McKINNEY'S CONSOLIDATED LAWS

OF

NEW YORK

ANNOTATED

REVISED PENAL LAW

Effective September 1, 1967

Including

INDEX

PENAL CODE COMMISSION'S STAFF COMMENTS

and

CONFORMING CHANGES IN OTHER LAWS

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EDWARD THOMPSON COMPANY

EXPLANATION

This pamphlet contains the text of the Revised Penal Law which will supersede the existing 1909 Penal Law on September 1, 1967.

The new law was enacted by Chapter 1030 of the Laws of 1965, approved by the Governor on July 20, 1965. It was amended at the same legislative session by Chapters 1037–1039, which restored provisions relating to adultery, sodomy and resisting an unlawful arrest, which had originally been omitted from the new law.

The revised Penal Law was drafted and recommended by the Temporary State Commission on Revision of the Penal Law and Criminal Code which was created in 1961. The scope of the revision is described in the Foreword of the Commission as revising "virtually every substantial area of the existing Penal Law in varying degrees ranging from the mild to the drastic".

A companion bill prepared by the Commission, which was enacted at the same time as the new Penal Law, transfers some 375 sections of the existing Penal Law to 27 other more appropriate Consolidated Laws and the Code of Criminal Procedure. These provisions were transferred by the Commission to other laws because they are "of limited scope and applicability and the criminal sanctions contained therein are merely incidental to their primarily regulatory functions". They are contained in Chapter 1031 of the Laws of 1965, which has been included in this pamphlet for a complete presentation of the revision.

COMMENTS ON CHANGES IN THE LAW

The major changes made in the Revised Penal Law since the original study bill was submitted to the Legislature in 1964, are described in the Commission's Staff Comments which follow the Index to the revised Penal Law in this pamphlet.

The Commission's Staff Comments on other changes made by the new Penal Law were published in the pamphlet entitled "Proposed New York Penal Law", which was published in 1964, and should be retained.

EXPLANATION

TABLES

Table I shows the corresponding sections of the existing 1909 Penal Law from which the sections of the revised Penal Law are specifically or generally derived.

Table II shows the disposition, in the revised Penal Law, of each section of the existing 1909 Penal Law, or its omission from the new law, or its transfer to another law.

September, 1965

THE PUBLISHER

TABLE OF CONTENTS

	Page
Explanation	III
Commission Foreword	IX
Governor's Memorandum of Approval	XI
Table I. Revised Penal Law	XIII
Table II. Penal Law of 1909	XXV
Certificate of Authenticity	LVI

REVISED PENAL LAW

Part One—General Provisions	1
Title A—General Purposes, Rules of Construction, and Definitions	1
Article	
1. General Purposes	4
5. General Rules of Construction and Application	5
10. Definitions	6
Title B—Principles of Criminal Liability	8
15. Culpability	8
20. Parties to Offenses and Liability through Accessorial Conduct	11
Title C—Defenses	13
25. Defenses in General	13
30. Defenses Involving Lack of Criminal Responsibility	13
35. Defenses Involving Lack of Culpability	14
Part Two—Sentences	22
Title E—Sentences	22
55. Classification and Designation of Offenses	22
60. Authorized Disposition of Offenders	23
65. Sentences of probation, conditional discharge and Unconditional Discharge	25

TABLE OF CONTENTS

Part Two—Sentences—Continued

Title E—Sentences—Continued

Article

70. Sentences of Imprisonment 30
75. Reformatory Sentence of Imprisonment for Young Adults 39
80. Fines 44

Part Three—Specific Offenses 47

Title G—Anticipatory Offenses 47

100. Criminal Solicitation 47
105. Conspiracy 48
110. Attempt 50
115. Criminal Facilitation 51

Title H—Offenses Against the Person Involving Physical Injury, Sexual Conduct, Restraint and Intimidation 52

120. Assault and Related Offenses 52
125. Homicide, Abortion and Related Offenses 55
130. Sex Offenses 60
135. Kidnapping, Coercion and Related Offenses 65

Title I—Offenses Involving Damage to and Intrusion Upon Property 71

140. Burglary and Related Offenses 71
145. Criminal Mischief 73
150. Arson 75

Title J—Offenses Involving Theft 77

155. Larceny 77
160. Robbery 83
165. Other Offenses Relating to Theft 84

Title K—Offenses Involving Fraud 90

170. Forgery and Related Offenses 90
175. Offenses Involving False Written Statements 95
180. Bribery Not Involving Public Servants, and Related Offenses 98
185. Frauds on Creditors 101
190. Other Frauds 103

TABLE OF CONTENTS

Part Three—Specific Offenses—Continued

Title L—Offenses Against Public Administration 107

Article

195. Official Misconduct and Obstruction of Public Servants Generally 107
200. Bribery Involving Public Servants and Related Offenses 108
205. Escape and Other Offenses Relating to Custody 110
210. Perjury and Related Offenses 114
215. Other Offenses Relating to Judicial and Other Proceedings 118

Title M—Offenses Against Public Health and Morals 123

220. Dangerous Drug Offenses 123
225. Gambling Offenses 126
230. Prostitution Offenses 131
235. Obscenity and Related Offenses 134

Title N—Offenses Against Public Order, Public Sensibilities and the Right to Privacy 136

240. Offenses Against Public Order 136
245. Offenses Against Public Sensibilities 141
250. Offenses Against the Right to Privacy 142

Title O—Offenses Against Marriage, the Family, and the Welfare of Children and Incompetents 145

255. Offenses Affecting the Marital Relationship 145
260. Offenses Relating to Children and Incompetents 147

Title P—Offenses Against Public Safety 149

265. Firearms and Other Dangerous Weapons 149
270. Other Offenses Relating to Public Safety 159

Part Four—Administrative Provisions 162

Title W—Provisions Relating to Firearms, Fireworks and Pornography Equipment 162

400. Licensing and Other Provisions Relating to Firearms 162
405. Licensing and Other Provisions Relating to Fireworks 169
410. Seizure and Forfeiture of Equipment Used in Promoting Pornography 173

TABLE OF CONTENTS

Part Four—Administrative Provisions—Continued

Title Z—Laws Repealed; Time of Taking Effect 175

Article

500. Savings Clauses; Laws Repealed; Time of Taking Effect 175

Index to Revised Penal Law 177

Commission's Staff Comments on Changes in the New Penal Law Since the 1964 Study Bill 251

Appendix A—Table I—1965 Penal Law to 1964 Study Bill 305

Appendix B—Table II—1964 Study Bill to 1965 Penal Law 309

Conforming and Harmonizing Provisions of Other Laws to the Revised Penal Law 315

COMMISSION FOREWORD

The 1965 Revised New York Penal Law represents the culmination of approximately three and one half years of revisional endeavor by the New York State Temporary Commission on Revision of the Penal Law and Criminal Code.

Legislatively created in 1961 primarily for the purpose of overhauling New York's two main bodies of criminal law—the Penal Law and the Code of Criminal Procedure—the Commission, under the chairmanship of Assemblyman Richard J. Bartlett, decided to devote the major share of its earlier effort to the Penal Law, which had not undergone any genuine over-all revision since the enactment of the old "Penal Code" in 1881. In March of 1964, the Commission submitted a "Proposed New York Penal Law" to the Legislature as a study bill. This was circularized and brought to the attention of the legal profession, Bar Associations and many other organizations and individuals chiefly through the cooperation of the Edward Thompson Company of Brooklyn, New York, which, generously and without cost to the Commission, printed and distributed many thousands of copies of the study bill in a publication which included explanatory comments of the Commission's staff upon each section.

Following this distribution and circularization, the Commission, in November and December of 1964, held extensive public hearings upon its proposal in New York City, Albany, Syracuse, Buffalo and Rochester.

As a result of the views expressed at those public hearings, as a result of many conferences and discussions of the Commission and its staff with interested associations and persons, and as a result of considerable self-critical analysis of its own product, the Commission substantially altered and revised its study bill during the ensuing months. The final proposal was submitted to and passed by the Legislature at its 1965 session, and was approved by the Governor on July 20, 1965, as Chapter 1030 of the Laws of 1965.

It is to be observed that the new Penal Law bears an effective date of September 1, 1967. The reasons for postponement of its actual operation for more than two years are two-fold.

COMMISSION FOREWORD

In the first place, the Penal Law, whether the old or the new version be considered, must be interwoven and meshed with the Code of Criminal Procedure, with the Correction Law to some extent, and with other bodies of law to lesser degrees. As a practical matter, prolific conforming of other bodies and codes to the new Penal Law should be done before the latter is permitted to become effective. The emphasis here is, of course, upon the Code of Criminal Procedure, to which the Commission is now addressing its revisional efforts. The situation is such that both the new Penal Law and the prospective new Criminal Code should become simultaneously effective, and it does not appear reasonably possible to achieve that objective in anything less than two years.

Apart from those considerations, it would be extremely burdensome and unfair to the legal profession and the judiciary, among others, to foist upon the state a completely new Penal Law without allowing extensive time for study and absorption of the numerous changes and new principles involved. The new Penal Law is not a patchwork project which renovates or refurbishes the existing Penal Law, but a reconstruction job from the ground up. Entirely new in structure, form and general pattern, it revises virtually every substantive area of the existing Penal Law in varying degrees ranging from the mild to the drastic. In several fields, such as those dealing with principles of culpability, sentences and homicide, changes of a fundamental nature have been wrought upon the theory that the existing law is rooted in outmoded nineteenth century theories and requires a thoroughgoing alteration of basic conceptual foundations in order to bring it into step with modern sociological, psychological and penological thinking.

It is probable that many judges and attorneys will experience some difficulty in adjusting from a body of law with which they are familiar to one of an entirely different pattern. The Commission hopes and firmly believes, however, that the Bench and Bar will soon find the new Penal Law far more clear, intelligible and workable than the existing Penal Law and will thereby be more than compensated for their initial difficulties.

GOVERNOR'S MEMORANDUM OF APPROVAL

On approving L.1965, cc. 1030 and 1031, which enacted the revised Penal Law and transferred certain provisions of a regulatory nature now in the Penal Law to other laws, the Governor issued a memorandum as follows:

July 20, 1965

These bills [L.1965, cc. 1030, 1031], prepared by the State Commission on Revision of the Penal Law and Criminal Code which was created upon my recommendation in 1961, constitute the first major and comprehensive revision of the Penal Law since 1881.

The first bill [L.1965, c. 1030] enacts a new Penal Law, effective September 1, 1967. It reorganizes and modernizes penal provisions proscribing conduct which has traditionally been considered criminal in Anglo-Saxon jurisprudence. Related crimes are grouped together in logically related titles, definitions are more carefully prescribed, and a new scheme of sentencing is provided affording ample scope for both the rehabilitation of offenders and the protection of society. In line with the Commission's objective, a system of penal sanction is achieved which protects society against transgressors, balanced with safeguards for persons charged with crime.

The second bill [L.1965, c. 1031] transfers many provisions from the present Penal Law to other State laws where they fit more appropriately—freeing the Penal Law of much of the unrelated and, in some instances, regulatory matter which has been added on a piecemeal basis over the years.

Together, these bills represent four years of dedicated and thoughtful effort on the part of the Commission and its staff. Although there undoubtedly will be further amendments to the new Penal Law before it becomes effective, it cannot be gainsaid that the new Penal Law represents a major and rarely equalled accomplishment. I commend the Commission and its staff for their prodigious efforts.

GOVERNOR'S MEMORANDUM OF APPROVAL

Among those recommending approval are the Association of the Bar of the City of New York, the State Administrator of the Judicial Conference, the Correctional Association of New York, the Association of Chiefs of Police, the Association of Magistrates, the State Department of Correction, the District Attorney's Association and numerous civic organizations and citizens.

The bills are approved.

Nelson A. Rockefeller

Table I

DERIVATION

The left column of this table lists each section of the revised Penal Law. The right column shows the corresponding section of the old Penal Law (or where indicated, some other law) from which the new section is specifically or generally derived. The word "new" indicates that there is no counterpart in the old Penal Law.

1965 Penal Law Section	1909 Penal Law Section
1.00	1
1.05	20
5.00	21
5.05(1)	22
5.05(2)	new
5.05(3)	22, 38
5.10(1)	41
5.10(2)	39
5.10(3)	23, 24, 37
10.00	cf. 370, 741, 1230
15.00	new
15.05	new
15.10	new
15.15	new
15.20	new
15.25	1220
20.00	cf. 2(5th para.), 26, 27, 1934, 1936
20.05	new
20.10	new
20.15	new
20.20	new
25.00	new
30.00	2186
30.05	1120; see, 34, 815
35.00	new
35.05	new
35.10	see, generally, 42, 246, 1054, 1055
35.15	42, 246(3), 1055(B 1, 2)
35.20	246(3)
35.25	246(3)
35.30	246(1), 1055(A3)
35.35	859
35.40	new
35.45	new

1965 Penal Law Section	1909 Penal Law Section
55.00	new
55.05	new
55.10(1)	1935
55.10(2)	1937
55.10(3)	new
60.00	new
65.00(1, 2)	2188, Code Crim. Proc. 483
65.00(3)	Code Crim. Proc. 933
65.05	2188
65.10	2188, 2188–b, Code Crim. Proc. 932
65.15(1)	new
65.15(2)	Code Crim. Proc. 933
65.15(3)	new
65.20	new
70.00(1)	2189
70.00(2)	new
70.00(3)	new
70.05	2186, 2187
70.10	1941, 1942
70.15	new
70.20(1)	2183, 2187
70.20(2)	2181, 2182(2)
70.25(1)	2190
70.25(2)	1938, 406
70.25(3)	new
70.30(1, 2)	new; see, however, Correction Law 231
70.30(3)	2193(1)
70.30(4)	new; see, however, Correction Law 230, 250
70.30(5)	2193(4)
70.30(6)	1693; Correction Law 132
70.35	new
70.40(1–a)	new; see, however, Correction Law 212
70.40(1–b)	new; see, however, Correction Law 230(4)
70.40(2)	new; see, however, Correction Law Article 7A
70.40(3–a, b)	new; see, however, Correction Law 218
70.40(3–c)	2193(3)
75.00	2184–a, 2187–a, 2195
75.05	2184–a, 2187–a
75.10(1)	1931, 2184–a, 2187–a, 2195

