of the Model Penal Code and makes no substantial change in existing law.

A parent may inflict corporal punishment on his child, provided the same is not excessive and unreasonable under the circumstances. *Commonwealth v. Gelet,* 65 Montg. 250, 63 York 141 (1948). A

teacher may inflict reasonable corporal punishment upon a student. *Commonwealth v. Yalk,* 30 Luz. L. Reg. 173 (1934). It would seem that a guardian of an incompetent may use reasonable force upon the incompetent. Where the patient consents to the treatment, a doctor is not liable to the patient. *Smith v. Yohe,* 412 Pa. 94 (1963). While there is apparently no specific Pennsylvania authority, it would seem that officials of correctional institutions may use reasonable force to enforce the lawful rules of the institution. See *Commonwealth ex rel. Forsythe v. Prasse,* 79 Dauph. 184 (1962).

SECTION 309. *Mistake of Law as to Unlawfulness of Force or Legality of Arrest; Reckless or Negligent Use of Otherwise Justifiable Force; Reckless or Negligent Injury or Risk of Injury to Innocent Persons.*— (a) The justification afforded by sections 304 to 307, inclusive, is unavailable when:

(1) the actor's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

(2) his error is due to ignorance or mistake as to the provisions of the code, any other provision of the criminal law or the law governing the legality of an arrest or search.

(b) When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under sections 303 to 308 but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of his use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(c) When the actor is justified under sections 303 to 308 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

Comment: This section is derived from Section 3.09 of the Model Penal Code.

Generally, there is no similar statutory law in Pennsylvania. But

see *Commonwealth v. Milkovits,* 28 Leh. L. J. 412 (1959), where the court held that an assault is not justified regardless of whether the arrest is lawful or unlawful.

Subsection (a) makes it clear that ignorance or mistake of law, as set forth therein, precludes the defense of justification. Mistake of fact does not preclude the defense.

Subsection (b) precludes the justification where the actor has acted recklessly or negligently.

SECTION 310. *Justification in Property Crimes.*—Conduct involving the appropriation, seizure or destruction of, damage to, intrusion on or interference with property is justifiable under circumstances which would establish a defense of privilege in a civil action based thereon, unless:

(1) the code or the law defining the offense deals with the specific situation involved; or

(2) a legislative purpose to exclude the justification claimed otherwise plainly appears.

Comment: This section is derived from Section 3.10 of the Model Penal Code.

Generally, there is no similar statutory law in Pennsylvania. But see *Gottesfeld v. Mechanics and Traders Insurance Co.,* 196 Pa. Superior Ct. 109 (1961) where the court, in defining a conversion, stated that it must be "without lawful justification."

This section does not attempt to spell out the governing factors; it is intended that the applicable rules, in general, be based upon the privileges defined in the law of torts and property.

SECTION 311. *Definitions.*—In this article, unless a different meaning plainly is required:

(1) "Unlawful force" means force, including confinement, which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence, or mental capacity; duress; youth; or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily injury.

(2) "Deadly force" means force which the actor uses with the

purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.

(3) "Dwelling" means any building or structure though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging.

Comment: This section is derived from Section 3.11 of the Model Penal Code, and is intended to more explicitly define these significant terms.

A trailer is a dwelling house. *Palumbo Appeal,* 166 Pa. Superior Ct. 557 (1950). In considering the plea of self-defense and the duty to retreat, the court has stated that there is no duty to retreat where one is assaulted in his "dwelling or home." *Commonwealth v. Fraser,* 369 Pa. 273 (1952). The court in the Fraser case applied the rule to an apartment. There has been no general definition of "dwelling house." The Pennsylvania cases apparently do not define terms such as "unlawful force" or "deadly force." The terms "excessive" or "unavoidable" force have been used. *Commonwealth v. Yalk,* 30 Luz. L. Reg. 173 (1930). However, as indicated, none of the terms used by the Pennsylvania courts have been defined. It seems that whether the force is "excessive," "unreasonable," or "unlawful" depends on the facts and circumstances of the case.

ARTICLE IV

RESPONSIBILITY

SECTION 401. *Mental Disease or Defect.*—(a) A person is not criminally responsible for conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity:

(1) to know or to appreciate the wrongfulness of his conduct; or

(2) to conform his conduct to the requirements of law.

(b) As used in this section, the terms "mental disease or

defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Comment: This section is derived from Section 60.05 of the Proposed New York Penal Law (1964), and is not radically different from "M'Naghten" but is intended to update the test.

There is no existing statutory authority defining the defense of insanity. Pennsylvania courts have adopted the ancient "M'Naghten Rule," which has been challenged by many as being out of step with modern psychiatric concepts. See *Commonwealth v. Woodhouse,* 401 Pa. 242 (1960), where the rule is defined as follows:

> "A person is not responsible for criminal conduct if at the time of such conduct he was laboring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong."

The New York Commission was of the opinion that a more enlightened standard was needed and, accordingly, proposed a section similar to that presented in the Model Penal Code, Section 4.01.

"With New York's switch, there are now five American jurisdictions which have embraced the new, legally sound, psychiatrically acceptable, M'Naghten test: California, Wisconsin, Missouri, Tenth Circuit, and now New York.[127]" See Mueller & Wall, *Criminal Law,* 1965 Ann. Survey Am. L. 90. See also Second Circuit decision, *United States v. Freeman,* 357 F. (2d) 606 (1966) and Third Circuit, *United States v. Currens,* 290 F. (2d) 751 (1961).

Subsection (b) excludes the psychopath. Something more than repeated criminal behavior must be shown. This section should eliminate the existing situation where the defendant's psychiatrist is asked a series of questions and then is asked if the defendant knew right from wrong. If the answer is "Yes," then all of the previous, most pertinent testimony is stricken.

SECTION 402. *Mental Disease or Defect Excluding Responsibility Is Defense; Requirement of Notice; Form of Verdict and Judgment When Finding of Irresponsibility Is Made.*—(a) Mental disease or defect excluding responsibility is a defense.

(b) Evidence of mental disease or defect excluding responsibility is not admissible unless the defendant files a written notice of his purpose to rely on such defense prior to trial or at such later time as the court may for good cause permit.

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

Comment: This section is derived from Section 4.03 of the Model Penal Code.

Subsection (a): Existing law is in accord if the M'Naghten test is met. If the defendant presents credible evidence of insanity, then the Commonwealth must prove his sanity.

Subsection (b): There is no similar provision in existing law or procedure. The purpose of this provision is to afford the prosecution a chance to evaluate and prepare for the defense and to arrange for an examination of the defendant. See Section 404.

Subsection (c): Existing law is in accord. Act of 1860, March 31, P. L. 427, § 66, as amended (19 P. S. § 1351). If the defendant is acquitted he is not released but is incarcerated for treatment. See Section 407(a).

But see Section 413 of the Mental Health & Mental Retardation Act of 1966 (October 20, Act No. 6, Special Session No. 3) which provides for the commitment of a person acquitted of crime because of insanity.

SECTION 403. *Mental Disease or Defect Excluding Fitness to Proceed.*—No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures.

Comment: This section is derived from Section 4.04 of the Model Penal Code.

Existing law is basically in accord but the test differs. See *Commonwealth v. Moon,* 383 Pa. 18 (1955), where the court stated that the test was whether the defendant's mental illness so lessened the defendant's "capacity to use his customary self-control, judgment and discretion as to render it necessary or advisable for him to be under care." See Sections 407 and 408 of the Mental Health & Mental Retardation Act of 1966 (October 20, Act No. 6, Special Session No. 3).

SECTION 404. *Psychiatric Examination of Defendant with Respect to Mental Disease or Defect.*—(a) Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness

to proceed, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist to examine and report upon the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding sixty (60) days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In such examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

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

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

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) when a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged; and

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

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

The report of the examination shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

Comment: This section is derived from Section 4.05 of the Model Penal Code.

This section provides the examination methods and procedure

which are to be used and the contents of the report. An extremely important provision is the authority granted to the court, in Subsection (a), to order the defendant committed for sixty (60) days in order to be examined and to permit defendant's psychiatrist to participate in the examination.

SECTION 405. *Determination of Fitness to Proceed; Effect of Finding of Unfitness; Proceedings if Fitness Is Regained.*—(a) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 404, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(b) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, and the court shall commit him to the custody of the Commissioner of Mental Health to be placed in an appropriate institution of the Department of Public Welfare for so long as such unfitness shall endure. When the court, on its own motion or upon the application of the Commissioner of Mental Health or the prosecuting attorney, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant to be committed to an appropriate institution of the Department of Public Welfare.

(c) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

Comment: This section is derived from Section 4.06 of the Model Penal Code.

Under existing law, if a person charged with a crime appears to be mentally ill and in need of care in a mental facility, procedure is provided therefor in the Mental Health & Mental Retardation Act of 1966 (October 20, Act No. 6, Special Session No. 3). See also *Commonwealth v. Gossard,* 385 Pa. 312 (1956) (appointment of sanity commission by court was held to be discretionary).

SECTION 406. *Determination of Irresponsibility on Basis of Report; Access to Defendant by Psychiatrist of His Own Choice; Form of Expert Testimony When Issue of Responsibility Is Tried.*— (a) If the report filed pursuant to section 404 finds that the defendant at the time of the criminal conduct charged suffered from a mental disease or defect which substantially impaired his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law, and the court, after a hearing if a hearing is requested by the prosecuting attorney or the defendant, is satisfied that such impairment was sufficient to exclude responsibility, the court on motion of the defendant shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

(b) When, notwithstanding the report filed pursuant to section 404, the defendant wishes to be examined by a qualified psychiatrist or other expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purposes of such examination.

(c) Upon the trial, the psychiatrists who reported pursuant to section 404 may be called as witnesses by the prosecution, the defendant or the court. If the issue is being tried before a jury, the jury may be informed that the psychiatrists were designated by the court. If called by the court, the witness shall be subject to cross-examination by the prosecution and by the defendant. Both the prosecution and the defendant may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by, another witness.

(d) When a psychiatrist or other expert who has examined the defendant testifies concerning his mental condition, he shall be permitted to make a statement as to the nature of his examination,

his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged and his opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law or to have a particular state of mind which is an element of the offense charged was impaired as a result of mental disease or defect at that time. He shall be permitted to make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

Comment: This section is derived from Section 4.07 of the Model Penal Code.

Subsection (a) is intended to serve to eliminate trials in cases where the defendant is suffering from an extreme mental disease which clearly excludes criminal responsibility.

Subsection (b) is intended to guarantee to the defendant the right to obtain his own expert.

The last sentence of Subsection (c) prevents an opinion by an expert who has not examined the defendant.

SECTION 407. *Legal Effect of Acquittal on the Ground of Mental Disease or Defect Excluding Responsibility; Commitment; Release or Discharge.*—(a) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order him to be committed to the custody of the Commissioner of Mental Health to be placed in an appropriate institution for custody, care and treatment.

(b) If the Commissioner of Mental Health is of the view that a person committed to his custody, pursuant to subsection (a) of this section, may be discharged or released on condition without danger to himself or to others, he shall make application for the discharge or release of such person in a report to the court by which such person was committed and shall transmit a copy of such application and report to the prosecuting attorney of the county from which the defendant was committed. The court shall thereupon appoint at least two qualified psychiatrists to examine such person and to report within sixty (60) days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate such examination and the proceedings thereon, the

court may cause such person to be confined in any institution located near the place where the court sits, which may hereafter be designated by the Commissioner of Mental Health as suitable for the temporary detention of irresponsible persons.

(c) If the court is satisfied by the report filed pursuant to subsection (b) of this section and such testimony of the reporting psychiatrists as the court deems necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the committed person to prove that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall thereupon be discharged or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the Commissioner of Mental Health, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(d) If, within five (5) years after the conditional release of a committed person, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of such person or for the safety of others his conditional release should be revoked, the court shall forthwith order him to be recommitted to the custody of the Commissioner of Mental Health, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(e) A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the Commissioner of Mental Health. However, no such application by a committed person need be considered until he has been confined for a period of not less than one (1) year from the date of the order of commitment, and if the determination of the court be adverse to the application, such person shall not be permitted to file a further application until two (2) years have elapsed from the date of any preceding hearing on an application for his release or discharge.

Comment: This section is derived from Section 4.08 of the Model Penal Code.

This section provides for the mandatory commitment of a defendant who has been acquitted on the grounds of insanity and makes dangerousness the basis for continued custody. Both of these provisions provide the public with maximum protection.

Under Subsection (c) if the defendant who has been committed seeks to be discharged or released, the burden is upon him to prove that he may safely be discharged or released. Since such a proceeding is a civil proceeding, the burden may be put upon him.

SECTION 408. *Statements for Purposes of Examination or Treatment Inadmissible Except on Issue of Mental Condition.*—A statement made by a person subjected to psychiatric examination or treatment pursuant to section 404, 405 or 407 for the purposes of such examination or treatment shall not be admissible in evidence against him in any criminal proceeding on any issue other than that of his mental condition but it shall be admissible upon that issue, whether or not it would otherwise be deemed a privileged communication.

Comment: This section is derived from Section 4.09 of the Model Penal Code.

Under existing law the doctor-patient privilege applies only to civil cases. The Act of 1907, June 7, P. L. 462, Section 1 (28 P. S. § 328) provides:

> "No person authorized to practice physics or surgery shall be allowed, in any civil case, to disclose any information which he acquired in attending the patient in a professional capacity, and which was necessary to enable him to act in that capacity, which shall tend to blacken the character of the patient, without consent of said patient, except in civil cases, brought by such patient, for damages on account of personal injuries."

This section permits statements of the defendant to be admitted in evidence, but only on the issue of the defendant's mental condition.

ARTICLE V

INCHOATE CRIMES

SECTION 501. *Criminal Attempt.*—(a) *Definition of Attempt.* A person is guilty of an attempt to commit a crime, if acting with

the kind of culpability otherwise required for commission of the crime, he:

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

(2) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or

(3) purposely does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(b) *Conduct Which May Be Held Substantial Step Under Subsection (a)(3).* Conduct shall not be held to constitute a substantial step under subsection (a)(3) of this section unless it is strongly corroborative of the actor's criminal purpose. Without negativing the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purposes, shall not be held insufficient as a matter of law:

(1) lying in wait, searching for or following the contemplated victim of the crime;

(2) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(3) reconnoitering the place contemplated for the commission of the crime;

(4) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(5) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;

(6) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(7) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(c) *Conduct Designed to Aid Another in Commission of a Crime.* A person who engages in conduct designed to aid another to commit a crime which would establish his complicity under section 206 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

(d) *Renunciation of Criminal Purpose.* When the actor's conduct would otherwise constitute an attempt under subsection (a)(2) or (a)(3) of this section, it is a defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this article, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

Comment: This section is derived from Section 5.01 of the Model Penal Code.

Section 1107 of The Penal Code of 1939 (18 P. S. § 5107) provides generally for the conviction of persons found guilty of an attempt to commit a crime. The purpose of this proposed section is to change existing case law which does not clearly define an attempt and which does not include "preparation." *Commonwealth v. Willard,* 179 Pa. Superior Ct. 369 (1955).

Under this section the actor must act purposely. Subsection (a)(1) makes it clear that "impossibility" is no defense. However, the result intended by the actor must constitute a crime.

Subsection (d) changes existing law by making renunciation of criminal purpose a defense. See *Commonwealth v. Eagan,* 190 Pa. 10 (1899). Such a rule is deemed desirable since it would tend to reduce the risk of commission of the actual crime.

SECTION 502. *Criminal Solicitation.*—(a) *Definition of Solici-*

tation. A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission.

(b) *Renunciation of Criminal Purpose.* It is a defense that the actor, after soliciting another person to commit a crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

Comment: This section is derived from Section 5.02 of the Model Penal Code.

This section is intended to cover solicitation to commit any crime. It would also apply to the situation where the actor by a message solicits another to commit a crime even though the message is not delivered.

Under Subsection (a) solicitation of an attempt to commit a crime is made a crime. Such a provision is necessary to cover the situation where the actor solicits a person to commit a crime which cannot be consummated because of legal impossibility.

There is no existing general statutory provision covering solicitation. There are, however, some specific solicitation statutes. See, e.g., Section 502 of The Penal Code of 1939 (18 P. S. § 4502) which makes it a crime to solicit to commit sodomy.

SECTION 503. *Criminal Conspiracy.*—(a) *Definition of Conspiracy.* A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

(b) *Scope of Conspiratorial Relationship.* If a person guilty of conspiracy, as defined by subsection (a) of this section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is

guilty of conspiring with such other person or persons, to commit such crime whether or not he knows their identity.

(c) *Conspiracy with Multiple Criminal Objectives.* If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(d) *Joinder and Venue in Conspiracy Prosecutions.*

(1) Subject to the provisions of clause (2) of this subsection, two or more persons charged with criminal conspiracy may be prosecuted jointly if: (i) they are charged with conspiring with one another; or (ii) the conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(2) In any joint prosecution under clause (1) of this subsection: (i) no defendant shall be charged with a conspiracy in any county other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired; and (ii) neither the liability of any defendant nor the admissibility against him of evidence of acts or declarations of another shall be enlarged by such joinder; and (iii) the court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence, and shall take any other proper measures to protect the fairness of the trial.

(e) *Overt Act.* No person may be convicted of conspiracy to commit a crime, other than a felony of the first or second degree, unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

(f) *Renunciation of Criminal Purpose.* It is a defense that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(g) *Duration of Conspiracy.* For purposes of section 109(d):

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

(2) such abandonment is presumed if neither the defendant

nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and

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

Comment: This section is derived from Section 5.03 of the Model Penal Code.

Section 109(d) of the Code, referred to in Subsection (g) provides, *inter alia,* in connection with the statute of limitations, that an offense is committed either when every element thereof occurs, "or if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated."

The purpose of this proposed section is to change existing conspiracy law which is inadequate and vague. Section 302 of The Penal Code of 1939 (18 P. S. § 4302) is a general conspiracy provision. It is not limited to conspiracy to commit a crime, but extends to conspiracy to "do any other dishonest, malicious, or unlawful act. . . . " The penalty is two years' imprisonment which apparently is the same whether there is a conspiracy to commit murder or to commit a traffic violation. See also Section 301 of The Penal Code of 1939 which makes it a felony to conspire to falsely charge a person with a crime, and imposes a five-year sentence therefor.

This section also changes existing law by requiring an "overt act" and by making renunciation of criminal purpose a defense. The purpose of the first change is to lessen the danger of unjust prosecutions and the purpose of the second change is to discourage the actual commission of the planned crime.

SECTION 504. *Incapacity, Irresponsibility or Immunity of Party to Solicitation or Conspiracy.*—(a) Except as provided in subsection (b) of this section, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:

(1) he or the person whom he solicits or with whom he conspires does not occupy a particular position or have a particular characteristic which is an element of such crime, if he believes that one of them does; or

(2) the person whom he solicits or with whom he conspires is

irresponsible or has an immunity to prosecution or conviction for the commission of the crime.

(b) It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under section 206(e) or section 206(f)(1) or section 206(f)(2).

Comment: This section is derived from Section 5.04 of the Model Penal Code.

Existing law, though somewhat meager, appears to be in accord. See *Commonwealth v. Parsons,* 69 Montg. 225 (1953).

SECTION 505. *Grading of Criminal Attempt, Solicitation and Conspiracy; Mitigation in Cases of Lesser Danger; Multiple Convictions Barred.*—(a) *Grading.* Except as otherwise provided in this section, attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or solicited or is an object of the conspiracy. An attempt, solicitation or conspiracy to commit a capital crime or a felony of the first degree is a felony of the second degree.

(b) *Mitigation.* If the particular conduct charged to constitute a criminal attempt, solicitation or conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither such conduct nor the actor presents a public danger warranting the grading of such offense under this section, the court may dismiss the prosecution.

(c) *Multiple Convictions.* A person may not be convicted of more than one offense defined by this article for conduct designed to commit or to culminate in the commission of the same crime.

Comment: This section is derived from Section 5.05 of the Model Penal Code.

There is no similar provision in existing law. Section 1107 of The Penal Code of 1939 (18 P. S. § 5107), which authorizes the jury to find the defendant guilty of an attempt, provides that such person "shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the indictment."

SECTION 506. *Possessing Instruments of Crime; Weapons.*—

(a) *Criminal Instruments Generally.* A person commits a misdemeanor of the first degree if he possesses any instrument of crime with purpose to employ it criminally: "Instrument of crime" means:

(1) anything specially made or specially adapted for criminal use; or

(2) anything commonly used for criminal purposes and possessed by the actor under circumstances which do not negative unlawful purpose.

(b) *Presumption of Criminal Purpose from Possession of Weapon.* If a person possesses a firearm or other weapon on or about his person, in a vehicle occupied by him, or otherwise readily available for use, it shall be presumed that he had the purpose to employ it criminally, unless:

(1) the weapon is possessed in the actor's home or place of business;

(2) the actor is licensed or otherwise authorized by law to possess such weapon; or

(3) the weapon is a type commonly used in lawful sport.

"Weapon" means anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have; the term includes a firearm which is not loaded or lacks a clip or other component to render it immediately operable, and components which can readily be assembled into a weapon.

(c) *Presumptions as to Possession of Criminal Instruments in Automobiles.* Where a weapon or other instrument of crime is found in an automobile, it shall be presumed to be in the possession of the occupant if there is but one. If there is more than one occupant, it is presumed to be in the possession of all, except under the following circumstances:

(1) where it is found upon the person of one of the occupants;

(2) where the automobile is not a stolen one and the weapon or instrument is found out of view in a glove compartment, car trunk, or other enclosed customary depository, in which case it shall be presumed to be in the possession of the occupant or occupants who own or have authority to operate the automobile;

(3) in the case of a taxicab, a weapon or instrument found in the passengers' portion of the vehicle shall be presumed to be in the

possession of all the passengers, if there are any, and, if not, in the possession of the driver.

Comment: This section is derived from Section 5.06 of the Model Penal Code.

Section 904 of The Penal Code of 1939 (18 P. S. § 4904) prohibits the possession of burglary tools and Section 416 (18 P. S. § 4416) prohibits the carrying of concealed deadly weapons on the person. See also Section 2601 hereof (Uniform Firearms Act).

This section broadens existing law by making it a crime to possess any instrument of crime with the purpose of employing it criminally.

Existing law is in accord with the exceptions to Subsection (b) (1), (2) and (3). See Uniform Firearms Act set forth in Section 2601 hereof and Comment thereto. This section is intended to place a reasonable burden of proof upon the person having possession rather than to require the Commonwealth to prove an unlawful purpose. See *Commonwealth v. Festa,* 156 Pa. Superior Ct. 329 (1944), where the court intimated that the jury may infer intent to injure another from the fact of carrying a concealed weapon.

SECTION 507. *Prohibited Offensive Weapons.*—A person commits a misdemeanor of the first degree if, except as authorized by law, he makes, repairs, sells, or otherwise deals in, uses, or possesses any offensive weapon. "Offensive weapon" means any bomb, machine gun, sawed-off shotgun, firearm specially made or specially adapted for concealment or silent discharge, any blackjack, sandbag, metal knuckles, dagger, knife, razor or cutting instrument, the blade of which is exposed in an automatic way by switch, push-button, spring mechanism, or otherwise, or other implement for the infliction of serious bodily injury which serves no common lawful purpose. It is a defense under this section for the defendant to prove by a preponderance of evidence that he possessed or dealt with the weapon solely as a curio or in a dramatic performance, or that he possessed it briefly in consequence of having found it or taken it from an aggressor, or under circumstances similarly negativing any purpose or likelihood that the weapon would be used unlawfully. The presumptions provided in section 506(c) are applicable to prosecutions under this section.

Comment: This section is derived from Section 5.07 of the Model

Penal Code. The reference to switch blade knives was included from Section 416 of The Penal Code of 1939 (18 P. S. § 4416).

See Section 2601, Uniform Firearms Act.

Section 416 of The Penal Code of 1939 (18 P. S. § 4416) prohibits the carrying of concealed deadly weapons on the person. Section 417 (18 P. S. § 4417) prohibits the carrying of bombs or explosives. Section 626 (18 P. S. § 4626) prohibits the sale of weapons and explosives to minors. Section 629 (18 P. S. § 4629) prohibits the traffic in machine guns.

This section broadens and consolidates the various existing provisions governing the dealing in or possession of offensive weapons. The requirement that the weapon be "concealed" has not been retained.

ARTICLE VI

AUTHORIZED DISPOSITION OF OFFENDERS

SECTION 601. *Fines.*—A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

(1) ten thousand dollars ($10,000), when the conviction is of a felony of the first or second degree;

(2) five thousand dollars ($5,000), when the conviction is of a felony of the third degree;

(3) one thousand dollars ($1,000), when the conviction is of a misdemeanor of the first degree;

(4) five hundred dollars ($500), when the conviction is of a misdemeanor of the second degree or a misdemeanor of the third degree;

(5) one hundred dollars ($100), when the conviction is of a summary offense, or in default of the payment of such fine and costs, imprisonment not exceeding ninety (90) days;

(6) any higher amount equal to double the pecuniary gain derived from the offense by the offender;

(7) any higher or lower amount specifically authorized by statute.

Comment: This section is derived from Section 6.03 of the Model Penal Code.

Under existing law the amount of fine which may be imposed

in any given case depends on the amount set forth in the specific section defining the offense. There is no consistency.

This section is intended to relate the amount of the fine to the gravity of the offense and to authorize fines related to the amounts of any pecuniary gain derived from the offense.

See Section 608 for the criteria to be used by the court for imposing fines.

SECTION 602. *Sentence for Murder.*—The sentence for murder shall be determined as provided in section 907.

Comment: Section 907 provides for the "split verdict." See Comment to Section 907.

SECTION 603. *Sentence of Imprisonment for Felony; Ordinary Terms.*—A person who has been convicted of a felony may be sentenced to imprisonment as follows:

(1) in the case of a felony of the first degree, for a term which shall be fixed by the court at not more than twenty (20) years;

(2) in the case of a felony of the second degree, for a term which shall be fixed by the court at not more than ten (10) years;

(3) in the case of a felony of the third degree, for a term which shall be fixed by the court at not more than seven (7) years.

No sentence shall be imposed under this section of which the minimum is longer than one-half the maximum, or, when the maximum is life imprisonment, longer than ten (10) years.

Comment: This section is derived from Alternate Section 6.06 of the Model Penal Code.

Under The Penal Code of 1939 (18 P. S. § 4101 *et seq.*) the sentence which may be imposed for a particular offense, as well as the designation of the offense as a felony, misdemeanor or summary offense, is set forth in each section. There is no consistent pattern.

This section, together with Section 107 establishing classes of crimes, simplifies and systematizes sentencing.

SECTION 604. *Sentence of Imprisonment for Felony; Extended Terms.*—In the cases designated in section 701, a person who has been convicted of a felony may be sentenced to an extended term of imprisonment, as follows:

(1) in the case of a felony of the first degree, for a term which

shall be fixed by the court the maximum of which shall be life imprisonment;

(2) in the case of a felony of the second degree, for a term the maximum of which shall be fixed by the court at not more than twenty (20) years;

(3) in the case of a felony of the third degree, for a term the maximum of which shall be fixed by the court at not more than ten (10) years.

Comment: This section is derived from Section 6.07 of the Model Penal Code.

Section 701 sets forth the criteria for sentencing for extended terms in cases of felonies.

Section 1108 of The Penal Code of 1939 (18 P. S. § 5108) provides for increased punishment for the persistent offender convicted of another or the same enumerated crime within five years after the first conviction. And, too, the section provides for increased punishment for the fourth offender. See also Section 6 of the Act of 1909, May 10, P. L. 495 (18 P. S. § 1086) providing for indeterminate sentences up to a maximum of thirty years for third convictions, and the Barr-Walker Act (1952, Jan. 8 (1951), P. L. 1851) (19 P. S. § 1166) providing for indeterminate sentences for certain sex offenses. This section, together with Section 701, broadens and systematizes existing law, which applies only to the persistent offender situation and which sets forth no criteria and requires no court findings.

SECTION 605. *Sentence of Imprisonment for Misdemeanors; Ordinary Terms.*—A person who has been convicted of a misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall be not more than five (5) years in the case of a misdemeanor of the first degree, or not more than one (1) year in the case of a misdemeanor of the second degree, or not more than six (6) months in the case of a misdemeanor of the third degree.

Comment: Under The Penal Code of 1939 (18 P. S. § 4101 *et seq.*) the sentence which may be imposed is set forth in each section defining the crime. There is no consistent pattern.

This section, together with Section 107 which establishes classes of crimes, simplifies and systematizes sentencing.

See also Section 603.

SECTION 606. *Sentence of Imprisonment for Misdemeanors; Extended Terms.*—(a) In the cases designated in section 702, a person who has been convicted of a misdemeanor may be sentenced to an extended term of imprisonment, as follows:

(1) in the case of a misdemeanor of the first degree, for a term which shall be fixed by the court, the maximum of which shall be not more than five (5) years;

(2) in the case of a misdemeanor of the second degree, for a term which shall be fixed by the court, the maximum of which shall be not more than three (3) years;

(3) in the case of a misdemeanor of the third degree, for a term which shall be fixed by the court, the maximum of which shall be not more than two (2) years.

(b) No such sentence for an extended term shall be imposed unless:

(1) the Attorney General has certified that there is an institution in the Department of Justice, or in a county, city or other appropriate political subdivision of the Commonwealth which is appropriate for the detention and correctional treatment of such misdemeanants, and that such institution is available to receive such commitments; and

(2) the Board of Parole has certified that the Board of Parole is able to visit such institution and to assume responsibility for the release of such prisoners on parole and for their parole supervision.

Comment: This section is derived from Section 6.09 of the Model Penal Code. See Comment to Section 604 for existing law on increased punishment. Existing law applies only to more serious crimes.