TABLE I—DERIVATION

1965 Penal Law Section	1909 Penal Law Section
75.10(2)	new
75.10(3)	2193(1)
75.10(4)	2193(4)
75.10(5)	new
75.15	new; see, Correction Law 281–283
75.20	new; see, however, N.Y.C.Cr.Ct. Act 81; Correction Law Article 7A
80.00	new
80.05	new
80.10	1932
80.15	1938
100.00	new
100.05	new
100.10	new
100.15	new
100.20	new
105.00	580(1)
105.05	580(1), 580–a
105.10	580(1), 580–a
105.15	580(1), 580–a
105.20	583
105.25	new
105.30	new
110.00	2 (last para.)
110.05	261
110.10	new
115.00	new
115.05	new
115.10	new
115.15	new
120.00(1)	244(1), 245, see 2 (last para.), 244(3)
120.00(2)	new, see, 244(2), 247, 1761
120.00(3)	244(2)
120.05(1)	242(3), 243
120.05(2)	2 (last para.), 242(4), 243
120.05(3)	242(5), 243
120.05(4)	new, see, 242(2), 1761
120.05(5)	2 (last para.), 242(1, 2), 243, see, 1752
120.10(1)	2 (last para.), 240, 241
120.10(2)	1400
120.10(3)	new
120.10(4)	cf. 242(5), 1392
120.15	new, see, 244(1)

1965 Penal Law Section	1909 Penal Law Section
120.20	new, cf. 197, 1222, 1422, 1423(1, 2, 3, 10, 11, 12, 12–a), 1424, 1433, 1760, 1760–a, 1761, 1890, 1892, 1893, 1895, 1911, 1913, 1984, 1991
120.25	same as 120.20
120.30	2305
120.35	new
125.00	1042
125.05	new
125.10	1052 (last 7 unnumbered paras.), 1053–a to 1053–f
125.15(1)	1052(3), 1053–a to 1053–f, 1391
125.15(2)	1050 (unnumbered paras.)
125.15(3)	2304
125.20(1)	cf. 1050(2), 1052(2)
125.20(2)	cf. 1046
125.20(3)	1050(2)
125.25(1)	1044(1), 1046
125.25(2)	1044(2)
125.25(3)	1044(2)
125.30	1045
125.35	1045–a
125.40	80
125.45	80, 1050 (last 2 unnumbered paras.), 1051
125.50	81
125.55	81, 1052 (1st unnumbered para.), 1053
125.60	82, 1142
130.00	new, see, 691, 2011
130.05	new
130.10	new
130.15	2013
130.20(1)	2010 (last unnumbered para.)
130.20(2)	690 (last unnumbered para.)
130.20(3)	690(5)
130.25(1)	2010 (1, 4, 5)
130.25(2)	2010 (2nd unnumbered para.)
130.30	new, see, 2010 (last unnumbered para.)
130.35(1)	2010 (2, 3)
130.35(2)	see, 2010(1)
130.35(3)	cf. 2010(1)
130.38	690 (last unnumbered para.)
130.40(1)	690 (1, 4, 5)
130.40(2)	690 (last unnumbered para.)

TABLE I—DERIVATION

1965 Penal Law Section	1909 Penal Law Section
130.45	new, see, 690 (last unnumbered para.)
130.50(1)	690(2, 3)
130.50(2)	see, 690(1)
130.50(3)	cf. 690(1)
130.55	483–a, 483–b
130.60	483–a, 483–b
130.65	483–a, 483–b
135.00	new
135.05	new, cf. 70, 1121, 1250
135.10	new, cf. 70, 1121, 1250
135.15	new
135.20	1250A
135.25	1250A
135.30	new
135.35	1250B
135.40	1250C
135.45(1)	see, 1250A (1st unnumbered para.)
135.45(2)	1250–a
135.50	1250–a, see, 1250A (1st unnumbered para.)
135.55	923
135.60	530, 853, 1323, 1324, 1454, 2070, 2073
135.65	530, 853, 860, 1323, 1324, 1824, 2070, 2073
140.00	400, 401
140.05	new, cf. 466, 743(3), 927, 1425(5), 1990 (4), 2034, 2035, 2036, 2036–a
140.10	new, cf. 1990(4)
140.15	new
140.20	404, 405
140.25	403, 404
140.30	402
140.35	408
145.00	223, 463, 464, 466, 1420, 1420–a, 1421, 1423, 1423–a, 1423–b, 1423–c, 1424, 1425, 1426, 1427(2), 1428, 1430, 1431, 1432, 1433, 1873, 1906(1, 2), 1911, 1991
145.05	same references as for 145.00
145.10	same references as for 145.00
145.15	463, 1422, 1423–a, 1423–b, 1424, 1427, 1431, 1432, 1432–a, 1433, 1911, 1991
145.20	1422, 1423, 1423–a, 1431, 1432
145.25	new
145.30	2036–a
150.00	220
150.05	new, cf. 1906

1965 Penal Law Section	1909 Penal Law Section
150.10	see, 222, 223, 1420, 1420–a
150.15	see, 221, 222, 1420, 1420–a, 1895, 2 (last para.)
155.00	new
155.05(1)	1290 (1st unnumbered para.)
155.05(2)	new, see, 194–b, 466, 662, 665(1), 850, 851, 856, 922, 925–b, 930, 937–a, 945, 947, 960, 1292–a, 1293–c, 1300, 1302, 1310, 1311, 1347, 1838(2), 1863, 1864, 1865, 1867, 1873, 1911
155.10	new
155.15(1)	1306
155.15(2)	new
155.20	1303, 1304, 1305
155.25	1296(1), 1298, 1299
155.30	850, 851, 852, 856, 1296, 1297, 1298
155.35	1294(3), 1295
155.40	850, 851, 852, 856
155.45	1290–a
160.00	2120, 2121, 2122, 2123
160.05	2126, see 2129
160.10	2124(2), see 2127
160.15	2124(1, 3), see 2125
165.00	941, 1310
165.05	1293–a
165.10	new
165.15(1)	new
165.15(2)	925
165.15(3)	1990, 1990–b
165.15(4)	967, 1293–c
165.15(5)	1431, 1431–a, 1432
165.15(6)	1431, 1432
165.15(7)	new
165.20	932, 934, 935, 937–a
165.25	722(6)
165.30	722(6)
165.35	new, see, Code Crim.Proc. 899(3)
165.40	1308, see, 1301
165.45	1308(2) see, 1301
165.50	new, see, 1308
165.55(1)	new
165.55(2)	1308(3)
165.60(1)	1309
165.60(2)	new
165.60(3)	see, 1308(1)

TABLE I—DERIVATION

1965 Penal Law Section	1909 Penal Law Section
165.65(1)	new
165.65(2)	1308–a
170.00	880, 882
170.05	660, 889(2, 3), 889–b, 926(1), see, 893
170.10	884(1, 2, 4, 6), 887(1, 2, 4), 889(4), 889–a, 890, 891, 1325, 1326, see, 888
170.15	884(3, 5), 892, see, 886
170.20	661, 881(3), 889(3), 889–b, 926(2)
170.25	662, 881(1, 3), 887(4), 889(4), 891
170.30	881(2), 892, 894
170.35	new
170.40	881, 887(3, 5)
170.45	see, 959
170.50	new
170.55	1293–d
170.60	1293–d
175.00	new
175.05	665(2, 3, 4), 887(2), 889(A1, B1–4), 1865(2, 3)
175.10	665(2, 3, 4), 887(2), 889(A1, B1–4), 1865(2, 3)
175.15	889(B4)
175.20	1836, 1838(1), 2050
175.25	1836, 1838(1), 2050
175.30	460, 1872, 1872–a, 2051, 2321
175.35	460, 1872, 1872–a, 2051, 2321
175.40	461, 1860, 1861
175.45	665(3), 1293–b
175.50	1202
180.00	439
180.05	439
180.10	new, see, 380
180.15	380(1)
180.20	new
180.25	380(2)
180.30	new
180.35	new, see, 382
180.40	382(1)
180.45	382(2)
180.50	190–a
180.55	965
185.00	1170, 1171, 1172, 1173
185.05	940–a
185.10	940(1), 1291(2)
185.15	940(2)

1965 Penal Law Section	1909 Penal Law Section
190.00	new
190.05	1292–a
190.10	1292–a
190.15	new
190.20	421
190.25(1)	928, 930, 942
190.25(2)	930, 1278
190.25(3)	854, 931, 936–b, 1846
190.30	2052
190.35	664(1–6)
195.00(1)	373, 461, 489, 854, 1231(1, 3, 4, 5, 6), 1792, 1830, 1839(2), 1847, 1862, 1863, 1864, 1866, 1867, 1875, 1876, see, 1786, 1788
195.00(2)	462, 997, 1231(2, 4, 7), 1792, 1840, 1841, 1842, 1843, 1844, 1857, 1865(4), 1866, 1867, 1869, 1874, 1875
195.05	196, 490 (2nd unnumbered para.), 1320, 1322, 1824, 1825, 1851
195.10	1848, 2095
195.15	1906(4), 1914
200.00	371, 378, 465, 1233(1), 1822
200.05	new
200.10	372, 374, 465, 1233(3), 1823, 1826, 1829, 1833, 1839(1)
200.15	new
200.20	new
200.25	new, see, 1826
200.30	new
200.35	855, 1826, 1831
200.40	new
200.45	1832(1)
200.50	1832(2)
205.00	cf. 1690
205.05	1694
205.10	1694
205.15	1694, see, 1695
205.20(1)	489, 1691(1, 2), 1791, 1796, 1828–a(1)
205.20(2)	new
205.25(1)	1961(3), 1796, 1828–a(2)
205.25(2)	new
205.30	see 242(5)
205.35	1694–a, 1694–b
205.40	1694–a, 1694–b
205.45	new

TABLE I—DERIVATION

1965 Penal Law Section	1909 Penal Law Section
205.50	2 (8th para.), 1698
205.55	1698, 1934
205.60	1698, 1934
205.65	1698, 1934, see, 1250–b
210.00	1621(3), 1622, 1625, 1626, cf. 1620(1, 2, 3)
210.05	1232, 1620–b, see, 1633(2)
210.10	1232, 1620–a, see, 1633(1)
210.15	1232, 1620–a, see, 1633(1)
210.20(1)	1627–a
210.20(2)	1627, 1627–a
210.20(3)	new
210.25	new
210.30(1)	1623
210.30(2)	1624
210.30(3)	1621(1, 2)
210.35	new
210.40	new
210.45	new, see, 1232–a, 1620(4), 2321
210.50	new
215.00	2440
215.05	379
215.10	2441, 2442
215.15	371
215.20	374
215.25	376, 376–a, 860
215.30	373(1)
215.35	new
215.40(1)	810, 811
215.40(2)	812, 814
215.45	570
215.50	600, 1235
215.55	601, 602, 1939
215.60(1)	1329
215.60(2)	1330
215.60(3)	1330
215.60(4)	1330
215.65	2448
215.70	1783, 1783–a, 1784
215.75	1782
220.00	see, 1747–b, 1747–c, 1751
220.05	1747–b, 1747–c, 1751–a(1)
220.10	1751(2)
220.15(1)	1751(2)
220.15(2)	1751(3)

1965 Penal Law Section	1909 Penal Law Section
220.20	new, see, 1751(2)
220.25	1751(4)
220.30	1747–b, 1747–c, 1751(1)
220.35	1751(1)
220.40	1751(1)
220.45	1747–d
225.00	cf. 982(2), 1370, see, 1387
225.05	970, 973, 974, 980, 986, 1372, 1373, 1376, 1377, 1378, 1381, 1388
225.10(1)	986–c
225.10(2)	974–a
225.15(1)	986–b
225.15(2)	975
225.20(1)	985–c
225.20(2)	new
225.25	new
225.30(1)	970–a, 982(1, 2)
225.30(2)	970–a, 970–b
225.35(1)	see, 986–b
225.35(2)	986–a
230.00	new, see Code Crim.Proc. 887(4)
230.05	new
230.10	new
230.15	new
230.20	70(2), 1090, 1148, 2460
230.25(1)	1146 (1st unnumbered para.), 2460, see, Code Crim.Proc. 899(4)
230.25(2)	70(1, 4)
230.30(1)	1090, 2460(7)
230.30(2)	70(1, 4)
230.35	see, 2460(9)
230.40	1146 (3rd unnumbered para.)
235.00	new
235.05(1)	1141, 1141–a, 1141–b, 1143
235.05(2)	1140, 1140–a, 1140–b
235.10(1)	new
235.10(2)	1141(4)
235.15	new
235.20	484–h
235.25	484–f
235.30	484–g
240.00	new
240.05	2090, 2091
240.10	2092, 2094
240.15	160, 161, see, 162, 164

TABLE I—DERIVATION

1965 Penal Law Section	1909 Penal Law Section
240.20(1)	722(1)
240.20(2)	722(1, 5)
240.20(3)	722(1, 10)
240.20(4)	1321, 1470, 2071
240.20(5)	new
240.20(6)	722(3), 2093
240.20(7)	722(2, 4, 9)
240.25(1)	720
240.25(2)	720
240.25(3)	new
240.25(4)	1030
240.25(5)	new
240.30(1)	551, 555
240.30(2)	1423(6)
240.35(1)	722(7), see Code Crim.Proc. 887(5)
240.35(2)	see 971, Code Crim.Proc. 899(8)
240.35(3)	722(8), 1148
240.35(4)	710, 711
240.35(5)	722–b
240.35(6)	new
240.35(7)	150(1), 1990–a(1)
240.35(8)	150(2), 1990–a(2)
240.35(9)	1533(2, 3, 4)
240.40	1221
240.45(1)	1530, 1533(1)
240.45(2)	1530(2)
240.50(1)	727
240.50(2)	1424
240.50(3)	727, 1250–b(3), 1786
245.00	1140
245.05(1)	832, 833
245.05(2)	834
245.05(3)	831(1, 2)
245.05(4)	834
250.00	new, cf. 739
250.05	738
250.10	742
250.15	744
250.20	745
250.25(1)	553(1)
250.25(2)	553(2, 3, 4)
250.25(3)	743(1)
250.25(4)	743(1)
250.30	743(2)
250.35	743(1)

1965 Penal Law Section	1909 Penal Law Section
255.00	1450
255.05	1451
255.10	1453
255.15	340, 343
255.17	100–103
255.20	new, cf. 341, 1453
255.25	1110
255.30	new
260.00	481
260.05	482(1)
260.10(1)	483
260.10(2)	494
260.15	495
260.20(1)	484(1)
260.20(2)	484(2)
260.20(3)	483–c
260.20(4)	484(3)
260.20(5)	484 (5th and last unnumbered para.)
260.25	1121, 1123
265.00	1896
265.05	1897
265.10	1898, 1902(3)
265.15	1899
265.20	1900
265.25	1902(4)
265.30	1902(5)
265.35	1904
270.00	1894–a
270.05	726
270.10	1920, 1923
270.15	1424–a
400.00	1903
400.05	1901, 1902
405.00	1894–a
405.05	1894–a
410.00	1141–c

Table II

DISPOSITION

The left column of this table lists each section of the old Penal Law; the right column shows the disposition of each such section. The numbers in the right column employing the decimal system refer to the appropriate section of the revised Penal Law which specifically or generally covers the same or approximately the same subject matter. The word "omitted" indicates that the old section has not been included in the revision because it has no further utility, or because it duplicates a provision in some other body of law. The abbreviation "tr" indicates that the old section has been transferred to the designated law.

1909 Penal Law Section	Disposition
Article 1 Short Title and Definitions	
1	1.00
2	10.00(1, 2, 3, 4, 5), 20.00, 110.00, 120.00 (1), 120.05(2, 5), 120.10(1), 150.15
3	omitted
Article 2 General Provisions	
20	1.05
21	5.00
22	5.05(1)
23	5.10(3)
24	5.10(3)
25	omitted
26	20.00
27	20.00
28	to be treated in Code Crim.Proc.
29	omitted
30	omitted
31	omitted
32	to be treated in Code Crim.Proc.
33	to be treated in Code Crim.Proc.
34	30.05
35	omitted
36	omitted
37	5.10(3)
38	5.05(3)
39	5.10(2)
40	omitted
41	5.10(1)
42	35.10, 35.15
43	omitted

1909 Penal Law Section	Disposition
Article 3 Abandonment	
50	omitted
Article 4 Abduction	
70	135.05, 135.10, 230.20, 230.25(2), 230.30 (2)
71	omitted
Article 6 Abortion	
80	125.40, 125.45
81	125.50, 125.55
81–a	to be treated in Code Crim.Proc.
82	125.60
Article 8 Adultery	
100–103	255.17
Article 13 Air and Bus Terminals	
150	240.35(7, 8)
Article 14 Anarchy	
160	240.15
161	240.15
162	240.15
163	see, Art. 115
164	240.15
165	omitted
166	to be treated in Code Crim.Proc.
Article 16 Animals	
180–197	tr—Agriculture and Markets Law
Article 18 Arson	
220	150.00
221	150.15
222	150.10, 150.15
223	145.00, 145.05, 145.10, 150.10
224	150.05, 150.10, 150.15
225	see, 145.20
226	see, 145.20
227	see, Art. 150

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 20 Assault	
240	120.10(1)
241	120.10(1)
242	120.05, 120.10(4)
243	120.05
244	120.00, 120.15
245	120.00
246	35.10, 35.15, 35.20, 35.25, 35.30
247	120.00(2)
248	120.00
Article 22 Attempt to Commit Crime	
260	see, 110.00
261	110.05
262	omitted
Article 24 Attorneys	
270–280	tr—Judiciary Law 478–495
Article 26 Banking	
290–306	tr—Banking Law 660–674
Article 28 Barratry	
320–323	omitted
Article 30 Bigamy	
340	255.15
341	255.20
342	omitted
343	255.15
Article 31 Billiard and Pocket Billiard Rooms	
344–355	tr—General Business Law 460–472
Article 32 Bills of Lading, Warehouse Receipts, Other Receipts and Vouchers	
360–369–f	tr—General Business Law 90–111

1909 Penal Law Section	Disposition
Article 34 Bribery and Corruption	
370	10.00(15)
371	200.00
372	200.10
373	195.00, 215.30
374	200.10, 215.20
375	omitted
376	215.25
376–a	215.25
377	omitted
378	200.00
379	215.05
380(1)	180.15, 180.20
380(2)	180.25, 180.30
380(3)	to be treated in Code Crim.Proc.
381	to be treated in Code Crim.Proc.
382	180.35, 180.40, 180.45
Article 36 Bucket Shops	
390–395	tr—General Business Law 351 to 351–e
Article 38 Burglary	
400	140.00
401	140.00
402	140.30
403	140.25
404	140.20
405	140.20
406	70.25(2)
407	140.20, 140.25, 140.30
408	140.35
Article 39 Budget Planning	
410–412	tr—General Business Law 455–457
Article 40 Business and Trade	
420	omitted
421	190.20
421–a	tr—General Business Law 396–b
421–b	tr—General Business Law 335
421–c	tr—General Business Law 396–d
421–d	tr—General Business Law 138
421–e	tr—General Business Law 396–c

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 40 Business and Trade—cont'd	
422	tr—General Business Law 220
423	tr—General Business Law 221
424	tr—General Business Law 222
425	tr—General Business Law 223
426	tr—General Business Law 224
427	tr—General Business Law 225
428	tr—General Business Law 226
429	tr—General Business Law 227
430	tr—General Business Law 396–e
431	tr—General Business Law 228
432	omitted
433	omitted
434	tr—Agriculture and Markets Law 194–e
435(1)	tr—General Business Law 392–b
435(2)	tr—General Business Law 392–b
435(3)	tr—General Business Law 392–b
435(4)	omitted
435–a	omitted
435–b	omitted
435–c	omitted
435–d	tr—General Business Law 392–c
436	tr—General Business Law 392–d
436–a	omitted
436–b	tr—Navigation Law 123–a
436–c	tr—Agriculture and Markets Law 95–a
436–d	omitted
437	omitted
438	tr—Agriculture and Markets Law 64–a
438–a	tr—General Business Law 392–a
439	180.00, 180.05
440	tr—General Business Law 130
440–a	tr—General Business Law 131
440–b	omitted
441	tr—General Business Law 338
441–a	tr—General Business Law 338–a
442	omitted
442–a	tr—Insurance Law 7–a
442–b	tr—Insurance Law 8
442–c	tr—Insurance Law 9
443	omitted
444	tr—General Business Law 399–b
445	tr—General Business Law 391–a
446	omitted

1909 Penal Law Section	Disposition
Article 40 Business and Trade—cont'd	
447	tr—General Business Law 392
448	tr—General Business Law 450
449	tr—General Business Law 451
450	tr—General Business Law 452
451	tr—General Business Law 453
452	tr—General Business Law 229
453	tr—General Business Law 169–k
Article 42 Canals	
460	175.30, 175.35
461	175.40, 195.00
462	195.00
463	145.00, 145.05, 145.10
464	145.00
465	200.00, 200.10
466	140.05, 145.00, 145.05, 145.10
Article 44 Children	
480	see, 260.00
481	260.00
482(1)	260.05
482(2)	omitted
482(3)	tr—Public Health Law 2502
483	260.10(1)
483–a	130.55, 130.60, 130.65
483–b	130.55, 130.60, 130.65
483–c	260.20(3)
483–d	tr—Public Health Law 2503
484(1)	260.20(1)
484(2)	260.20(2)
484(3)	260.20(4)
484(4)	tr—General Business Law 47–a
484(5)	260.20(5)
484(5–a)	omitted
484(6)	tr—General Business Law 63–a
484–a	tr—General Business Law 398–c
484–b	tr—General Business Law 399–d
484–c	20.00, 20.05
484–d	tr—Alcoholic Beverage Control Law 65–a
484–e	omitted
484–f	235.25
484–g	235.30
484–h	235.20

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 44 Children—cont'd	
485	omitted
485–a	tr—Education Law 3216–c
486	omitted
487	omitted
487–a	omitted
488	see, 260.10, 260.20
489	195.00, 205.20(1)
490	195.05
492	omitted
494	260.10(2)
495	260.15
496	tr—Alcoholic Beverage Control Law 65–b
Article 46 Civil Rights	
510	tr—Civil Rights Law 79
510–a	tr—Election Law 462
511	tr—Civil Rights Law 79–a
512	tr—Civil Rights Law 79–b
512–a	tr—Civil Rights Law 79–c
512–b	tr—Civil Rights Law 79–d
513	tr—Civil Rights Law 40–e
514	tr—Civil Rights Law 44–a
515	tr—Civil Rights Law 40–f
516	tr—Civil Rights Law 79–e
517	tr—Civil Rights Law 40–g
518	tr—Civil Rights Law 40–h
Article 48 Coercion	
530	135.60, 135.65
531	omitted
Article 50 Communication	
550	omitted
551	240.30(1)
551–a	omitted
553	250.25
554	see, 155.30(3)
555	240.30(1)
Article 52 Compounding Crime	
570	215.45
571	omitted

1909 Penal Law Section	Disposition
Article 54 Conspiracy	
580(1)	105.00, 105.05, 105.10, 105.15
580(2–6)	omitted
580–a	105.05, 105.10, 105.15
581	omitted
581–a	tr—General Municipal Law 103–e
582	omitted
583	105.20
584	to be treated in Code Crim.Proc.
Article 56 Contempt of Court	
600	215.50
601	215.55
602	215.55
Article 58 Conviction	
610	omitted
Article 64 Corporations	
660	170.05
661	170.20
662	155.05(2), 170.25
663	omitted
663–a	omitted
664	190.35
665(1)	155.05(2)
665(2)	175.05, 175.10
665(3)	175.05, 175.10, 175.45
665(4)	175.05, 175.10
665(5)	omitted
665(6)	omitted
666	tr—General Business Law 139
667	omitted
668	omitted
669	tr—Transportation Corporations Law 81–a
671	tr—Election Law 460
Article 66 Crime Against Nature	
690	130.20, 130.38, 130.40, 130.45, 130.50
691	130.00(2)

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 67 Discrimination	
700	tr—Civil Rights Law 40–c
701	tr—Civil Rights Law 40–d
Article 68 Disguises	
710	240.35(4)
711	240.35(4)
712	omitted
713	to be treated in Code Crim.Proc.
Article 70 Disorderly Conduct	
720	240.25(1, 2)
722(1–10)	240.20, 240.35
722(11–12)	omitted
722–a	omitted
722–b	240.35(5)
723	240.20
724	omitted
725	omitted
726	270.05
727	245.50(1, 3)
728	240.50
Article 72 Dueling	
730–737	see, 35.15(4) (c)
Article 73 Eavesdropping	
738	250.05
739	250.00
740	250.05
741	10.00(6)
742	250.10
743(1)	250.25(3, 4), 250.35
743(2)	250.30
743(3)	140.05, 140.10
744	250.15
745	250.20
Article 74 Elective Franchise	
750–783	tr—Election Law 420–429
Article 76 Evidence	
810	215.40(1)

1909 Penal Law Section	Disposition
Article 76 Evidence—cont'd	
811	215.40(1)
812	215.40(2)
813	see, Art. 100
814	215.40(2)
815	25.00, 30.05
816	omitted
817	omitted
Article 78 Exhibitions	
831(1)	245.05(3)
831(2)	245.05(3)
831(3)	omitted
832	245.05(1)
833	245.05(1)
834	245.05(2, 4)
835	omitted
Article 80 Extortion and Threats	
850	155.05(2), 155.30, 155.40
851	155.05(2), 155.30, 155.40
852	155.30, 155.40
853	135.60, 135.65
854	190.25(3), 195.00
855	200.35
856	155.05, 155.30, 155.40
857	155.05
858	155.05
859	35.35
860	135.60, 215.25
861	tr—Real Property Law 238
Article 82 Ferries	
870	tr—Navigation Law 114
871	omitted
872	omitted
Article 84 Forgery	
880	170.00
881	170.20, 170.25, 170.30, 170.40
882	170.00
883	170.20
884	170.10, 170.15
885	see, 195.00

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 84 Forgery—cont'd	
886	170.15
887	170.10, 170.25, 170.40, 175.05, 175.10
888	170.10
889	170.05, 170.10, 170.20, 170.25, 175.05, 175.10, 175.15
889–a	170.10
889–b	170.05, 170.20
890	170.10
891	170.10, 175.25
892	170.15, 170.30
893	170.05
894	170.30
895	omitted
Article 86 Frauds and Cheats	
920	omitted
921	omitted
922	155.05(2)
923	135.55
924	tr—General Business Law 132
925	165.15(2)
925–a	tr—General Business Law 206–c
925–b	155.05(2)
926(1)	170.05
926(2)	170.20
926(3)	omitted
926–a	see, 175.45
927	140.05
928	190.25(1)
929	omitted
930	155.05, 190.25(1, 2)
931	190.25(3)
932	165.20
932–a	tr—Agriculture and Markets Law 45–b
933	tr—Agriculture and Markets Law 95–b
934	165.20
935	165.20
936	tr—General Business Law 134
936–a	omitted
936–b	190.25(3)
937	see, 155.05
937–a	155.05(2), 165.20
938	see, 155.05(2), 165.25
939	omitted

1909 Penal Law Section	Disposition
Article 86	
Frauds and Cheats—cont'd	
940(1)	185.10
940(2)	185.15
940–a	185.05
940–b	tr—General Business Law 398–a
941	165.00
942	190.25(1)
943	tr—General Business Law 24
944	170.10
945	155.05(2)
946	tr—General Business Law 334
947	155.05(2)
948	tr—General Business Law 135
949	155.05
950	omitted
951	tr—General Business Law 339
952	tr—General Business Law 339–a
953	tr—General Business Law 339–b
954	tr—General Business Law 339–c
955	tr—General Business Law 339–d
956	tr—General Business Law 339–e
957	tr—General Business Law 339–f
958	tr—Vehicle and Traffic Law 396
959	170.45
960	155.05(2)
961	tr—General Business Law 396–f
962	tr—Labor Law 199–c
962–a	tr—Labor Law 196–b
963	tr—General Business Law 396–g
964	tr—General Business Law 133
964–a	tr—General Business Law 141
965	180.55
966	tr—General Business Law 142
967	165.15(4)
968	tr—Agriculture and Markets Law 45–c
Article 88	
Gambling	
970	225.05
970–a	225.30
970–b	225.30(2)
971	see, 240.35(2)
972	see, 240.45
973	225.05
974	225.05
974–a	225.10(2)
975	225.15(2)