This section, together with Section 702 setting forth the criteria for sentence for extended terms in misdemeanor cases, broadens and systematizes existing law which applies only to the persistent offender situation and to the more serious crimes and requires no specific finding by the court.

The purpose of Subsection (b) is to assure that there is an adequate institution for, as well as adequate supervision of, the type of persons sentenced to extended terms.

SECTION 607. *Civil Commitment in Lieu of Prosecution or of Sentence.*—(a) When a person prosecuted for a felony of the third degree, or a misdemeanor is a chronic alcoholic, narcotic addict or

prostitute or person suffering from mental abnormality and the court is authorized by law to order the civil commitment of such person to a hospital or other institution for medical, psychiatric or other rehabilitative treatment, the court may order such commitment and dismiss the prosecution. The order of commitment may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

(b) The court shall not make an order under subsection (a) of this section unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

Comment: This section is derived from Section 6.13 of the Model Penal Code.

It is considered that where the defendant is a chronic alcoholic, narcotics addict or prostitute or suffers from mental abnormality (other than psychosis), civil commitment may be preferable to incarceration since the incarceration may add to the defendant's problems whereas he will be able to secure better therapy in a hospital or other institution. This section authorizes such commitment in cases where the defendant will benefit therefrom and the public will not be jeopardized.

The Act of 1945, May 15, P. L. 569, Section 1 (19 P. S. § 1161) provides for sentence of males convicted of certain crimes and defective delinquents to "a State institution."

SECTION 608. *Criteria for Imposing Fines.*—(a) The court shall not sentence a defendant only to pay a fine, when any other disposition is authorized by law, unless having regard to the nature and circumstances of the crime and to the history and character of the defendant, it is of the opinion that the fine alone suffices for protection of the public.

(b) The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation unless:

(1) the defendant has derived a pecuniary gain from the crime; or

(2) the court is of the opinion that a fine is specially adapted to deterrence of the crime involved or to the correction of the offender.

(c) The court shall not sentence a defendant to pay a fine unless:

(1) the defendant is or will be able to pay the fine; and

(2) the fine will not prevent the defendant from making restitution or reparation to the victim of the crime.

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

(e) The exercise by the court of its discretion under this section shall not be appealable.

Comment: This section is derived from Section 7.02 of the Model Penal Code. It furnishes criteria for the guidance of the sentencing judge.

Existing law does not establish criteria for the imposition of fines.

ARTICLE VII

AUTHORITY OF COURT IN SENTENCING

SECTION 701. *Criteria for Sentence of Extended Term of Imprisonment; Felonies.*—The court may sentence a person who has been convicted of a felony to an extended term of imprisonment if it finds one or more of the following grounds specified in this section. The finding of the court shall be incorporated in the record.

(1) The defendant is a persistent offender whose commitment for an extended term is necessary for protection of the public.

The court shall not make such a finding unless the defendant is over twenty-one (21) years of age and has previously been convicted of two felonies or of one felony and two misdemeanors, committed at different times when he was over eighteen (18) years of age.

(2) The defendant is a professional criminal whose commitment for an extended term is necessary for protection of the public.

The court shall not make such a finding unless the defendant is over twenty-one (21) years of age and: (i) the circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood; or (ii) the defendant has substantial income or resources not explained to be derived from a source other than criminal activity.

(3) The defendant is a dangerous, mentally abnormal person

whose commitment for an extended term is necessary for protection of the public.

The court shall not make such a finding unless the defendant has been subjected to a psychiatric examination resulting in the conclusions that his mental condition is gravely abnormal; that his criminal conduct has been characterized by a pattern of repetitive or compulsive behavior or by persistent aggressive behavior with heedless indifference to consequences; and that such condition makes him a serious danger to others.

(4) The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted.

The court shall not make such a finding unless: (i) the defendant is being sentenced for two or more felonies, or is already under sentence of imprisonment for felony, and the sentences of imprisonment involved will run concurrently; or (ii) the defendant admits in open court the commission of one or more other felonies and asks that they be taken into account when he is sentenced; and (iii) the longest sentences of imprisonment authorized for each of the defendant's crimes, including admitted crimes taken into account, if made to run consecutively would exceed in length the maximum of the extended term imposed.

(5) The defendant was armed with or used a bomb, machine gun or other fully automatic firearm in the course of committing the offense.

For the purpose of this section, "fully automatic firearm" means any firearm from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger.

Comment: This section is derived from Section 7.03 of the Model Penal Code.

See Section 604, which authorizes extended terms for felonies, and the Comment thereto.

This section, together with Section 604, broadens and systematizes existing law.

SECTION 702. *Criteria for Sentence of Extended Term of Imprisonment; Misdemeanors.*—The court may sentence a person who

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

(1) The defendant is a persistent offender whose commitment for an extended term is necessary for protection of the public.

The court shall not make such a finding unless the defendant has previously been convicted of two crimes, committed at different times when he was over eighteen (18) years of age.

(2) The defendant is a professional criminal whose commitment for an extended term is necessary for protection of the public.

The court shall not make such a finding unless: (i) the circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood; or (ii) the defendant has substantial income or resources not explained to be derived from a source other than criminal activity.

(3) The defendant is a chronic alcoholic, narcotic addict, prostitute or person of abnormal mental condition who requires rehabilitative treatment for a substantial period of time.

The court shall not make such a finding unless, with respect to the particular category to which the defendant belongs, the Attorney General has certified that there is a specialized institution or facility which is satisfactory for the rehabilitative treatment of such persons and which otherwise meets the requirements of section 606, subsection (b).

(4) The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted.

The court shall not make such a finding unless: (i) the defendant is being sentenced for a number of misdemeanors or is already under sentence of imprisonment for crime of such grades, or admits in open court the commission of one or more such crimes and asks that they be taken into account when he is sentenced; and (ii) maximum fixed sentences of imprisonment for each of the defendant's crimes, including admitted crimes taken into account, if made to run consecutively, would exceed in length the maximum period of the extended term imposed.

Comment: This section is derived from Section 7.04 of the Model Penal Code.

See Section 606, which authorizes extended terms for misdemeanors, and the Comment thereto.

This section, together with Section 606, broadens and systematizes existing law.

SECTION 703. *Former Conviction in Another Jurisdiction; Definition and Proof of Conviction; Sentence Taking into Account Admitted Crimes Bars Subsequent Conviction for Such Crimes.*—(a) For purposes of subsection (a) of section 701 or 702, a conviction of the commission of a crime in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been of a felony if sentence of imprisonment of more than five (5) years was authorized under the law of such other jurisdiction, of a misdemeanor if sentence of imprisonment of not more than five (5) years was authorized.

(b) An adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for purposes of sections 701 to 703, inclusive, although sentence or the execution thereof was suspended: Provided, That, the time to appeal has expired and that the defendant was not pardoned on the ground of innocence.

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

(d) When the defendant has asked that other crimes admitted in open court be taken into account when he is sentenced and the court has not rejected such request, the sentence shall bar the prosecution or conviction of the defendant in this Commonwealth for any such admitted crime.

Comment: This section is derived from Section 7.05 of the Model Penal Code. In Subsection (a) the classes of crime, however, conform to Section 107.

There apparently are no similar provisions in existing law.

Subsection (d) is apparently based on the British practice. The purpose of this subsection is to enable a defendant, if the court approves, to wipe the slate clean in this jurisdiction by having the court consider such other crimes when it imposes sentence.

SECTION 704. *Restitution.*—On all convictions for any crime

wherein property has been stolen, converted or otherwise unlawfully obtained, or damaged or destroyed in the commission of an offense, in addition to the punishment prescribed therefor, the defendant may be sentenced to restore such property to the owner thereof, and in default of such restitution to pay the value of the same, or so much thereof as may not be restored. The court shall have the power in adjudging restitution as aforesaid, to fix and determine the amount to be paid in accordance with the evidence presented, but no judgment of restitution shall debar the owner of his right, by appropriate legal action, to recover from the defendant the said property or the true value thereof less such payments as shall have been actually made by the defendant in compliance therewith.

Comment: This section is derived from Section 1109 of The Penal Code of 1939 (18 P. S. § 5109). The language was extended to include property "damaged or destroyed in the commission of an offense . . ."

ARTICLE VIII

OFFENSES AGAINST THE FLAG

SECTION 801. *Display of Flag at Public Meetings.*—A person is guilty of a summary offense if, being directly or indirectly in charge of any public gathering, in any place, he fails at such gathering to display publicly and visibly the flag of the United States reasonably clean and in good repair.

This section does not apply to gatherings for religious worship.

The provisions of this section do not prohibit the exhibition of torn, soiled or worn flags of the United States which have historical significance when exhibited in conjunction with the type of flag herein required.

Comment: This section is derived from Section 208 of The Penal Code of 1939 (18 P. S. § 4208). The language was simplified.

Under existing law the offense is punishable in a summary conviction by a fine not exceeding $100 for each such offense and, in default of payment of such fine and costs, imprisonment not exceeding thirty days.

SECTION 802. *Desecration of Flag.*—A person is guilty of a misdemeanor of the second degree if, in any manner, he:

(1) for exhibition or display places any marks, writing or design of any nature or any advertisement upon any flag; or

(2) exposes to public view any such marked or defiled flag; or

(3) manufactures, sells, exposes for sale, gives away, or has in his possession for any of such purposes any article which uses the flag for the purposes of advertisement, sale or trade; or

(4) publicly or privately mutilates, defaces, defiles or tramples upon, or casts contempt in any manner upon any flag.

The word "flag," as used in this section, shall include any flag, standard, color, ensign or any picture or representation of any thereof, made of any substance or represented on any substance and of any size, purporting to be a flag, standard, color or ensign of the United States or of this Commonwealth, or a picture or a representation of any thereof, upon which shall be shown the colors or any color, or any combination of colors, or either the stars or the stripes, or the stars and the stripes, in any number of either thereof, or anything which the person seeing the same, may reasonably believe the same to represent the flag, colors, standard or ensign of the United States or of this Commonwealth.

This section does not apply to any act permitted by the statutes of the United States, or by the regulations of the armed forces of the United States; nor in a case where the government of the United States has granted the use of such flag, standard, color, or ensign as a trademark; nor does it apply to any writing or instrument, or stationery for use in correspondence on any of which shall be printed, painted, or placed said flag, disconnected from any advertisement for the purpose of sale or trade; nor does it apply to any patriotic or political demonstration or decorations.

Comment: This section retains existing law as contained in Section 211 of The Penal Code of 1939 (18 P. S. § 4211) without substantial change. The language was simplified.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $200 or imprisonment not exceeding six months, or both.

SECTION 803. *Insults to National or State Flag.*—A person is guilty of a misdemeanor of the second degree if he maliciously takes down, defiles, injures, removes or in any manner damages, insults,

or destroys any American flag or the flag of this Commonwealth which is displayed anywhere.

Comment: This section retains existing law as contained in Section 210 of The Penal Code of 1939 (18 P. S. § 4210) without substantial change. The language was simplified.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

SECTION 804. *Red Flag in Public Processions or Public Gatherings.*—A person is guilty of a misdemeanor of the third degree if he carries or displays a red flag in or in connection with any public procession or public gathering.

Comment: This section retains existing law as contained in Section 209 of The Penal Code of 1939 (18 P. S. § 4209).

Under existing law the offense is a misdemeanor, punishable by a fine of $20 or imprisonment not exceeding three months, or both.

ARTICLE IX

CRIMINAL HOMICIDE

SECTION 901. *Definitions.*—In Articles IX, X, XI, and XII, unless a different meaning plainly is required:

(1) "Human being" means a person who has been born and is alive;

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

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

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

Comment: This section is derived from Section 210.0 of the Model Penal Code.

There are no definitions specifically relating to homicide in The Penal Code of 1939 (18 P. S. § 4101 *et seq.*).

SECTION 902. *Criminal Homicide.*—(a) A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being.

(b) Criminal homicide shall be classified as murder, manslaughter or negligent homicide.

Comment: This section is derived from Section 210.1 of the Model Penal Code.

In connection with Subsection (a), the terms "purposely," "knowingly," "recklessly," and "negligently" are defined in Section 202, *supra.*

Under existing law homicide is classified as murder in the first degree, murder in the second degree, voluntary manslaughter and involuntary manslaughter. The Penal Code of 1939, § 701, as amended (18 P. S. § 4701); § 703 (18 P. S. § 4703). The distinction between each of these classes is somewhat nebulous and confusing.

SECTION 903. *Murder.*—(a) A criminal homicide constitutes murder when:

(1) it is committed purposely or knowingly; or

(2) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping or felonious escape.

Comment: This section is derived from Section 210.2 of the Model Penal Code.

Under existing law first degree murder is defined as that being perpetrated by poison, lying in wait, "or by any other kind of willful, deliberate and premeditated killing . . . ;" first degree murder is also that "committed in the perpetration of, or attempting to perpetrate any arson, rape, robbery, burglary, or kidnapping." The Penal Code of 1939, § 701, as amended (18 P. S. § 4701). All other kinds of murder are murder in the second degree, *id.* The aforesaid act does not define second degree murder. See *Commonwealth v. Drago,* 88 P. L. J. 647 (1940) for definition. This section would broaden the

felony-murder rule and established a *rebuttable* presumption of guilt if the killing is committed in the course of the commission of one of the named felonies. See *Commonwealth v. Redline,* 391 Pa. 486 (1958); *Commonwealth v. Almeida,* 362 Pa. 596 (1949), cert. denied, 339 U.S. 924, reh. denied, 339 U.S. 950 (1950), cert. denied, 340 U.S. 867 (1950).

SECTION 904. *Manslaughter.*—(a) Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly; or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental and emotional disturbance, except that caused by criminal conduct of the actor, for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.

(b) Manslaughter is a felony of the second degree.

Comment: This section is derived from Section 210.3 of the Model Penal Code and is intended to make it clear that if the mental or emotional disturbance of the actor is caused by the actor's criminal conduct, the homicide is not reduced to manslaughter.

Existing law distinguishes between voluntary and involuntary manslaughter. The Penal Code of 1939, § 703 (18 P. S. § 4703). The aforesaid section does not define voluntary manslaughter, but defines involuntary manslaughter as a homicide "happening in consequence of an unlawful act, or the doing of a lawful act in an unlawful way. . . ." This section goes further than existing law by being "subjective"; i.e., the viewpoint of the actor is considered.

SECTION 905. *Negligent Homicide.*—(a) A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person.

(b) Negligent homicide is a felony of the third degree.

Comment: Subsection (a) is derived from Section 125.10 of the New York Revised Penal Law (1965). Subsection (b) is derived from Section 210.4(2) of the Model Penal Code.

Subsection (a) of this section is similar in substance to Section 210.4(1) of the Model Penal Code which provides: "Criminal

homicide constitutes negligent homicide when it is committed negligently."

The analogous crime under existing law is involuntary manslaughter. The Penal Code of 1939, § 703 (18 P. S. § 4703). See Comment to Section 904. The adoption of this section would eliminate the necessity for classifying a crime as involuntary manslaughter.

SECTION 906. *Causing or Aiding Suicide.*—(a) *Causing Suicide as Criminal Homicide.* A person may be convicted of criminal homicide for causing another to commit suicide only if he purposely causes such suicide by force, duress or deception.

(b) *Aiding or Soliciting Suicide as an Independent Offense.* A person who purposely aids or solicits another to commit suicide is guilty of a felony of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a misdemeanor of the second degree.

Comment: This section is derived from Section 210.5 of the Model Penal Code.

There is no similar provision in existing law.

A survivor of a suicide pact may be guilty under this section.

SECTION 907. *Sentence of Death for Murder; Further Proceedings to Determine Sentence.*—(a) Whoever is found guilty of murder shall suffer death in the manner provided by law or shall be sentenced to a life term of imprisonment at the discretion of the jury trying the case which shall, in the manner hereinafter provided, fix the penalty. In the trial of an indictment for murder, the court shall inform the jury that if they find the defendant guilty of murder, it will be their further duty to fix the penalty therefor after hearing such additional evidence as may be submitted upon that question. Whenever the jury shall agree upon a verdict of murder, they shall immediately return and render the same, which shall be recorded and shall not thereafter be subject to reconsideration by the jury or any member thereof. After such verdict is recorded and before the jury is permitted to separate, the court shall proceed to receive such additional evidence not previously received in the trial as may be relevant and admissible upon the question of the penalty to be imposed upon the defendant, and shall permit such argument by counsel and deliver such charge thereon as may be just and proper in the circumstances. The jury shall then retire and consider the penalty to

be imposed and render such verdict respecting it as they shall agree upon. A failure of the jury to agree upon the penalty to be imposed shall not be held to impeach, or in any way affect the validity of the verdict already recorded, and whenever the court shall be of opinion that further deliberation by the jury will not result in an agreement upon the penalty to be imposed, it may, in its discretion, discharge the jury from further consideration thereof, in which event, if no retrial of the indictment is directed, the court shall sentence the defendant to a life term of imprisonment upon the verdict theretofore rendered by the jury and recorded as aforesaid. The court shall impose the sentence so fixed as in other cases. In the case of a plea of guilty, the court shall, at its discretion, impose sentence of death or life imprisonment.

In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition and any of the aggravating or mitigating circumstances enumerated in subsections (b) and (c) of this section. Any such evidence not legally privileged, which the court deems to have probative force may be received, regardless of its admissibility under the exclusionary rules of evidence, provided that the defendant's counsel is accorded a fair opportunity to rebut any hearsay statements.

The court, in exercising its discretion as to sentence, and the jury, in determining upon its verdict, shall take into account the aggravating and mitigating circumstances enumerated in subsections (b) and (c) and any other facts that it deems relevant.

(b) *Aggravating Circumstances:*

(1) the murder was committed by a convict under sentence of imprisonment;

(2) the defendant was previously convicted of another murder or of a felony involving the use or threat of violence to the person;

(3) at the time the murder was committed the defendant also caused the death of or serious bodily injury to another person;

(4) the defendant knowingly created a great risk of death to many persons;

(5) the murder was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery,

rape or deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping;

(6) the murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from lawful custody;

(7) the murder was committed for pecuniary gain;

(8) the murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(c) *Mitigating Circumstances:*

(1) the defendant has no significant history of prior criminal activity;

(2) the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(3) the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act;

(4) the murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct;

(5) the defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor;

(6) the defendant acted under duress or under the domination of another person;

(7) at the time of the murder, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication;

(8) the youth of the defendant at the time of the crime.

Comment: This section is derived from Section 701 of The Penal Code of 1939 (18 P. S. § 4701) and Section 210.6 of the Model Penal Code.

No change is made in existing law.

Section 701 of The Penal Code of 1939, as amended 1959, December 1, P. L. 1621, Section 1 (18 P. S. § 4701), provides for the "split verdict" in capital cases. The jury makes the determination of whether the defendant should be sentenced to life imprisonment or to suffer death.

This section sets forth the specific criteria to be considered in the determination of whether the death penalty should be imposed.

ARTICLE X

ASSAULT

SECTION 1001. *Assault.*—(a) *Simple Assault.* A person is guilty of assault if he:

(1) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) negligently causes bodily injury to another with a deadly weapon; or

(3) attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a misdemeanor of the second degree unless committed in a fight or scuffle entered into by mutual consent, in which case it is a misdemeanor of the third degree.

(b) *Aggravated Assault.* A person is guilty of aggravated assault if he:

(1) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or

(2) attempts to cause or purposely, knowingly or recklessly causes serious bodily injury to a police officer making or attempting to make a lawful arrest; or

(3) attempts to cause or purposely or knowingly causes bodily injury to a police officer making or attempting to make a lawful arrest; or

(4) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.

Aggravated assault under clauses (1) and (2) is a felony of the second degree; aggravated assault under clauses (3) and (4) is a misdemeanor of the first degree.

Comment: Subsections (a) and (b)(1) and (4) are derived from Section 211.1 of the Model Penal Code. Subsection (b)(2) and (3) is derived from Section 314.1 of The Penal Code of 1939 [18 P. S. § 4314.1 (Supp.)].

Section 708 of The Penal Code of 1939 (18 P. S. § 4708) provides a penalty for assault and battery, but does not define the crime. Said code defines aggravated assault and battery, Section 709 (18 P. S. § 4709); assault with intent to kill, Section 710 (18 P. S. §

4710); assault by prisoner, Section 710.1 (18 P. S. § 4710.1); assault by life prisoner, Section 710.2 (18 P. S. § 4710.2); assault with intent to maim, Section 712 (18 P. S. § 4712); etc.

It is intended by this section to clarify existing law by establishing a statutory definition of all forms of assault and battery, and also to consolidate existing sections in order to eliminate unnecessary duplication. This section eliminates the common law distinctions between assault, battery and mayhem and classifies the crimes on the basis of the seriousness of the harm done, intended or risked. In addition, offensive contact is not included within the definition of assault. Assaults with intent to commit murder or other felonies are excluded since they are treated as attempts.

Subsection (a)(3) covers the situation when the actor intends to frighten even though he does not intend, or lacks ability, to commit a battery.

For definitions of "Human being," "Bodily injury," "Serious bodily injury," and "Deadly weapon," see Section 901.

SECTION 1002. *Assault by Prisoner.*—A person who has been sentenced to imprisonment for any term of years in any penal or correctional institution, located in this Commonwealth is guilty of a felony of the second degree if he, while undergoing imprisonment, purposely or knowingly commits an assault upon another with a deadly weapon or instrument, or by any means or force likely to produce serious bodily injury.

Comment: This section retains existing law as contained in Section 710.1 of The Penal Code of 1939 (18 P. S. § 4710.1) without substantial change.

Under existing law the offense is a felony, punishable by a fine not exceeding $5,000 or imprisonment by separate and solitary confinement at labor not exceeding ten years, or both.

"Serious bodily injury" is used in the last sentence instead of "great bodily injury" in order to conform to the definition in this Code.

SECTION 1003. *Assault by Life Prisoner.*—Every person who has been sentenced to imprisonment for life in any penal institution located in this Commonwealth, and whose sentence has not been commuted, who commits an aggravated assault with a deadly weapon or instrument upon another, or by any means or force likely

to produce serious bodily injury, is guilty of a crime, the penalty for which shall be the same as the penalty for murder.

Comment: This section is derived from Section 710.2 of The Penal Code of 1939 (18 P. S. § 4710.2). The language has been drafted to fit the format of this Code.

Under existing law the offense is a felony, punishable by death or life imprisonment, at the discretion of the jury trying the case, or by the court in the case of a guilty plea.

"Serious bodily injury" is used in the last sentence instead of "great bodily injury" in order to conform to the definition in this Code.

SECTION 1004. *Recklessly Endangering Another Person.*—A person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where a person knowingly points a firearm at or in the direction of another, whether or not the actor believed the firearm to be loaded.

Comment: This section is derived from Section 211.2 of the Model Penal Code.

There is no similar general provision in existing law. However, certain specific reckless acts are, under existing law, penalized. For example, under Section 623 of The Penal Code of 1939 (18 P. S. § 4623), it is a crime to serenade a wedding with guns or explosives, and under Section 658 (18 P. S. § 4658) it is a crime to distribute samples of medicines to children.

This section consolidates the various provisions which penalize reckless behavior.

SECTION 1005. *Terroristic Threats.*—A person is guilty of a misdemeanor of the first degree if he threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.

Comment: This section is derived from Section 211.3 of the Model Penal Code. There is no similar provision in existing law.

This section covers oral threats as well as written threats. The purpose of the section is to impose criminal liability on persons who

make threats which seriously impair personal security or public convenience. It is not intended by this section to penalize mere spur-of-the-moment threats which result from anger.

ARTICLE XI

KIDNAPPING

SECTION 1101. *Kidnapping.*—(a) A person is guilty of kidnapping if he unlawfully removes another a substantial distance under the circumstances from the place where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:

(1) to hold for ransom or reward, or as a shield or hostage; or

(2) to facilitate commission of any felony or flight thereafter; or

(3) to inflict bodily injury on or to terrorize the victim or another; or

(4) to interfere with the performance by public officials of any governmental or political function.

(b) Kidnapping is a felony of the first degree unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree. A removal or confinement is unlawful within the meaning of this section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of fourteen (14) years or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

Comment: This section is proposed instead of Section 212.1 of the Model Penal Code. The language is deemed more appropriate to cover the conduct intended to be made criminal.

Under existing law it is a crime to kidnap "with intent to extort money or any other valuable thing. . . ." The Penal Code of 1939, § 723 (18 P. S. § 4723). Section 725 of said Code (18 P. S. § 4725) makes it a crime to kidnap a child under ten years of age, with the intent to conceal or detain such child or steal anything from him. It is intended by this section to remedy the deficiencies in existing law by extending the crime of kidnapping to cover kidnapping to facilitate the commission of felonies, or to prevent testimony, etc.

The section also changes existing law by establishing an inducement for the safe return of the victim; in such case the crime is reduced to a felony of the second degree.

For definition of "Human being," "Bodily injury," "Serious bodily injury," and "Deadly weapon," see Section 901.

SECTION 1102. *Felonious Restraint.*—A person commits a misdemeanor of the first degree if he knowingly:

(1) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or

(2) holds another in a condition of involuntary servitude.

Comment: This section is derived from Section 212.2 of the Model Penal Code.

There apparently is no similar provision in existing law. The Thirteenth Amendment to the Federal Constitution and 18 U. S. C. A. 1581 *et seq.* prohibit involuntary servitude.

This section establishes a crime between kidnapping and false imprisonment. It is intended to cover restraints which do not reach the magnitude of kidnapping but are somewhat more serious than mere false imprisonment.

SECTION 1103. *False Imprisonment.*—A person commits a misdemeanor of the second degree if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.

Comment: This section is derived from Section 212.3 of the Model Penal Code.

There is no similar crime in existing law. Section 301 of The Penal Code of 1939 (18 P. S. § 4301) makes it a crime for two persons to conspire to arrest or indict another person.

It is not intended by this section to penalize every detention which might be the basis of a civil suit for false imprisonment. For example, a short detention of a suspected thief by the victim for the purpose of questioning or recovering the stolen property would not constitute a crime under this section.

SECTION 1104. *Interference with Custody.*—(a) *Custody of Children.* A person commits an offense if he knowingly or recklessly takes or entices any child under the age of eighteen (18) years from the custody of its parent, guardian or other lawful custodian, when he has no privilege to do so. It is a defense that:

(1) the actor believed that his action was necessary to preserve the child from danger to its welfare; or

(2) the child, being at the time not less than fourteen (14) years old, was taken away at its own instigation without enticement and without purpose to commit a criminal offense with or against the child.

Proof that the child was below the critical age gives rise to a presumption that the actor knew the child's age or acted in reckless disregard thereof. The offense is a misdemeanor of the second degree unless the actor, not being a parent or person in equivalent relation to the child, acted with knowledge that his conduct would cause serious alarm for the child's safety, or in reckless disregard of a likelihood of causing such alarm, in which case the offense is a misdemeanor of the first degree.

(b) *Custody of Committed Persons.* A person is guilty of a misdemeanor of the second degree if he knowingly or recklessly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

Comment: This section is derived from Section 212.4 of the Model Penal Code and is broader than existing law. See The Penal Code of 1939, § 725 (18 P. S. § 4725).

Although this section is somewhat similar to kidnapping, it is intended to protect parental custody from unlawful interruption, even when the child is a willing participant in the interference with custody. The offender under this section, as distinguished from the kidnapper, may be the parent or relative of the child. Removal of the child for a brief period would not be covered by this section. However, as intimated above, this section would apply to a parent who wilfully defies a custody order by taking the child from the parent who was awarded custody.

Eighteen is selected as the critical age since it is the age at which children begin to achieve relative independence. It is recognized, however, that between the ages of 14 and 18, the child may be primarily

responsible for the decision to leave home; in such case, it is not intended to punish a person who "helps" the child.

Subsection (b) prohibits interference with custody of committed persons, i.e., persons in foster homes, private hospitals, etc., even though no formal judicial commitment has been made.

SECTION 1105. *Criminal Coercion.*—(a) *Offense Defined.* A person is guilty of criminal coercion if, with purpose unlawfully to restrict another's freedom of action to his detriment, he threatens to:

(1) commit any criminal offense; or

(2) accuse anyone of a criminal offense; or

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(4) take or withhold action as an official, or cause an official to take or withhold action.

It is a defense to prosecution based on clause (2), (3) or (4) that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

(b) *Grading.* Criminal coercion is a misdemeanor of the second degree unless the threat is to commit a felony or the actor's purpose is felonious, in which cases the offense is a misdemeanor of the first degree.

Comment: This section is derived from Section 212.5 of the Model Penal Code.

Existing law does not contain a statutory provision as comprehensive as this section. See, for example, Section 669 of The Penal Code of 1939 (18 P. S. § 4669) which prohibits coercion of employes because of their connection with any lawful labor organization. See also Section 670 (18 P. S. § 4670).

This section limits the type of punishable threats to those which might be considered as substantial.

Any of the enumerated threats made for a "good" purpose, e.g., to induce a spendthrift to quit gambling, are excluded from the penal sanctions of this section.

ARTICLE XII

SEXUAL OFFENSES

SECTION 1201. *Definitions.*—In this article, unless a different meaning plainly is required:

(1) the definitions given in section 901 apply; and

(2) "Sexual intercourse," in addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; emission is not required;

(3) "Deviate sexual intercourse" means sexual intercourse per os or per anus between human beings who are not husband and wife, and any form of sexual intercourse with an animal;

(4) "Sexual contact" is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.

Comment: This section is derived from Section 213.0 of the Model Penal Code. In clause (2) the phrase "in addition to its ordinary meaning" was added to the Model Penal Code's definition.

Existing law provides that "Carnal knowledge" shall be "deemed complete upon proof of penetration only." The Penal Code of 1939, § 103 (18 P. S. § 4103).