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 88 Gambling—cont'd	
977	to be treated in Code Crim.Proc.
978	to be treated in Code Crim.Proc.
979	to be treated in Code Crim.Proc.
980	225.05
981	see, 225.05
982(1)	225.30(1)
982(2)	225.30(1)
982(3)	225.30
983	to be treated in Code Crim.Proc.
984	to be treated in Code Crim.Proc.
985	to be treated in Code Crim.Proc.
985–a	to be treated in Code Crim.Proc.
986	225.05
986–a	225.35(2)
986–b	225.15, 225.35(1)
986–c	225.10(1)
987	see, 225.05
988	see, 155.05
989	omitted
990	omitted
991	tr—General Obligations Law 5–401
992	tr—General Obligations Law 5–411
993	tr—General Obligations Law 5–413
994	tr—General Obligations Law 5–419
995	tr—General Obligations Law 5–421
996	to be treated in Code Crim.Proc.
997	195.00(2)
998	omitted
Article 90 Habitual Criminals	
1020–1022	omitted
Article 92 Hazing	
1030	240.25(4)
Article 94 Homicide	
1040	omitted
1041	omitted
1042	125.00
1043	125.00
1044	125.25
1045	125.30
1045–a	125.35

1909 Penal Law Section	Disposition
Article 94	
Homicide—cont'd	
1046	125.20, 125.25(1)
1047	omitted
1048	omitted
1049	125.00
1050	125.15(2), 125.20(1, 3), 125.45
1051	125.20, 125.45
1052	125.10, 125.15(1), 125.20(1), 125.55
1053	125.15
1053–a	125.10, 125.15(1)
1053–b	125.10, 125.15(1)
1053–c	125.10, 125.15(1)
1053–d	125.10, 125.15(1)
1053–e	125.10, 125.15(1)
1053–f	125.10, 125.15(1)
1054	35.10
1055	35.10, 35.15, 35.30
Article 96	
Horse Racing	
1081	tr—Unconsolidated Laws
1082	omitted
Article 98	
Husband and Wife	
1090	230.20, 230.30(1)
1091	omitted
1092	omitted
Article 100	
Ice	
1100	omitted
Article 102	
Incest	
1110	255.25
Article 104	
Incompetent Persons	
1120	30.05
1121	135.05, 135.10, 260.25
1122	tr—Mental Hygiene Law 224(6)
1123	260.25
Article 106	
Indecency	
1140	235.05(2), 245.00
1140–a	235.05(2)
1140–b	235.05(2)
1141	235.05, 235.10(2)

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 106 Indecency—cont'd	
1141–a	235.05(1)
1141–b	235.05(1)
1141–c	410.00
1142	125.60 (in part); tr—Public Health Law 12–d (in part)
1142–a	tr—Public Health Law 2310
1143	235.05(1)
1144	omitted
1145	tr—Public Health Law 12–d (in part)
1146 (para. 1)	230.25(1)
1146 (para. 2)	omitted
1146 (para. 3)	230.40
1146 (para. 4)	omitted
1146 (para. 5)	omitted
1147	omitted
1148	230.20, 240.35(3)
Article 108 Indians	
1160	omitted
1161	omitted
Article 110 Insolvency	
1170	185.00
1171	185.00
1172	185.00
1173	185.00
Article 112 Insurance	
1190	tr—Insurance Law 149–a
1191	omitted
1192	omitted
1194	omitted
1195	omitted
1196	tr—Insurance Law 77–a
1196–a	tr—Insurance Law 78–a
1197	omitted
1197–a	tr—Insurance Law 66
1198	omitted
1199	tr—Insurance Law 59–b
1200	tr—Insurance Law 40–a
1201	omitted
1202	175.50
1203	tr—Insurance Law 40–b
1204	tr—Insurance Law 40–c

1909 Penal Law Section	Disposition
Article 113 Intoxicating Liquor	
1220	15.25
1221	240.40
1222	120.20, 120.25
Article 116 Juries and Jurors	
1230	10.00
1231	195.00
1232	210.05, 210.10, 210.15
1232–a	210.45
1233(1)	200.00
1233(2)	omitted
1233(3)	200.10
1233(4)	omitted
1234	omitted
1235	215.50
Article 118 Kidnapping	
1250 (para. A)	135.05, 135.10, 135.20, 135.25, 135.45 (1), 135.50
1250 (para. B)	135.35
1250 (para. C)	135.40
1250 (para. D)	135.40
1250–a	135.45(2), 135.50
1250–b	205.65, 240.50(3)
1251	omitted
1252	135.00
1253	omitted
1255	omitted
1256	to be treated in Code Crim.Proc.
Article 120 Labor	
1270	omitted
1271(1)	tr—Labor Law 220(2–a)
1271(2)	omitted
1271(3)	omitted
1271(4)	omitted
1272	tr—Labor Law 199–d
1274	tr—Labor Law 636
1275	tr—Labor Law 213
1276	omitted
1278	tr—Labor Law 209–a
1279	tr—General Business Law 140

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 122	
Larceny	
1290	155.05(1)
1290–a	155.45
1291(1)	155.00
1291(2)	185.10
1292	155.00
1292–a	155.05(2), 190.05, 190.10
1293	155.05
1293–a	165.05
1293–b	175.45
1293–c	155.05(2), 165.15(4)
1293–d	170.55, 170.60
1294	155.30, 155.35
1295	155.30, 155.35
1296	155.25, 155.30
1297	155.25, 155.30
1298	155.25, 155.30
1299	155.25, 155.30
1300	155.05(2)
1301	165.40, 165.45
1302	155.05(2)
1302–a	tr—General Obligations Law 7–105
1302–b	omitted
1302–c	tr—Lien Law 79–a
1303	155.20
1304	155.20
1305	155.20
1306	155.15(1)
1307	omitted
1307–a	omitted
1308	165.45, 165.50, 165.55, 165.60, 165.65
1308–a	165.65(2)
1309	165.60(1)
1310	155.05(2), 165.00
1311	155.05(2)
1312	155.05(2)
1313	155.05(2)
Article 124	
Legislature	
1320	195.05
1321	240.20(4)
1322	195.05
1323	135.60, 135.65
1324	135.60, 135.65

1909 Penal Law Section	Disposition
Article 124	
Legislature—cont'd	
1325	170.10
1326	170.10
1329	215.60(1)
1330	215.60(2, 3, 4)
1331	omitted
Article 126	
Libel	
1340	omitted
1341	omitted
1342	omitted
1343	omitted
1344	omitted
1345	omitted
1346	omitted
1347	155.05(2)
1348	omitted
1349	omitted
Article 130	
Lotteries	
1370	225.00
1371	see, 225.05
1372	225.05
1373	225.05
1374	see, 225.05
1375	see, 225.05
1376	225.05
1377	225.05
1378	225.05
1379	see, 225.05
1380	to be treated in Code Crim.Proc.
1381	225.05
1382	225.40
1383	tr—General Obligations Law 5–423
1384	omitted
1385	tr—General Obligations Law 5–415
1386	tr—General Obligations Law 5–417
1387	225.40
1388	225.05
Article 131	
Lynching and Mob Violence	
1390	omitted
1391	125.15(1)
1392	120.10(4)

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 132 Maiming	
1400	120.10(2)
1401	omitted
1402	omitted
1403	omitted
1404	omitted
Article 134 Malicious Mischief	
1420	145.00, 145.05, 145.10, 150.10, 150.15
1420–a	145.00, 145.05, 145.10, 150.10, 150.15
1421	145.00, 145.05, 145.10
1422	120.20, 120.25, 145.15, 145.20
1423	120.20, 125.20, 145.00, 145.05, 145.10, 145.15, 145.20
1423–a	145.00, 145.05, 145.10, 145.15, 145.20
1423–b	145.00, 145.05, 145.10, 145.15
1423–c	145.00, 145.05, 145.10
1424	120.20, 120.25, 145.00, 145.05, 145.10, 145.15
1424–a(1)	270.15
1424–a(2)	270.15
1424–a(3)	tr—General Business Law 336
1425	140.05, 145.00, 145.05, 145.10
1425(16)	tr—General Business Law 136
1425–a	omitted
1426	145.00, 145.05, 145.10
1427	145.00, 145.05, 145.10, 145.15
1428	145.00, 145.05, 145.10
1429	tr—Election Law 461
1430	145.00, 145.05, 145.10
1431	145.00, 145.05, 145.10, 145.15, 165.15(5, 6), 145.20
1431–a	165.15(5)
1432	145.00, 145.05, 145.10, 145.15, 165.15(5, 6), 145.20
1432–a	145.00, 145.05, 145.10, 145.15, 165.15(5, 6)
1433(1)	145.00, 145.05, 145.10, 145.15
1433(2)	145.00, 145.05, 145.10, 145.15
1433(3)	omitted
1435	tr—Military Law 238–b
1436	see, 105.00
1437	omitted
1438	145.00, 145.05, 145.10

1909 Penal Law Section	Disposition
Article 136 Marriage and Divorce	
1450	255.00
1451	255.05
1452	tr—General Business Law 337
1453	255.10, 255.20
1454	135.60
1455	omitted
Article 140 Meetings	
1470	240.20(4)
1471	omitted
1472	to be treated in Code Crim.Proc.
Article 142 Military	
1480	tr—Military Law 251
1481	tr—Military Law 252
1482	see, 120.05
1483	tr—Military Law 238–c
1484	tr—Military Law 238–a
1484–a	tr—Military Law 238–d
1486	omitted
1487	omitted
Article 144 Navigation	
1500	tr—Navigation Law 140–a
1500–a	tr—Navigation Law 44–a
1500–b	tr—Navigation Law 44–b
1501	tr—Navigation Law 88–a
1502	tr—Navigation Law 87–a
1503	tr—Navigation Law 32–a
1504	tr—Navigation Law 32–b
1505	tr—Navigation Law 32–c
1505–a	tr—Navigation Law 45–a
1506	omitted
1507	omitted
1508	omitted
1509	omitted
1510	tr—Navigation Law 44–c
1511	tr—Navigation Law 58–a
Article 146 Negotiable Instruments	
1520–1522	tr—General Business Law 552–554

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 148	
Nuisances	
1530	240.45(1)
1531	omitted
1532	omitted
1533	240.35(9), 240.45(1)
1534	tr—General Business Law 168–a
Article 150	
Oysters	
1550	omitted
1551	omitted
Article 152	
Passage Tickets	
1560–1574	tr—General Business Law 115–127
Article 154	
Pawnbrokers	
1590–1593	omitted
Article 156	
Peddlers	
1610	omitted
Article 158	
Perjury and Subornation of Perjury	
1620(1)	210.00
1620(2)	210.00
1620(3)	210.00
1620(4)	210.45
1620–a	210.10, 210.15
1620–b	210.05
1621(1)	210.30(3)
1621(2)	210.30(3)
1621(3)	210.00
1622	210.00(1)
1623	210.30(1)
1624	210.30(2)
1625	210.00(5)
1626	210.00(5)
1627	210.20(2)
1627–a	210.20(1, 2)
1628	omitted
1629	omitted
1630	omitted
1632	see, Art. 100
1632–a	see, Art. 100
1633(1)	210.10, 210.20
1633(2)	210.05
1634	omitted

1909 Penal Law Section	Disposition
Article 159 Platinum Stamping	
1635–1643	tr—General Business Law 230–238
Article 160 Poor Persons	
1650	omitted
Article 161 Portable Kerosene Heaters	
1670–1674	tr—Real Property Law 239 to 239–d
Article 162 Prisoners	
1690	205.00
1691	205.20(1), 205.25(1)
1692	210.05, 210.10, 210.15
1693	70.30(6)
1694	205.00, 205.05, 205.10, 205.15
1694–a	205.35, 205.40
1694–b	205.35, 205.40
1695	205.15
1696	205.05, 205.10, 205.15, see, 20.00
1697	205.05, 205.10, 205.15, see, 20.00
1698	205.50, 205.55, 205.60, 205.65
1699	omitted
1699–a	tr—Correction Law 601–b
Article 164 Prize-Fighting and Sparring	
1710–1716	omitted
Article 166 Public Health	
1740	tr—Public Health Law 12–b
1741	tr—Public Health Law 12–c
1742	tr—Education Law 6808–a
1743	omitted
1744	omitted
1745	tr—Education Law 6813–a
1746	tr—General Business Law 399–e
1747	tr—Education Law 6804–a
1747–a	tr—Education Law 6804–b
1747–b	tr—Public Health Law 3370 (in part); 220.00, 220.05, 220.30 (in part)
1747–c	tr—Public Health Law 3371 (in part); 220.00, 220.05, 220.30 (in part)

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 166 Public Health—cont'd	
1747–d	tr—Public Health Law 3372 (in part); 220.45 (in part)
1747–e	170.10
1748	omitted
1749	tr—Agriculture and Markets Law 204–d
1750	tr—Agriculture and Markets Law 199–c
1751(1)	220.30, 220.35, 220.40
1751(2)	220.10, 220.15(1), 220.20
1751(3)	220.15(2)
1751(4)	220.25
1751(5)	omitted
1751–a(1)	220.05
1751–a(2)	omitted
1751–a(3)	omitted
1751–a(4)	omitted
1751–a(5)	omitted
1752	120.05(5)
1752–a	to be treated in Code Crim.Proc.
1753	tr—Public Health Law 3315
1754	tr—Public Health Law 1300–a
1755	omitted
1756	omitted
1757	tr—Agriculture and Markets Law 169–a
1758	tr—Public Health Law 1150–a
1759	tr—Public Health Law 1300–b
1760	120.20, 120.25
1760–a	120.20, 120.25
1761	120.20, 120.25
1762	omitted
1763	omitted
1764	tr—Agriculture and Markets Law 73–a
Article 168 Public Justice	
1780	omitted
1781	omitted
1782	215.75
1783	215.70
1783–a	215.70
1784	215.70
1785	omitted
1786	195.00, 240.50(3)