This section broadens the ordinary definition of sexual intercourse, and hence broadens the definition of rape.

Under existing law intercourse per os and per anus and with animals is covered by the offense of sodomy. The Penal Code of 1939, § 501 (18 P. S. § 4501).

For definition of "Human being," "Bodily injury," "Serious bodily injury," and "Deadly weapon," see Section 901.

SECTION 1202. *Rape and Related Offenses.*—(a) *Rape.* A male who has sexual intercourse with a female not his wife is guilty of rape if:

(1) he compels her to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on anyone; or

(2) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(3) the female is unconscious; or

(4) the female is less than fifteen (15) years old; or

(5) he knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct.

Rape is a felony of the first degree if: (i) in the course thereof the actor inflicts serious bodily injury upon anyone; or (ii) the victim was not a voluntary social companion of the actor upon the occasion of the crime and had not previously permitted him sexual liberties.

In all other cases the offense is a felony of the second degree.

(b) *Gross Sexual Imposition.* A male who has sexual intercourse with a female not his wife commits a felony of the third degree if:

(1) he compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution; or

(2) he knows that she is unaware that a sexual act is being committed upon her or that she submits because she mistakenly supposes that he is her husband.

Comment: This section is derived from Section 213.1 of the Model Penal Code. In Subsection (a)(4) the age was raised from 10 years to 15 years. Subsection (a)(5) makes the offense "rape" instead of the lesser crime of "gross sexual imposition."

Rape, including "statutory rape," is defined and penalized under existing law in Section 721 of The Penal Code of 1939 (18 P. S. § 4721), as amended by Act No. 1, Special Session No. 3 of 1966, approved May 12, 1966. Existing law makes voluntary intercourse between a 16-year-old boy and a 15-year-old girl rape as it does forcible intercourse of a girl by a male, adult stranger.

This section distinguishes between the brutal, forcible rape and other types of sexual imposition. The requirement under existing law that there be some penetration, however slight, is retained. See Section 1201.

Under Subsection (a) first degree rape is restricted to "classic" rape cases, i.e., where the woman is subdued by violence or threat of violence. Subsection (a)(1) extends existing law by making the conduct rape if the woman submits because of threat of violence, etc. No distinction is made between actual force and threat of force.

Subsection (a)(4) changes the statutory rape age to 15.

Subsection (a)(5) makes no substantial change in existing law.

Subsection (b)(1) covers threats which do not involve serious bodily injury, etc., but do involve such things as economic duress or

threat to disclose secrets. Under existing law these acts would not constitute rape.

Subsection (b)(2) partially changes existing law under which a man cannot be convicted of rape if the woman submits because she mistakenly supposes he is her husband. See 31 P. L. E. Rape, § 3. It is intended by this subsection to cover situations where the defendant impersonates the woman's husband, or marries the woman where he knows the marriage is bigamous, or stages a mock marriage.

SECTION 1203. *Deviate Sexual Intercourse.*—(a) *By Force or Its Equivalent.* A person who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, commits a felony of the second degree if:

(1) he compels the other person to participate by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

(2) he has substantially impaired the other person's power to appraise or control his conduct, by administering or employing without the knowledge of the other person drugs, intoxicants or other means for the purpose of preventing resistance; or

(3) the other person is unconscious; or

(4) the other person is less than fifteen (15) years old.

(b) *By Other Imposition.* A person who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, commits a felony of the third degree if:

(1) he compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution; or

(2) he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct; or

(3) he knows that the other person submits because he is unaware that a sexual act is being committed upon him.

(c) A person who engages in deviate sexual intercourse under circumstances not covered by subsections (a) and (b) is guilty of a misdemeanor of the second degree.

Comment: This section is derived from Section 213.2 of the Model Penal Code. Subsection (c) was added. In Subsection (a)(4) the age was increased to 15 years.

Existing law penalizes sodomy, which is defined as carnally

knowing in any manner any animal or bird, or any male or female by the anus or by or with the mouth; voluntarily submitting to such carnal knowledge is also sodomy. The Penal Code of 1939, § 501 (18 P. S. § 4501). In addition, assault and solicitation to commit sodomy are also penalized. Section 502 (18 P. S. § 4502).

This section differentiates between acts committed by force and those committed by other imposition, a distinction which existing law does not recognize.

Subsection (c) covers deviate sexual intercourse between consenting adults.

SECTION 1204. *Corruption of Minors and Seduction.*—(a) *Offense Defined.* A male who has sexual intercourse with a female not his wife is guilty of an offense if:

(1) the female is less than sixteen (16) years old and of good repute and the male is at least four (4) years older than the female; or

(2) the female is less than twenty-one (21) years old and the male is her guardian or otherwise responsible for general supervision of her welfare; or

(3) the female is in custody of law or detained in a hospital or other institution and the male has supervisory or disciplinary authority over her.

(b) *Grading.* An offense under clause (1) of subsection (a) is a felony of the third degree. Otherwise an offense under this section is a misdemeanor of the second degree.

Comment: This section is derived from Section 213.3 of the Model Penal Code. In Subsection (a) reference to deviate sexual intercourse was deleted since it is now covered by Section 1203.

There apparently are no provisions in existing law specifically penalizing the conduct covered by Subsections (a)(2) and (a)(3). These provisions are included in view of the relationship between the parties involved.

SECTION 1205. *Sexual Assault.*—A person who has sexual contact with another not his spouse, or causes such other to have sexual contact with him, is guilty of sexual assault, a misdemeanor of the second degree, if:

(1) he knows that the contact is offensive to the other person; or

(2) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct; or

(3) he knows that the other person is unaware that a sexual contact is being committed; or

(4) the other person is less than fifteen (15) years old; or

(5) he has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(6) the other person is less than sixteen (16) years old and the actor is at least four (4) years older than the other person; or

(7) the other person is less than twenty-one (21) years old and the actor is his guardian or otherwise responsible for general supervision of his welfare; or

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

Comment: This section is derived from Section 213.4 of the Model Penal Code. In clause (4) the age was increased to 15.

There is no specific existing statutory authority covering sexual assault. Existing case law does, however, recognize the common law crime of indecent assault which is defined as "the taking by a man of indecent liberties with the person of a female without her consent and against her will, but with no intent to commit the crime of rape . . ." *Commonwealth v. Carpenter,* 172 Pa. Superior Ct. 271 (1953).

The purpose of this section is to define more precisely the wide variety of behavior which constitutes sexual assault.

SECTION 1206. *Indecent Exposure.*—A person commits a misdemeanor of the second degree if, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm.

Comment: This section is derived from Section 213.5 of the Model Penal Code.

Existing law is set forth in Section 519 of The Penal Code of 1939 (18 P. S. § 4519) which penalizes "open lewdness, or any

notorious act of public indecency, tending to debauch the morals or manners of the people . . ."

Additionally, Section 2501 of this Code penalizes "open lewdness."

SECTION 1207. *Provisions Generally Applicable to Article XII.* —(a) *Mistake as to Age.* Whenever in this article the criminality of conduct depends on a child's being below the age of fifteen (15) years, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fifteen (15) years. When criminality depends on the child's being below a critical age other than fifteen (15) years, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.

(b) *Spouse Relationships.* Whenever in this article the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation. Where the definition of an offense excludes conduct with a spouse or conduct by a woman, this shall not preclude conviction of a spouse or woman as accomplice in a sexual act which he or she causes another person, not within the exclusion, to perform.

(c) *Sexually Promiscuous Complainants.* It is a defense to prosecution under section 1204, and clauses (6), (7), and (8) of section 1205 for the actor to prove by a preponderance of the evidence that the alleged victim had, prior to the time of the offense charged, engaged promiscuously in sexual relations with others.

(d) *Prompt Complaint.* No prosecution may be instituted or maintained under this article unless the alleged offense was brought to the notice of public authority within three (3) months of its occurrence or, where the alleged victim was less than sixteen (16) years old or otherwise incompetent to make complaint, within three (3) months after a parent, guardian or other competent person specially interested in the victim learns of the offense.

(e) *Testimony of Complainants.* No person shall be convicted of any felony under this article upon the uncorroborated testimony of the alleged victim. Corroboration may be circumstantial. In any prosecution before a jury for an offense under this article, the jury

shall be instructed to evaluate the testimony of a victim or complaining witness with special care in view of the emotional involvement of the witness and the difficulty of determining the truth with respect to alleged sexual activities carried out in private.

Comment: This section is derived from Section 213.6 of the Model Penal Code and contains provisions applicable generally to Article XII.

Subsection (*a*): The imposition of criminality if the child is under a certain age, regardless of whether the defendant reasonably believed the child to be older, is in accord with existing law.

Subsection (b) is new to the extent that it applies the spouse exclusions to unmarried persons living together as man and wife.

Subsection (c) permits the defense of prior promiscuity. Under existing law a defendant charged with statutory rape may reduce the charge to fornication by showing that the girl was "not of good repute." The Penal Code of 1939, § 721 (18 P. S. § 4721). See also Section 510 (18 P. S. § 4510) penalizing seduction of female "of good repute."

Subsection (d) changes existing law under which failure to make prompt complaint is not a bar to prosecution but merely evidence of consent. The Comment to Section 213.6(5) of the Model Penal Code observes "The possibility that pregnancy might change . . . participant in a sex act to a vindictive complainant . . ." [and] "Likewise, the dangers of blackmail or psychopathy of the complainant make objective standards imperative."

Subsection (e) also changes existing law to the extent that it requires corroboration to convict of a felony.

ARTICLE XIII

ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DESTRUCTION

SECTION 1301. *Arson and Related Offenses.*—(a) *Arson.* A person is guilty of arson, a felony of the second degree, if he starts a fire or causes an explosion with the purpose of:

(1) destroying a building or occupied structure of another; or

(2) destroying or damaging any property, whether his own or another's, to collect insurance for such loss. It shall be a defense to prosecution under this clause that the actor's conduct did not reck-

lessly endanger any building or occupied structure of another or place any other person in danger of death or bodily injury.

(b) *Reckless Burning or Exploding.* A person commits a felony of the third degree if he purposely starts a fire or causes an explosion, whether on his own property or another's, and thereby recklessly:

(1) places another person in danger of death or bodily injury; or

(2) places a building or occupied structure of another in danger of damage or destruction.

(c) *Failure to Control or Report Dangerous Fire.* A person who knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when he can do so without substantial risk to himself, or to give a prompt fire alarm, commits a misdemeanor of the second degree if:

(1) he knows that he is under an official, contractual, or other legal duty to prevent or combat the fire; or

(2) the fire was started, albeit lawfully, by him or with his assent, or on property in his custody or control.

(d) *Definition.* "Occupied structure" means any structure, vehicle or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present. Property is that of another, for the purposes of this section, if anyone other than the actor has a possessory or proprietory interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.

Comment: This section is derived from Section 220.1 of the Model Penal Code.

Existing law concerning arson is archaic. Burning a dwelling or a "barn, stable or other outhouse" appurtenant thereto, carries a maximum sentence of 20 years. The Penal Code of 1939, § 905 (18 P. S. § 4905). The burning of any other building (e.g., a school) carries a maximum sentence of 10 years. *Id.* This section abolishes this type of illogical distinction and updates the law of arson by distinguishing between arson endangering life and arson endangering property only, with the emphasis on the degree of danger to life and property rather than on the burning as such.

Subsection (c) creates a new offense. The offense is graded, under this section, partly according to the danger to the person and partly according to the type of property involved. Under Subsection (a)(1) the use of fire with a purpose other than to destroy (e.g., to enter) does not constitute arson. However, the actor may be committing an offense punishable under Subsection (b). Subsection (a)(2) covers personal property, as well as buildings.

SECTION 1302. *Causing or Risking Catastrophe.*—(a) *Causing Catastrophe.* A person who causes a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage, commits a felony of the second degree if he does so purposely or knowingly, or a felony of the third degree if he does so recklessly.

(b) *Risking Catastrophe.* A person is guilty of a misdemeanor of the second degree if he recklessly creates a risk of catastrophe in the employment of fire, explosives or other dangerous means listed in subsection (a).

(c) *Failure to Prevent Catastrophe.* A person who knowingly or recklessly fails to take reasonable measures to prevent or mitigate a catastrophe, when he can do so without substantial risk to himself, commits a misdemeanor of the second degree if:

(1) he knows that he is under an official, contractual or other legal duty to take such measures; or

(2) he did or assented to the act causing or threatening the catastrophe.

Comment: This section is derived from Section 220.2 of the Model Penal Code, limited however, in Subsection (c) to situations where the actor "can do so without substantial risk to himself."

There is no similar provision in existing law. It is based on European statutes penalizing this type of conduct and defines behavior that is criminal because it harms or threatens harm to property.

Subsection (c) parallels the provisions of Section 1301(c).

SECTION 1303. *Criminal Mischief.*—(a) *Offense Defined.* A person is guilty of criminal mischief if he:

(1) damages tangible property of another purposely, recklessly,

or by negligence in the employment of fire, explosives, or other dangerous means listed in section 1302(a); or

(2) purposely or recklessly tampers with tangible property of another so as to endanger person or property; or

(3) purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

(b) *Grading.* Criminal mischief is a felony of the third degree if the actor purposely causes pecuniary loss in excess of five thousand dollars ($5,000), or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service. It is a misdemeanor of the second degree if the actor purposely causes pecuniary loss in excess of one hundred dollars ($100), or a misdemeanor of the third degree if he purposely or recklessly causes pecuniary loss in excess of twenty-five dollars ($25). Otherwise criminal mischief is a summary offense, punishable by a fine not exceeding twenty-five dollars ($25) or, in default of the payment of such fine and costs, imprisonment not exceeding thirty (30) days.

Comment: This section is derived from Section 220.3 of the Model Penal Code.

Under existing law there are numerous sections dealing with what may be classified as "malicious mischief." For example, Section 914 of The Penal Code of 1939 (18 P. S. § 4914) deals with malicious mischief to monuments. Section 915 of said act (18 P. S. § 4915) deals with malicious mischief to windows, doors, bells, and signs.

This section is intended to consolidate all of the offenses dealing with malicious mischief.

ARTICLE XIV

BURGLARY AND OTHER CRIMINAL INTRUSION

SECTION 1401. *Definitions.*—In this article, unless a different meaning plainly is required:

(1) "Occupied structure" means any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

(2) "Night" means the period between thirty (30) minutes past sunset and thirty (30) minutes before sunrise.

Comment: This section is derived from Section 221.0 of the Model Penal Code.

"Night-time" is defined in Section 103 of The Penal Code of 1939 (18 P. S. § 4103) as "the period of time between sunset and sunrise."

SECTION 1402. *Burglary.*—(a) *Burglary Defined.* A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is a defense to prosecution for burglary that the building or structure was abandoned.

(b) *Grading.* Burglary is a felony of the second degree if it is perpetrated in the dwelling of another at night, or if, in the course of committing the offense, the actor:

(1) purposely, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone; or

(2) is armed with explosives or a deadly weapon.

Otherwise, burglary is a felony of the third degree. An act shall be deemed "in the course of committing" an offense if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(c) *Multiple Convictions.* A person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a felony of the first or second degree.

Comment: This section is derived from Section 221.1 of the Model Penal Code.

Under Section 901 of The Penal Code of 1939 (18 P. S. § 4901) burglary is defined as the wilful and malicious entry of "any building with intent to commit any felony therein. . . ." The courts have construed the statute to require a "breaking." Section 901.1 (18 P. S. § 4901.1) penalizes "unlawful entry" (i.e., entry of a building under circumstances not amounting to burglary, with intent to commit a crime therein); Section 902 (18 P. S. § 4902) penalizes burglary with explosives; and Section 903 (18 P. S. § 4903) penalizes burglary of railroad cars and vehicles.

Generally, this section combines the various existing burglary provisions, eliminates the "breaking" requirement and substitutes the unlicensed or unprivileged entry therefor, and grades the offense in relation to the risk involved. In addition, except where a felony of the first or second degree is involved, existing law which permits conviction of the burglary and the felony intended is changed.

The "breaking" requirement was eliminated since it had become merely a symbolic element which gave rise to illogical distinctions. For example, raising a closed window was a breaking, but raising a partly open window was not a breaking.

The offense is restricted to buildings and occupied structures since they involve the situations which are normally more alarming and dangerous to the person; and the offense has been extended to include entry for the purpose of committing any crime.

Subsection (c) is intended to eliminate the imposition of consecutive sentences for burglary with intent to commit theft and for the actual theft.

SECTION 1403. *Criminal Trespass.*—(a) *Buildings and Occupied Structures.* A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or gains entrance by subterfuge or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof. An offense under this subsection is a misdemeanor of the second degree if it is committed in a dwelling at night. Otherwise it is a misdemeanor of the third degree.

(b) *Defiant Trespasser.* A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

(1) actual communication to the actor; or

(2) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) fencing or other enclosure manifestly designed to exclude intruders.

An offense under this subsection constitutes a misdemeanor of the third degree if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person. Otherwise it is a summary offense punishable by a fine not exceeding twenty-five dollars ($25) or in default of the payment

of such fine and costs imprisonment not exceeding thirty (30) days.

(c) *Defenses.* It is a defense to prosecution under this section that:

(1) a building or occupied structure involved in an offense under subsection (a) was abandoned; or

(2) the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) the actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

Comment: This section is derived from Section 221.2 of the Model Penal Code.

Existing law contains various provisions relating to trespass. For example, Section 954 of The Penal Code of 1939 (18 P. S. § 4954) makes it a crime to trespass on posted land; Section 955 (18 P. S. § 4955) penalizes trespassing on grounds of State institutions.

This section consolidates the trespass provisions. The offense is limited to situations where the objective circumstances show an unwanted intrusion by the actor; not every entry on lands of another is a trespass. Neither the inadvertent trespasser nor the trespasser who reasonably believes that the owner would have licensed him to enter the premises will be penalized. Existing law is, on the other hand, broadened by this section since it applies to "occupied structures," which is defined in Section 1401 to include vehicles as well as buildings.

ARTICLE XV

ROBBERY

SECTION 1501. *Robbery.*—(a) *Robbery Defined.* A person is guilty of robbery if, in the course of committing a theft, he:

(1) inflicts serious bodily injury upon another; or

(2) threatens another with or purposely puts him in fear of immediate serious bodily injury; or

(3) commits or threatens immediately to commit any felony of the first or second degree.

An act shall be deemed "in the course of committing a theft"

if it occurs in an attempt to commit theft or in flight after the attempt or commission.

(b) *Grading.* Robbery is a felony of the second degree, except that it is a felony of the first degree if, in the course of committing the theft, the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury.

Comment: This section is derived from Section 222.1 of the Model Penal Code.

The Penal Code of 1939 (18 P. S. § 4101 *et seq.*) contains four sections dealing with robbery: robbery and robbery by assault and force, Section 704 (18 P. S. § 4704); robbery with accomplice or while armed or by violence, Section 705 (18 P. S. § 4705); robbery of bank vaults, Section 706 (18 P. S. § 4706); and train robbery, Section 707 (18 P. S. § 4707). The proposed section embraces the situations set forth in existing law. In addition, the requirement of "serious bodily injury" has replaced the existing requirement of "violence." The offense of robbery is extended to include threats, since they are indicative of the actor's willingness to carry them out and are regarded as the equivalent of injuries. Unless there is such injury, the unlawful taking from the person would be theft, not robbery. Here again, the crime is graded in accordance with the danger involved.

ARTICLE XVI

THEFT AND RELATED OFFENSES

SECTION 1601. *Definitions.*—In this article, unless a different meaning plainly is required:

(1) "Deprive" means: (i) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or (ii) to dispose of the property so as to make it unlikely that the owner will recover it.

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

(3) "Government" means the United States, any state, county, municipality, or other political unit, or any department, agency or

subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government.

(4) "Movable property" means property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location. "Immovable property" is all other property.

(5) "Obtain" means: (i) to bring about a transfer or purported transfer of a legal interest in property, whether to the obtainer or another; or (ii) in relation to labor or service, to secure performance thereof.

(6) "Property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power.

(7) "Property of another" includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

Comment: This section is derived from Section 223.0 of the Model Penal Code.

The Penal Code of 1939 (18 P. S. § 4101 *et seq.*) does not define words specifically in reference to offenses against personal property.

SECTION 1602. *Consolidation of Theft Offenses; Theft from Spouse.*—(a) *Consolidation of Theft Offenses.* Conduct denominated theft in this article constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this article, notwithstanding the specification of a different manner in the complaint or indictment, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

(b) *Theft from Spouse.* Where the property involved is that of the offender's spouse, no prosecution for theft may be maintained unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft.

Comment: Subsection (a) of this section is derived from Section 223.1 (1) of the Model Penal Code. Subsection (b) is derived from Section 16-4(b) of the Illinois Criminal Code of 1961, July 28, Laws 1961, p. 1983, § 16-4(b), S. H. A. ch. 38, § 16-4(b). Subsection (b) is new.

The crime of "theft" is intended to embrace the offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. It is intended by this subsection and this article to eliminate the technical distinctions between larceny, fraudulent conversion, etc. The basic philosophy adopted is that if a person takes something which does not belong to him, this constitutes theft. It is contemplated that the indictment will state the facts justifying the conclusion that a theft was committed.

Under existing law theft offenses are not consolidated. There are many and varied sections dealing with theft under The Penal Code of 1939. For example, Sections 801 through 806 of the act (18 P. S. §§ 4801–4806) all deal with blackmail.

In connection with Subsection (a), see Rule 220 of the Rules of Criminal Procedure.

SECTION 1603. *Grading of Theft Offenses.*—(a) Theft constitutes a felony of the third degree if the amount involved exceeds two thousand dollars ($2,000), or if the property stolen is a firearm, automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle, or in the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.

(b) Theft not within the preceding subsection constitutes a misdemeanor of the first degree, except that if the property was not taken from the person or by threat, or in breach of a fiduciary obligation, and the actor proves by a preponderance of the evidence that the amount involved was fifty dollars ($50) or more but less than two hundred dollars ($200) the offense constitutes a misdemeanor of the second degree, if less than fifty dollars ($50) the offense constitutes a misdemeanor of the third degree.

(c) The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or services

which the actor stole or attempted to steal. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

Comment: This section is derived from Section 223.1(2) of the Model Penal Code.

The grading system set up by this section is generally based upon the amount involved. While it is agreed that the amount of the theft does not provide an infallible indication of how dangerous the offender is, it is at least a rough measurement of the injury.

Existing law does not provide for the grading of theft offenses. Pennsylvania is one of the few states that does not differentiate between "taking an apple and taking a truckload of apples." Such differentiation is clearly necessary.

See Section 1614 covering unauthorized use of automobiles and other vehicles.

SECTION 1604. *Theft by Unlawful Taking or Disposition.*—(a) *Movable Property.* A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

(b) *Immovable Property.* A person is guilty of theft if he unlawfully transfers immovable property of another or any interest therein with purpose to benefit himself or another not entitled thereto.

Comment: This section is derived from Section 223.2 of the Model Penal Code.

Existing law contains many sections dealing with larceny. Section 807 of The Penal Code of 1939 (18 P. S. § 4807) makes larceny a crime; Section 808 (18 P. S. § 4808) provides for larceny of bank bills, securities and documents; Section 811 (18 P. S. § 4811) provides for larceny of growing property. This section consolidates the larceny offenses. See also Section 1602 (Consolidation of Theft Offenses) and the Comment thereto.

The term "unlawfully" implies that the necessary *mens rea* must be present in order to constitute theft. See Section 202 of this Code which provides that "a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require. . . ." These terms are then defined in that section.

See clause (4) of Section 1601 which defines "movable property."

SECTION 1605. *Theft by Shoplifting.*—(a) A person is guilty of a summary offense if he shall wilfully take possession of any goods, wares or merchandise offered for sale by any store or other mercantile establishment, with the intention of converting the same to his own use without paying the purchase price thereof. Any fine imposed in a summary proceeding pursuant to the provisions of this section shall be decreed to be paid to the city, borough, town or township in which the offense was committed, for the use of such city, borough, town or township.

(b) Any person wilfully concealing unpurchased goods or merchandise of any store or other mercantile establishment, either on the premises or outside the premises of such store, shall be prima facie presumed to have so concealed such article with the intention of converting the same to his own use without paying the purchase price thereof within the meaning of subsection (a) of this section, and the finding of such unpurchased goods or merchandise concealed, upon the person or among the belongings of such person, shall be prima facie evidence of wilful concealment, and, if such person conceals, or causes to be concealed, such unpurchased goods or merchandise, upon the person or among the belongings of another, the finding of the same shall also be prima facie evidence of wilful concealment on the part of the person so concealing such goods. Persons so concealing such goods may be detained, in a reasonable manner and for a reasonable length of time, by a peace officer or a merchant or a merchant's employe in order that recovery of such goods may be effected. Such detention by a peace officer, merchant or a merchant's employe shall not render such peace officer, merchant or merchant's employe, criminally or civilly, liable for false arrest, false imprisonment or unlawful detention.

(c) The offenses for which penalties and the presumptions are herein provided shall not be exclusive, and shall be in addition to previously existing offenses, and such rights and presumptions as were heretofore provided by law. No magistrate, alderman or justice of the peace shall have the power to reduce any other charge of theft to a charge of theft by shoplifting as defined in this section.

Comment: This section retains existing law as contained in Section 816.1 of The Penal Code of 1939, added by Act of 1957, July 5, P. L.

501, Section 1, as amended 1959, December 30, P. L. 2062, Section 1 (18 P. S. § 4816.1).

Under existing law the offense is "shoplifting," punishable in a summary proceeding by a fine of not less than $25 and not more than $50 or imprisonment of not less than five days and not more than ten days, or both.

SECTION 1606. *Theft by Deception.*—A person is guilty of theft if he purposely obtains or withholds property of another by deception. A person deceives if he purposely:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) prevents another from acquiring information which would affect his judgment of a transaction; or

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) where inquiry is made, fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed.

Comment: This section is derived from Section 223.3 of the Model Penal Code and is extended to include property "withheld" as well as property obtained by deception.

Existing law makes it a crime to cheat by fraudulent pretenses. The Penal Code of 1939, § 836, as amended 1943, May 21, P. L. 306, § 1 (18 P. S. § 4836). This section broadens existing law under which "false pretense" is limited to false representations of existing facts. *Commonwealth v. Becker,* 151 Pa. Superior Ct. 169 (1943).

SECTION 1607. *Theft by Extortion.*—A person is guilty of theft

if he purposely obtains or withholds property of another by threatening to:

(1) inflict bodily injury on anyone or commit any other criminal offense; or

(2) accuse anyone of a criminal offense; or

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(4) take or withhold action as an official, or cause an official to take or withhold action; or

(5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

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

(7) inflict any other harm which would not benefit the actor.

It is a defense to prosecution based on clause (2), (3) or (4) that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

Comment: This section is derived from Section 223.4 of the Model Penal Code, and is extended to include property "withheld" as well as property obtained by extortion.

Existing law contains various sections dealing with blackmail. The Penal Code of 1939 contains sections dealing with blackmail in general, Section 801 (18 P. S. § 4801); blackmail by injury to reputation or business, Section 802 (18 P. S. § 4802); blackmail by accusation of a heinous crime, Section 803 (18 P. S. § 4803); blackmail by threatening murder or destruction of particular property, Section 804 (18 P. S. § 4804); blackmail by threatening letter or accusation of crime, Section 805 (18 P. S. § 4805); and blackmail by threatening to kidnap or damage property generally, Section 806 (18 P. S. § 4806).

This section consolidates and broadens existing law.

SECTION 1608. *Theft of Property Lost, Mislaid, or Delivered by Mistake.*—A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of

the recipient is guilty of theft if, with purpose to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

Comment: This section is derived from Section 223.5 of the Model Penal Code. For the definition of "Deprive" see Section 1601(1).

Under existing law it is not clear whether there can be larceny of lost or mislaid property. The common law rule apparently would apply. See Scurlock, *The Element of Trespass in Larceny at Common Law,* 22 Temple Law Quarterly 12, at 28 (1948). See also *Commonwealth v. Dearolf.* 1 Dist. 543 (1892) where it was held that where a defendant finds stolen property, converts it to his own use and sells it for an unreasonable price, he may be convicted of larceny, although he did not know to whom it belonged or that it was stolen.

SECTION 1609. *Receiving Stolen Property.*—(a) *Receiving.* A person is guilty of theft if he purposely receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

(b) *Presumption of Knowledge.* The requisite knowledge or belief is presumed in the case of a dealer who:

(1) is found in possession or control of property stolen from two or more persons on separate occasions; or

(2) has received stolen property in another transaction within the year preceding the transaction charged; or

(3) being a dealer in property of the sort received, acquires it for a consideration which he knows is far below its reasonable value.

"Dealer" means a pawnbroker or a person in the business of buying or selling goods of the type stolen.

Comment: This section is derived from Section 223.6 of the Model Penal Code, adding to the definition of "Dealer" the words "of the type stolen."

In connection with Subsection (b), see Section 114(c) of this Code setting forth the consequences of presumptions established by the Code. Existing law has no similar presumptions in connection with the crime of receiving stolen property.

The crime of receiving stolen property is covered in existing law

by Section 817 of The Penal Code of 1939, as amended 1943, May 21, P. L. 306, Section 1 (18 P. S. § 4817). The existing statute provides that the person is guilty if he receives the property "knowing, or having reasonable cause to know the same to have been stolen. . . ." This section provides that the receiver must receive the property "knowing that it has been stolen, or believing that it has probably been stolen. . . ." On the one hand, it is intended by this section to impose a stricter test of "knowledge" or "belief" and, on the other hand, to relax the proof in the case of the "professional" receiver of stolen property.

SECTION 1610. *Theft of Services.*—(a) A person is guilty of theft if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token or other trick or artifice to avoid payment for the service. "Services" includes labor, transportation, telephone, or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Refusal to pay for such services without reasonable cause or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

(b) A person is guilty of theft if, having control over the disposition of services of others to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

Comment: This section is derived from Section 223.7 of the Model Penal Code, with some change of phraseology. It broadens and extends existing law.

Under existing law it is a crime to obtain, with intent to cheat or defraud, food, lodging, credit or other accommodation in any hotel, inn or boardinghouse. The Penal Code of 1939, § 871 (18 P. S. § 4871). It is also a crime to fraudulently obtain telephone services by charging the call to the account of another without his authorization. The Penal Code, *supra,* § 871.1, added 1957, July 8, P. L. 541, No. 300, § 1 (18 P. S. § 4871.1).

SECTION 1611. *Theft of Trade Secrets.*—(a) For the purposes of this section:

(1) The word "article" means any object, material, device or substance or copy thereof, including any writing, record, recording,

drawing, description, sample, specimen, prototype, model, photograph, microorganism, blueprint or map.

(2) The word "representing" means describing, depicting, containing, constituting, reflecting or recording.

(3) The term "trade secret" means the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula or improvement which is of value and has been specifically identified by the owner as of a confidential character, and which has not been published or otherwise become a matter of general public knowledge. There shall be a rebuttable presumption that scientific or technical information has not been published or otherwise become a matter of general public knowledge when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by him to have access thereto for limited purposes.

(4) The word "copy" means any facsimile, replica, photograph or reproduction of, an article, or any note, drawing, sketch, or description made of, or from an article.

(b) A person is guilty of a misdemeanor of the first degree if he, with intent to wrongfully deprive of, or withhold from the owner, the control of a trade secret, or with intent to wrongfully appropriate a trade secret for his use, or for the use of another:

(1) unlawfully obtains possession of, or access to, an article representing a trade secret; or

(2) having lawfully obtained possession of an article representing a trade secret, or access thereto, converts such article to his own use or that of another person, while having possession thereof or access thereto makes, or causes to be made, a copy of such article, or exhibits such article to another.

(c) A person is guilty of a felony of the third degree if he:

(1) by force or violence or by putting him in fear takes from the person of another any article representing a trade secret; or

(2) wilfully and maliciously enters any building or other structure with intent to obtain unlawful possession of, or access to, an article representing a trade secret.

(d) The crime or crimes defined in subsections (b) and (c) hereof shall be deemed complete without regard to the further disposition, return, or intent to return, of the article representing a trade secret.

(e) It shall be a complete defense to any prosecution under subsection (b) hereof for the defendant to show that information comprising the trade secret was rightfully known or available to him from a source other than the owner of the trade secret.

Comment: This section retains existing law as contained in Section 899.2 of The Penal Code of 1939, added by Act of 1965, October 12, P. L. 574, No. 297, Section 1 (18 P. S. § 4899.2) without substantial change. Under existing law the offense is misdemeanor (if not committed by force or violence), punishable by a fine not exceeding $2,000 or imprisonment not exceeding two years, or both; if committed by force or violence it is a felony, punishable by a fine of $5,000 or imprisonment not exceeding five years, or both.

SECTION 1612. *Theft of Unpublished Dramas and Musical Compositions.*—A person is guilty of theft if he publicly presents for profit, without the consent of the author or authors thereof, any unpublished dramatic play or musical composition.

Comment: This section retains existing law as contained in Section 878 of The Penal Code of 1939 (18 P. S. § 4878) without substantial change. Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $100 or imprisonment not exceeding three months, or both.

SECTION 1613. *Theft by Failure to Make Required Disposition of Funds Received.*—A person who obtains property upon agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he purposely deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition. An officer or employe of the government or of a financial institution is presumed:

(1) to know any legal obligation relevant to his criminal liability under this section; and

(2) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

Comment: This section is derived from Section 223.8 of the Model Penal Code.

Similar acts are made crimes under existing law. See, e.g., Sections 834 and 835 of The Penal Code of 1939 (18 P. S. §§ 4834 and 4835) which deal with fraudulent conversion and fraudulent conversion of partnership, corporation or association property. The last sentence of this section is intended to make specific the bases for the presumption.

See Section 1601(2) and (3) of this article for definitions of "Financial institution" and "Government."

SECTION 1614. *Unauthorized Use of Automobiles and Other Vehicles.*—A person is guilty of a misdemeanor of the second degree if he operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner. It is a defense to prosecution under this section that the actor reasonably believed that the owner would have consented to the operation had he known of it.

Comment: This section is derived from Section 223.9 of the Model Penal Code. The section is limited to motor-propelled vehicles.

The Penal Code of 1939 (18 P. S. § 4101 *et seq.*) does not contain a similar provision. However, Section 624(5) of The Vehicle Code [1959, April 29, P. L. 58, 75 P. S. § 624(5)] makes it a crime to operate a motor vehicle or tractor without the consent of the owner.

This section is intended to extend the crime to the operation of airplanes and motorboats, etc.

ARTICLE XVII

FORGERY AND FRAUDULENT PRACTICES

SECTION 1701. *Forgery.*—(a) *Definition.* A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

(1) alters any writing of another without his authority; or

(2) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place

or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or

(3) utters any writing which he knows to be forged in a manner specified in clause (1) or (2).

"Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

(b) *Grading.* Forgery is a felony of the second degree if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments issued by the government, or part of an issue of stock, bonds or other instruments representing interests in or claims against any property or enterprise. Forgery is a felony of the third degree if the writing is or purports to be a will, deed, contract, release, commercial instrument, or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations. Otherwise forgery is a misdemeanor of the second degree.

Comment: This section is derived from Section 224.1 of the Model Penal Code.

The Penal Code of 1939 (18 P. S. § 4101 *et seq.*), in addition to a forgery section, Section 1014 (18 P. S. § 5014), which applies only to "any written instrument," contains sections dealing with forgery of seals, Section 1019 (18 P. S. § 5019); forgery of records, Section 1020 (18 P. S. § 5020); etc. This proposed section consolidates and broadens existing forgery statutes.

SECTION 1702. *Simulating Objects of Antiquity, Rarity, Etc.*— A person commits a misdemeanor of the second degree if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

Comment: This section is derived from Section 224.2 of the Model Penal Code.

There is no similar provision in existing law. A fake manuscript might possibly constitute a forgery under the general forgery provision of The Penal Code of 1939, Section 1014 (18 P. S. § 5014). It is

intended by this section to extend existing law to include *inter alia,* defrauding by use of forged paintings or false antiques.

SECTION 1703. *Fraudulent Destruction, Removal or Concealment of Recordable Instruments.*—A person commits a felony of the third degree if, with purpose to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

Comment: This section is derived from Section 224.3 of the Model Penal Code.

Section 1020 of The Penal Code of 1939 (18 P. S. § 5020) which penalizes anyone who "forges, defaces, embezzles, alters, corrupts, withdraws, falsifies, or unlawfully avoids any record, charter . . ." etc., is somewhat similar.

This section is intended to be limited to writings, the destruction, removal or concealment of which could lead to falsification of public records.

SECTION 1704. *Tampering with Records or Identification.*—A person commits a misdemeanor of the second degree if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, or distinguishing mark or brand or other identification with purpose to deceive or injure anyone or to conceal any wrongdoing.

Comment: This section is derived from Section 224.4 of the Model Penal Code.

Section 882 of The Penal Code of 1939 (18 P. S. § 4882) penalizes the destruction of deeds, leases, checks, securities, etc., with intent to defraud, prejudice or injure any person. Section 883 (18 P. S. § 4883) penalizes the alteration or destruction of identifying marks on machines and apparatus. Sections 845 and 846 (18 P. S. §§ 4845, 4846) penalize false entries and false statements.

This section is intended to consolidate and broaden existing law.

SECTION 1705. *Bad Checks.*—A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor of the second degree. For the purposes of this section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid, if:

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

(2) payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the issuer failed to make good within ten (10) days after receiving notice of that refusal.

Comment: This section is derived from Section 224.5 of the Model Penal Code.

A person who passes a bad check could be prosecuted for theft by deception under Section 1606.

Section 854 of The Penal Code of 1939 (18 P. S. § 4854) makes it a crime for a person, with intent to defraud, to issue a check knowing that he does not have sufficient funds in the bank to cover the check. If the check is postdated or is given for a debt past due there is no criminal intent, and therefore no crime. *Commonwealth v. Kelinson,* 199 Pa. Superior Ct. 135 (1962); *Commonwealth v. Spohn,* 20 D. & C. 318 (1933). Under existing law the giving of a check, payment of which is refused by the drawee because of lack of funds or credit, is prima facie evidence of intent to defraud unless the check is made good within ten days after notice.

SECTION 1706. *Credit Cards.*—A person commits an offense if he uses a credit card for the purpose of obtaining property or services with knowledge that:

(1) the card is stolen or forged; or

(2) the card has been revoked or cancelled; or

(3) for any other reason his use of the card is unauthorized by the issuer.

It is a defense to prosecution under clause (3) if the actor proves by a preponderance of the evidence that he had the purpose and ability to meet all obligations to the issuer arising out of his use of the card. "Credit card" means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer. An offense under this section is a felony of the third degree if the value of the property or services secured or sought to be secured by means of the credit card exceeds five hundred dollars ($500); otherwise it is a misdemeanor of the second degree.

Comment: This section is derived from Section 224.6 of the Model Penal Code.

Section 898 of The Penal Code of 1939 (18 P. S. § 4898) is a comprehensive section dealing with fraudulent use of credit cards. This section simplifies but makes no substantial change in existing law.

SECTION 1707. *Deceptive Business Practices.*—A person commits a misdemeanor of the second degree if, in the course of business, he:

(1) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(2) sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(3) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or

(4) sells, offers or exposes for sale adulterated or mislabeled commodities. "Adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage. "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage; or

(5) makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or

(6) makes a false or misleading written statement for the purpose of obtaining property or credit; or

(7) makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

It is a defense to prosecution under this section if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.

Comment: This section is derived from Section 224.7 of the Model Penal Code.

Various sections of existing law prohibit and penalize various deceptive practices. For example, Section 857 of The Penal Code of 1939 (18 P. S. § 4857) penalizes untrue, false and misleading advertising made with intent to sell merchandise, securities, etc.; Section 864 (18 P. S. § 4864) penalizes false representation that meat is kosher. See also the Weights and Measures Act of 1965 (1965, December 1, P. L. 988, No. 368) (76 P. S. Supp. § 100-1 *et seq.*).

This section is intended to consolidate the various deceptive practices offenses.

SECTION 1708. *Commercial Bribery and Breach of Duty to Act Disinterestedly.*—(a) A person commits a misdemeanor of the second degree if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:

(1) partner, agent or employe of another;

(2) trustee, guardian, or other fiduciary;

(3) lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(4) officer, director, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(5) arbitrator or other purportedly disinterested adjudicator or referee.

(b) A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services commits a misdemeanor of the second degree if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.

(c) A person commits a misdemeanor of the second degree if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section.

Comment: This section is derived from Section 224.8 of the Model Penal Code.

Existing law covers only bribery of agents, servants or employes, The Penal Code of 1939, Section 667 (18 P. S. § 4667); bribery of certain officials, Section 303 (18 P. S. § 4303); and breaches of trust involved in embezzlement, Sections 824–828, 830, 831 (18 P. S. §§ 4824–4828, 4830, 4831). This section includes other enumerated relationships where a duty of fidelity is owed.

SECTION 1709. *Rigging Publicly Exhibited Contest.*—(a) A person commits a misdemeanor of the first degree if, with purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:

(1) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or

(2) tampers with any person, animal or thing.

(b) *Soliciting or Accepting Benefit for Rigging.* A person commits a misdemeanor of the first degree if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under subsection (a).

(c) *Participation in Rigged Contest.* A person commits a misdemeanor of the first degree if he knowingly engages in, sponsors, produces, judges, or otherwise participates in a publicly exhibited contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct which would be criminal under this section.

Comment: This section is derived from Section 224.9 of the Model Penal Code.

Under The Penal Code of 1939, Section 614 (18 P. S. § 4614) bribery in athletic contests is a misdemeanor. In addition, Section 881 (18 P. S. § 4881) makes it a misdemeanor fraudulently to enter a horse in a race. It is intended by this section to extend the crime of "rigging" or "fixing" to all publicly exhibited contests.

SECTION 1710. *Defrauding Secured Creditors.*—A person commits a misdemeanor of the second degree if he destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder enforcement of that interest.

Comment: This section is derived from Section 224.10 of the Model Penal Code.

Section 886 of The Penal Code of 1939 (18 P. S. § 4886) makes it a crime to remove or secrete property to defraud creditors. Existing law applies to unencumbered property, as well as encumbered property.

SECTION 1711. *Fraud in Insolvency.*—A person commits a misdemeanor of the second degree if, knowing that proceedings

have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors, or that any other composition or liquidation for the benefit of creditors has been or is about to be made, he:

(1) destroys, removes, conceals, encumbers, transfers, or otherwise deals with any property with purpose to defeat or obstruct the claim of any creditor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors; or

(2) knowingly falsifies any writing or record relating to the property; or

(3) knowingly misrepresents or refuses to disclose to a receiver or other person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

Comment: This section is derived from Section 224.11 of the Model Penal Code.

There apparently is no similar provision in existing law. See, however, The Penal Code of 1939, Section 302 (18 P. S. § 4302) (conspiracy to do unlawful act); Section 886 (18 P. S. § 4886) (removing or secreting property to defraud creditors).

The purpose of this section is to fill in this apparent gap in the law in order to give unsecured creditors additional protection.

SECTION 1712. *Receiving Deposits in a Failing Financial Institution.*—An officer, manager or other person directing or participating in the direction of a financial institution commits a misdemeanor of the second degree if he receives or permits the receipt of a deposit, premium payment or other investment in the institution knowing that:

(1) due to financial difficulties the institution is about to suspend operations or go into receivership or reorganization; and

(2) the person making the deposit or other payment is unaware of the precarious situation of the institution.

Comment: This section is derived from Section 224.12 of the Model Penal Code.

Under existing law "any officer or agent of a saving fund society, national, state or private bank, bank and trust company, or trust

company, or a broker" is guilty of a misdemeanor if he receives a deposit knowing that the bank is insolvent. The Penal Code of 1939, § 852 (18 P. S. § 4852). Apparently under existing law actual insolvency at the time the money was received is an essential element of the crime. See *Commonwealth v. Smith,* 4 Pa. Superior Ct. (1897).

The term "insolvent" used in existing law was considered ambiguous and not a sufficient basis for determining criminality. Clause (1) is intended to cover the situation where it is known that the institution is going to suspend operations or go into receivership.

Clause (2) is new and was included to cover situations where persons having knowledge of the precarious condition of the institution are willing to make deposits in the hope of saving the institution. It is not intended that receipt of funds in such circumstances should be criminal.

SECTION 1713. *Misapplication of Entrusted Property and Property of Government or Financial Institutions.*—A person commits an offense if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted. The offense is a misdemeanor of the second degree if the amount involved exceeds fifty dollars ($50); otherwise it is a misdemeanor of the third degree.

Comment: This section is derived from Section 224.13 of the Model Penal Code.

Section 832 of The Penal Code of 1939 (18 P. S. § 4832) makes criminal the misapplication of public moneys collected for a special purpose by treasurers of political subdivisions. A similar provision is contained in The County Code (1955, August 9, P. L. 323, § 805). This section is broader and is intended to apply to the mishandling of property which by law is to be for a special purpose.

SECTION 1714. *Securing Execution of Documents by Deception.*—A person commits a misdemeanor of the second degree if by deception he causes another to execute any instrument affecting or purporting to affect or likely to affect the pecuniary interest of any person.

Comment: This section is derived from Section 224.14 of the Model Penal Code.

Existing law is embodied in Section 836 of The Penal Code of 1939 (18 P. S. § 4836) which provides that whoever "by any false pretense, obtains the signature of any person to any written instrument . . ." is guilty of a felony. See *Commonwealth v. KoEune,* 69 Pa. Superior Ct. 176 (1918).

This section is concerned only with writings affecting pecuniary interests.

ARTICLE XVIII

OFFENSES AGAINST THE FAMILY

SECTION 1801. *Bigamy and Polygamy.*—(a) *Bigamy.* A married person is guilty of bigamy, a misdemeanor of the second degree, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(1) the actor believes that the prior spouse is dead; or

(2) the actor and the prior spouse have been living apart for five (5) consecutive years throughout which the prior spouse was not known by the actor to be alive; or

(3) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the actor does not know that judgment to be invalid; or

(4) the actor reasonably believes that he is legally eligible to remarry.

(b) *Polygamy.* A person is guilty of polygamy, a felony of the third degree, if he marries or cohabits with more than one spouse at a time in purported exercise of the right of plural marriage. The offense is a continuing one until all cohabitation and claim of marriage with more than one spouse terminates. This section does not apply to parties to a polygamous marriage, lawful in the country of which they are residents or nationals, while they are in transit through or temporarily visiting this Commonwealth.

(c) *Other Party to Bigamous or Polygamous Marriage.* A person is guilty of bigamy or polygamy, as the case may be, if he contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy or polygamy.

Comment: This section is derived from Section 230.1 of the Model Penal Code.

Section 503 of The Penal Code of 1939 (18 P. S. § 4503) defines the crime of bigamy (i.e., a married person marrying another person) and Section 504 of said Code (18 P. S. § 4504) makes it a crime for a single person to marry the spouse of another.

Subsection (a) requires proof that the actor was validly married at the time of the second marriage. This changes existing law which makes the second marriage bigamy regardless of whether the first marriage was "valid in law or not."

Subsection (a)(3) and (4) is new. They adopt the view that a person who has reasonable grounds for believing himself legally eligible to remarry should not be criminally liable if he does remarry. This is based upon the general principle that there should be no criminality when there is no subjective guilt.

Subsection (b) is new.

SECTION 1802. *Incest.*—A person is guilty of incest, a felony of the third degree, if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. The relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

Comment: This section is derived from Section 230.2 of the Model Penal Code. For the definition of "Cohabit" see Section 115(13).

The Penal Code of 1939, Section 507 (18 P. S. § 4507) prohibits "incestuous fornication, or incestuous adultery" or intermarriage within specified degrees of consanguinity or affinity, i.e., blood relationship or step-relations.

This section changes existing law by limiting the crime to blood relationships except in the case of parent and child by adoption.

SECTION 1803. *Abortion.*—(a) *Unjustified Abortion.* A person who purposely and unjustifiably terminates the pregnancy of another otherwise than by a live birth commits a felony of the third degree or, where the pregnancy has continued beyond the twenty-sixth week, a felony of the second degree.

(b) *Justifiable Abortion.* A licensed physician is justified in terminating a pregnancy if he believes there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave physical or mental defect; or that the pregnancy resulted from

rape, incest, or other felonious intercourse. All illicit intercourse with a girl below the age of sixteen (16) years shall be deemed felonious for purposes of this subsection. Justifiable abortions shall be performed only in a licensed hospital except in case of emergency when hospital facilities are unavailable.

(c) *Physicians' Certificates; Presumption from Noncompliance.* No abortion shall be performed unless two physicians, one of whom may be the person performing the abortion, shall have certified in writing the circumstances which they believe to justify the abortion. Such certificate shall be submitted before the abortion to the hospital where it is to be performed and, in the case of abortion following felonious intercourse, to the prosecuting attorney or the police. Failure to comply with any of the requirements of this subsection gives rise to a presumption that the abortion was unjustified.

(d) *Self-abortion.* A woman whose pregnancy has continued beyond the twenty-sixth week commits a felony of the third degree if she purposely terminates her own pregnancy otherwise than by a live birth, or if she uses instruments, drugs or violence upon herself for that purpose. Except as justified under subsection (b), a person who induces or knowingly aids a woman to use instruments, drugs or violence upon herself for the purpose of terminating her pregnancy otherwise than by a live birth commits a felony of the third degree whether or not the pregnancy has continued beyond the twenty-sixth week.

(e) *Pretended Abortion.* A person commits a felony of the third degree if, representing that it is his purpose to perform an abortion, he does an act adapted to cause abortion in a pregnant woman although the woman is in fact not pregnant, or the actor does not believe she is. A person charged with unjustified abortion under subsection (a) or an attempt to commit that offense may be convicted thereof upon proof of conduct prohibited by this subsection.

(f) *Distribution of Abortifacients.* A person who sells, offers to sell, possesses with intent to sell, advertises, or displays for sale anything specially designed to terminate a pregnancy, or held out by the actor as useful for that purpose, commits a misdemeanor of the second degree, unless:

(1) the sale, offer or display is to a physician or druggist or to an intermediary in a chain of distribution to physicians or druggists;

or

(2) the sale is made upon prescription or order of a physician; or

(3) the possession is with intent to sell as authorized in clauses (1) and (2); or

(4) the advertising is addressed to persons named in clause (1) and confined to trade or professional channels not likely to reach the general public.

(g) *Section Inapplicable to Prevention of Pregnancy.* Nothing in this section shall be deemed applicable to the prescription, administration or distribution of drugs or other substances for avoiding pregnancy, whether by preventing implantation of a fertilized ovum or by any other method that operates before, at or immediately after fertilization.

Comment: This section is derived from Section 230.3 of the Model Penal Code.

Various sections of The Penal Code of 1939 pertain to abortion. Section 718 (18 P. S. § 4718) penalizes abortion; Section 719 (18 P. S. § 4719) penalizes abortion causing death; and Section 525 (18 P. S. § 4525) penalizes the advertising or sale of medicines to procure abortion. Existing law follows the general rule of absolute prohibition.

This section changes existing law by justifying the termination of pregnancy in a limited number of cases.

Subsection (e) is intended to cover the situation where an abortionist performs acts to cause an abortion although he may know or believe that the woman is not pregnant. See *Commonwealth v. Longwell,* 79 Pa. Superior Ct. 68 (1922). This makes it clear that the woman need not actually be pregnant in order to have a crime.

Subsection (f) is intended to confine the trade in abortifacients to legitimate channels. See Section 525 of The Penal Code of 1939 (18 P. S. § 4525) which prohibits the advertising or sale of medicines to procure abortion.

SECTION 1804. *Endangering Welfare of Children.*—A parent, guardian, or other person supervising the welfare of a child under eighteen (18) years of age commits a misdemeanor of the second degree if he knowingly endangers the child's welfare by violating a duty of care, protection or support.

Comment: This section is derived from Section 230.4 of the Model Penal Code.

There is no similar provision in existing law. Section 727 of The Penal Code of 1939 (18 P. S. § 4727) covers neglect to maintain a child or abandonment of a child by a parent or person having custody; Section 728 (18 P. S. § 4728) punishes cruelty to minors. Section 726 (18 P. S. § 4726) punishes the abandonment by a parent of a child under seven (7) years of age; Section 641 (18 P. S. § 4641) makes it a crime for a person having custody of a child to employ such child for certain purposes; etc.

This section consolidates and simplifies the various provisions concerning crimes endangering the welfare of children. The offense involves the endangering of the physical or moral welfare of a child by an act or omission in violation of legal duty even though such legal duty does not itself carry a criminal sanction.

SECTION 1805. *Persistent Nonsupport.*—A person commits a misdemeanor of the second degree if he persistently fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child or other dependent.

Comment: This section is derived from Section 230.5 of the Model Penal Code.

Existing law contains somewhat overlapping and contradictory provisions penalizing nonsupport. For example, Section 727 of The Penal Code of 1939 (18 P. S. § 4727) penalizes the abandonment of a child under sixteen in destitute circumstances or the failure to furnish necessary and proper food, clothing or shelter; Section 731 (18 P. S. § 4731) penalizes wilful separation from or nonsupport of, wife or children. In addition, Section 733 (18 P. S. § 4733) provides for an action in quarter sessions court for a support order against a husband or father who deserts or fails to support his wife or children. See Sections 2634 and 2636 of this Code and Introductory Comment to Article XXVI.

ARTICLE XIX

OFFENSES AGAINST PUBLIC POLICY

SECTION 1901. *Distribution of Samples of Medicine, Dyes, Etc.* —A person is guilty of a summary offense if he distributes or deposits any package, parcel, or sample of any medicine, dyeing, ink, or polishing compounds, in any form of preparation, upon the ground, sidewalks, porches, yards, or into or under doors or windows so that

children may get possession of or secure the same. Nothing contained in this section shall prohibit such distribution to adult persons only. Whoever violates any of the provisions of this section shall, upon conviction thereof, be fined not exceeding fifty dollars ($50), and in default of the payment of such fine and costs shall be imprisoned not exceeding thirty (30) days.

Comment: This section retains existing law as contained in Section 658 of The Penal Code of 1939 (18 P. S. § 4658).

Under existing law the offense is a misdemeanor, punishable in a summary proceeding, by a fine not exceeding $50 and, in default of payment thereof and of costs, imprisonment not exceeding 30 days.

SECTION 1902. *Throwing Articles on Highways or Upon Land of Another; Interference with Contents of Containers.*—A person is guilty of a summary offense if he:

(1) throws any waste paper, sweepings, ashes, household waste, glass, metal, refuse or rubbish, or any dangerous or detrimental substance into or upon any road, street, highway, or alley, or upon the land of another;

(2) interferes with, scatters, or disturbs the contents of any receptacle containing ashes, garbage, household waste, or rubbish.

Whoever violates any of the provisions of this section shall, upon conviction thereof, be fined not exceeding fifty dollars ($50) and in default of the payment of such fine and costs shall be imprisoned not exceeding thirty (30) days.

Comment: This section retains existing law as contained in Sections 693 and 694 of The Penal Code of 1939 (18 P. S. §§ 4693 and 4694) without substantial change. Under Section 694 of existing law (18 P. S. § 4694), which deals with interference with rubbish receptacles, the offense is punishable in a summary proceeding by costs of prosecution and by a fine not exceeding $10 for each such offense and, in default of payment, imprisonment not exceeding ten days. Under Section 693, which deals with throwing articles on highways, the offense is punishable in a summary proceeding by a fine not exceeding $50, and in default of payment of the fine and costs, imprisonment not exceeding thirty days.

SECTION 1903. *Purchase of Junk.*—A person is guilty of a misdemeanor of the third degree if he buys or receives from minors,

knowing them to be such, or from any person unknown to the person so buying or receiving, any junk, rope, or metal.

Comment: This section retains existing law as contained in Section 879 of The Penal Code of 1939 (18 P. S. § 4879) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

SECTION 1904. *Illegal Wearing of Uniforms and Insignia.*—A person is guilty of a summary offense if, without authority, he:

(1) wears or displays the uniform, decoration, insignia or other distinctive emblem of any branch of the armed forces of the United States or of any of the several states, or of any association, for the purpose of obtaining aid or profit, or while soliciting contributions or subscriptions;

(2) wears an honorable discharge button issued or authorized by the United States.

Whoever violates any of the provisions of this section shall, upon conviction thereof, be fined not exceeding fifty dollars ($50), and in default of the payment of such fine and costs shall be imprisoned not exceeding thirty (30) days.

Comment: This section retains existing law as contained in Sections 888 through 891 of The Penal Code of 1939 (18 P. S. §§ 4888–4891).

Under existing law each of the offenses is a misdemeanor, punishable by a fine not exceeding $100 or imprisonment not exceeding sixty days, or both.

SECTION 1905. *Discrimination on Account of Uniform.*—A person is guilty of a misdemeanor of the second degree if, being the proprietor, manager, or employe of a theatre, hotel, restaurant, or other place of public entertainment or amusement, he discriminates against any person wearing the uniform of the armed forces of the United States, because of that uniform.

Comment: This section retains existing law as contained in Section 652 of The Penal Code of 1939 (18 P. S. § 4652) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

SECTION 1906. *Illegal Sale of Veterans' Flowers.*—A person is guilty of a summary offense if, without authority, he sells, or offers for sale, the labeled artificial flowers, or any imitation thereof, of any bona fide war veterans' organization, or affiliate thereof.

Whoever violates any of the provisions of this section shall, upon conviction thereof, be fined not exceeding fifty dollars ($50), and in default of the payment of such fine and costs shall be imprisoned not exceeding ten (10) days.

Comment: This section is derived from Section 892 of The Penal Code of 1939 (18 P. S. § 4892). The language was simplified by the use of a general term which includes all of the specific organizations named in Section 892.

Under existing law the offense is punishable in a summary proceeding by a fine not exceeding $50 and in default of payment of such fine and costs, imprisonment for ten days.

SECTION 1907. *Illegal Dealing in Military Decorations.*—A person is guilty of a misdemeanor of the third degree if, without authority, he purchases, sells, or offers for sale, or accepts as a pledge or pawn, any medal, insignia or decoration granted by the United States for service in the armed forces.

Comment: This section retains existing law as contained in Section 893 of The Penal Code of 1939 (18 P. S. § 4893) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

SECTION 1908. *Fraud on Association Having Grand Lodge.*—A person is guilty of a summary offense if, without the authority of the grand lodge hereafter described, he:

(1) fraudulently uses, in any manner, the name or title of any secret fraternal association, which has had a grand lodge having jurisdiction in this Commonwealth for at least ten (10) years;

(2) imitates such name or title with intent to deceive;

(3) wears or uses any insignia of such association with intent to deceive;

(4) publishes or distributes, in any manner, any written or printed matter soliciting applications for membership in such secret

fraternal association, or any alleged association claiming to be known by such title, or by a title in imitation or resemblance of such title;

(5) sells or gives or offers to sell or give any information as to how any alleged degree, secret work or secret of such fraternal association or of any alleged association, claiming to be known by such title, or by a title in imitation or resemblance of such title may be obtained.

Whoever violates any of the provisions of this section shall, upon conviction thereof, be fined not exceeding fifty dollars ($50), and in default of the payment of such fine and costs shall be imprisoned not exceeding thirty (30) days.

Comment: This section is derived from Section 894 of The Penal Code of 1939 (18 P. S. § 4894).