1909 Penal Law Section	Disposition
Article 168 Public Justice—cont'd	
1787(1)	see, 105.00
1787(2)	omitted
1787(3)	to be treated in Code Crim.Proc.
1788	195.00(1)
1789	omitted
1790	omitted
1791	205.20(1)
1792	195.00
Article 170 Public Offices and Officers	
1820	omitted
1820–a	tr—Executive Law 135–a
1821	omitted
1822	200.00
1823	200.05
1824	135.65, 195.05
1825	195.05
1826	200.25, 200.35
1827	tr—Tax Law 170–a
1828	tr—Correction Law 22
1828–a	205.20(1), 205.25(1)
1829	200.10
1830	195.00(1)
1831	200.35
1832	200.45, 200.50
1833	200.10
1834	omitted
1835	omitted
1836	175.20, 175.25
1837	see, 10.00(14)
1838(1)	175.20, 175.25
1838(2)	155.05(2)
1839(1)	200.10
1839(2)	195.00(1)
1840	195.00(2)
1841	195.00(2)
1842	195.00(2)
1843	195.00(2)
1844	195.00(2)
1845	tr—Public Officers Law 3–b
1846	190.25(3)
1847	195.00(1)
1848	195.10 (in part); tr—General Municipal Law 71–a (in part)

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 170 Public Offices and Officers —cont'd	
1849	omitted
1850	195.05
1851	195.05
1852	omitted
1853	omitted
1854	omitted
1855	omitted
1856	omitted
1857	195.00(2)
1858	omitted
1859	omitted
1860	175.40
1861	175.40
1862	195.00(1)
1863	155.05(2), 195.00(1)
1864	155.05(2), 195.00(1)
1865(1)	155.05(2)
1865(2)	175.05, 175.10
1865(3)	175.05, 175.10
1865(4)	195.00(2)
1866	195.00
1867	155.05(2), 195.00
1868	tr—Education Law 410
1869	195.00(2)
1870	see, 195.05
1871	tr—Education Law 2119
1872	175.30, 175.35
1872–a	175.30, 175.35
1873	145.00, 145.05, 145.10, 155.05(2)
1874	195.00(2)
1875	195.00
1876	195.00(1)
1877	omitted
1878	tr—Public Officers Law 73–a
1879	tr—General City Law 3–c
Article 172 Public Safety	
1890	120.20, 120.25
1891	omitted
1892	120.20, 120.25
1893	120.20, 120.25
1894	tr—General Business Law 322–b
1894–a(1–a)	270.00

1909 Penal Law Section	Disposition
Article 172	
Public Safety—cont'd	
1894–a(1–b)	405.00
1894–a(2)	270.00
1894–a(3)	405.00
1894–a(4)	405.00
1894–a(5)	405.00
1894–a(6)	270.00
1894–a(7)	270.00
1894–a(8)	270.00
1894–a(9)	405.05
1894–a(10)	405.05
1895	120.20, 120.25, 150.15
1896	265.00
1897	265.05
1898	265.10(1–6)
1899	265.15
1900	265.20
1901	400.05(1, 2, 3)
1902(1)	400.05(4, 5)
1902(2)	400.05(4, 5)
1902(3)	265.10(7)
1902(4)	265.25
1902(5)	265.30
1903	400.00
1904(1)	265.35
1904(2)	265.35
1904(3)	265.35
1904(4)	265.35
1904(5)	omitted
1904(6)	to be treated in Code Crim.Proc.
1905	omitted
1906(1)	145.00, 145.05, 145.10, 145.20
1906(2)	145.00, 145.05, 145.10, 145.20
1906(3)	145.00, 145.05, 145.10, 145.20
1906(4)	195.15
1907	omitted
1908	omitted
1909	omitted
1910	omitted
1911	120.20, 120.25, 145.05, 145.10, 145.15, 155.05(2)
1912	omitted
1913	120.20, 120.25
1914	195.15
1915	tr—General Business Law 304–a
1916	tr—Vehicle and Traffic Law 397

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 172	
Public Safety—cont'd	
1917	omitted
1918	tr—General Business Law 322–a
1919	tr—General Business Law 306–a
1920	270.10(1)
1921	tr—General Business Law 308
1922(para. 1)	tr—General Business Law 265
1922(para. 2)	omitted
1923	270.10(2)
Article 174	
Punishment	
1930	omitted
1931	omitted
1932	see, 20.20
1933	omitted
1934	see, 20.00
1935	55.10(1)
1936	see, 20.00
1937	55.10(2)
1938	70.25, 75.10, 80.15
1939	215.55
1940	Under study
1941	70.10
1942	70.10
1943	to be treated in Code Crim.Proc.
1944	omitted
1944–a	Under study
1945	omitted
Article 176	
Quarantine	
1960–1964	omitted
Article 178	
Railroads	
1980	omitted
1981	omitted
1982	omitted
1983	omitted
1984	120.20, 120.25
1985	tr—Railroad Law 53–b
1987	omitted
1988	omitted
1989	omitted
1990	140.05, 140.10, 165.15(3)
1990–a	240.35(7, 8)
1990–b	165.15(3)
1991	120.20, 120.25, 145.00, 145.05, 145.10

15,

1909 Penal Law Section	Disposition
Article 180	
Rape	
2010	130.20, 130.25, 130.30, 130.35
2011	130.00
2012	omitted
2013	130.15
Article 182	
Real Property	
2030	omitted
2034	140.05
2035	140.05
2036	140.05
2036–a	140.05, 145.30
2037	omitted
2038	to be treated in Code Crim.Proc.
2039	omitted
2040	tr—Real Property Law 235
2041	tr—Real Property Law 236
2042	tr—Real Property Law 237
Article 184	
Records and Documents	
2050	175.20, 175.25
2051	175.30, 175.35
2052(1)	190.30
2052(2)	to be treated in Code Crim.Proc.
2053	omitted
Article 186	
Religion	
2070	135.60, 135.65
2071	240.20(4)
2072	omitted
2073	135.60, 135.65
2074	omitted
Article 188	
Riots and Unlawful Assemblies	
2090	240.05
2091	240.05
2092	240.10
2093	240.20(6)
2094	240.10
2095	195.10
2095–a	omitted
2096	omitted
2097	to be treated in Code Crim.Proc.

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 190	
Robbery	
2120	160.00
2121	160.00
2122	160.00
2123	160.00
2124	160.10, 160.15
2125	160.15
2126	160.05
2127	160.10
2128	omitted
2129	160.05
Article 192	
Sabbath	
2140–2153	tr—General Business Law 2–16
Article 194	
Salt Works	
2170	omitted
Article 195	
Seduction	
2175–2177	omitted
Article 196	
Sentence	
2180	to be treated in Correction Law
2181	70.20(2)
2182(1)	70.20(2)
2182(2)	70.00(3)
2182(3)	to be treated in Correction Law
2183	70.20(1)
2184	omitted
2184–a	75.00, 75.05, 75.15
2185	omitted
2186	70.05, 30.00
2187	70.20, 75.00
2187–a	75.00, 75.05, 75.10, 75.15
2188	65.00, 65.05, 65.10, 65.15, 65.20
2188–a	to be treated in Correction Law
2188–b	65.10
2189	70.00(1)
2189–a	Under study
2190	70.25(1), 70.30(1, 2)
2191	omitted
2192	omitted
2193(1)	70.30(3)
2193(2)	70.40(3)

1909 Penal Law Section	Disposition
Article 196 Sentence—cont'd	
2193(3)	70.40(3)
2193(4)	70.30(5)
2194	omitted
2195	75.00
2196	70.20(2); also to be treated in Correction Law
2198	to be treated in Code Crim.Proc. and Correction Law
Article 198 Sepulture	
2214	tr—Public Health Law 4210–a
2216	tr—Public Health Law 4216
2217	tr—Public Health Law 4217
2218	tr—Public Health Law 4218
2219	tr—Public Health Law 4219
2220	tr—Public Health Law 4220
2221	omitted
Article 200 Societies and Orders	
2240	tr—General Business Law 137
2240–a	omitted
2241	tr—Civil Service Law 155
Article 202 Suicide	
2300	omitted
2301	omitted
2304	125.15(3)
2305	120.30
2306	omitted
Article 204 Taxes	
2320	omitted
2321	210.45
2322	tr—Tax Law 5
Article 206 Trade-Marks	
2350–2357	tr—General Business Law 279j–279q
Article 208 Trading Stamps	
2360	omitted
2361	omitted
Article 210 Tramps	
2370–2372	omitted

TABLE II—DISPOSITION

1909 Penal Law Section	Disposition
Article 212 Treason	
2380–2383	omitted
Article 214 Usury	
2400	tr—General Obligations Law 5–524
Article 216 Weights and Measures	
2410–2416	omitted
Article 218 Witness	
2440	215.00
2441	215.10
2442	215.10
2443	omitted
2444	omitted
2445	omitted
2446	to be treated in Code Crim.Proc.
2447	to be treated in Code Crim.Proc.
2448	215.65
Article 220 Women	
2460(1)	230.20, 230.25
2460(2)	230.20, 230.25
2460(3)	230.20, 230.25
2460(4)	230.20, 230.25
2460(5)	230.20, 230.25
2460(6)	230.20, 230.25
2460(7)	230.30(1)
2460(8)	230.20, 230.25
2460(9)	230.35
2461	omitted
Article 222 Wrecks	
2480	tr—Navigation Law 139–a
2481	tr—Navigation Law 139–b
2482	tr—Navigation Law 139–c
Article 224 Repeal of Provisions of Penal Law Must Be Explicit; Laws Repealed; Time of Taking Effect	
2500–2502	omitted

STATE OF NEW YORK

Department of State ss.

In pursuance of the authority vested in me, by section 70–b of the Public Officers Law, I, John P. Lomenzo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

Given under my hand and the seal of office of the Department of State, in the City of Albany, this 27th day of July, 1965.

John P. Lomenzo

SECRETARY OF STATE

PENAL LAW OF 1965

Laws 1965, Chapter 1030

As amended by L.1965, cc. 1037, 1039, 1046 and 1047

Effective September 1, 1967.

AN ACT providing for the punishment of offenses, constituting chapter forty of the consolidated laws

Became a law July 20, 1965 (eff. Sept. 1, 1967), with the approval of the Governor.

Passed, three-fifths being present

NOTE.—The Temporary Commission on Revision of the Penal Law and Criminal Code has prepared two bills, of which this is the main bill, to revise the Penal Law. The companion bill [L.1965, c. 1031, see page 315] supplements this bill by relocating 373 sections, or parts thereof, repealed by this bill in other, more appropriate chapters of the consolidated and unconsolidated laws. See New York Legislative Documents No. 41 (1962); No. 8 (1963); and No. 14 (1964).

Section 500.05 repeals the present Penal Law in its entirety.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 40 OF THE CONSOLIDATED LAWS

PART ONE—GENERAL PROVISIONS

TITLE A—GENERAL PURPOSES, RULES OF CONSTRUCTION, AND DEFINITIONS

Article		Sec.
1.	General purposes	1.00–1.05
5.	General rules of construction and application	5.00–5.10
10.	Definitions	10.00

TITLE B—PRINCIPLES OF CRIMINAL LIABILITY

15.	Culpability	15.00–15.25
20.	Parties to offenses and liability through accessorial conduct	20.00–20.25

TITLE C—DEFENSES

25.	Defenses in general	25.00
30.	Defenses involving lack of criminal responsibility	30.00–30.05
35.	Defenses involving lack of culpability	35.00–35.45

PART TWO—SENTENCES

TITLE E—SENTENCES

Article		Sec.
55.	Classification and designation of offenses	55.00–55.10
60.	Authorized disposition of offenders	60.00
65.	Sentences of probation, conditional discharge and unconditional discharge	65.00–65.20
70.	Sentences of imprisonment	70.00–70.40
75.	Reformatory sentence of imprisonment for young adults	75.00–75.20
80.	Fines	80.00–80.15

PART THREE—SPECIFIC OFFENSES

TITLE G—ANTICIPATORY OFFENSES

100.	Criminal solicitation	100.00–100.20
105.	Conspiracy	105.00–105.30
110.	Attempt	110.00–110.10
115.	Criminal facilitation	115.00–115.15

TITLE H—OFFENSES AGAINST THE PERSON INVOLVING PHYSICAL INJURY, SEXUAL CONDUCT, RESTRAINT AND INTIMIDATION

120.	Assault and related offenses	120.00–120.35
125.	Homicide, abortion and related offenses	125.00–125.60
130.	Sex offenses	130.00–130.65
135.	Kidnapping, coercion and related offenses	135.00–135.75

TITLE I—OFFENSES INVOLVING DAMAGE TO AND INTRUSION UPON PROPERTY

140.	Burglary and related offenses	140.00–140.35
145.	Criminal mischief	145.00–145.30
150.	Arson	150.00–150.15

TITLE J—OFFENSES INVOLVING THEFT

155.	Larceny	155.00–155.45
160.	Robbery	160.00–160.15
165.	Other offenses relating to theft	165.00–165.65

TITLE K—OFFENSES INVOLVING FRAUD

Article		Sec.
170.	Forgery and related offenses	170.00–170.60
175.	Offenses involving false written statements	175.00–175.50
180.	Bribery not involving public servants, and related offenses	180.00–180.55
185.	Frauds on creditors	185.00–185.15
190.	Other frauds	190.00–190.35

TITLE L—OFFENSES AGAINST PUBLIC ADMINISTRATION

195.	Official misconduct and obstruction of public servants generally	195.00–195.15
200.	Bribery involving public servants and related offenses	200.00–200.50
205.	Escape and other offenses relating to custody	205.00–205.65
210.	Perjury and related offenses	210.00–210.50
215.	Other offenses relating to judicial and other proceedings	215.00–215.75

TITLE M—OFFENSES AGAINST PUBLIC HEALTH AND MORALS

220.	Dangerous drug offenses	220.00–220.45
225.	Gambling offenses	225.00–225.40
230.	Prostitution offenses	230.00–230.40
235.	Obscenity and related offenses	235.00–235.30

TITLE N—OFFENSES AGAINST PUBLIC ORDER, PUBLIC SENSIBILITIES AND THE RIGHT TO PRIVACY

240.	Offenses against public order	240.00–240.50
245.	Offenses against public sensibilities	245.00–245.05
250.	Offenses against the right to privacy	250.00–250.35

TITLE O—OFFENSES AGAINST MARRIAGE, THE FAMILY, AND THE WELFARE OF CHILDREN AND INCOMPETENTS

255.	Offenses affecting the marital relationship	255.00–255.30
260.	Offenses relating to children and incompetents	260.00–260.25

TITLE P—OFFENSES AGAINST PUBLIC SAFETY

265.	Firearms and other dangerous weapons	265.00–265.35
270.	Other offenses relating to public safety	270.00–270.15

PART FOUR—ADMINISTRATIVE PROVISIONS

TITLE W—PROVISIONS RELATING TO FIREARMS, FIREWORKS AND PORNOGRAPHY EQUIPMENT

Article		Sec.
400.	Licensing and other provisions relating to firearms	400.00–400.05
405.	Licensing and other provisions relating to fireworks	405.00–405.05
410.	Seizure and forfeiture of equipment used in promoting pornography	410.00

TITLE Z—LAWS REPEALED; TIME OF TAKING EFFECT

500. Savings clauses; laws repealed; time of taking effect ____500.00–500.10

PART ONE—GENERAL PROVISIONS

TITLE A—GENERAL PURPOSES, RULES OF CONSTRUCTION, AND DEFINITIONS

ARTICLE 1—GENERAL PURPOSES

Section
1.00 Short title.
1.05 General purposes.