Under existing law the offense is a misdemeanor, punishable by imprisonment not exceeding two years or a fine not exceeding $1,000, or both.

ARTICLE XX

BRIBERY AND CORRUPT INFLUENCE

SECTION 2001. *Definitions.*—In Articles XX, XXI, XXII, and XXIII unless a different meaning plainly is required:

(1) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(2) "Government" includes any branch, subdivision or agency of the government of the Commonwealth or any locality within it;

(3) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested;

(4) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary

or other person taking testimony or deposition in connection with any such proceeding;

(5) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility;

(6) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain;

(7) "Public servant" means any officer or employe of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function; but the term does not include witnesses;

(8) "Administrative proceeding" means any proceeding other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

Comment: This section is derived from Section 240.0 of the Model Penal Code. Under existing law there are no statutory definitions specifically relating to bribery or corrupt influence.

SECTION 2002. *Bribery in Official and Political Matters.*—A person is guilty of bribery, a felony of the third degree, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(1) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of a known legal duty as public servant or party official.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

Comment: This section is derived from Section 240.1 of the Model Penal Code.

Under Section 303 of The Penal Code of 1939 (18 P. S. § 4303) a person bribing certain Commonwealth officials may be imprisoned for one year while the person accepting the bribe may be imprisoned by separate and solitary confinement for five years. See also Section 304 of The Penal Code of 1939 (18 P. S. § 4304) which overlaps and contradicts Section 303 to some extent.

This section extends bribery to cover all public employes. Under this section the crime is limited to bribery in connection with decision-making; consequently, it does not apply to situations where the law contemplates payment of fees to the public servant for his services or to tips given to a public servant. While the practice of tipping is not condoned, it is recognized that such practice is widespread.

The nature of the benefit constituting the bribe consideration is more broadly defined in this section than under existing law. See Section 2001 for the definition. The broad definition is intended to reach every possible type of offer made or designed to influence official action.

SECTION 2003. *Threats and Other Improper Influence in Official and Political Matters.*—(a) *Offenses Defined.* A person commits an offense if he:

(1) threatens unlawful harm to any person with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(3) threatens harm to any public servant or party official with purpose to influence him to violate his known legal duty; or

(4) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication with purpose to influence the outcome on the basis of considerations other than those authorized by law.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(b) *Grading.* An offense under this section is a misdemeanor of the second degree unless the actor threatened to commit a crime

or made a threat with purpose to influence a judicial or administrative proceeding, in which cases the offense is a felony of the third degree.

Comment: This section is derived from Section 240.2 of the Model Penal Code.

Under existing law the crime of corrupt solicitation covers, *inter alia,* threats or intimidation used to influence State or local officials. The Penal Code of 1939, § 304 (18 P. S. § 4304). To some extent, this section of The Penal Code of 1939 overlaps and contradicts Section 303 of said Code (18 P. S. § 4303).

This section broadens existing law to cover all types of threats and improper influences as well as all public servants.

SECTION 2004. *Compensation for Past Official Behavior.*—A person commits a misdemeanor of the second degree if he solicits, accepts or agrees to accept any pecuniary benefit as compensation for having, as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty. A person commits a misdemeanor of the second degree if he offers, confers or agrees to confer compensation acceptance of which is prohibited by this section.

Comment: This section is derived from Section 240.3 of the Model Penal Code.

There is no similar provision in existing law. Such a provision was included in order to discourage such conduct which undermines the integrity of administration.

SECTION 2005. *Retaliation for Past Official Action.*—A person commits a misdemeanor of the second degree if he harms another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public servant.

Comment: This section is derived from Section 240.4 of the Model Penal Code.

There is no similar crime under existing law. The penalizing of such conduct is deemed necessary so that public servants may act without fear of future "revenge." Some forms of retaliation would, of course, be independently criminal, e.g., assault.

SECTION 2006. *Gifts to Public Servants by Persons Subject to*

Their Jurisdiction.—(a) *Regulatory and Law Enforcement Officials.* No public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

(b) *Officials Concerned with Government Contracts and Pecuniary Transactions.* No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

(c) *Judicial and Administrative Officials.* No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority, or participating in the enforcement of its decisions, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated.

(d) *Legislative Officials.* No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in a bill, transaction or proceeding, pending or contemplated, before the legislature or any committee or agency thereof.

(e) *Exceptions.* This section shall not apply to:

(1) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled; or

(2) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or

(3) trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(f) *Offering Benefits Prohibited.* No person shall knowingly

confer, or offer or agree to confer, any benefit prohibited by the foregoing subsections.

(g) *Grade of Offense.* An offense under this section is a misdemeanor of the second degree.

Comment: This section is derived from Section 240.5 of the Model Penal Code.

Section 682 of The Penal Code of 1939 (18 P. S. § 4682) prohibits certain public officials from receiving gratuities from persons interested in contracts with the municipality or body by which the public officials are employed. Section 683 (18 P. S. § 4683) prohibits gratuities to an official by persons selling to the employer of the official. See also Sections 690 and 668 (18 P. S. §§ 4690 and 4668) dealing with gratuities in connection with public contracts and deceiving employers.

The section is intended to consolidate and broaden existing law to cover additional special cases of "conflict of interest."

SECTION 2007. *Compensating Public Servant for Assisting Private Interests in Relation to Matters Before Him.*—(a) *Receiving Compensation.* A public servant commits a misdemeanor of the second degree if he solicits, accepts or agrees to accept compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise.

(b) *Paying Compensation.* A person commits a misdemeanor of the second degree if he pays or offers or agrees to pay compensation to a public servant with knowledge that acceptance by the public servant is unlawful.

Comment: This section is derived from Section 240.6 of the Model Penal Code.

There is no similar provision in existing law. The purpose of this section is to fill an obvious loophole.

SECTION 2008. *Selling Political Endorsement; Special Influence.*—(a) *Selling Political Endorsement.* A person commits a misdemeanor of the second degree if he solicits, receives, agrees to receive, or agrees that any political party or other person shall receive, any pecuniary benefit as consideration for approval or disapproval of an appointment or advancement in public service, or for approval or disapproval of any person or transaction for any benefit conferred by

an official or agency of government. "Approval" includes recommendation, failure to disapprove, or any other manifestation of favor or acquiescence. "Disapproval" includes failure to approve, or any other manifestation of disfavor or nonacquiescence.

(b) *Other Trading in Special Influence.* A person commits a misdemeanor of the second degree if he solicits, receives or agrees to receive any pecuniary benefit as consideration for exerting special influence upon a public servant or procuring another to do so. "Special influence" means power to influence through kinship, friendship or other relationship, apart from the merits of the transaction.

(c) *Paying for Endorsement or Special Influence.* A person commits a misdemeanor of the second degree if he offers, confers or agrees to confer any pecuniary benefit receipt of which is prohibited by this section.

Comment: This section is derived from Section 240.7 of the Model Penal Code.

There is no similar provision in existing law.

ARTICLE XXI

PERJURY AND OTHER FALSIFICATION IN OFFICIAL MATTERS

SECTION 2101. *Definitions.*—In this article, unless a different meaning plainly is required:

(1) the definitions given in section 2001 apply; and

(2) "Statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

Comment: This section is derived from Section 241.0 of the Model Penal Code.

SECTION 2102. *Perjury.*—(a) *Offense Defined.* A person is guilty of perjury, a felony of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(b) *Materiality.* Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(c) *Irregularities No Defense.* It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(d) *Retraction.* No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(e) *Inconsistent Statements.* Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(f) *Corroboration.* No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

Comment: This section is derived from Section 241.1 of the Model Penal Code.

Existing law defines perjury as wilfully and corruptly making "false oral or written statements, or testimony upon oath or affirmation, legally administered. . . ." The Penal Code of 1939, § 322 (18 P. S. § 4322). The elements of perjury are an oath to tell the truth, administration of the oath by legal authority in a judicial proceeding or statutory affidavit and wilfully false and material testimony by defendant in such proceeding. *Commonwealth v. Russo,* 177 Pa. Superior Ct. 470 (1955).

The general purpose of this section is to define the various situations in which lying constitutes a felony. The essential elements of the offense are (1) oath or affirmation; (2) materiality of the lie; and (3) requirement that the lie be told in an official proceeding involving a hearing. If there is no oath or affirmation, the falsification can only be a misdemeanor under the following sections of this article.

Under Subsection (a) perjury may be committed by false statements of opinion, belief or other state of mind. See definition of "Statement" in Section 2101. The Code does not specify how definite a statement must be since it would be almost impossible to do so. The degree of specificity required in any given case would depend upon the circumstances of that case.

Subsection (b): Existing law is in accord with this subsection. *Commonwealth v. Billingsley,* 160 Pa. Superior Ct. 140, aff'd, 357 Pa. 378 (1947). Under existing law testimony is material where it tends to directly prove or disprove one side or the other in the main issue or where, under established rules of evidence, it indirectly tends to do so by crediting or discrediting other evidence or the testimony of another witness. The definition of "materiality" does not substantially differ from that of existing law.

Subsection (c) changes existing law which requires that the oath or affirmation be "legally administered." The Penal Code of 1939, § 322 (18 P. S. § 4322).

Under Subsection (d) retraction, made during the same proceeding, is a defense to a perjury prosecution. There is no similar provision in existing law. The purpose of this subsection is to provide an incentive for the witness to promptly correct his falsehood in order to eradicate any harm which may have been caused by the falsehood in the proceeding where made.

Subsection (e) makes it clear that where the defendant has made contradictory statements he cannot escape conviction because the prosecution cannot prove which of the contradictory statements was false and known by the defendant to be so. See *Commonwealth v. Russo,* 388 Pa. 462 (1957).

Existing law is in accord with Subsection (f).

SECTION 2103. *False Swearing.*—(a) *False Swearing in Official Matters.* A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true is guilty of a misdemeanor of the second degree if:

(1) the falsification occurs in an official proceeding; or

(2) the falsification is intended to mislead a public servant in performing his official function.

(b) *Other False Swearing.* A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a misdemeanor of the third degree, if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(c) *Perjury Provisions Applicable.* Subsections (c) to (f) of section 2102 apply to the present section.

Comment: This section is derived from Section 241.2 of the Model Penal Code.

There is no similar provision in existing law. The purpose of this section is to fill this void in existing law which applies only to falsification of "material" testimony. See Comment to Section 2102.

SECTION 2104. *Unsworn Falsification to Authorities.*—(a) *In General.* A person commits a misdemeanor of the second degree if, with purpose to mislead a public servant in performing his official function, he:

(1) makes any written false statement which he does not believe to be true; or

(2) purposely creates a false impression in a written application for any pecuniary or other benefit, by omitting information necessary to prevent statements therein from being misleading; or

(3) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(4) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(b) *Statements "Under Penalty."* A person commits a misdemeanor of the third degree if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(c) *Perjury Provisions Applicable.* Subsections (c) to (f) of section 2102 apply to the present section.

Comment: This section is derived from Section 241.3 of the Model Penal Code.

While existing law contains various provisions penalizing false swearing to public officials in particular cases (e.g., Section 11 of the Act of 1945, May 24, P. L. 967 (54 P. S. § 28.11) relating to applications for registration of fictitious names), there is no law which penalizes unsworn falsification to authorities.

Subsection (a)(2) is of particular importance since it extends criminal liability to misleading omissions.

Subsection (b) is useful in that it provides a means whereby the law can direct attention to the fact that more than nominal importance is to be placed on the statements in the writing, and in that it establishes a practical, simple alternative to the requirement of notarization.

SECTION 2105. *False Alarms to Agencies of Public Safety.*—A person who knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property commits a misdemeanor of the second degree.

Comment: This section is derived from Section 241.4 of the Model Penal Code.

Under Section 665 of The Penal Code of 1939 (18 P. S. § 4665) it is a crime to give or turn in a false fire alarm.

This section is intended to extend existing law to cover all dangerous emergency alarms such as hurricanes, floods, etc., and to cover all public safety agencies.

Any injuries arising as a result of a false alarm would be punishable under Section 1001(b) or 1302 of this Code.

SECTION 2106. *False Reports to Law Enforcement Authorities.*—(a) *Falsely Incriminating Another.* A person who knowingly gives false information to any law enforcement officer with purpose to implicate another commits a misdemeanor of the second degree.

(b) *Fictitious Reports.* A person commits a misdemeanor of the third degree if he:

(1) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

Comment: This section is derived from Section 241.5 of the Model Penal Code.

There is no similar provision in The Penal Code of 1939 (18 P. S. § 4101 *et seq.*). Whether such conduct would be punishable as a common law offense is not clear.

The purpose of this section is to make it clear that such conduct is punishable and also to specifically define the limits of such an offense.

SECTION 2107. *Tampering with Witnesses and Informants; Retaliation Against Them.*—(a) *Tampering.* A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a witness or informant to:

(1) testify or inform falsely; or

(2) withhold any testimony, information, document or thing; or

(3) elude legal process summoning him to testify or supply evidence; or

(4) absent himself from any proceeding or investigation to which he has been legally summoned.

The offense is a felony of the third degree if the actor employs force, deception, threat or offer of pecuniary benefit. Otherwise it is a misdemeanor of the second degree.

(b) *Retaliation Against Witness or Informant.* A person commits a misdemeanor of the second degree if he harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or informant.

(c) *Witness or Informant Taking Bribe.* A person commits a felony of the third degree if he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in clauses (1) to (4) of subsection (a).

Comment: This section is derived from Section 241.6 of the Model Penal Code.

Existing law penalizes subornation of perjury, i.e., wilfully and corruptly procuring or suborning any person to give false testimony, The Penal Code of 1939, Section 322 (18 P. S. § 4322); and hindering witnesses, i.e., dissuading, hindering or preventing any witness from attending and testifying when required by any legal process or otherwise, Section 342 (18 P. S. § 4324).

This section is intended to extend existing statutory law to cover "informants" as well as witnesses. In addition, it is made clear here-

under that the witness or informant who seeks or accepts a bribe to do any of the enumerated acts may be punished.

SECTION 2108. *Tampering with or Fabricating Physical Evidence.*—A person commits a misdemeanor of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(1) alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(2) makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

Comment: This section is derived from Section 241.7 of the Model Penal Code.

There is no similar provision in existing law. Conceivably, however, the prohibited acts might be punishable under existing forgery statutes. The Penal Code of 1939, §§ 1020 and 1014 (18 P. S. §§ 5020 and 5014).

The purpose of this section is to specifically penalize prehearing or investigation fabrication or tampering as a broad application of "obstructing justice." It should be emphasized that this section applies to investigations as well as trials and other formal hearings.

SECTION 2109. *Tampering with Public Records or Information.*—(a) *Offense Defined.* A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government; or

(2) makes, presents or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in clause (1); or

(3) purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(b) *Grading.* An offense under this section is a misdemeanor of the second degree unless the actor's purpose is to defraud or injure anyone, in which case the offense is a felony of the third degree.

Comment: This section is derived from Section 241.8 of the Model Penal Code.

Section 323 of The Penal Code of 1939 (18 P. S. § 4323) makes it a crime to fraudulently make a false entry in, or erase, alter, secrete, carry away, or destroy any public record.

This section represents no significant departure from existing law, except perhaps by explicitly providing in Subsection (a)(2) for the fabrication of false public records.

SECTION 2110. *Impersonating a Public Servant.*—A person commits a misdemeanor of the second degree if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

Comment: This section is derived from Section 241.9 of the Model Penal Code.

Section 319 of The Penal Code of 1939 (18 P. S. § 4319) makes it an offense for a person to falsely represent himself to be or falsely assume to act as "a detective or any elective or appointive officer of the Commonwealth, or of any political subdivision thereof. . . ."

ARTICLE XXII

OBSTRUCTING GOVERNMENTAL OPERATIONS: ESCAPES

SECTION 2201. *Definitions.*—In this article, unless another meaning plainly is required, the definitions given in section 2001 apply.

Comment: This section is derived from Section 242.0 of the Model Penal Code.

SECTION 2202. *Obstructing Administration of Law or Other Governmental Function.*—A person commits a misdemeanor of the second degree if he purposely obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any

other means of avoiding compliance with law without affirmative interference with governmental functions.

Comment: This section is derived from Section 242.1 of the Model Penal Code.

There is no similar provision in existing law.

SECTION 2203. *Obstructing or Impeding the Administration of Justice by Picketing, Etc.*—A person is guilty of a misdemeanor of the second degree if he purposely interferes with, obstructs or impedes the administration of justice, or with the purpose of influencing any judge, juror, witness or court officer in the discharge of his duty, pickets or parades in or near any building housing a court of the Commonwealth of Pennsylvania, or in or near a building or residence occupied by or used by such judge, juror, witness or court officer, or with such purpose uses any sound-truck or similar device, or resorts to any other demonstration in or near any such building or residence.

Nothing in this section shall interfere with or prevent the exercise by any court of the Commonwealth of Pennsylvania of its power to punish for contempt.

Comment: This section retains existing law as contained in Section 327 of The Penal Code of 1939 (18 P. S. § 4327) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $5,000 or imprisonment not exceeding one year, or both.

SECTION 2204. *Unlawfully Listening into Deliberations of Jury.*—A person is guilty of a misdemeanor of the third degree if he, by any scheme or device, or in any manner, for any purpose, intentionally listens into the deliberations of any grand, petit, traverse, or special jury.

Comment: This section retains existing law as contained in Section 305.1 of The Penal Code of 1939 (18 P. S. § 4305.1).

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $1,000 or imprisonment not exceeding one year, or both.

SECTION 2205. *Resisting Arrest or Other Law Enforcement.*—A person commits a misdemeanor of the second degree if, for the purpose of preventing a public servant from effecting a lawful arrest

or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

Comment: This section is derived from Section 242.2 of the Model Penal Code.

Section 314 of The Penal Code of 1939 (18 P. S. § 4314) covers, *inter alia,* resisting arrest and obstructing the service of any legal process or order.

This section changes existing law somewhat by not extending to minor scuffling which occasionally takes place during an arrest. Another change is the extension to the discharge of any duty, including the effecting of a lawful detention, by a public servant.

SECTION 2206. *Hindering Apprehension or Prosecution.*—(a) A person commits an offense if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for crime, he:

(1) harbors or conceals the other; or

(2) provides or aids in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or

(3) conceals or destroys evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or

(4) warns the other of impending discovery or apprehension, except that this clause does not apply to a warning given in connection with an effort to bring another into compliance with law; or

(5) volunteers false information to a law enforcement officer.

(b) The offense is a felony of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a felony of the first or second degree. Otherwise it is a misdemeanor of the second degree.

Comment: This section is derived from Section 242.3 of the Model Penal Code.

This section covers the accessory after the fact. Existing statutory law provides for the punishment of every "accessory after the fact to any felony at the common law or under any act of Assembly. . . ." The Penal Code of 1939, § 1105 (18 P. S. § 5105). See also Section

1106 of said Code (18 P. S. § 5106) which provides for the trial of accessories after the fact. The cases define an accessory after the fact as one who, knowing that someone has committed a felony, receives, relieves, comforts or assists the felon or in any manner aids him to escape arrest or punishment. *Commonwealth v. Finkelstein,* 191 Pa. Superior Ct. 328 (1959).

This section makes it a crime to aid persons who commit misdemeanors, as well as persons who commit felonies.

This section also eliminates the requirement that the accessory after the fact know that an offense was committed. Existing law is somewhat narrowed by this section by the limitation of the types of aid which constitute offenses.

SECTION 2207. *Failure to Report Injuries by Firearm or Criminal Act.*—(a) Any physician, including any licensed doctor of medicine, licensed osteopathic physician, intern or resident, or any person conducting, managing or in charge of any hospital or pharmacy, or in charge of any ward or part of a hospital, to whom shall come or be brought any person suffering from any wound or other injury inflicted by his own act or by the act of another by means of a firearm, or in any other case where injuries have been inflicted upon any person in violation of any penal law of this Commonwealth, shall report the same immediately both by telephone and in writing, to the chief of police or other head of the police department of the city, borough, incorporated town or township, or to the Pennsylvania State Police. The report shall state the name of the injured person, if known, his whereabouts and the character and extent of his injuries.

(b) When the person who comes, or is brought to the physician, as herein defined, or to the person in charge of conducting or managing a pharmacy, or to the person in charge of any hospital or any ward or part of a hospital, is under the age of eighteen (18) years, the report shall be made to the presiding judge of the juvenile court or the Community Child Protective Service where such court or service exists. When there is no such court or service, the report shall be made to the police in the same manner as required for injuries to those eighteen (18) years of age or older, as hereinbefore set forth.

Any physician or other person who purposely fails to make the report required by this section is guilty of a misdemeanor of the third degree.

No physician or other person shall be subject to civil or criminal liability by reason of making a report required by this section.

In any judicial proceeding resulting from a report pursuant to this section, the physician-patient privilege shall not apply in respect to evidence regarding such injuries or the cause thereof.

Comment: This section retains existing law as contained in Section 330 added 1963, to The Penal Code of 1939 (18 P. S. § 4330) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

SECTION 2208. *Aiding Consummation of Crime.*—A person commits an offense if he purposely aids another to accomplish an unlawful object of a crime, as by safeguarding the proceeds thereof or converting the proceeds into negotiable funds. The offense is a felony of the third degree if the principal offense was a felony of the first or second degree. Otherwise it is a misdemeanor of the second degree.

Comment: This section is derived from Section 242.4 of the Model Penal Code.

There is no similar provision in existing law.

Prosecution might theoretically be possible under Section 2206.

SECTION 2209. *Compounding.*—A person commits a misdemeanor of the second degree if he accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense.

It is a defense to prosecution under this section that the pecuniary benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for harm caused by the offense.

Comment: This section is derived from Section 242.5 of the Model Penal Code.

Under existing statutory law the crime of compounding is limited to certain specified crimes such as treason, murder, rape, larceny, etc. The Penal Code of 1939, § 307 (18 P. S. § 4307). Rule 315 of the Pennsylvania Rules of Criminal Procedure authorizes the

court to approve settlement of offenses not alleged to have been committed by force or violence or threat thereof, if the aggrieved party has a civil remedy and it appears that the public interest will not be materially affected.

This section also extends existing law to cover any offense, not just the more serious offenses.

SECTION 2210. *Barratry.*—A person is guilty of a misdemeanor of the third degree if he vexes others with unjust and vexatious suits.

Comment: This section retains existing law as contained in Section 306 of The Penal Code of 1939 (18 P. S. § 4306) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

SECTION 2211. *Escape.*—(a) *Escape.* A person commits an offense if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but "official detention" does not include supervision of probation or parole, or constraint incidental to release on bail.

(b) *Permitting or Facilitating Escape.* A public servant concerned in detention commits an offense if he knowingly or recklessly permits an escape. Any person who knowingly causes or facilitates an escape commits an offense.

(c) *Effect of Legal Irregularity in Detention.* Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to prosecution under this section if the escape is from a prison or other custodial facility or from detention pursuant to commitment by official proceedings. In the case of other detentions, irregularity or lack of jurisdiction shall be a defense only if:

(1) the escape involved no substantial risk of harm to the person or property of anyone other than the detainee; or

(2) the detaining authority did not act in good faith under color of law.

(d) *Grading of Offenses.* An offense under this section is a felony of the third degree where:

(1) the actor was under arrest for or detained on a charge of felony or following conviction of crime; or

(2) the actor employs force, threat, deadly weapon or other dangerous instrumentality to effect the escape; or

(3) a public servant concerned in detention of persons convicted of crime purposely facilitates or permits an escape from a detention facility.

Otherwise an offense under this section is a misdemeanor of the second degree.

Comment: This section is derived from Section 242.6 of the Model Penal Code.

Subsection (*a*): This makes no substantial change in existing law. The Penal Code of 1939, § 309 (18 P. S. § 4309). See also *Commonwealth v. Storm,* 185 Pa. Superior Ct. 136 (1958).

Subsection (*b*): This makes no substantial change in existing law. The Penal Code of 1939, Section 311 (18 P. S. § 4311) (officer voluntarily permitting convict to escape); Section 312 (18 P. S. § 4312) (officer permitting prisoner to escape through gross negligence); Section 316 (18 P. S. § 4316) (aiding prisoner to escape). This subsection rejects the "gross negligence" test in Section 316 aforesaid and substitutes therefor the test of recklessness.

Subsection (*c*): Under existing law illegality of the detention is no defense. *Commonwealth ex rel. Penland v. Ashe,* 142 Pa. Superior Ct. 403 (1941). There apparently is no distinction in existing law between escapes from prison and escapes from other detentions. The defense of illegality of detention may be available where the detention is not in prison.

SECTION 2212. *Implements for Escape.*—A person commits a misdemeanor of the second degree if he unlawfully introduces within a detention facility or mental hospital, or unlawfully provides an inmate thereof with any weapon, tool or other thing which may be useful for escape. An inmate commits a misdemeanor of the second degree if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession any such implement of

escape. "Unlawfully" means surreptitiously or contrary to law, regulation or order of the detaining authority.

Comment: This section is derived from Section 242.7(1) of the Model Penal Code.

Section 310 of The Penal Code of 1939 (18 P. S. § 4310) makes it a crime to furnish any prisoner or inmate of a mental institution a weapon or other implement which may be used to injure any person or to assist any person to escape.

This section makes no substantial change in existing law except to impose criminal liability on the inmate who unlawfully procures or possesses such implements.

SECTION 2213. *Contraband.*—A person commits a misdemeanor of the first degree if he sells, gives, or furnishes to any convict in a prison, or inmate in a mental hospital, or gives away in, or brings into any prison, mental hospital, or any building appurtenant thereto, or on the land granted to or owned or leased by the state for the use and benefit of the prisoners or inmates, or puts in any place where it may be secured by a convict of a prison, inmate of a mental hospital, or employe thereof, any kind of spirituous or fermented liquor, drug, medicine, poison, opium, morphine, or other kind of narcotics, (except the ordinary hospital supply of the prison or mental hospital) without a written permit signed by the physician of such institution, specifying the quantity and quality of the liquor or narcotic which may be furnished to any convict, inmate, or employe in the prison or mental hospital, the name of the prisoner, inmate, or employe for whom, and the time when, the same may be furnished, which permit shall be delivered to and kept by the warden or superintendent of the prison or mental hospital.

Nothing contained in this section shall be construed to apply to tobacco supplied in accordance with the regulations of the prison.

Comment: This section retains existing law as contained in Section 620 of The Penal Code of 1939 (18 P. S. § 4620) without substantial change.

Under existing law the offense is a felony, punishable by a fine not exceeding $2,000 or imprisonment not exceeding five years, or both.

SECTION 2214. *Bail Jumping; Default in Required Appearance.*—A person set at liberty by court order, with or without bail,

upon condition that he will subsequently appear at a specified time and place, commits a misdemeanor of the second degree if, without lawful excuse, he fails to appear at that time and place. The offense constitutes a felony of the third degree where the required appearance was to answer to a charge of felony, or for disposition of any such charge, and the actor took flight or went into hiding to avoid apprehension, trial or punishment. This section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.

Comment: This section is derived from Section 242.8 of the Model Penal Code.

Section 325 of The Penal Code of 1939 (18 P. S. § 4325) penalizes a witness who jumps bail. There apparently is no existing statute making it a crime for a criminal defendant to jump bail. Such an offense would be an inducement to releasing poor defendants on their own recognizance; failure to appear would be penalized. The required appearance "at a specified time and place" is not limited to appearance in court; e.g., it would cover the failure of a defendant to appear to start serving his sentence after he has been sentenced but given time to settle his affairs.

SECTION 2215. *Absconding Witness.*—A person is guilty of a misdemeanor of the third degree if, having been lawfully subpoenaed to testify before any committee of either branch of the General Assembly or before any joint committee thereof, or before any person, tribunal, committee or body, he refuses to appear and testify, or conceals himself or departs from this Commonwealth or the jurisdiction of such person, tribunal, committee or body, to avoid appearing and testifying.

This section shall not apply to subpoenas issued by a tribunal having the power to punish for contempt.

Comment: This section is derived from Section 325 of The Penal Code of 1939 (18 P. S. § 4325). The language has been simplified and broadened in scope.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

SECTION 2216. *Contempt of Legislature.*—A person is guilty of a misdemeanor of the third degree if he is disorderly or contemptuous in the presence of either branch of the General Assembly.

Comment: This section is derived from Article II, Section 11 of the Pennsylvania Constitution, which authorizes each House to punish "persons for contempt or disorderly behavior in its presence. . . ."

ARTICLE XXIII

ABUSE OF OFFICE

SECTION 2301. *Definitions.*—In this article, unless a different meaning plainly is required, the definitions given in section 2001 apply.

Comment: This section is derived from Section 243.0 of the Model Penal Code.

Section 2001 defines the terms "Benefit," "Government," "Harm," "Official proceedings," "Party official," "Pecuniary benefit," "Public servants," and "Administrative proceeding."

Existing law has no specific definitions in this regard.

SECTION 2302. *Official Oppression.*—A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor of the second degree if, knowing that his conduct is illegal, he:

(1) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(2) denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

Comment: This section is derived from Section 243.1 of the Model Penal Code.

Existing law does not contain a provision specifically penalizing official oppression. The provisions of The Penal Code of 1939 (18 P. S. § 4101 *et seq.*) apply to conduct of an official as an individual.

This section creates a distinct crime which extends to all official activities. It should be emphasized that clause (2) applies to the denial of any right or privilege or protection to which a person is legally entitled.

This section is intended to cover the use of official position to wrong another. If an official privately commits a wrong he, of course, will be subject to the same penalties as a private citizen who does so.

While there may appear to be some overlap, in fact the offense by an official is the more serious.

SECTION 2303. *Speculating or Wagering on Official Action or Information.*—A public servant commits a misdemeanor of the second degree if, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which has not been made public, he:

(1) acquires a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action; or

(2) speculates or wagers on the basis of such information or official action; or

(3) aids another to do any of the foregoing.