§ 1.00 Short title

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

§ 1.05 General purposes

The general purposes of the provisions of this chapter are:

1. To proscribe conduct which unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;

2. To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;

3. To define the act or omission and the accompanying mental state which constitute each offense;

4. To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties therefor; and

5. To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, and their confinement when required in the interests of public protection.

ARTICLE 5—GENERAL RULES OF CONSTRUCTION AND APPLICATION

Section

5.00 Penal law not strictly construed.
5.05 Application of chapter to offenses committed before and after enactment.
5.10 Other limitations on applicability of this chapter.

§ 5.00 Penal law not strictly construed

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

§ 5.05 Application of chapter to offenses committed before and after enactment

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

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

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

§ 5.10 Other limitations on applicability of this chapter

1. Except as otherwise provided, the procedure governing the accusation, prosecution, conviction and punishment of offenders and offenses is not regulated by this chapter but by the code of criminal procedure.

2. This chapter does not affect any power conferred by law upon any court-martial or other military authority or officer to prosecute and punish conduct and offenders violating military codes or laws.

3. This chapter does not bar, suspend, or otherwise affect any right or 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 constitutes an offense defined in this chapter.

ARTICLE 10—DEFINITIONS

Section

10.00 Definitions of terms of general use in this chapter.

§ 10.00 Definitions of terms of general use in this chapter

Except where different meanings are expressly specified in subsequent provisions of this chapter, the following terms have the following meanings:

1. "Offense" means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state.

2. "Violation" means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment not in excess of fifteen days is authorized by this chapter, or for which no sentence of imprisonment can be imposed.

3. "Misdemeanor" means an offense, rather than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days but not in excess of one year is authorized by this chapter.

4. "Felony" means an offense for which a sentence to a term of imprisonment in excess of one year is authorized by this chapter.

5. "Crime" means a misdemeanor or a felony.

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

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

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

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

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

11. "Deadly weapon" means any loaded weapon from which a shot may be discharged by gunpowder, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, metal knuckles, or slungshot.

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

13. "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic law, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail.

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

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

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

TITLE B—PRINCIPLES OF CRIMINAL LIABILITY

ARTICLE 15—CULPABILITY

Section

15.00 Culpability; definitions of terms.
15.05 Culpability; definitions of culpable mental states.
15.10 Requirements for criminal liability in general and for offenses of strict liability and mental culpability.
15.15 Construction of statutes with respect to culpability requirements.
15.20 Effect of ignorance or mistake upon liability.
15.25 Effect of intoxication upon liability.

§ 15.00 Culpability; definitions of terms

The following definitions are applicable to this chapter:

1. "Act" means a bodily movement.

2. "Voluntary act" means a bodily movement performed consciously as a result of effort or determination, and includes the possession of property if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it.

3. "Omission" means a failure to perform an act as to which a duty of performance is imposed by law.

4. "Conduct" means an act or omission and its accompanying mental state.

5. "To act" means either to perform an act or to omit to perform an act.

6. "Culpable mental state" means "intentionally" or "knowingly" or "recklessly" or with "criminal negligence," as these terms are defined in section 15.05.

§ 15.05 Culpability; definitions of culpable mental states

The following definitions are applicable to this chapter:

1. "Intentionally." A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct.

2. "Knowingly." A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an

offense when he is aware that his conduct is of such nature or that such circumstance exists.

3. "Recklessly." A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

4. "Criminal negligence." A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

§ 15.10 Requirements for criminal liability in general and for offenses of strict liability and mental culpability

The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is physically capable of performing. If such conduct is all that is required for commission of a particular offense, or if an offense or some material element thereof does not require a culpable mental state on the part of the actor, such offense is one of "strict liability." If a culpable mental state on the part of the actor is required with respect to every material element of an offense, such offense is one of "mental culpability."

§ 15.15 Construction of statutes with respect to culpability requirements

1. When the commission of an offense defined in this chapter, or some element of an offense, requires a particular culpable mental state, such mental state is ordinarily designated in the statute defining the offense by use of the terms "intentionally,"

"knowingly," "recklessly" or "criminal negligence," or by use of terms, such as "with intent to defraud" and "knowing it to be false," describing a specific kind of intent or knowledge. When one and only one of such terms appears in a statute defining an offense, it is presumed to apply to every element of the offense unless an intent to limit its application clearly appears.

2. Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of such offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such culpable mental state. A statute defining a crime, unless clearly indicating a legislative intent to impose strict liability, should be construed as defining a crime of mental culpability. This subdivision applies to offenses defined both in and outside this chapter.

§ 15.20 Effect of ignorance or mistake upon liability

1. A person is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief of fact, unless:

(a) Such factual mistake negatives the culpable mental state required for the commission of an offense; or

(b) The statute defining the offense or a statute related thereto expressly provides that such factual mistake constitutes a defense or exemption; or

(c) Such factual mistake is of a kind that supports a defense of justification as defined in article thirty-five of this chapter.

2. A person is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless such mistaken belief is founded upon an official statement of the law contained in (a) a statute or other enactment, or (b) an administrative order or grant of permission, or (c) a judicial decision of a state or federal court, or (d) an interpretation of the statute or law relating to the offense, officially made or issued by a public servant, agency or body legally charged or empowered with the responsibility or privilege of administering, enforcing or interpreting such statute or law.

3. Notwithstanding any other provision of this chapter and notwithstanding the use of the term "knowingly" in any offense

defined in this chapter in which the age of a child is an element thereof, knowledge by the defendant of the age of such child is not an element of any such offense and it is no defense to a prosecution therefor that the defendant did not know the age of the child or believed such age to be the same as or greater than that specified in the statute.

§ 15.25 Effect of intoxication upon liability

Intoxication is not, as such, a defense to a criminal charge; but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

ARTICLE 20—PARTIES TO OFFENSES AND LIABILITY THROUGH ACCESSORIAL CONDUCT

Section

20.00 Criminal liability for conduct of another.
20.05 Criminal liability for conduct of another; no defense.
20.10 Criminal liability for conduct of another; exemption.
20.15 Convictions for different degrees of offense.
20.20 Criminal liability of corporations.
20.25 Criminal liability of an individual for corporate conduct.

§ 20.00 Criminal liability for conduct of another

When one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct.

§ 20.05 Criminal liability for conduct of another; no defense

In any prosecution for an offense in which the criminal liability of the defendant is based upon the conduct of another person pursuant to section 20.00, it is no defense that:

1. Such other person is not guilty of the offense in question owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of the offense in question; or

2. Such other person has not been prosecuted for or convicted of any offense based upon the conduct in question, or has previously been acquitted thereof, or has legal immunity from prosecution therefor; or

3. The offense in question, as defined, can be committed only by a particular class or classes of persons, and the defendant, not belonging to such class or classes, is for that reason legally incapable of committing the offense in an individual capacity.

§ 20.10 Criminal liability for conduct of another; exemption

Notwithstanding the provisions of sections 20.00 and 20.05, a person is not criminally liable for conduct of another person constituting an offense when his own conduct, though causing or aiding the commission of such offense, is of a kind that is necessarily incidental thereto. If such conduct constitutes a related but separate offense upon the part of the actor, he is liable for that offense only and not for the conduct or offense committed by the other person.

§ 20.15 Convictions for different degrees of offense

Except as otherwise expressly provided in this chapter, when, pursuant to section 20.00, two or more persons are criminally liable for an offense which is divided into degrees, each person is guilty of such degree as is compatible with his own culpable mental state and with his own accountability for an aggravating fact or circumstance.

§ 20.20 Criminal liability of corporations

1. As used in this section:

(a) "Agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.

(b) "High managerial agent" means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

2. A corporation is guilty of an offense when:

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

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation; or

(c) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation and (i) the offense is a misdemeanor or a violation, or (ii) the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation.

§ 20.25 Criminal liability of an individual for corporate conduct

A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.

TITLE C—DEFENSES

ARTICLE 25—DEFENSES IN GENERAL

Section
25.00 Defenses; burden of proof.

§ 25.00 Defenses; burden of proof

1. When a "defense," other than an "affirmative defense," defined by statute is raised at a trial, the people have the burden of disproving such defense beyond a reasonable doubt.

2. When a defense declared by statute to be an "affirmative defense" is raised at a trial, the defendant has the burden of establishing such defense by a preponderance of the evidence.

ARTICLE 30—DEFENSES INVOLVING LACK OF CRIMINAL RESPONSIBILITY

Section
30.00 Infancy.
30.05 Mental disease or defect.

§ 30.00 Infancy

1. A person less than sixteen years old is not criminally responsible for conduct.

2. In any prosecution for an offense, lack of criminal responsibility by reason of infancy, as defined in subdivision one of this section, is a defense.

§ 30.05 Mental disease or defect

1. 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 to know or appreciate either:

(a) The nature and consequence of such conduct; or

(b) That such conduct was wrong.

2. In any prosecution for an offense, lack of criminal responsibility by reason of mental disease or defect, as defined in subdivision one of this section, is a defense.

ARTICLE 35—DEFENSES INVOLVING LACK OF CULPABILITY

Section

35.00 Justification; a defense.
35.05 Justification; generally.
35.10 Justification; use of physical force generally.
35.15 Justification; use of physical force in defense of a person.
35.20 Justification; use of physical force in defense of premises.
35.25 Justification; use of physical force in defense of property.
35.30 Justification; use of physical force in making an arrest or in preventing an escape.
35.35 Duress.
35.40 Entrapment.
35.45 Renunciation.

§ 35.00 Justification; a defense

In any prosecution for an offense, justification, as defined in sections 35.05 through 35.30, is a defense.

§ 35.05 Justification; generally

Unless inconsistent with the ensuing provisions of this article defining justifiable use of physical force, or with some other pro-

vision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when:

1. Such conduct is required or authorized by a provision of law or by a judicial decree. Among the kinds of such provisions and decrees are (a) laws defining duties and functions of public servants, (b) laws defining duties of private citizens to assist public servants in the performance of certain of their functions, (c) laws governing the execution of legal process, (d) laws governing the military services and the conduct of war, and (e) judgments and orders of competent courts; or

2. Such conduct is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. The necessity and justifiability of such conduct may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder. Whenever evidence relating to the defense of justification under this subdivision is offered by the defendant, the court shall rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a defense.

§ 35.10 Justification; use of physical force generally

The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

1. A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person, and a teacher or other person entrusted with the care and supervision of a minor for a special purpose, may use physical force, but not deadly physical force, upon such minor or incompetent person when and to the extent that he reasonably believes it necessary to maintain discipline or to promote the welfare of such minor or incompetent person.

2. A warden or other authorized official of a jail, prison or correctional institution may, in order to maintain order and

discipline, use such physical force as is authorized by the correction law.

3. A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his direction, may use physical force when and to the extent that he reasonably believes it necessary to maintain order, but he may use deadly physical force only when he reasonably believes it necessary to prevent death or serious physical injury.

4. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force upon such person to the extent that he reasonably believes it necessary to thwart such result.

5. A duly licensed physician, or a person acting under his direction, may use physical force for the purpose of administering a recognized form of treatment which he reasonably believes to be adapted to promoting the physical or mental health of the patient if (a) the treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent, guardian or other person entrusted with his care and supervision, or (b) the treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

6. A person may use physical force upon another person in defending himself or a third person, in defending property, in making an arrest or in preventing an escape, as hereafter prescribed in this article.

§ 35.15 Justification; use of physical force in defense of a person

1. Except as provided in subdivisions two and three of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by such other person, and he may use a degree of force which he reasonably believes to be necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (a) using or about to use unlawful deadly physical force, or (b) using or about to use physical force against an occupant of a

dwelling while committing or attempting to commit a burglary of such dwelling, or (c) committing or about to commit a kidnapping, robbery, forcible rape or forcible sodomy.

2. Notwithstanding the provisions of subdivision one of this section, a person is not justified in using deadly physical force upon another person if he knows that he can avoid the necessity of using such force with complete safety (a) by retreating, except that the actor is not required to retreat (i) if he is in his dwelling and was not the initial aggressor, or (ii) if he is a peace officer or a private person assisting him at his direction, and was acting pursuant to section 35.30, or (b) by surrendering possession of property to a person asserting a claim of right thereto, or (c) by complying with a demand that he abstain from performing an act which he is not obligated to perform.

3. Notwithstanding the provisions of subdivision one of this section, a person is not justified in using physical force if (a) with intent to cause physical injury or death to another person, he provoked the use of unlawful physical force by such other person, or (b) he was the initial aggressor, except that his use of physical force upon another person under such circumstances is justifiable if he withdraws from the encounter and effectively communicates to such other person his intent to do so, but the latter notwithstanding continues or threatens the use of unlawful physical force, or (c) the physical force involved was the product of a combat by agreement not specifically authorized by law. As amended L.1965, c. 1039.

Historical Note

L.1965, c. 1039, deleted provision which prohibited use of physical force to resist arrest by a peace officer.

§ 35.20 Justification; use of physical force in defense of premises

A person in possession or control of premises, as that term is defined in section 140.00, or a person who is licensed or privileged to be thereon, is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of a criminal trespass by such other person in or upon such premises; but he may use deadly physical force under such circumstances only (a) in defense of a person as prescribed in section 35.15, or (b) when he reasonably believes it necessary to prevent what he reasonably believes to be an attempt by the trespasser to commit arson.

§ 35.25 Justification; use of physical force in defense of property

A person is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be an attempt by such other person to commit larceny or criminal mischief involving property; but he may use deadly physical force under such circumstances only in defense of a person as prescribed in section 35.15.

§ 35.30 Justification; use of physical force in making an arrest or in preventing an escape

1. Except as provided in subdivision two of this section, a peace officer is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) to effect an arrest or to prevent the escape from custody of a person whom he reasonably believes to have committed an offense, unless he knows that the arrest is unauthorized; or

(b) to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

2. A peace officer is justified in using deadly physical force upon another person for a purpose specified in subdivision one of this section only when he reasonably believes that such is necessary:

(a) to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) to effect an arrest or to prevent the escape from custody of a person whom he reasonably believes (i) has committed or attempted to commit a felony involving the use or threatened use of deadly physical force, or (ii) is attempting to escape by the use of a deadly weapon, or (iii) otherwise indicates that he is likely to endanger human life or to inflict serious physical injury unless apprehended without delay; provided that nothing contained in this paragraph shall be deemed to constitute justification for reckless or criminally negligent conduct by such peace officer amounting to an offense against or with respect to

innocent persons whom he is not seeking to arrest or retain in custody.

3. For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of physical force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subdivisions one and two of this section unless the warrant is invalid and is known by such officer to be invalid.

4. Except as provided in subdivision five of this section, a person who has been directed by a peace officer to assist such peace officer to effect an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he reasonably believes such to be necessary to carry out such peace officer's direction, unless he knows or believes that the arrest or prospective arrest is not or was not authorized.

5. A person who has been directed to assist a peace officer under circumstances specified in subdivision four of this section may use deadly physical force to effect an arrest or to prevent an escape from custody only when:

(a) he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) he is directed or authorized by such peace officer to use deadly physical force and does not know that, if such happens to be the case, the peace officer himself is not authorized to use deadly physical force under the circumstances.

6. A private person acting on his own account is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he reasonably believes to have committed an offense and who in fact has committed such offense; but he is justified in using deadly physical force for such purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

7. A guard or other peace officer employed in a detention facility, as that term is defined in section 205.00, is justified in using physical force when and to the extent that he reasonably believes it necessary to prevent the escape of a prisoner from such detention facility.

§ 35.35 Duress

1. In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist.

2. The defense of duress as defined in subdivision one of this section is not available when a person intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

§ 35.40 Entrapment

In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the proscribed conduct because he was induced or encouraged to do so by a public servant, or by a person acting in cooperation with a public servant, seeking to obtain evidence against him for purpose of criminal prosecution, and when the methods used to obtain such evidence were such as to create a substantial risk that the offense would be committed by a person not otherwise disposed to commit it. Inducement or encouragement to commit an offense means active inducement or encouragement. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

§ 35.45 Renunciation

1. In any prosecution for an offense, other than an attempt to commit a crime, in which the defendant's guilt depends upon his criminal liability for the conduct of another person pursuant to section 20.00, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant withdrew from participation in such offense prior to the commission thereof and made a substantial effort to prevent the commission thereof.

2. In any prosecution for criminal facilitation pursuant to article one hundred fifteen, it is an affirmative defense that, prior

to the commission of the felony which he facilitated, the defendant made a substantial effort to prevent the commission of such felony.

3. In any prosecution pursuant to section 110.00 for an attempt to commit a crime, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

4. In any prosecution for criminal solicitation pursuant to article one hundred or for conspiracy pursuant to article one hundred five in which the crime solicited or the crime contemplated by the conspiracy was not in fact committed, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant prevented the commission of such crime.

5. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (a) a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose, or (b) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

PART TWO—SENTENCES

TITLE E—SENTENCES

ARTICLE 55—CLASSIFICATION AND DESIGNATION OF OFFENSES

Section

55.00 Offense; exclusion of traffic infraction.
55.05 Classifications of felonies and misdemeanors.
55.10 Designation of offenses.

§ 55.00 Offense; exclusion of traffic infraction

As used in this title, the term offense does not include a "traffic infraction."

§ 55.05 Classifications of felonies and misdemeanors

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

(a) Class A felonies;

(b) Class B felonies;

(c) Class C felonies;

(d) Class D felonies; and

(e) Class E felonies.

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

(a) Class A misdemeanors;

(b) Class B misdemeanors; and

(c) Unclassified misdemeanors.

§ 55.10 Designation of offenses

1. Felonies. The particular classification of each felony defined in this chapter is expressly designated in the section or article defining it. Any offense defined outside this chapter which is declared by law to be a felony without specification of the classification thereof, or for which a law outside this chapter provides a sentence to a term of imprisonment in excess of one year, shall be deemed a class E felony.

2. Misdemeanors.

(a) Each misdemeanor defined in this chapter is either a class A misdemeanor or a class B misdemeanor, as expressly designated in the section or article defining it.

(b) Any offense defined outside this chapter which is declared by law to be a misdemeanor without specification of the classification thereof or of the sentence therefor shall be deemed a class A misdemeanor.

(c) Except as provided in paragraph (d) of this subdivision, where an offense is defined outside this chapter and a sentence to a term of imprisonment in excess of fifteen days but not in excess of one year is provided in the law or ordinance defining it, such offense shall be deemed an unclassified misdemeanor.

(d) An offense defined outside this chapter which was not a crime prior to the effective date of this chapter shall not be deemed a misdemeanor by virtue of any sentence specified in a law or ordinance enacted prior to that date.

3. Violations. Every violation defined in this chapter is expressly designated as such. Any offense defined outside this chapter which is not expressly designated a violation shall be deemed a violation if:

(a) Notwithstanding any other designation specified in the law or ordinance defining it, a sentence to a term of imprisonment which is not in excess of fifteen days is provided therein, or the only sentence provided therein is a fine; or

(b) A sentence to a term of imprisonment in excess of fifteen days is provided for such offense in a law or ordinance enacted prior to the effective date of this chapter but the offense was not a crime prior to that date.

ARTICLE 60—AUTHORIZED DISPOSITION OF OFFENDERS

Section
60.00 Authorized dispositions.

§ 60.00 Authorized dispositions

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

2. Class A felony. Every person convicted of a class A felony shall be sentenced to imprisonment in accordance with section

70.00 unless such person is sentenced to death in accordance with section 125.35 or section 135.40.

3. Revocable dispositions; probation and conditional discharge. When a person is convicted of an offense, the court, where authorized by article sixty-five, may sentence such person to a period of probation or to a period of conditional discharge as provided in that article. Such sentence shall be deemed a tentative one to the extent that it may be altered or revoked in accordance with article sixty-five, but for all other purposes shall be deemed to be a final judgment of conviction.

In any case where the court imposes a sentence of probation, it may also impose a fine authorized by article eighty.

4. Other dispositions. When a person is convicted of an offense, other than a class A felony, and not sentenced to a period of probation or to a period of conditional discharge, or when a sentence of probation or of conditional discharge is revoked, the sentence of the court shall be as follows:

(a) A term of imprisonment authorized by article seventy; or

(b) Where authorized by article seventy-five, a reformatory period of imprisonment as provided in that article; or

(c) A fine authorized by article eighty, provided, however, that when the conviction is of a class B felony or of any felony defined in article two hundred twenty, the sentence shall not consist solely of a fine; or

(d) Both imprisonment and a fine; or

(e) Where authorized by section 65.20, unconditional discharge as provided in that section.

In any case where a person has been sentenced to a period of probation and a fine, if the part of the sentence that provides for probation is revoked, the court shall sentence such person to imprisonment.

5. Corporations. When a corporation is convicted of an offense, the sentence of the court shall be as follows:

(a) A fine authorized by section 80.10; or

(b) Where authorized by section 65.05, a period of conditional discharge as provided in that section; or

(c) Where authorized by section 65.20, unconditional discharge as provided in that section.

In any case where a corporation has been sentenced to a period of conditional discharge and such sentence is revoked, the court shall sentence the corporation to pay a fine.

6. Civil penalties. This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty and any appropriate order exercising such authority may be included as part of the judgment of conviction.

ARTICLE 65—SENTENCES OF PROBATION, CONDITIONAL DISCHARGE AND UNCONDITIONAL DISCHARGE

Section

65.00 Sentence of probation.
65.05 Sentence of conditional discharge.
65.10 Conditions of probation and of conditional discharge.
65.15 Calculation of periods of probation and of conditional discharge.
65.20 Sentence of unconditional discharge.

§ 65.00 Sentence of probation

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

(a) Institutional confinement of the defendant is not necessary for the protection of the public;

(b) The defendant is in need of guidance, training or other assistance which, in his case, can be effectively administered through probation supervision; and

(c) Such disposition is not inconsistent with the ends of justice.

Provided, however, that the court shall not impose a sentence of probation in any case where it sentences a defendant for more than one crime and imposes a sentence of imprisonment for any one of the crimes, or where the defendant is subject to an undischarged indeterminate or reformatory sentence of imprisonment which was imposed at a previous time by a court of this state and has more than one year to run.

2. Sentence. When a person is sentenced to a period of probation the court shall impose the period authorized by subdivision three of this section and shall specify, in accordance with section 65.10, the conditions to be complied with. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation.

3. Periods of probation. Unless terminated sooner in accordance with the code of criminal procedure, the period of probation shall be as follows:

(a) For a felony, the period of probation shall be five years;

(b) For a class A misdemeanor, the period of probation shall be three years;

(c) For a class B misdemeanor, the period of probation shall be one year; and

(d) For an unclassified misdemeanor, the period of probation shall be three years if the authorized sentence of imprisonment is in excess of three months, otherwise the period of probation shall be one year.

§ 65.05 Sentence of conditional discharge

1. Criteria. The court may impose a sentence of conditional discharge for an offense if the court, having regard to the nature and circumstances of the offense and to the history, character and condition of the defendant, is of the opinion that neither the public interest nor the ends of justice would be served by a sentence of imprisonment or a fine and that probation supervision is not appropriate; provided, however, that the court shall not impose a sentence of conditional discharge for a class A or class B felony or for any felony defined in article two hundred twenty.

When a sentence of conditional discharge is imposed for a felony, the court shall set forth in the record the reasons for its action.

2. Sentence. When the court imposes a sentence of conditional discharge the defendant shall be released with respect to the conviction for which the sentence is imposed without imprisonment, fine or probation supervision but subject, during the period of conditional discharge, to such conditions as the court may determine. The court shall impose the period of conditional

discharge authorized by subdivision three of this section and shall specify, in accordance with section 65.10, the conditions to be complied with. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.

3. Periods of conditional discharge. Unless terminated sooner in accordance with the code of criminal procedure, the period of conditional discharge shall be as follows:

(a) Three years in the case of a felony; and

(b) One year in the case of a misdemeanor or a violation.

Where the court has required, as a condition of the sentence, that the defendant make restitution of the fruits of his offense or make reparation for the loss or damage caused thereby and such condition has not been satisfied, the court, at any time prior to the expiration or termination of the period of conditional discharge, may impose an additional period. The length of the additional period shall be fixed by the court at the time it is imposed and shall not be more than two years. All of the incidents of the original sentence, including the authority of the court to modify or enlarge the conditions, shall continue to apply during such additional period.

§ 65.10 Conditions of probation and of conditional discharge

1. In general. The conditions of probation and of conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

2. Conditions relating to conduct and rehabilitation. When imposing a sentence of probation or of conditional discharge, the court may, as a condition of the sentence, require that the defendant:

(a) Avoid injurious or vicious habits;

(b) Refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

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

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

(e) Support his dependents and meet other family responsibilities;

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

(g) If a minor, (i) reside with his parents or in a suitable foster home or hostel as referred to in section six-f of the correction law, (ii) attend school, (iii) spend such part of the period of the sentence as the court may direct, but not exceeding two years, in a facility made available by the division for youth pursuant to subdivision two of section five hundred two of the executive law, provided that admission to such facility may be made only with the prior consent of the division for youth, (iv) attend a non-residential program for such hours and pursuant to a schedule prescribed by the court as suitable for a program of rehabilitation of youth, (v) contribute to his own support in any home, foster home or hostel;

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

(i) Satisfy any other conditions reasonably related to his rehabilitation.

3. Conditions relating to supervision. When imposing a sentence of probation the court, in addition to any conditions imposed pursuant to subdivision two of this section, shall require as conditions of the sentence, that the defendant:

(a) Report to a probation officer as directed by the court or the probation officer and permit the probation officer to visit him at his place of abode or elsewhere;

(b) Remain within the jurisdiction of the court unless granted permission to leave by the court or the probation officer; and

(c) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.

§ 65.15 Calculation of periods of probation and of conditional discharge

1. A period of probation or a period or additional period of conditional discharge commences on the day it is imposed. Mul-

tiple periods, whether imposed at the same or at different times, shall run concurrently.

2. When a person has violated the conditions of his probation or conditional discharge and is declared delinquent by the court, the declaration of delinquency shall interrupt the period of the sentence as of the date of the delinquency and such interruption shall continue until a final determination as to the delinquency has been made by the court pursuant to a hearing held in accordance with the provisions of the code of criminal procedure.

3. In any case where a person who is under a sentence of probation or of conditional discharge is also under an indeterminate sentence of imprisonment, or a reformatory sentence of imprisonment authorized by section 75.00, imposed for some other offense by a court of this state the service of the sentence of imprisonment shall satisfy the sentence of probation or of conditional discharge unless the sentence of probation or of conditional discharge is revoked prior to the next to occur of parole or conditional release under, or satisfaction of, the sentence of imprisonment. Provided, however, that the service of an indeterminate or a reformatory sentence of imprisonment shall not satisfy a sentence of probation if the sentence of probation was imposed at a time when the sentence of imprisonment had one year or less to run.

§ 65.20 Sentence of unconditional discharge

1. Criteria. The court may impose a sentence of unconditional discharge in any case where it is authorized to impose a sentence of conditional discharge under section 65.05 if the court is of the opinion that no proper purpose would be served by imposing any condition upon the defendant's release.