Comment: This section is derived from Section 243.2 of the Model Penal Code.

Although there is no similar general provision in existing law, various specific provisions prohibit certain conduct by public officials as a result of "inside" information. See, e.g., Section 682 of The Penal Code of 1939 (18 P. S. § 4682) (prohibits interest in contracts). See also the State Adverse Interest Act (1957, July 19, P. L. 1017) (71 P. S. § 776.1 *et seq.*). Existing law, however, is somewhat limited in scope.

This section goes beyond existing statutes and covers all types of official speculation based on confidential information or contemplated action in every department or agency of government.

ARTICLE XXIV

RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES

SECTION 2401. *Riot, Failure to Disperse.*—(a) *Riot.* A person is guilty of riot, a felony of the third degree, if he participates with two or more others in a course of disorderly conduct:

(1) with purpose to commit or facilitate the commission of a felony or misdemeanor; or

(2) with purpose to prevent or coerce official action; or

(3) when the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(b) *Failure of Disorderly Persons to Disperse Upon Official Order.* Where three or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance or alarm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor of the second degree.

Comment: This section is derived from Section 250.1 of the Model Penal Code.

Section 401 of The Penal Code of 1939 (18 P. S. § 4401) prohibits riots, routs, unlawful assemblies and affrays. Section 402 (18 P. S. § 4402) prohibits riotous destruction of property. Neither of these sections defines the words "riot," "rout," "unlawful assembly," or "affray" or "riotous and tumultuous assembly." See *Commonwealth v. Zwierzelewski,* 177 Pa. Superior Ct. 141 (1955) for definition of "riot." The common law crime of "inciting to riot" is recognized in Pennsylvania. *Commonwealth v. Albert,* 169 Pa. Superior Ct. 318 (1951).

This section is intended to specifically define the offense and limit it to actual participation in a "course of disorderly conduct," in aggravating circumstances.

SECTION 2402. *Disorderly Conduct.*—(a) *Offense Defined.* A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(1) engages in fighting or threatening, or in violent or tumultuous behavior; or

(2) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(3) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

"Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons,

apartment houses, places of business or amusement, or any neighborhood.

(b) *Grading.* An offense under this section is a misdemeanor of the third degree if the actor's purpose is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a summary offense punishable by a fine not exceeding ten dollars ($10) or in default of the payment of such fine and costs, imprisonment not exceeding thirty (30) days.

Comment: This section is derived from Section 250.2 of the Model Penal Code.

Disorderly conduct is defined and penalized in existing law in Section 406 of The Penal Code of 1939 (18 P. S. § 4406). Various other sections penalize the offense if committed in certain places, e.g., Railroad Car, Section 406 (18 P. S. § 4406).

This section defines the offense more precisely and consolidates and extends existing law which is limited to "any loud, boisterous and unseemly noise or disturbance. . . ." Under Subsection (a)(2) the offense is extended to coarse or indecent utterances and abusive language. Subsection (a)(3) would cover the throwing of garbage or "stink bombs" into public passages, etc.

SECTION 2403. *False Public Alarms.*—A person is guilty of a misdemeanor of the second degree if he initiates or circulates a report or warning of an impending bombing or other crime or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm.

Comment: This section is derived from Section 250.3 of the Model Penal Code.

Giving false information concerning bombs or other explosives is penalized by existing law in Section 329 of The Penal Code of 1939 (18 P. S. § 4329).

This section is intended to extend existing law to false alarms concerning any other catastrophe.

SECTION 2404. *Harassment.*—A person commits a misdemeanor of the third degree if, with purpose to harass another, he:

(1) makes a telephone call without purpose of legitimate communication or addresses to or about such other person any lewd,

lascivious or indecent words or language or whoever anonymously telephones another person repeatedly; or

(2) makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language.

Any offense committed under clause (1) may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

Comment: This section is derived from Section 250.4(1) and (3) of the Model Penal Code. The language in clause (1) relating to lewd, lascivious or indecent language is derived from Section 414.1 of The Penal Code of 1939 (18 P. S. § 4414.1).

This section makes no substantial change in existing law. In addition to Section 414.1 of The Penal Code of 1939, *supra,* see Section 414 (18 P. S. § 4414) dealing with anonymous communications.

SECTION 2405. *Public Drunkenness; Drug Incapacitation.*—A person is guilty of an offense if he appears in any public place manifestly under the influence of alcohol, narcotics or other drug, not therapeutically administered, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity. An offense under this section constitutes a misdemeanor of the third degree if the actor has been convicted hereunder twice before within a period of one (1) year. Otherwise the offense constitutes a summary offense punishable by a fine not exceeding ten dollars ($10) or in default of the payment of such fine and costs, imprisonment not exceeding thirty (30) days.

Comment: This section is derived from Section 250.5 of the Model Penal Code. The penalty for the summary offense has been added.

Section 3 of the Act of 1794, April 22, 3 Sm. L. 177 (18 P. S. § 1523) penalizes drunkenness by a fine of sixty-seven cents.

See Section 607 providing for civil commitment.

SECTION 2406. *Loitering or Prowling.*—A person commits a summary offense if he loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify

himself, or manifestly endeavors to conceal himself or any object. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall, prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.

Comment: This section is derived from Section 250.6 of the Model Penal Code.

Section 418 of The Penal Code of 1939 (18 P. S. § 4418) prohibits loitering and prowling at nighttime around a dwelling house. See also Section 1 of the Act of 1876, May 8, P. L. 154 (18 P. S. § 2032) concerning vagrants.

This section extends existing law by prohibiting loitering or prowling any place, at any time, in an unusual manner under the circumstances.

SECTION 2407. *Obstructing Highways and Other Public Passages.*—(a) A person, who, having no legal privilege to do so, purposely or recklessly obstructs any highway, railroad track or public utility right-of-way, other public passage, whether alone or with others, commits a summary offense, or, in case he persists after warning by a law officer, a misdemeanor of the third degree. "Obstructs" means renders impassable without unreasonable inconvenience or hazard. No person shall be deemed guilty of recklessly obstructing in violation of this subsection solely because of a gathering of persons to hear him speak or otherwise communicate, or solely because of being a member of such a gathering.

(b) A person in a gathering commits a summary offense if he refuses to obey a reasonable official request or order to move:

(1) to prevent obstruction of a highway or other public passage; or

(2) to maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard.

An order to move, addressed to a person whose speech or other lawful behavior attracts an obstructing audience, shall not be deemed

reasonable if the obstruction can be readily remedied by police control of the size or location of the gathering.

A summary offense under this section shall be punishable by a fine not exceeding ten dollars ($10) or in default of the payment of such fine and costs, imprisonment not exceeding ten (10) days.

Comment: This section is derived from Section 250.7 of the Model Penal Code.

There is no similar provision in existing law. It is intended by this section to prevent public inconvenience which may result from unjustified obstruction of public passages.

SECTION 2408. *Disrupting Meetings and Processions.*—A person commits a misdemeanor of the second degree if, with purpose to prevent or disrupt a lawful meeting, procession or gathering, he does any act tending to obstruct or interfere with it physically, or makes any utterance, gesture or display designed to outrage the sensibilities of the group.

Comment: This section is derived from Section 250.8 of the Model Penal Code.

Section 405 of The Penal Code of 1939 (18 P. S. § 4405) imposes penal sanctions on anyone who "wilfully and maliciously disturbs or interrupts any meeting. . . ."

SECTION 2409. *Desecration of Venerated Objects.*—A person commits a misdemeanor of the second degree if he purposely desecrates any public monument or structure, or place of worship or burial, or if he purposely desecrates any other object of veneration by the public or a substantial segment thereof in any public place. "Desecrate" means defacing, damaging, polluting or otherwise physically mistreating in a way that the actor knows will outrage the sensibilities of persons likely to observe or discover his action.

Comment: This section is derived from Section 250.9 of the Model Penal Code. Desecration of the national flag is covered by Section 802.

Various sections of The Penal Code of 1939 (18 P. S. § 4101 *et seq.*) punish behavior which would be punishable under this section. For example, Section 914 of The Penal Code of 1939 (18 P. S. § 4914) prohibits the injuring or defacing of any statue or monument. Section 938 (18 P. S. § 4938) prohibits the destruction or mutilation of flowers, trees, etc., in cemeteries.

The crimes defined by the various sections of existing law are

consolidated in this section. Only physical acts of desecration are within the purview of this section.

SECTION 2410. *Abuse of Corpse.*—Except as authorized by law, a person who treats a corpse in a way that he knows would outrage ordinary family sensibilities commits a misdemeanor of the second degree.

Comment: This section is derived from Section 250.10 of the Model Penal Code.

Under existing law the wilful and malicious removal of a body from a tomb or grave is penalized. The Penal Code of 1939, § 521 (18 P. S. § 4521). See also Section 5 of the Act of 1883, June 13, as amended (35 P. S. § 1095), which penalizes traffic in dead bodies.

This section covers all indecent treatment of a corpse. The opening phrase is intended to exclude use of bodies for research, etc., as authorized by law.

SECTION 2411. *Cruelty to Animals.*—A person commits a misdemeanor of the second degree if he purposely or recklessly:

(1) subjects any animal to cruel mistreatment; or

(2) subjects any animal in his custody to cruel neglect; or

(3) kills or injures any animal belonging to another without legal privilege or consent of the owner.

Clauses (1) and (2) shall not be deemed applicable to accepted veterinary practices and activities carried on for scientific research.

Comment: This section is derived from Section 250.11 of the Model Penal Code. It consolidates into one general section the law covering cruelty to animals. See The Penal Code of 1939 §§ 941–950 (18 P. S. §§ 4941–4950).

SECTION 2412. *Violation of Privacy.*—(a) *Definitions.* As used in this section:

(1) "Divulge" includes divulgence to a fellow employe or official in government or private enterprise or in a judicial, administrative, legislative or other proceeding.

(2) "Person" includes natural persons, business associates, partnerships, corporations, or other legal entities, and persons acting or purporting to act for, or in behalf of, any government or subdivision thereof, whether Federal, State or local.

(3) "Private place" means a place where one may reasonably

expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

(b) *Unlawful Eavesdropping or Surveillance.* A person commits a misdemeanor of the second degree if he:

(1) trespasses on property with purpose to subject anyone to eavesdropping or other surveillance in a private place; or

(2) installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in such place, or uses any such unauthorized installation; or

(3) installs or uses outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there.

(c) *Breach of Privacy of Messages or Other Communications.* A person commits a misdemeanor of the second degree if he:

(1) intercepts without permission of the parties to the communication a message or other communication by telephone, telegraph, letter or other means of communicating privately; but this paragraph does not extend to (i) overhearing of messages through a regularly installed instrument on a telephone party line or on an extension, (ii) interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities, (iii) acts done by personnel of any telephone or telegraph carrier in the performance of their duties in connection with the construction, maintenance or operation of a telephone or telegraph system, or (iv) messages or communications transmitted directly between the sender and any person receiving the message or communication; or

(2) installs or employs any device for overhearing or recording communications passing through a telephone or telegraph line with intent to intercept a communication in violation of this section; or

(3) divulges or uses without the consent of the sender or receiver the existence or contents of any such message or other communication if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

(d) *Admissibility in Evidence.* Except as proof in a suit or

prosecution for a violation of this section, no evidence obtained as a result of a violation of privacy or breach of privacy of messages shall be admissible as evidence in any legal proceeding.

(e) *Civil Damages.* Any person who violates or aids, abets or procures a violation of this section shall be liable to any person whose communication is unlawfully intercepted or divulged for treble the amount of any damage resulting from such unlawful interception, divulgence or use, but in no event less than one hundred dollars ($100) and a reasonable attorney's fee.

Comment: This section is derived from Section 250.12 of the Model Penal Code and incorporates the provisions of the Wiretap Act [1957, July 16, P. L. 956 (15 P. S. § 2443)].

This section retains all of the Pennsylvania wiretap provisions and extends existing law to cover other violations of privacy.

Section 688 of The Penal Code of 1939 (18 P. S. § 4688) prohibits the divulging of the contents of telephone and telegraph messages.

SECTION 2413. *Lotteries, Etc.*—(a) All lotteries or numbers games are hereby declared to be common nuisances. Every transfer of property which shall be in pursuance of any lottery or numbers game is hereby declared to be invalid and void.

(b) A person is guilty of a misdemeanor of the third degree if he:

(1) sets up, or maintains, any lottery or numbers game;

(2) manufactures or prints, or sells, exposes for sale or has in his possession with intent to sell any lottery or numbers ticket or share, or any writing, token or other device purporting or intending to entitle the holder or bearer, or any other person, to any prize to be drawn or obtained in any lottery, or numbers game;

(3) publishes any advertisement of any lottery or numbers game.

The purchaser of any such ticket, or device, shall not be liable to any prosecution or penalty arising out of this crime, and shall in all respects be a competent witness to prove the offense.

Comment: This section is derived from Sections 601 and 602 of The Penal Code of 1939 (18 P. S. §§ 4601 and 4602). The language was simplified.

Under existing law the offenses are misdemeanors, punishable by

imprisonment by separate and solitary confinement at labor not exceeding one year, and by fines not exceeding $500, or both.

SECTION 2414. *Gambling Devices, Gambling, Etc.*—A person is guilty of a misdemeanor of the third degree if he:

(1) purposely or knowingly makes, assembles, sets up, maintains, sells, lends, leases, gives away, or offers for sale, loan, lease or gift, any punch board, drawing card, slot machine or any device to be used for gambling purposes, except playing cards;

(2) allows persons to collect and assemble for the purpose of gambling at any place under his control;

(3) solicits or invites any person to visit any gambling place for the purpose of gambling;

(4) engages in gambling for a livelihood;

(5) is without any fixed residence and is in the habit or practice of gambling;

(6) being the owner, tenant, lessee or occupant of any premises, knowingly permits or suffers the same, or any part thereof, to be used for the purpose of gambling.

Comment: This section is derived from Sections 603, 604, 605, and 606 of The Penal Code of 1939 (18 P. S. §§ 4603, 4604, 4605, and 4606). The language was simplified.

Under existing law the offenses are misdemeanors, punishable by fines not exceeding $500 or imprisonment not exceeding one year, or both.

SECTION 2415. *Pool Selling and Bookmaking.*—A person is guilty of a misdemeanor of the third degree if he:

(1) engages in pool selling or bookmaking;

(2) occupies any place for the purpose of receiving, recording or registering bets or wagers, or of selling pools;

(3) receives, records, registers, forwards, or purports or pretends to forward, to another, any bet or wager upon the result of any political nomination, appointment or election, or upon any contest of any nature;

(4) becomes the custodian or depository, for gain or reward, of any property staked, wagered or pledged, or to be staked, wagered, or pledged upon any such result;

(5) being the owner, lessee, or occupant of any premises,

knowingly permits or suffers the same, to be used or occupied for any of such purposes.

Comment: This section is derived from Section 607 of The Penal Code of 1939 (18 P. S. § 4607). The language was simplified.

Under existing law the offense is a misdemeanor, punishable by a fine of not more than $500 or imprisonment of not more than one year, or both.

ARTICLE XXV

PUBLIC INDECENCY

SECTION 2501. *Open Lewdness.*—A person commits a misdemeanor of the third degree if he does any lewd act which he knows is likely to be observed by others who would be affronted or alarmed.

Comment: This section is derived from Section 251.1 of the Model Penal Code and makes no radical change in existing law which provides that any one who "commits open lewdness, or any notorious act of public indecency, tending to debauch the morals or manners of the people, is guilty of a misdemeanor . . ." Section 519 of The Penal Code of 1939 (18 P. S. § 4519).

SECTION 2502. *Prostitution and Related Offenses.*—(a) *Prostitution.* A person is guilty of prostitution, a misdemeanor of the third degree, if he or she:

(1) is an inmate of a house of prostitution or otherwise engages in sexual activity as a business; or

(2) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

"Sexual activity" includes homosexual and other deviate sexual relations. A "house of prostitution" is any place where prostitution or promotion of prostitution is regularly carried on by one person under the control, management or supervision of another. An "inmate" is a person who engages in prostitution in or through the agency of a house of prostitution. "Public place" means any place to which the public or any substantial group thereof has access.

(b) *Promoting Prostitution.* A person who knowingly promotes prostitution of another commits a misdemeanor or felony as

provided in subsection (c). The following acts shall, without limitation of the foregoing, constitute promoting prostitution:

(1) owning, controlling, managing, supervising or otherwise keeping, alone or in association with others, a house of prostitution or a prostitution business; or

(2) procuring an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate; or

(3) encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute; or

(4) soliciting a person to patronize a prostitute; or

(5) procuring a prostitute for a patron; or

(6) transporting a person into or within this Commonwealth with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or

(7) leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or the promotion of prostitution, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means; or

(8) soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this subsection.

(c) *Grading of Offenses Under Subsection (b).* An offense under subsection (b) constitutes a felony of the third degree if:

(1) the offense falls within clause (1), (2), or (3) of subsection (b); or

(2) the actor compels another to engage in or promote prostitution; or

(3) the actor promotes prostitution of a child under the age of sixteen (16) years, whether or not he is aware of the child's age; or

(4) the actor promotes prostitution of his wife, child, ward or any person for whose care, protection or support he is responsible.

Otherwise the offense is a misdemeanor of the second degree.

(d) *Presumption from Living off Prostitutes.* A person, other than the prostitute or the prostitute's minor child or other legal dependent incapable of self-support, who is supported in whole or substantial part by the proceeds of prostitution is presumed to be knowingly promoting prostitution in violation of subsection (b).

(e) *Patronizing Prostitutes.* A person commits a summary offense if he hires a prostitute to engage in sexual activity with him,

or if he enters or remains in a house of prostitution for the purpose of engaging in sexual activity.

(f) *Evidence.* On the issue whether a place is a house of prostitution the following shall be admissible evidence: its general repute; the repute of the persons who reside in or frequent the place; the frequency, timing and duration of visits by nonresidents. Testimony of a person against his spouse shall be admissible to prove offenses under this section.

Comment: This section is derived from Section 251.2 of the Model Penal Code.

The Penal Code of 1939 contains a number of sections dealing with prostitution. Section 508 (18 P. S. § 4508) penalizes prostitution of a female under sixteen; Section 509 (18 P. S. § 4509) penalizes parents and guardians who permit a child under sixteen to be in or remain in a house of prostitution; Section 512 (18 P. S. § 4512) penalizes prostitution and assignation; Section 513 (18 P. S. § 4513) deals with pandering; Section 514 (18 P. S. § 4514) relates to forcing wife into house of prostitution; Section 515 (18 P. S. § 4515) penalizes acceptance of bawd money; Section 516 (18 P. S. § 4516) covers detention of prostitute for debt; Section 517 (18 P. S. § 4517) prohibits the transportation of females for the purpose of prostitution; and Section 518 (18 P. S. § 4518) prohibits loitering about a bawdy house and receiving money from prostitutes. "Assignation" and "Prostitution" are defined in Section 103 of The Penal Code of 1939 (18 P. S. § 4103).

This section extends existing law to include homosexual and other deviate sexual relations in the definition of prostitution.

Only sexual activity as a "business" or "for hire" is covered by this section which is consistent with existing law which defines prostitution as "sexual intercourse for hire." The Penal Code of 1939, § 103 (18 P. S. § 4103).

Subsection (b) establishes a single comprehensive offense covering the promotion of prostitution. It consolidates the various provisions of existing law relating to pandering, permitting building to be used for prostitution, etc. Generally speaking the subsidiary clauses of Subsection (b) are consistent with existing law.

Subsection (d) is new and provides a presumption where the prosecution is under Subsection (b). For present law covering receiving money from a prostitute, see The Penal Code of 1939, Section 515 (18 P. S. § 4515) and Section 518 (18 P. S. § 4518).

Subsection (e) is consistent with existing law except the offense

is made a summary offense. The Penal Code of 1939, § 512 (18 P. S. § 4512).

SECTION 2503. *Loitering to Solicit Deviate Sexual Relations.*—A person is guilty of a misdemeanor of the third degree if he loiters in or near any public place for the purpose of soliciting or being solicited to engage in deviate sexual relations.

Comment: This section is derived from Section 250.3 of the Model Penal Code.

Existing law penalizes solicitation to commit sodomy [The Penal Code of 1939, § 502 (18 P. S. § 4502)] but does not contain any provision prohibiting loitering for such purpose. The purpose of this section is to make it clear that the indiscriminate making of one's self available for deviate sexual relations is punishable since such conduct is a type of public nuisance.

SECTION 2504. *Obscenity.*—(a) *Obscene Defined.* Material is obscene if, considered as a whole, its predominant appeal is to prurient interest, that is, a shameful or morbid interest, in nudity, sex or excretion, and if in addition it goes substantially beyond customary limits of candor in describing or representing such matters. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(b) *Offenses.* Subject to the defense provided in subsection (c), a person commits a misdemeanor of the second degree if he knowingly or recklessly:

(1) sells, delivers or provides, or offers or agrees to sell, deliver or provide, any obscene writing, picture, record or other representation or embodiment of the obscene; or

(2) presents or directs an obscene play, dance or performance, or participates in that portion thereof which makes it obscene; or

(3) publishes, exhibits or otherwise makes available any obscene material; or

(4) possesses any obscene material for purposes of sale or other commercial dissemination; or

(5) sells, advertises or otherwise commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene.

A person who disseminates or possesses obscene material in the course of his business is presumed to do so knowingly or recklessly.

(c) *Justifiable and Noncommercial Private Dissemination.* It is a defense to prosecution under this section that dissemination was restricted to:

(1) institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or

(2) noncommercial dissemination to personal associates of the actor.

(d) *Evidence; Adjudication of Obscenity.* In any prosecution under this section evidence shall be admissible to show:

(1) the character of the audience for which the material was designed or to which it was directed;

(2) what the predominant appeal of the material would be for ordinary adults or any special audience to which it was directed, and what effect, if any, it would probably have on conduct of such people;

(3) artistic, literary, scientific, educational or other merits of the material;

(4) the degree of public acceptance of the material in the United States;

(5) appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; and

(6) the good repute of the author, creator, publisher or other person from whom the material originated.

Expert testimony and testimony of the author, creator, publisher or other person from whom the material originated, relating to factors entering into the determination of the issue of obscenity, shall be admissible. The court shall dismiss a prosecution for obscenity if it is satisfied that the material is not obscene.

Comment: This section is derived from Section 251.4 of the Model Penal Code.

The general purpose of this section is to set forth a modern obscenity law, taking into account changed circumstances and knowledge occurring since the era when the prevailing law of obscenity was formed.

Existing law is set forth in Section 524 of The Penal Code of 1939 (18 P. S. § 4524).

Subsection (a): Under existing law the word "obscene" is defined as "that which, to the average person applying contemporary community standards, has as its dominant theme, taken as a whole, an appeal to prurient interest." See *Roth v. United States,* 354 U.S. 476 (1957). This subsection brings the definition into sharper focus by applying it to a predominantly prurient interest in sexual matters, which interest goes beyond customary freedom in these matters; and by judging the material with reference to ordinary adults, unless the material is designed for children or other specially susceptible audiences. The penal prohibition applies only to those appeals to prurient interest which go substantially beyond prevailing customary freedom of discussion or representation in these matters.

Subsection (b) limits the offense to the commercial aspects. In this regard, existing law is somewhat narrowed. The commercial production of obscene material offers perhaps the greatest danger to the public. The elimination of the commercial activities would undoubtedly greatly reduce public display of obscene materials. What is attacked by this section is a sort of "pandering" to an interest in obscenity. In Subsection (b)(1) the term "delivers or provides" is broad enough to include "giving" or "lending." This subsection would also include an oral obscene communication such as the reading of an obscene writing to others.

Subsection (c)(2) is based upon the policy adopted in Subsection (b) of limiting the offense to commercial activities in obscenity.

Subsection (d) clarifies existing law which is in a state of flux on the admissibility of evidence, including expert evidence. The purpose of this subsection is to make it clear that all evidence bearing on the issue of obscenity is admissible. The last sentence of this subsection is intended to meet criticisms of the actions of juries in obscenity cases and to assure consistency on a State-wide basis in the application of this section; the judge should dismiss the prosecution if he finds the matter is not obscene, even if the evidence would be such as would ordinarily be submitted to the jury.

ARTICLE XXVI

MISCELLANEOUS

Introductory Comment: Attention is directed to the policy which governed the placing of the offenses contained in this article. It will

be noted that these offenses generally do not conform to the pattern of the Model Penal Code of The American Law Institute. For the most part, they represent existing Pennsylvania law and are retained in this Code as part of a miscellaneous article.

The drafters of this Code neither affirm nor disaffirm the policy which prompted the original enactment of these sections. It is intended that the policy with respect to them may be determined in the future by the General Assembly. Some provisions which seem obsolete may be repealed; others may be modified.

This Miscellaneous Article also provides an article in which future enactments not in consonance with a general criminal law may be placed.

Generally, the sections of this article have not changed the definition of the offense but have conformed the penalties to the general penalty provisions of the Code.

SECTION 2601. *Uniform Firearms Act.*—(a) *Definitions.* As used in this section:

"Firearm" means any pistol or revolver with a barrel less than twelve inches, any shotgun with a barrel less than twenty-four inches, or any rifle with a barrel less than fifteen inches.

"Crime of violence" means any of the following crimes, or an attempt to commit any of the same, namely: murder, rape, aggravated assault, robbery, burglary, entering a building with intent to commit a crime therein, and kidnapping.

"Person" includes firm, partnership, association, or corporation; and the masculine shall include the feminine and neuter.

(b) *Crimes Committed with Firearms.* If any person shall commit or attempt to commit a crime of violence when armed with a firearm contrary to the provisions of this section, he may, in addition to the punishment provided for the crime, be punished also as provided by this section.

(c) *Evidence of Intent.* In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, shall be evidence of his intention to commit said crime of violence.

(d) *Former Convict Not to Own a Firearm, Etc.* No person who has been convicted in this Commonwealth or elsewhere of a

crime of violence shall own a firearm, or have one in his possession or under his control.

(e) *Firearms Not to Be Carried Without a License; Exceptions.* No person shall carry a firearm in any vehicle or concealed on or about his person, except in his place of abode or fixed place of business, without a license therefor as hereinafter provided.

The provisions of clause (e) shall not apply (I) to constables, sheriffs, prison or jail wardens, or their deputies, policemen of the Commonwealth or its political subdivisions, or other law-enforcement officers; (II) or to members of the army, navy or marine corps of the United States or of the national guard or organized reserves when on duty; (III) or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this Commonwealth; (IV) or to the members of any organization incorporated under the laws of this Commonwealth engaged in target shooting with rifle, pistol or revolver, provided such members are at or are going to or from their places of assembly or target practice; (V) or to officers or employes of the United States duly authorized to carry a concealed firearm; (VI) or to agents, messengers and other employes of common carriers, banks, or business firms, whose duties require them to protect moneys, valuables and other property in the discharge of such duties; (VII) or to any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person, having in his possession, using or carrying a firearm in the usual or ordinary course of such business; (VIII) or to any person while carrying a firearm unloaded and in a secure wrapper from the place of purchase to his home or place of business, or to a place of repair or back to his home or place of business, or in moving from one place of abode or business to another; (IX) or to persons licensed to hunt or fish in this Commonwealth, provided that such persons are actually hunting or fishing or are going to the places where they desire to hunt or fish or returning from such places, or to persons training dogs: Provided, That, such persons are actually training dogs during the regular training season: Provided, however, That, before any such exemption shall be granted to any person licensed to hunt or fish or who desires to train dogs, such person shall at the time of securing his hunting or fishing license or any time after any such license has issued, register with the county

treasurer the make of the firearm he desires to carry, and the caliber and number thereof, on a blank to be furnished by the Commissioner of the Pennsylvania State Police. The original registration shall be delivered to the person registering such firearm, and a copy thereof shall be forwarded by the county treasurer to the Commissioner of the Pennsylvania State Police. The county treasurer shall be entitled to collect a fee of fifty cents (50c) for each such registration of a firearm. In all counties the treasurer shall retain twenty cents (20c) of each fee and the remaining thirty cents (30c) of each fee shall be paid to the county. The registration of a firearm, as herein provided, shall be good only for the year for which the hunting or fishing license in connection with which it is granted, is issued.

Any such registration of a firearm may be revoked by the county treasurer issuing the same, upon written notice to the holder thereof, and any person aggrieved by the action of a county treasurer in revoking such registration, may appeal from such action in the manner provided by clause (k) of this section.

(f) *Police Heads in Cities and Sheriffs in Counties May Issue Licenses in Triplicate; Fee; Revocation.* The chief or head of any police force or police department of a city, and, elsewhere, the sheriff of a county, may, upon the application of any person, issue a license to such person to carry a firearm in a vehicle or concealed on or about his person within this Commonwealth for not more than one (1) year from date of issue, if it appears that the applicant has good reason to fear an injury to his person or property, or has any other proper reason for carrying a firearm, and that he is a suitable person to be so licensed. The license shall be in triplicate, in form to be prescribed by the Commissioner of the Pennsylvania State Police, and shall bear the name, address, description, and signature of the licensee, and the reason given for desiring a license. The original thereof shall be delivered to the licensee, the duplicate shall, within seven (7) days, be sent by registered mail to the Commissioner of the Pennsylvania State Police, and the triplicate shall be preserved for six (6) years by the authority issuing said license. The fee for issuing such license shall be fifty cents (50c), which fee shall be paid into the county treasury, except that if the applicant exhibits a resident hunter's license issued to him for the current license year, the fee shall not be charged.

Any such license to carry firearms may be revoked by the

person issuing the same, at any time, upon written notice to the holder thereof.

(g) *Persons to Whom Delivery Shall Not Be Made.* No person shall deliver a firearm to any person under the age of eighteen (18) years, or to one he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

(h) *Time and Manner of Delivery; Statement to Be Signed by Purchaser; Sales at Wholesale.* No seller shall deliver a firearm to the purchaser thereof until forty-eight (48) hours shall have elapsed from the time of the application for the purchase thereof, and when delivered, said firearm shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a firearm, the purchaser shall sign in quadruplicate and deliver to the seller a statement containing his full name, address, occupation, color, place of birth, the date and hour of application, the caliber, length of barrel, make, model and manufacturer's number of the firearm to be purchased and a statement that he has never been convicted in this Commonwealth or elsewhere of a crime of violence. The seller shall, within six (6) hours after such application, sign and attach his address and forward by registered mail one copy of such statement to the chief or head of the police force or police department of the city, or the sheriff of the county of the seller's place of business, the duplicate, duly signed by the seller, shall, within seven (7) days, be sent by him, with his address, to the Commissioner of the Pennsylvania State Police, the triplicate he shall retain for six (6) years, and the quadruplicate with the proper signature and address of the seller shall, within six (6) hours after such application, be forwarded by registered mail to the chief or head of the police force or police department of the city or to the sheriff of the county of which the buyer is a resident. This clause shall not apply to sales at wholesale.

(i) *Retail Dealer Required to Be Licensed.* No retail dealer shall sell, or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell or transfer, any firearm without being licensed as hereinafter provided.

(j) *Issuance of Licenses; Form to Be Prescribed by the Commissioner of the Pennsylvania State Police; Conditions; Display of Firearms Prohibited; License Fee; Revocation.* The chief or head of any police force or police department of a city, and, elsewhere, the

sheriff of the county, shall grant to reputable applicants licenses, in form prescribed by the Commissioner of the Pennsylvania State Police, effective for not more than one (1) year from date of issue, permitting the licensee to sell firearms direct to the consumer, subject to the following conditions in addition to those specified in clause (h) hereof, for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in this act.

I. The business shall be carried on only in the building designated in the license.

II. The license, or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

III. No firearm shall be sold (a) in violation of any provision of this section, nor (b) shall a firearm be sold, under any circumstances, unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

IV. A true record in triplicate shall be made of every firearm sold, in a book kept for the purpose, the form of which may be prescribed by the Commissioner of the Pennsylvania State Police, and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model, and manufacturer's number of the firearm, the name, address, occupation, color, and place of birth of the purchaser, and a statement signed by the purchaser that he has never been convicted in this Commonwealth, or elsewhere, of a crime of violence. One copy shall, within six (6) hours, be sent by registered mail to the chief or head of the police force or police department of the city, or the sheriff of the county of which the dealer is a resident; the duplicate, the dealer shall, within seven (7) days, send to the Commissioner of the Pennsylvania State Police; the triplicate, the dealer shall retain for six (6) years.

V. No firearm or imitation thereof, or placard advertising the sale thereof, shall be displayed in any part of any premises where it can readily be seen from the outside.

The fee for issuing said license shall be ten dollars ($10), which fee shall be paid into the county treasury.

VI. Any license granted under this clause may be revoked by

the person issuing the same, upon written notice to the holder thereof.

(k) *Petition to Quarter Sessions for Reversal.* Any applicant aggrieved by the refusal of his application for a license to carry a firearm or for a dealer's license, or any person or retail dealer whose license has been revoked, may file, within thirty (30) days thereafter, in the court of quarter sessions of his county, a petition against the official who refused his application, as defendant, alleging therein, in brief detail, the refusal complained of, and praying for reversal thereof. Upon service of a copy of the petition upon the defendant, returnable within ten (10) days from its date, the defendant shall, on or before the return day, file an answer in which he may allege by way of defense the reason for his refusal, and such other reasons as may in the meantime have been discovered. Upon application of either party, the cause shall be heard without delay. The court may either sustain or reverse the action of the defendant. If the defendant's action is reversed, he shall forthwith issue the license upon payment of the fee. A judgment sustaining a refusal to grant a license shall not bar, after one (1) year, a new application; nor shall a judgment in favor of the petitioner prevent the defendant from thereafter revoking or refusing to renew such license for any proper cause which may thereafter occur. The court shall have full power to dispose of all costs.

(l) *Loans on, or Lending or Giving Firearms Prohibited.* No person shall make any loan secured by mortgage, deposit, or pledge of a firearm; nor shall any person lend or give a firearm to another or otherwise deliver a firearm contrary to the provisions of this section.

(m) *False Evidence of Identity.* No person shall, in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry the same, give false information or offer false evidence of his identity.

(n) *Altering or Obliterating Marks of Identification.* No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any firearm. Possession of any firearm, upon which any such mark shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same.

(o) *Antique Firearms.* This section shall not apply to antique firearms unsuitable for use and possessed as curiosities or ornaments.

(p) *Violation Penalty.* An offense under this section constitutes a misdemeanor of the first degree.

(q) *Short Title.* This section may be cited as the "Uniform Firearms Act."

(r) *Uniformity.* This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Comment: This section retains existing law as contained in Section 628 of The Penal Code of 1939 (18 P. S. § 4628) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $3,000 or imprisonment not exceeding three years, or both.

[**NOTE:** Section 2604 of House Bill No. 2272]

SECTION 2602. *Use of Fire Extinguishers Containing Carbon Tetrachloride in School Buildings or School Buses.*—It shall be unlawful for any building used for private, public or parochial school purposes, or any bus being used for the transportation of school children, to be equipped with or to have available for use a fire extinguisher containing carbon tetrachloride, and any person having immediate control over such buildings or buses, who permits them to be so equipped or to have such fire extinguishers available for use therein, is guilty of a summary offense.

Comment: This section retains existing law as contained in Section 699.11 of The Penal Code of 1939 (18 P. S. § 4699.11) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $100 or imprisonment not exceeding sixty days, or both.

[**NOTE:** Section 2636 of House Bill No. 2272]

SECTION 2603. *Sale of Gasoline in Glass Containers.*—A person is guilty of a summary offense if he sells gasoline in a glass container.

Comment: This section retains existing law as contained in Section 699.12 of The Penal Code of 1939 (18 P. S. § 4699.12) without substantial change.

Under existing law the offense is punishable in a summary proceeding by a fine not exceeding $100 or imprisonment not exceeding thirty days.

[**NOTE:** Section 2637 of House Bill No. 2272]

SECTION 2604. *Corrupting Morals of Children or Encouraging Children to Commit Crime or Violate Parole.*—A person is guilty of a misdemeanor of the first degree if he, being of the age of eighteen (18) years and upwards, by any act corrupts or tends to corrupt the morals of any child under the age of eighteen (18) years, or if he aids, abets, entices or encourages any such child in the commission of any crime, or who knowingly assists or encourages such child in violating his or her parole or any order of court.

A conviction under the provisions of this section may be had whether or not the jurisdiction of any juvenile court has attached or shall thereafter attach to such child or whether or not such child has been adjudicated a delinquent or shall thereafter be adjudicated a delinquent.

In trials and hearing upon charges of violating the provisions of this section, knowledge of the minor's age and of the court's orders and decrees concerning such minor shall be presumed in the absence of proof to the contrary.

Comment: This section retains existing law as contained in Section 532 of The Penal Code of 1939 (18 P. S. § 4532) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $1,000 or imprisonment not exceeding three years, or both.

[**NOTE:** Section 2603 of House Bill No. 2272]

SECTION 2605. *Sale or Lease of Weapons and Explosives to Minors.*—A person is guilty of a misdemeanor of the third degree if he knowingly or wilfully sells or causes to be sold or leases to any person under the age of sixteen (16) years any deadly weapon, cartridge, gunpowder, or other similar dangerous explosive substance: Provided, That, the provisions of the section shall not be construed to prohibit hunting by minors under sixteen (16) years of age permitted under provisions of the act approved the third day of June, one thousand nine hundred thirty-seven (P. L. 1225) and its amendments.

Comment: This section is derived from Section 626 of The Penal Code of 1939 (18 P. S. § 4626). The proviso relating to hunting by minors was added to insure construction consistent with the provisions of The Game Law.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

NOTE: This section replaces Section 2601 of House Bill No. 2272 and follows existing law more closely.

SECTION 2606. *Sale of Starter Pistols to Minors.*—A person is guilty of a misdemeanor of the third degree if he sells, causes to be sold, gives or furnishes to any person under the age of eighteen (18) years, or whoever being under the age of eighteen (18) years purchases, accepts, receives or possesses, any pistol commonly referred to as "starter pistol" specially designed to receive and discharge blank cartridges only or similar pistol.

Nothing in this section, however, shall prohibit the use of said starter pistols for the purpose of starting or officiating at athletic events, use in dramatic productions, or other similar events.

Comment: This section retains existing law as contained in Section 626.1 of The Penal Code of 1939 (18 P. S. § 4626.1) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

[**NOTE:** Section 2602 of House Bill No. 2272]

SECTION 2607. *Sale of Tobacco to Minors.*—A person is guilty of a summary offense if he sells tobacco, in any form, to any minor under the age of sixteen (16) years, or by purchase, gift or other means, furnishes tobacco, in any form, to a minor under the age of sixteen (16) years.

Comment: This section retains existing law as contained in Section 647 of The Penal Code of 1939 (18 P. S. § 4647) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $100 or imprisonment not exceeding thirty days, or both.

SECTION 2608. *Furnishing Cigarettes or Cigarette Papers to Minors.*—A person commits an offense if he furnishes to any minor, by gift, sale or otherwise, any cigarettes or cigarette paper. Whoever commits an offense under this section shall, upon being convicted thereof in a summary proceeding, be sentenced for the first offense to pay a fine not exceeding twenty-five dollars ($25), and, in default of the payment thereof, shall be imprisoned for a period not exceeding thirty (30) days; and for the second offense shall be fined not exceeding one hundred dollars ($100); and for the third or subsequent offense shall be guilty of a misdemeanor of the third degree.

Comment: This section retains existing law as contained in Section 648 of The Penal Code of 1939 (18 P. S. § 4648) without substantial change.

Under existing law the offense is punishable in a summary proceeding, for the first offense, by a fine not exceeding $25, and, in default of payment thereof, imprisonment not exceeding thirty days; for the second offense, a fine of $100; and, for the third or subsequent offense, the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

SECTION 2609. *Failure of Minor to Divulge Information.*—A person commits an offense if he, being a minor, and being in possession of a cigarette or of cigarette paper, and being by any police officer, constable, juvenile court officer, truant officer, or teacher in any school, asked where and from whom such cigarette or cigarette paper was obtained, refuses to furnish such information.

Whoever commits an offense under this section shall, upon conviction thereof in a summary proceeding, being of the age of sixteen (16) years or upwards, be sentenced to pay a fine not exceeding five dollars ($5), or to undergo an imprisonment in the jail of the proper county not exceeding five (5) days, or both; or being under the age of sixteen (16) years, shall be certified by the magistrate to the juvenile court, for such action as to said court shall seem proper.

Comment: This section retains existing law as contained in Section 649 of The Penal Code of 1939 (18 P. S. § 4649) without substantial change.

Under existing law the offense for a person 16 years of age or

upwards, is punishable in a summary proceeding, by a fine not exceeding $5, or imprisonment in the jail of the proper county not exceeding five days, or both. If the person is under 16 years of age, he is to be certified to the juvenile court for such action as such court shall deem proper.

SECTION 2610. *Misrepresentation of Age by Minor to Secure Liquor.*—A person is guilty of a misdemeanor of the third degree if he, being under the age of twenty-one (21) years, knowingly and falsely represents himself to be twenty-one (21) years of age to any licensed dealer or other person, for the purpose of procuring or having furnished to him, any intoxicating liquors.

Comment: This section retains existing law as contained in Section 675 of The Penal Code of 1939 (18 P. S. § 4675) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine of not less than $100 and not exceeding $300 or imprisonment not exceeding six months, or both.

[**NOTE:** Section 2617 of House Bill No. 2272]

SECTION 2611. *Prohibiting the Purchase, Consumption, Possession or Transportation of Intoxicating Liquors or Malt or Brewed Beverages by Minors.*—It shall be an offense for a person less than twenty-one (21) years of age to attempt to purchase, to purchase, consume, possess or to transport any alcohol, liquor or malt or brewed beverages within the Commonwealth.

An offense under this section constitutes a summary offense.

Any fine imposed in a summary proceeding pursuant to the provisions of this section shall be decreed to be paid to the city, borough, town or township in which the offense was committed, for the use of such city, borough, town or township.

Comment: This section retains existing law as contained in Section 675.1 of The Penal Code of 1939 [18 P. S. § 4675.1 (Supp.)] without substantial change.

Under existing law the offense is punishable in a summary proceeding, by a fine of not less than $25 nor more than $100 and costs of prosecution or imprisonment not exceeding thirty days, or both.

[**NOTE:** Section 2618 of House Bill No. 2272]

SECTION 2612. *Representing to Liquor Dealers That Minor*

Is of Age.—A person is guilty of a misdemeanor of the third degree if he knowingly, wilfully, and falsely represents to any licensed dealer or other person, any minor to be of full age, for the purpose of inducing any such licensed dealer or other person, to sell or furnish any intoxicating liquors to said minor.

Comment: This section retains existing law as contained in Section 676 of The Penal Code of 1939 (18 P. S. § 4676) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $50 or imprisonment not exceeding sixty days, or both.

[**NOTE:** Section 2619 of House Bill No. 2272]

SECTION 2613. *Inducement of Minors to Buy Liquor Prohibited.*—A person is guilty of a misdemeanor of the third degree if he hires or requests or induces any minor to purchase, or offer to purchase, spirituous, vinous or brewed and malt liquors from a duly licensed dealer for any purpose.

Comment: This section retains existing law as contained in Section 677 of The Penal Code of 1939 (18 P. S. § 4677) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

[**NOTE:** Section 2620 of House Bill No. 2272]

SECTION 2614. *Worldly Employment or Business on Sunday.*—A person is guilty of a summary offense if he does or performs any worldly employment or business whatsoever on the Lord's day, commonly called Sunday (works of necessity, charity and wholesome recreation excepted). Fines collected for violations of this section shall be for the use of the Commonwealth.

As used in this section "wholesome recreation" shall mean golf, tennis, boating, swimming, bowling, basketball, picnicking, shooting at inanimate targets and similar healthful or recreational exercises and activities.

Nothing herein contained shall be construed to prohibit the dressing of victuals in private families, bake-houses, lodginghouses, inns and other houses of entertainment for the use of sojourners, travellers or strangers, or to prohibit the sale of newspapers, or to

hinder watermen from landing their passengers, or ferrymen from carrying over the water travellers, or work in connection with the rendering of service by a public utility as defined by the act of May 28, 1937 (P. L. 1053), known as the "Public Utility Law," or persons removing with their families on the Lord's day, commonly called Sunday, nor to the delivery of milk or the necessaries of life, before nine of the clock in the forenoon, nor after five of the clock in the afternoon of the same day, nor shall anything herein contained be construed to prohibit the production and performance of drama and civic light opera in cities of the second class on Sundays, between the hours of two o'clock post meridian and twelve o'clock midnight, by nonprofit corporations in such cities, with right to charge admission. Nothing herein contained shall be construed to prohibit any person, partnership, association or corporation from conducting, staging, managing, operating, performing or engaging in basketball, ice shows and ice hockey in cities of the first and second class, on Sundays, between the hours of two o'clock post meridian and twelve o'clock midnight, although a charge of admission thereto is made and although labor or business is necessary to conduct, stage, manage or operate the same.

Comment: This section retains existing law as contained in Section 699.4 of The Penal Code of 1939 (18 P. S. § 4699.4) without substantial change. The last sentence of said section which related to daylight saving time was deleted.

Under existing law the offense is punishable in a summary proceeding, by a fine of $4 for the use of the Commonwealth or in default of payment thereof, six days' imprisonment.

[**NOTE:** Section 2630 of House Bill No. 2272]

SECTION 2615. *Buying, Selling, Exchanging, Trading, or Otherwise Dealing in Motor Vehicles and Trailers on Sunday.*—The term "motor vehicle," as used in this section, shall mean every self-propelled device in, upon or by which any person or property is or may be transported or drawn on a public highway.

The term "trailer," as used in this section, shall mean every vehicle, without motor power, designed to carry property or passengers or designed and used exclusively for living quarters wholly on its own structure, and to be drawn by a motor vehicle.

A person is guilty of a summary offense if he engages in the

business of buying, selling, exchanging, trading, or otherwise dealing in new or used, motor vehicles or trailers, on Sunday. A person who commits a second or any subsequent offense within one (1) year after conviction for the first offense, shall be sentenced to pay a fine not exceeding two hundred dollars ($200).

Information charging violations of this section may be brought within seventy-two (72) hours after the commission of the alleged offense and not thereafter.

Comment: This section retains existing law as contained in Section 699.9 of The Penal Code of 1939 (18 P. S. § 4699.9) without substantial change.

Under existing law the offense is punishable in a summary proceeding, for the first offense, by a fine not exceeding $100 and, for the second or subsequent offense committed within one year after conviction of the first offense, a fine not exceeding $200 and imprisonment not exceeding thirty days in default thereof.

[**NOTE:** Section 2634 of House Bill No. 2272]

SECTION 2616. *Selling Certain Personal Property on Sunday.*—A person is guilty of a summary offense if he engages on Sunday in the business of selling, or sells or offers for sale, on such day, at retail, clothing and wearing apparel, clothing accessories, furniture, housewares, home, business or office furnishings, household, business or office appliances, hardware, tools, paints, building and lumber supply materials, jewelry, silverware, watches, clocks, luggage, musical instruments and recordings, or toys, excluding novelties and souvenirs. A person who commits a second or any subsequent offense within one (1) year after conviction for the first offense shall be sentenced to pay a fine of not exceeding two hundred dollars ($200).

Each separate sale or offer to sell shall constitute a separate offense.

Information charging violations of this section shall be brought within seventy-two (72) hours after the commission of the alleged offense and not thereafter.

Comment: This section retains existing law as contained in Section 699.10 of The Penal Code of 1939 (18 P. S. § 4699.10) without substantial change.

Under existing law the offense is punishable in a summary proceeding, for the first offense, by a fine not exceeding $100 and, for

the second or subsequent offense committed within one year after conviction of the first offense, a fine not exceeding $200 and imprisonment not exceeding thirty days in default thereof.
[**NOTE:** Section 2635 of House Bill No. 2272]

SECTION 2617. *Selling or Otherwise Dealing in Fresh Meats, Produce and Groceries on Sunday.*—A person is guilty of a summary offense if he engages in the business of selling or otherwise dealing at retail in fresh meats, produce and groceries on Sunday. A person who commits a second or any subsequent offense within one (1) year after conviction for the first offense shall be sentenced to pay a fine not exceeding two hundred dollars ($200).

Each separate sale, or offer to sell, shall constitute a separate offense.

Informations charging violations of this section shall be brought within seventy-two (72) hours after the commission of the alleged offense and not thereafter.

This section shall not apply to any retail establishment employing less than ten persons or to any retail establishment where fresh meats, produce and groceries are offered or sold by the proprietor or members of his immediate family or employing less than ten persons nor shall it apply to any retail establishment where food is prepared on the premises for human consumption.

Comment: This section retains existing law as contained in Section 699.15 of The Penal Code of 1939 (18 P. S. § 4699.15) without substantial change.

Under existing law the offense is punishable in a summary proceeding, for the first offense, by a fine not exceeding $100 and, for the second or any subsequent offense committed within one year after conviction for the first offense, a fine not exceeding $200 or imprisonment not exceeding thirty days in default thereof.
[**NOTE:** Section 2640 of House Bill No. 2272]

SECTION 2618. *Professional Thieves.*—A person is guilty of a summary offense if he, being a professional thief, burglar or pickpocket, frequents or attends any place for an unlawful purpose.

Comment: This section is derived from Section 821 of The Penal Code of 1939 (18 P. S. § 4821) without substantial change.

Under existing law the offense is punishable in a summary of proceeding by imprisonment not exceeding ninety days at labor, or in

the discretion of the magistrate, to enter security for his good behavior for a period not exceeding one year.

[**NOTE:** Section 2645 of House Bill No. 2272]

SECTION 2619. *Out-of-State Convict Made Goods.*—A person is guilty of a misdemeanor of the second degree if he sells or exchanges on the open market any goods, wares or merchandise prepared, wholly or in part, or manufactured by convicts or prisoners of other states, except convicts or prisoners on parole or probation.

Comment: This section retains existing law as contained in Section 634 of The Penal Code of 1939 (18 P. S. § 4634) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

[**NOTE:** Section 2606 of House Bill No. 2272]

SECTION 2620. *Unlawful Advertising of Insurance Business.*—A person is guilty of a misdemeanor of the second degree if he publishes or prints in any newspaper, magazine, periodical, circular, letter, pamphlet, or in any other manner, or publishes by radio or television broadcasting, in this Commonwealth, any advertisement or other notice, either directly or indirectly, setting forth the advantages of, or soliciting business for, any insurance company, association, society, exchange or person which has not been authorized to do business in this Commonwealth, or accepts for publication or printing in any newspaper, magazine or other periodical, or for radio or television broadcasting, in this Commonwealth, any advertisement or other notice, either directly or indirectly, setting forth the advantages of or soliciting business for any insurance company, association, exchange or person, unless such newspaper, magazine or other periodical, or the radio or television broadcasting company has in its possession a true and attested or photostatic copy of a certificate of authority from the Insurance Department to the effect that the insurance company, association, society, exchange or person named therein is authorized to do business in this Commonwealth.

Such certificates shall be issued by the Insurance Department to any person applying therefor.

Comment: This section retains existing law as contained in Section

689 of The Penal Code of 1939 (18 P. S. § 4689) without substantial change.

Under existing law the offense is a misdemeanor, punishable by imprisonment not exceeding one year or a fine not exceeding $500, or both.

[**NOTE:** Section 2623 of House Bill No. 2272]

SECTION 2621. *Unlawful Coercion in Contracting Insurance.* —A person is guilty of a misdemeanor of the first degree if he, being engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property, requires, as a condition precedent to financing the purchase of such property, or to lending money upon the security of a mortgage thereon, or as a condition prerequisite for the renewal or extension of any such loan or mortgage, or for the performance of any other act in connection therewith, that the person for whom such purchase is to be financed, or to whom the money is to be loaned, or for whom such extension, renewal or other act is to be granted or performed, shall negotiate any policy of insurance or renewal thereof covering such property, or with the exception of a group creditor policy any policy covering the life or health of such person, through a particular insurance company, agent or broker.

A person other than individuals or the responsible officers, agents or employes of a corporation, partnership or association, who commits an offense under this section shall be sentenced to pay a fine not exceeding one thousand dollars ($1,000).

Nothing contained in this section shall prevent any person from approving or disapproving the insurance company selected to underwrite such insurance.

Comment: This section retains existing law as contained in Section 689.1 of The Penal Code of 1939 (18 P. S. § 4689.1) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $1,000 and in the case of individuals or the responsible officers, agents or employes of a corporation, partnership or association, by imprisonment not exceeding one year, or both.

[**NOTE:** Section 2624 of House Bill No. 2272]

SECTION 2622. *Buying or Exchanging Federal Food Order Stamps or Accepting Federal Food Order Stamps for Other Than*

Food or Surplus Foods.—A person is guilty of a misdemeanor of the third degree if he, not being authorized to do so by the United States Department of Agriculture, shall buy or exchange Federal food order stamps for currency, or if he shall accept or cause to be accepted Federal food order stamps in exchange for any merchandise or article except food, as defined by the Secretary of the United States Department of Agriculture, or Federal food order stamps in exchange for merchandise or articles, not defined by the Secretary of the United States Department of Agriculture to be surplus foods.

Comment: This section retains existing law as contained in Section 699.6 of The Penal Code of 1939 (18 P. S. § 4699.6) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine of not less than $25 nor more than $300 or imprisonment for not less than one month nor more than six months, or both.

[**NOTE:** Section 2632 of House Bill No. 2272]

SECTION 2623. *Removal of Mobilehome or House Trailer to Evade Tax; Failure of Court Operator to Make Reports.*—(a) A person is guilty of a summary offense if he, being the titled owner of a mobilehome or house trailer which is subject to a tax, and having received an official tax notice levying such tax thereon, thereafter for the purpose of evading the payment of such tax, removes such mobilehome or house trailer from the political subdivision levying such tax.

(b) A person is guilty of a summary offense if he, being an operator of a mobilehome or house trailer court, shall fail to submit to the tax assessor of the political subdivision, in which such court is located, after written notice to do so, such report or reports as are required by law to be submitted by an operator to such tax assessor.

Comment: This section retains existing law as contained in Section 699.14 of The Penal Code of 1939 (18 P. S. § 4699.14) without substantial change.

Under existing law the offense is punishable in summary proceedings by a fine of not more than $50 or imprisonment not exceeding twenty-five days, as regards Subsection (a); and upon summary conviction to pay a fine of not more than $50 or imprisonment of not more than twenty days, as regards Subsection (b).

[**NOTE:** Section 2639 of House Bill No. 2272]

SECTION 2624. *Attaching Advertisement without Consent of Publisher.*—A person is guilty of a summary offense if he places or affixes or inserts, or causes to be placed or affixed or inserted, any advertisement, notice, circular, pamphlet, card, handbill, book, booklet, or other printed notice of any kind, on or in or to any newspaper, magazine, periodical, or book, when such newspaper, magazine, periodical, or book is in the possession of the owner, or publisher thereof, or in the possession of any newsdealer, distributor, or carrier, or of any agent or servant of such owner or publisher, without the consent of the owner or publisher.

Comment: This section retains existing law as contained in Section 858 of The Penal Code of 1939 (18 P. S. § 4858) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine of not more than $100 for each offense, with costs of prosecution.

[**NOTE:** Section 2646 of House Bill No. 2272]

SECTION 2625. *Unlawful Use of Containers Bearing Owner's Name.*—A person is guilty of a summary offense if he uses, in the sale, exchange, transportation, delivery or preparation for sale of milk or cream, or their products, or of bread or any other bakery products, or any other products, any bottle, jar, vessel, can, box, or other container of another, upon which is stamped, blown, or engraved the name, title, or mark of the owner, without the permission of the owner thereof.

Comment: This section retains existing law as contained in Section 868 of The Penal Code of 1939 (18 P. S. § 4868) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $25 or imprisonment not exceeding one month, or both.

[**NOTE:** Section 2647 of House Bill No. 2272]

SECTION 2626. *Unauthorized Use or Possession of Stamped Containers.*—A person is guilty of a summary offense if he, without the consent of the owner thereof, sells or offers for sale, any milk can, butter tub or box, bread box, or other container used for the transportation of milk, cream, butter, bread or other bakery products, or any other products, having the name of the owner stamped thereon, or detains for his own use, or has in his possession for any

cause, any milk can, butter tub or box, bread box, or any other container belonging to another, without the consent of the owner thereof, or wilfully removes, obliterates, mutilates or otherwise destroys any lettering or plate containing the name and residence of such owner or owners of any milk can, butter tub or box, bread box, or container used for the transportation or handling of milk, cream, butter, bread or other bakery products, or any other products, without the consent of the owner.

Comment: This section retains existing law as contained in Section 869 of The Penal Code of 1939 (18 P. S. § 4869) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $100 or imprisonment not exceeding thirty days, or both.

[**NOTE:** Section 2648 of House Bill No. 2272]

SECTION 2627. *False Registration of Domestic Animals.*—A person is guilty of a misdemeanor of the third degree if he, by any false pretense, obtains from any club, association, society or company for improving the breed of domestic animals the registration or transfer of registration, of any animal in its herd, or other register, or knowingly gives a false pedigree of any animal.

Comment: This section retains existing law as contained in Section 880 of The Penal Code of 1939 (18 P. S. § 4880) without substantial change.

Under existing law the offense is a misdemeanor, punishable by imprisonment not exceeding one year or a fine not exceeding $500, or both.

[**NOTE:** Section 2650 of House Bill No. 2272]

SECTION 2628. *Unlawful Collection Agency Practices.*—(a) The following words and terms as used in this section shall be construed as follows:

"Claim" means and includes any claim, demand, account, note, or any other chose in action or liability of any kind whatsoever;

"Collection agency" means a person, other than an attorney at law duly admitted to practice in any court of record in this Commonwealth, who, as a business, enforces, collects, settles, adjusts, or compromises claims, or holds himself out, or offers, as a business, to enforce, collect, settle, adjust, or compromise claims;

"Creditor" means and includes a person having or asserting such a claim.

"Debtor" means and includes any person against whom a claim is asserted; and

"Person" means and includes an individual, partnership, association, or corporation, and any employe, agent, director, or officer thereof.

(b) It is unlawful for a collection agency to appear for or represent a creditor or other person in any proceeding, or in any action or proceeding for or growing out of the appointment of a receiver or trustee, or in connection with an assignment for the benefit of creditors, or to present any claim or to vote on behalf of a creditor, whether an assignee or transferee of such claim or by virtue of a proxy or otherwise, or to represent any creditor in any action or proceeding in any court, or before any alderman or justice of the peace in this Commonwealth, or to solicit from any creditor any claim for any of the purposes forbidden by this section.

(c) It is unlawful for a collection agency, for the purpose of collecting or enforcing the payment thereof, directly or indirectly, to buy, take an assignment of, or to become in any manner interested in the buying or taking of an assignment of any such claim.

(d) It is unlawful for a collection agency to furnish, or offer to furnish legal services, directly or indirectly, or to offer to render or furnish such services within or without this Commonwealth: Provided, however, That, the forwarding of a claim by a collection agency to an attorney or attorneys at law, for the purpose of collection, shall not be construed as furnishing legal service.

(e) It is unlawful for a collection agency to act for, represent or undertake to render services for any debtor with regard to the proposed settlement or adjustment of the affairs of such debtor, whether such compromise, settlement, or adjustment be made through legal proceedings or otherwise, or to demand, ask for, or receive any compensation for services in connection with the settlement or collection of any claim except from the creditor for whom it has rendered lawful services.

(f) It is unlawful for a collection agency to solicit employment for any attorney at law or firm or group of attorneys at law, whether practicing in this Commonwealth or elsewhere, or to receive from

or divide with such attorney or attorneys at law any portion of any fee received by such attorney or attorneys at law; but the established custom of sharing commissions at a commonly accepted rate upon collection of claims between a collection agency and an attorney or attorneys at law is not prohibited hereby.

(g) It is unlawful for a collection agency to coerce or intimidate any debtor by delivering or mailing any paper or document simulating, or intending to simulate, a summons, warrant, writ, or court process as a means for the collection of a claim, or to threaten legal proceedings against any debtor; but nothing contained herein shall prohibit a collection agency from informing a debtor that if a claim is not paid, it will be referred to an attorney or attorneys at law for such action as he or they may deem necessary, without naming a specific attorney or attorneys; and nothing herein contained shall be construed to prohibit a magistrate from sending out notices to debtors before the institution of suit.

(h) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the third degree.

Comment: This section retains existing law as contained in Section 895 of The Penal Code of 1939 (18 P. S. § 4895) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine of not more than $500 or imprisonment of not more than one year, or both.

[**NOTE:** Section 2652 of House Bill No. 2272]

SECTION 2629. *Fraudulent Traffic in Food Orders.*—As used in this section, the term "food order" shall mean any order issued by or under the authority of any public relief or assistance agency, authorizing the furnishing and delivery of food to any person or persons therein named or described.

A person is guilty of a summary offense if he, whether acting for himself or for another, directly or indirectly, furnishes or delivers to any person money, merchandise, or anything other than food, on or in exchange for a food order, or furnishes or delivers food on or in exchange for a food order to any person, other than the original recipient of the order, or in quantities or for prices other than those itemized on the food order at the time the food is furnished or

delivered. In addition to the penalties hereinbefore prescribed, the defendant shall also be adjudged to pay to the agency which shall have issued such food order, the face amount thereof.

This section shall not apply to the negotiation of a food order after food to the full amount of the order shall have been furnished thereon to the original recipient of the order.

Comment: This section retains existing law as contained in Section 896 of The Penal Code of 1939 (18 P. S. § 4896) without substantial change.

Under existing law the offense is punishable upon summary conviction before a magistrate by a fine of not more than $100 and costs of prosecution and, in default thereof, imprisonment for not more than thirty days and, in addition, the defendant to make restitution to the issuing agent.

[**NOTE:** Section 2653 of House Bill No. 2272]

SECTION 2630. *Fraudulent Entry of Horses in Races.*—A person is guilty of a summary offense if he enters or causes to be entered for competition, or competes for any purse, prize, premium, stake or sweepstake, offered or given by any agricultural or other society, association, or person, any horse, mare or gelding, colt or filly, under an assumed name, or out of its proper class, when such prize, purse, premium, stake or sweepstake is to be decided by a contest, in running, trotting or pacing races.

Comment: This section retains existing law as contained in Section 881 of The Penal Code of 1939 (18 P. S. § 4881) without substantial change.

Under existing law the offense is a misdemeanor, punishable by imprisonment not exceeding six months or a fine not exceeding $200, or both.

NOTE: This is substituted for Section 2651 of House Bill No. 2272 in order to conform to the sentencing provisions of the Code.

SECTION 2631. *Administering Drugs to Race Horses.*—A person is guilty of a misdemeanor of the first degree if he attempts to or administers drugs or stimulants with the intent to affect the speed of horses in races where there is a monetary award offered.

Comment: This section retains existing law as contained in Section

950.1 of The Penal Code of 1939 [18 P. S. § 4950.1 (Supp.)] without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $1,000 or imprisonment not exceeding three years, or both.

[**NOTE:** Section 2655 of House Bill No. 2272]

SECTION 2632. *Dealing in Infant Children.*—A person is guilty of a misdemeanor of the first degree if he deals in humanity, by trading, bartering, buying, selling, or dealing in infant children.

Comment: This section retains existing law as contained in Section 633 of The Penal Code of 1939 (18 P. S. § 4633) without substantial change.

Under existing law the offense is a felony, punishable by a fine not exceeding $2,000 or imprisonment not exceeding five years, or both.

[**NOTE:** Section 2605 of House Bill No. 2272]

SECTION 2633. *Concealing Death of Bastard Child.*—A person is guilty of a misdemeanor of the third degree if she, being a woman, endeavors privately, either by herself or the procurement of others, to conceal the death of her bastard child, so that it may not come to light, whether it was born dead or alive or whether it was murdered or not.

If the grand jury, in the same indictment, charges any woman with the murder of her bastard child, as well as with the offense of the concealment of the death, the jury may acquit or convict her of both offenses, or find her guilty of one and acquit her of the other.

Comment: This section retains existing law as contained in Section 720 of The Penal Code of 1939 (18 P. S. § 4720) without substantial change.

Under existing law the offense is a misdemeanor, punishable by imprisonment not exceeding one year or a fine not exceeding $500, or both.

[**NOTE:** Section 2641 of House Bill No. 2272]

SECTION 2634. *Wilful Separation or Nonsupport.*—A person is guilty of a misdemeanor of the third degree if he, being a husband or father, separates himself from his wife or from his children or from wife and children, without reasonable cause, or wilfully neglects to maintain his wife or children, such wife or children being

destitute, or being dependent wholly or in part on their earnings for adequate support. Any fine imposed under this section may be paid or applied, in whole or in part, to the wife or children, as the court may direct.

No such conviction, payment, or fine, or undergoing imprisonment shall in any manner affect the obligation of any order for support theretofore made against the defendant in any competent court.

In any such case, the court may suspend sentence upon and during compliance by the defendant with any order for support as already made or as thereafter modified. If no such order shall have been made, then the court trying the defendant may make such order for the support by the defendant of his wife and children or either of them, which order shall be subject to modification by the court on cause shown, and may suspend sentence upon and during the compliance by defendant with such order upon entry of bond by defendant with surety approved by the court, conditioned on compliance with such order. The court after hearing the parties may also determine and make orders with respect to the right of parents to visit their children.

In any proceedings under this section, the wife or any person having the care, custody, or control of minor children shall be a competent witness.

As used in this section, the word "children" shall be limited to mean children under sixteen (16) years of age, and also such children over sixteen (16) and under twenty-one (21) years of age, as by reason of infirmity are incapable of supporting themselves. "Separation" or "nonsupport" shall include every case where a husband has caused his wife to leave him by conduct on his part which would be ground for divorce, or a father has neglected to provide for maintenance, support, and care of his wife or children or wife and children.

Comment: This section retains existing law as contained in Section 731 of The Penal Code of 1939 (18 P. S. § 4731) without substantial change.

Under existing law the offense is a misdemeanor, punishable by imprisonment not exceeding one year or a fine not exceeding $500, or both.

[**NOTE:** Section 2642 of House Bill No. 2272]

SECTION 2635. *Neglect to Support Bastard.*—A person is guilty of a misdemeanor of the third degree if he, being a parent, wilfully neglects or refuses to contribute reasonably to the support and maintenance of a child born out of lawful wedlock, whether within or without this Commonwealth.

All prosecutions under this section must be brought within two (2) years of the birth of the child, except where the reputed father shall have voluntarily contributed to the support of the child, or shall have acknowledged in writing his paternity, in which case a prosecution may be brought at any time within two (2) years of any such contribution or acknowledgment by the reputed father.

Before the trial, with the consent of the defendant indorsed on the bill of indictment, as now provided by law, or at the trial on entry of a plea of guilty, or after conviction, instead of imposing the fine herein provided, or in addition thereto, the court having regard to the circumstances and to the financial capacity of the defendant, may make an order, subject to change from time to time, as circumstances may require, directing the defendant to pay a certain sum periodically, for such time and to such person as the court may direct. The court shall have the power to suspend the sentence herein provided, and release the defendant from custody on probation, in the manner provided in cases of desertion and nonsupport, provided that the defendant has entered into a recognizance, in such sum, with or without surety, as the court shall direct, for compliance with such order.

Whenever a parent is paying for the support of a child, under an order of court made in any other proceeding, civil, criminal, or quasicriminal, said parent shall not be subject to proceedings for support for the same child under this section, unless he has failed to obey such order of court.

Comment: This section retains existing law as contained in Section 732 of The Penal Code of 1939 (18 P. S. § 4732) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

[**NOTE:** Section 2643 of House Bill No. 2272]

SECTION 2636. *Desertion and Nonsupport.*—If any husband,

or father, being within the limits of this Commonwealth, separates himself from his wife or from his children, or from wife and children, without reasonable cause, or neglects to maintain his wife or children, (1) his wife or children may file a petition, prepared by the district attorney and joined in and consented to by the husband or father, in the court of quarter sessions of the county in which the wife or children reside or in the county wherein the desertion or failure to maintain took place, setting forth the facts relating to the separation from or neglect to maintain his wife or children, or both, whereupon the court, or any judge thereof in chambers, shall enter an order fixing a time and place for hearing; or (2) any magistrate, upon information made before him under oath or affirmation, by his wife or children, or either of them, or by any person, may issue his warrant for the arrest of the person against whom the information shall have been made, and bind him over, with one sufficient surety, to appear at the court of quarter sessions or other court having jurisdiction, there to answer the said charge of desertion.

The said court, after hearing in a summary proceeding, may order the person against whom complaint has been made or petition filed, being of sufficient ability, to pay such sum as said court shall think reasonable and proper for the comfortable support and maintenance of the said wife or children, or both, and to commit such person to prison, there to remain until he shall comply with such order, or give security, by one or more sureties, to the Commonwealth, and in such sum as the court shall direct for the compliance therewith. But in no instance shall the defendant be required in any county of the first class to give security for compliance, or be imprisoned for failure to give security for compliance, unless and until the court finds on substantial evidence, (1) that the defendant is possessed of property, real or personal, in sufficient amount and in such form, as to enable him to give the required security, and (2) that the defendant is likely to dissipate his assets or flee the jurisdiction. In each instance in which security for compliance is ordered, the court shall enter upon the record the findings on the basis of which the order is made. The court may also issue the appropriate writ of execution against any property, real or personal, belonging to the defendant, and its writ of attachment execution against any money or property to which he may be in any way entitled, whether under what is known as a spendthrift trust or otherwise, which shall

not exceed fifty per centum thereof, and shall remain a continuing levy until the order has been paid in full with costs. The person against whom an order is made shall not be entitled to the benefits of any exemption law now in force or hereafter passed.

The provisions of this section shall apply to any trust, whether it is known as a spendthrift trust or otherwise, whether such trust was created or came into existence before or after the passage of this act. Where an attachment execution is issued the further proceedings thereon shall be in the manner provided in the case of foreign attachments.

The court, after hearing as provided in this section, may also determine and make orders with respect to the right of parents to visit their children.

Any wife so deserted shall be a competent witness on the part of the Commonwealth, and the husband shall also be a competent witness.

Should any such person abscond, remove or be found in any other county of the Commonwealth than the one in which said warrant issued, he may be arrested by the said warrant being backed by any magistrate of the county in which such person may be found.

Whenever the court of quarter sessions of any county in the Commonwealth commits the person complained of to the county prison, there to remain until he complies with their order or give security, etc., the court may at any time after three (3) months, if it shall be satisfied of the inability of such person to comply with the said order and give such security, to discharge him from imprisonment.

Comment: This section retains existing law as contained in Section 733 of The Penal Code of 1939 (18 P. S. § 4733) without substantial change.

[**NOTE:** Section 2644 of House Bill No. 2272]

SECTION 2637. *Horse Racing.*—A person is guilty of a misdemeanor of the third degree if he races, runs, paces or trots any horse, mare or gelding for money, goods or other valuable things, or contributes or collects any money, goods or valuable things to make up a purse therefor, or prints or causes to be printed, sets up or causes to be set up any advertisement mentioning the time and place for the running, pacing or trotting of any horses, mares or geldings,

or knowingly suffers any such advertisement to be attached to his property or to remain on his property.

All wagers and bets laid on any such race shall be null and void, and money, goods and valuable things lost on any such race, or the value thereof, may be recovered from the winner by action of debt.

Nothing contained in this section shall be construed as applying to racing at exhibitions of agricultural societies and associations, nor to trials of speed in any incorporated driving park, nor to races given by regularly incorporated trotting associations, nor to races conducted pursuant to the Act of December 22, 1959, P. L. 1978.

Comment: This section retains existing law as contained in Section 699.5 of The Penal Code of 1939 (18 P. S. § 4699.5) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both, and the offender is guilty of maintaining a nuisance.

Reference to the Act of 1959 has been added to exempt harness racing, as provided by law.

[**NOTE:** Section 2631 of House Bill No. 2272]

SECTION 2638. *Keeping Bucket-Shop.*—"Bucket-shop" shall mean a place where contracts, agreements, trades or transactions respecting the sale or purchase of stocks, bonds, securities, grains, provisions or other commodities are made or offered to be made, to be closed, adjusted or settled upon the basis of public market quotations on a board of trade or exchange, but without a bona fide transaction on such board of trade or exchange.

A person is guilty of a misdemeanor of the third degree if he keeps, or causes to be kept, any bucket-shop, or assists in the keeping of any bucket-shop.

If a corporation is convicted, it shall be liable to the forfeiture of its charter by a proceeding in quo warranto, to be instituted at the relation of the Attorney General or of the district attorney.

The continuance of the establishment after the first conviction shall be deemed a second offense.

It shall not be necessary, in order to convict any person of keeping a bucket-shop, or causing one to be kept, to show that such person has entered into any contract, agreement, trade, or transaction

of the nature described in the definition of the phrase "bucket-shop"; but it shall be sufficient to show that such person has offered to make such a contract, agreement, trade or transaction, whether the contract, agreement, trade, or transaction was accepted or not. Proof of a single instance wherein any person or another on his behalf, has made or offered to make any such contract, agreement, trade, or transaction, shall be conclusive that the place wherein the same was made is a bucket-shop.

Comment: The definition of "bucket-shop" is derived from Section 103 of The Penal Code of 1939 (18 P. S. § 4103) without substantial change. The remaining provisions are derived from Section 699 of said Code (18 P. S. § 4699) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $100 or imprisonment not exceeding six months, or both; in addition a corporation, if convicted, may forfeit its charter.

[**NOTE:** Section 2626 of House Bill No. 2272]

SECTION 2639. *Accessories in Conduct of Bucket-Shop.*—A person is guilty of a misdemeanor of the third degree if he transmits or communicates by telegraph, telephone, wireless telegraphy, express, mail, or otherwise, or who receives, exhibits, or displays, in any manner, any statement or quotation of the prices of any property, mentioned in the definition contained in section 2638 of the phrase bucket-shop, with a view of entering into any contract, agreement, trade, or transaction, or offering to enter into any contract, agreement, trade, or transaction, or with a view of aiding others to enter or offer to enter into any such contract, agreement, trade, or transaction, of the nature described in said definition of "bucket-shop," shall be deemed an accessory to the keeping of a bucket-shop.

If a corporation is the defendant, its charter shall be forfeited by a proceeding in quo warranto, instituted either at the relation of the Attorney General or the district attorney.

Comment: This section retains existing law as contained in Section 699.1 of The Penal Code of 1939 (18 P. S. § 4699.1) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $100 or imprisonment not exceeding six months, or both.

[**NOTE:** Section 2627 of House Bill No. 2272]

SECTION 2640. *Maintaining of Premises in Which Bucket-Shop Operated.*—A person is guilty of a misdemeanor of the third degree if he knowingly permits a bucket-shop, as defined in section 2638, to be maintained or operated in any premises owned, leased, controlled, or operated by him.

Any fine, so adjudged, shall be a lien upon the premises, in or on which the said bucket-shop shall be maintained and operated.

Comment: This section retains existing law as contained in Section 699.2 of The Penal Code of 1939 (18 P. S. § 4699.2) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

[**NOTE:** Section 2628 of House Bill No. 2272]

SECTION 2641. *Bucket-Shop Contracts.*—All contracts, agreements, trades, or transactions of the nature described in the definition contained in section 2638 of the phrase bucket-shop, are hereby declared gambling, and criminal acts, and null and void. A person is guilty of a misdemeanor of the third degree if he shall enter into the same, whether for himself or as agent or broker of any person.

Comment: This section retains existing law as contained in Section 699.3 of The Penal Code of 1939 (18 P. S. § 4699.3) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 for each offense.

[**NOTE:** Section 2629 of House Bill No. 2272]

SECTION 2642. *Fortune Telling.*—A person is guilty of a misdemeanor of the third degree if he pretends for gain or lucre, to tell fortunes or predict future events, by cards, tokens, the inspection of the head or hands of any person, or by any one's age, or by consulting the movements of the heavenly bodies, or in any other manner, or for gains or lucre, pretends to effect any purpose by spells, charms, necromancy, or incantation, or advises the taking or administering of what are commonly called love powders or potions, or prepare the same to be taken or administered, or publishes by card, circular, sign, newspaper or other means that he can predict future events, or for gain or lucre, pretends to enable anyone to get or to recover stolen property, or to tell where lost property is, or to stop bad luck, or to

give good luck, or to put bad luck on a person or animal, or to stop or injure the business or health of a person or shorten his life, or to give success in business, enterprise, speculation, and games of chance, or to win the affections of a person, or to make one person marry another, or to induce a person to make or alter a will, or to tell where money or other property is hidden, or to tell where to dig for treasure, or to make a person to dispose of property in favor of another.

Any publication contrary to this section may be given in evidence to sustain the indictment.

Any person whose fortune may have been told shall be a competent witness against the person charged with violating this section.

Comment: This section retains existing law as contained in Section 870 of The Penal Code of 1939 (18 P. S. § 4870) without substantial change.

Under existing law the offense is a misdemeanor, punishable by imprisonment not exceeding one year or a fine not exceeding $500, or both.

[**NOTE:** Section 2649 of House Bill No. 2272]

SECTION 2643. *Wilful Obstruction of Emergency Telephone Calls.*—(a) A person is guilty of a summary offense if he wilfully refuses to immediately relinquish a party line when informed that the line is needed for an emergency call to a fire department or police department or for medical aid or ambulance service, or any person who secures the use of a party line by falsely stating that the line is needed for an emergency call.

"Party line," as used in this section, means a subscribers line telephone circuit, consisting of two or more main telephone stations connected therewith each station with a distinctive ring or telephone number. "Emergency," as used in this section, means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

(b) Every telephone directory hereafter distributed to the members of the general public in this Commonwealth, or in any portion thereof, which lists the calling numbers of telephones of any telephone exchange located in this Commonwealth, shall contain a notice which explains the offense provided for in this section. The notice shall be printed in type which is not smaller than the smallest

other type on the same page, and to be preceded by the word "warning" printed in type at least as large as the largest type on the same page. The provisions of this subsection shall not apply to those directories distributed solely for business advertising purposes commonly known as classified directories, nor to any telephone directory heretofore distributed to the general public. Any person, firm or corporation providing telephone service which distributes, or causes to be distributed, in this Commonwealth copies of a telephone directory violating the provisions of this subsection, shall be guilty of a summary offense.

Comment: This section retains existing law as contained in Section 688.1 of The Penal Code of 1939 (18 P. S. § 4688.1) without substantial change.

Under existing law the offenses defined in Subsections (a) and (b) are punishable in a summary proceeding, for the first offense, by a fine not exceeding $50, and for the second or subsequent offense, by a fine not exceeding $300, or imprisonment not exceeding thirty days, or both.

NOTE: This section replaces Section 2622 of House Bill No. 2272 and conforms in Subsections (a) and (b) as to penalties.

SECTION 2644. *Retention of Library Property after Notice to Return.*—A person is guilty of a summary offense if he retains any book, pamphlet, magazine, newspaper, manuscript, map or other property belonging in, or to, or on deposit with, the State Library, or any free public library which is established or maintained under any law of this Commonwealth, or any public school library, or the library of any university, college or educational institution chartered by the Commonwealth, or any branch reading room, deposit station, or agency operated in connection therewith, for a period exceeding thirty (30) days after such library has given written notice to return the same. Any fine imposed under this section shall be paid over by the magistrate imposing such fine to the library instituting the prosecution, and costs of prosecution.

Such notice may be given by personal service upon the borrower, or by the mailing of a registered letter to the borrower's address on file with said library. The notice shall recite this act, and shall contain a demand that the property be returned.

Comment: This section retains existing law as contained in Section 911 of The Penal Code of 1939 (18 P. S. § 4911) without substantial change.

Under existing law the offense is punishable in summary proceedings by a fine of not more than $10 to be paid by the magistrate to the library instituting the prosecution, and the costs of prosecution, and in default thereof, imprisonment in the county jail not exceeding ten days.

[**NOTE:** Section 2654 of House Bill No. 2272]

SECTION 2645. *Demanding Property to Secure Employment.*—A person is guilty of a misdemeanor of the third degree if he, being an officer or employe of any employer of labor, solicits, demands or receives, directly or indirectly, from any person any money or other valuable thing, for the purpose, actual or alleged, of either obtaining for such person employment in the service of said employer or of the continuing of such person in employment.

Comment: This section retains existing law as contained in Section 666 of The Penal Code of 1939 (18 P. S. § 4666) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

[**NOTE:** Section 2615 of House Bill No. 2272]

SECTION 2646. *Interest of Certain Architects and Engineers in Public Work Contracts.*—A person is guilty of a misdemeanor of the third degree if he, being an architect or engineer, in the employ of the Commonwealth, or any political subdivision thereof, and engaged in the preparation of plans, specifications, or estimates, bids on any public work at any letting of such work in this Commonwealth; or whoever, being an officer of the Commonwealth, or any political subdivision thereof, charged with the duty of letting any public work, awards a contract to any such architect or engineer; or whoever, being any such architect or engineer, is in any wise interested in any contract for public work, or receives any remuneration or gratuity from any person interested in such contract.

A person who commits an offense under this section shall, in addition to the penalty prescribed herein, forfeit his office.

Comment: This section retains existing law as contained in Section

690 of The Penal Code of 1939 (18 P. S. § 4690) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding six months, or both, and forfeiture of office.

[**NOTE:** Section 2625 of House Bill No. 2272]

SECTION 2647. *Furnishing Free Insurance as Inducement for Purchases.*—A person is guilty of a misdemeanor of the third degree if he, being a manufacturer, broker, wholesaler, retailer or agent of any manufacturer, broker, wholesaler or retailer, offers any policy of insurance free of cost as an inducement to any person to purchase any real or personal property.

The provisions of this section shall not affect the right of any person who, in connection with a sale of property or services or any credit transaction, shall have, retain or acquire an insurable interest in any subject of insurance related to such sale or transaction, including person or property or risk pertaining thereto, to procure and maintain insurance embracing any or all insurable interests in such subject, or to agree to do so, and neither such insurance nor the procurement or maintaining thereof or agreement to procure or maintain the same shall be construed to be an inducement to purchase.

Comment: This section retains existing law as contained in Section 699.11 of The Penal Code of 1939 (18 P. S. § 4699.13) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year.

[**NOTE:** Section 2638 of House Bill No. 2272]

SECTION 2648. *Refrigerators and Iceboxes.*—A person is guilty of a summary offense if he discards or abandons in any place accessible to children any refrigerator or icebox having a capacity of one and one-half cubic feet or more with an attached lid or door, or being the owner, lessee or manager of any place accessible to children knowingly permits an abandoned or discarded refrigerator, icebox or chest to remain there with an attached lid or door. A violation of this act shall not in itself render a person guilty of manslaughter, assault or other crime against a person who may suffer death or injury from entrapment in an icebox or refrigerator.

Comment: This section retains existing law as contained in Section 699.8 of The Penal Code of 1939 (18 P. S. § 4699.8) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $50 or imprisonment not exceeding thirty days, or both.

[**NOTE:** Section 2633 of House Bill No. 2272]

SECTION 2649. *Carrying Explosives on Trains, Etc.*—A person is guilty of a misdemeanor of the second degree if he enters into or upon any railroad train, locomotive, tender or car thereof, or into or upon any automobile or other conveyance used for the carrying of freight or passengers, having in his custody or about his person any nitroglycerine or torpedo, other than as freight regularly shipped as such.

The conductor or person having charge and control of any railroad train, coach, or other conveyance for the carriage of freight or passengers, may arrest any person found violating the provisions of this section and detain such person until reaching some place, where such person may be delivered to a constable or other police authority.

It shall be lawful to prosecute such offenders in any county through which said public conveyance passes, without reference to the place where such offenders were arrested.

Comment: This section retains existing law as contained in Section 660 of The Penal Code of 1939 (18 P. S. § 4660) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both.

[**NOTE:** Section 2610 of House Bill No. 2272]

SECTION 2650. *Shipping Explosives.*—A person is guilty of a misdemeanor of the third degree if he knowingly delivers, or causes to be delivered to any transportation company, or to any person engaged in the business of transportation, any explosive material adapted for blasting, or for any other purpose for which such articles may be used, under any false or deceptive invoice or description, or without informing the carrier at or before the time when such delivery is made, of the true nature of the same, and without having

the keg, barrel, can or package containing the same plainly marked with the name of the explosive material therein contained, together with the word "dangerous."

Any person convicted of an offense under this section shall, in addition to any other penalty, be responsible for all damages to persons or property directly or indirectly resulting from the explosion of any such article.

Any person engaged in the business of transportation, upon affidavit made of the fact that any container tendered for transportation, not in compliance with the provisions of this section is believed to contain explosive material, may require such container to be opened, and refuse to receive any such container unless such requirement is complied with. If such container is opened and found to contain any explosive material, the container and its contents shall be forthwith removed to any lawful place for the storing of explosives. After conviction of the offender, or after three (3) months from such removal, the container, with its contents, shall be sold at public sale, after the expiration of ten (10) days from notice of the time and place of such sale, published in one newspaper in the county where such seizure shall have been made. The proceeds of such sale, after deducting therefrom the expenses of removal, storage, advertisement and sale, shall be paid into the treasury of the county.

Comment: This section retains existing law as contained in Section 661 of The Penal Code of 1939 (18 P. S. § 4661) without substantial change.

Under existing law the offense is a misdemeanor, punishable by imprisonment not exceeding one year, a fine not exceeding $500, and responsibility for all damage to persons or property directly or indirectly resulting from the explosion of any such article.

[**NOTE:** Section 2611 of House Bill No. 2272]

SECTION 2651. *Railroad Employe Abandoning Train.*—A person is guilty of a misdemeanor of the third degree if he, being a locomotive engineer or other railroad employe engaged in any strike, or with a view to incite others to such strike or in furtherance of any combination or preconcerted arrangement with any other person to bring about a strike, abandons the locomotive engine in his charge, when attached either to a passenger or freight train, at any

place other than the schedule or otherwise appointed destination of such train, or refuses or neglects to continue to discharge his duty, or to proceed with said train to the place of destination.

Comment: This section retains existing law as contained in Section 662 of The Penal Code of 1939 (18 P. S. § 4662) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $200 or imprisonment not exceeding six months, or both.

[**NOTE:** Section 2612 of House Bill No. 2272]

SECTION 2652. *Railroad Employe Refusing to Move Car.*—A person is guilty of a misdemeanor of the third degree if he, being a locomotive engineer or other railroad employe, for the purpose of furthering the object of or lending aid to any strike or strikes, organized or attempted to be maintained on any other railroad, refuses or neglects, in the course of his employment, to aid in the movement over and upon the tracks of the company employing him, of the cars of such other railroad company, received therefrom in the course of transit.

Comment: This section retains existing law as contained in Section 663 of The Penal Code of 1939 (18 P. S. § 4663) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $200 or imprisonment not exceeding six months, or both.

[**NOTE:** Section 2613 of House Bill No. 2272]

SECTION 2653. *Interfering with Railroad Employe.*—A person is guilty of a misdemeanor of the third degree if he, in aid or furtherance of the objects of any strike upon any railroad, interfers with, molests or obstructs any locomotive engineer or other railroad employe engaged in the discharge and performance of his duty as such.

Comment: This section retains existing law as contained in Section 664 of The Penal Code of 1939 (18 P. S. § 4664) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $200 or imprisonment not exceeding six months, or both.

[**NOTE:** Section 2614 of House Bill No. 2272]

SECTION 2654. *Appointment of Special Policemen.*—A person is guilty of a misdemeanor of the third degree if he, having authority to do so, appoints as a special deputy, or policeman, to preserve the public peace and prevent or quell public disturbances, any person who shall not be a citizen of this Commonwealth.

If any corporation, company or association is convicted under this section, it shall be sentenced to pay a fine not exceeding five thousand dollars ($5,000).

This section shall not be construed as applying to policemen, constables or specials appointed by municipalities for municipal purposes.

Comment: This section retains existing law as contained in Section 672 of The Penal Code of 1939 (18 P. S. § 4672) without substantial change.

Under existing law the offense is a misdemeanor, punishable by a fine not exceeding $500 or imprisonment not exceeding one year, or both. The penalty for a corporation, company or association is a fine not exceeding $5,000, as set forth in the text of this section.

[**NOTE:** Section 2616 of House Bill No. 2272]

ARTICLE XXVII

REPEALS

SECTION 2701. *Specific Repeal.*—The following act and its amendments are repealed absolutely, except insofar as (1) parts thereof are specifically saved from repeal by this act, and (2) it may relate to venue and the jurisdiction to indict, try, or otherwise dispose of offenses:

Act of June 24, 1939 (P. L. 872), entitled, "An act to consolidate, amend and revise the penal laws of the Commonwealth."

SECTION 2702. *General Repeal.*—All acts and parts of acts, general, local, and special, are repealed insofar as they are inconsistent herewith.