When a sentence of unconditional discharge is imposed for a felony, the court shall set forth in the record the reasons for its action.

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

ARTICLE 70—SENTENCES OF IMPRISONMENT

Section

70.00 Indeterminate sentence of imprisonment for felony.
70.05 Alternative definite sentence for class D or E felony.
70.10 Sentence of imprisonment for persistent felony offender.
70.15 Sentences of imprisonment for misdemeanors and violation.
70.20 Place of imprisonment.
70.25 Concurrent and consecutive terms of imprisonment.
70.30 Calculation of terms of imprisonment.
70.35 Merger of certain definite and indeterminate sentences.
70.40 Release on parole; conditional release.

§ 70.00 Indeterminate sentence of imprisonment for felony

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

2. Maximum term of sentence. The maximum term of an indeterminate sentence shall be at least three years and the term shall be fixed as follows:

(a) For a class A felony, the term shall be life imprisonment;

(b) For a class B felony, the term shall be fixed by the court, and shall not exceed twenty-five years;

(c) For a class C felony, the term shall be fixed by the court, and shall not exceed fifteen years;

(d) For a class D felony, the term shall be fixed by the court, and shall not exceed seven years; and

(e) For a class E felony, the term shall be fixed by the court, and shall not exceed four years.

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

(a) In the case of a class A felony, the minimum period shall be fixed by the court and specified in the sentence. Such minimum period shall not be less than fifteen years nor more that [1] twenty-five years;

(b) Where the sentence is for a class B, class C or class D felony and the court, having regard to the nature and cir-

cumstances of the crime and to the history and character of the defendant, is of the opinion that the ends of justice and best interests of the public require that the court fix a minimum period of imprisonment, the court may fix the minimum period. In such event, the minimum period shall be specified in the sentence and shall not be more than one-third of the maximum term imposed. When the minimum period of imprisonment is fixed pursuant to this paragraph, the court shall set forth in the record the reasons for its action; and

(c) In any other case, the minimum period of imprisonment shall be fixed by the state board of parole in accordance with the provisions of the correction law.

[1] So in original. Probably should read "than".

§ 70.05 Alternative definite sentence for class D or E felony

Notwithstanding the provisions of section 70.00 of this article, when a person is sentenced for a class D or class E felony and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less.

§ 70.10 Sentence of imprisonment for persistent felony offender

1. Definition of persistent felony offender.

(a) A persistent felony offender is a person who stands convicted of a felony after having previously been convicted of two or more felonies, as provided in paragraphs (b) and (c) of this subdivision.

(b) A previous felony conviction within the meaning of paragraph (a) of this subdivision is a conviction of a felony in this state, or of a crime in any other jurisdiction, provided:

(i) that a sentence to a term of imprisonment in excess of one year, or a sentence to death, was imposed therefor; and

(ii) that the defendant was imprisoned under sentence for such conviction prior to the commission of the present felony; and

(iii) that the defendant was not pardoned on the ground of innocence.

(c) For the purpose of determining whether a person has two or more previous felony convictions, two or more convictions of crimes that were committed prior to the time the defendant was imprisoned under sentence for any of such convictions shall be deemed to be only one conviction.

2. Authorized sentence. When the court has found, pursuant to the provisions of the code of criminal procedure, that a person is a persistent felony offender, and when it is of the opinion that the history and character of the defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest, the court, in lieu of imposing the sentence of imprisonment authorized by section 70.00 for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by that section for a class A felony. In such event the reasons for the court's opinion shall be set forth in the record.

§ 70.15 Sentences of imprisonment for misdemeanors and violation

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

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

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

4. Violation. A sentence of imprisonment for a violation shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed fifteen days.

In the case of a violation defined outside this chapter, if the sentence is expressly specified in the law or ordinance that defines the offense and consists solely of a fine, no term of imprisonment shall be imposed.

§ 70.20 Place of imprisonment

1. Indeterminate sentence. When an indeterminate sentence of imprisonment is imposed, the court shall commit the defendant to the custody of the state department of correction for the term of his sentence and until released in accordance with the law.

2. Definite sentence. When a definite sentence of imprisonment is imposed, the court shall commit the defendant to the county or regional correctional institution for the term of his sentence and until released in accordance with the law.

§ 70.25 Concurrent and consecutive terms of imprisonment

1. Except as provided in subdivision two of this section, when multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and the undischarged term or terms in such manner as the court directs at the time of sentence. If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run as follows:

(a) An indeterminate sentence shall run concurrently with all other terms; and

(b) A definite sentence shall run concurrently with any sentence imposed at the same time and shall be consecutive to any other term.

2. When more than one sentence of imprisonment is imposed on a person for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the sentences must run concurrently.

3. Where consecutive definite sentences of imprisonment are not prohibited by subdivision two of this section and are imposed on a person for offenses which were committed as parts of a single incident or transaction, the aggregate of the terms of such sentences shall not exceed one year.

§ 70.30 Calculation of terms of imprisonment

1. Indeterminate sentences. An indeterminate sentence of imprisonment commences when the prisoner is received in an

institution under the jurisdiction of the state department of correction. Where a person is under more than one indeterminate sentence, the sentences shall be calculated as follows:

(a) If the sentences run concurrently, the time served under imprisonment on any of the sentences shall be credited against the minimum periods of all the concurrent sentences, and the maximum terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run;

(b) If the sentences run consecutively, the minimum periods of imprisonment merge in and are satisfied by service of the period which has the longest unexpired time to run, and, except as provided in paragraph (c) of this subdivision, the maximum terms are added to arrive at an aggregate maximum term equal to the sum of all the maximum terms;

(c) The aggregate maximum term of consecutive sentences imposed for two or more crimes committed prior to the time the person was imprisoned under any of such sentences shall, if it exceeds twenty years, be deemed to be twenty years, unless one of the sentences was imposed for a class B felony, in which case the aggregate maximum term shall, if it exceeds thirty years, be deemed to be thirty years.

2. Definite sentences. A definite sentence of imprisonment commences when the prisoner is received in the institution named in the commitment. Where a person is under more than one definite sentence, the sentences shall be calculated as follows:

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

(b) If the sentences run consecutively and are to be served in a single institution, the terms are added to arrive at an aggregate term and are satisfied by discharge of such aggregate term, or by service of two years imprisonment plus any term imposed for an offense committed while the person is under the sentences, whichever is less;

(c) If the sentences run concurrently and are to be served in more than one institution, the term of each such sentence

shall be credited with the portion of any concurrent term served after that sentence was imposed;

(d) If the sentences run consecutively and are to be served in more than one institution, the aggregate of the time served in all of the institutions shall not exceed two years plus any term imposed for an offense committed while the person is under the sentences.

3. Jail time. The term of a definite sentence or the maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody prior to the commencement of such sentence as a result of the charge that culminated in the sentence. In the case of an indeterminate sentence, if the minimum period of imprisonment has been fixed by the court, the credit shall also be applied against such portion of the minimum period as exceeds one year. The credit herein provided shall be calculated from the date custody under the charge commenced to the date the sentence commences and shall not include any time that is credited against the term or maximum term of any previously imposed sentence to which the person is subject. Where the charge or charges culminate in more than one sentence, the credit shall be applied as follows:

(a) If the sentences run concurrently, the credit shall be applied against each such sentence;

(b) If the sentences run consecutively, the credit shall be applied against the aggregate term or aggregate maximum term of the sentences and against each minimum period of imprisonment fixed by the court.

In any case where a person has been in custody due to a charge that culminated in a dismissal or an acquittal, the amount of time that would have been credited against a sentence for such charge, had one been imposed, shall be credited against any sentence that is based on a charge for which a warrant or commitment was lodged during the pendency of such custody.

4. Good behavior time. Time allowances earned for good behavior, pursuant to the provisions of the correction law, shall be computed and applied as follows:

(a) In the case of a person serving an indeterminate sentence, the total of such allowances shall not exceed one-third of his maximum or aggregate maximum term and the allow-

ances shall be applied as provided in subdivision one (b) of section 70.40;

(b) In the case of a person serving a definite sentence, the total of such allowances shall not exceed one-sixth of his term or aggregate term and the allowances shall be applied as a credit against such term.

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

6. Escape. When a person who is serving a sentence of imprisonment escapes from custody, the escape shall interrupt the sentence and such interruption shall continue until the return of the person to the institution in which the sentence was being served or, if the sentence was being served in an institution under the jurisdiction of the state department of correction, to an institution under the jurisdiction of that department. Any time spent by such person in custody from the date of escape to the date the sentence resumes shall be credited against the term or maximum term of the interrupted sentence, provided:

(a) That such custody was due to an arrest or surrender based upon the escape; or

(b) That such custody arose from an arrest on another charge which culminated in a dismissal or an acquittal, and the person was denied admission to bail pending disposition of such charge due to a warrant lodged against him because of the escape.

§ 70.35 Merger of certain definite and indeterminate sentences

The service of an indeterminate sentence of imprisonment shall satisfy any definite sentence of imprisonment imposed on a person for an offense committed prior to the time the indeterminate sentence was imposed. A person who is serving a definite sentence at the time an indeterminate sentence is imposed shall be delivered to the custody of the state department of correction to commence service of the indeterminate sentence immediately.

§ 70.40 Release on parole; conditional release

1. Indeterminate sentence.

(a) A person who is serving one or more than one indeterminate sentence of imprisonment may be paroled from the institution in which he is confined at any time after the expiration of the minimum period or periods of imprisonment that have been fixed. Release on parole shall be in the discretion of the state board of parole, and such person shall continue service of his sentence or sentences while on parole, in accordance with and subject to the provisions of the correction law.

(b) A person who is serving one or more than one indeterminate sentence of imprisonment shall, if he so requests, be conditionally released from the institution in which he is confined when the total good behavior time allowed to him, pursuant to the provisions of the correction law, is equal to the unserved portion of his maximum or aggregate maximum term. The conditions of release shall be such as may be imposed by the state board of parole in accordance with the provisions of the correction law.

Conditional release shall interrupt service of the sentence or sentences and the remaining portion of the maximum or aggregate maximum term shall be held in abeyance. Every person so released shall be under the supervision of the state board of parole for a period equal to the unserved portion of the maximum or aggregate maximum term, or for a period of one year, whichever is longer. Compliance with the conditions of release during the period of supervision shall satisfy the portion of the maximum or aggregate maximum term that has been held in abeyance.

2. Definite sentence. A person who is serving one or more than one definite sentence of imprisonment with a term or aggregate term in excess of sixty days may, if he so requests, be conditionally released from the institution in which he is confined at any time after service of thirty days of that term, exclusive of credits allowed under subdivisions three, four and six of section 70.30. Conditional release from such institution shall be in the discretion of the county or regional conditional release commission, and shall be upon such conditions as may be imposed by that board, in accordance with the provisions of the correction law.

Conditional release shall interrupt service of the sentence or sentences and the remaining portion of the term or aggregate term shall be held in abeyance. Every person so released shall be

under the supervision of the authorized conditional release commission for a period which shall be as follows:

(a) One year, if at the time of release the unserved portion of the term or aggregate term less all credits allowed under section 70.30 is not in excess of one hundred and twenty days; and

(b) Two years in any other case.

Compliance with the conditions of release during the period of supervision shall satisfy the portion of the term or aggregate term that has been held in abeyance.

3. Delinquency.

(a) When a person has violated the terms of his parole and the state board of parole has declared such person to be delinquent, the declaration of delinquency shall interrupt the person's sentence as of the date of the delinquency and such interruption shall continue until the return of the person to an institution under the jurisdiction of the state department of correction.

(b) When a person has violated the terms of his conditional release and has been declared delinquent by the board or commission having supervision over him, the declaration of delinquency shall interrupt the period of supervision as of the date of the delinquency and such interruption shall continue until the return of the person to the institution from which he was released or, if he was released from an institution under the jurisdiction of the state department of correction, to an institution under the jurisdiction of that department. Upon such return, the person shall resume service of his sentence.

(c) Any time spent by a person in custody from the time of delinquency to the time service of the sentence resumes shall be credited against the term or maximum term of the interrupted sentence, provided:

(i) that such custody was due to an arrest or surrender based upon the delinquency; or

(ii) that such custody arose from an arrest on another charge, which culminated in a dismissal or an acquittal, and the person was denied admission to bail pending disposition of such charge due to a warrant lodged against him because of such delinquency.

ARTICLE 75—REFORMATORY SENTENCE OF IMPRISONMENT FOR YOUNG ADULTS

Section
75.00 Reformatory sentence of imprisonment for young adults.
75.05 Place of imprisonment under reformatory sentence.
75.10 Caculation of reformatory sentence.
75.15 Parole under reformatory sentence.
75.20 Alternative local reformatory sentence of imprisonment for young adults.

§ 75.00 Reformatory sentence of imprisonment for young adults

1. Young adult. For sentencing purposes, a young adult is a person who is more than sixteen and less than twenty-one years old at the time the court imposes sentence upon him.

2. Reformatory sentence. When the court sentences a young adult for a crime, the court may, in lieu of any other sentence of imprisonment authorized by this title, impose a reformatory sentence of imprisonment. This shall be a sentence to imprisonment for a period of unspecified duration which shall commence and terminate as provided in section 75.10 and the court shall not fix the minimum or maximum length of the period.

3. Limitations. The court shall not impose a reformatory sentence in the following cases:

(a) Where the conviction is of a class A felony; or

(b) Where the court sentences the young adult for more than one crime and imposes a term of imprisonment for any one of the crimes; or

(c) Where the young adult is subject to any undischarged indeterminate sentence of imprisonment imposed at a previous time by a court of this state; or

(d) Where the conviction is of a crime that was committed by the young adult during incarceration in or after parole or release from an institution under the jurisdiction of the state department of correction.

§ 75.05 Place of imprisonment under reformatory sentence

When a reformatory sentence of imprisonment is imposed, the court shall commit the young adult to the custody of the state department of correction for a reformatory period and until released in accordance with the law.

§ 75.10 Calculation of reformatory sentence

1. Commencement and termination. A reformatory period commences when the young adult is received in an institution under the jurisdiction of the state department of correction and terminates upon the first to occur of (a) discharge of the person by the state board of parole, or (b) service by the person of four years from the date the period commenced less any amount of time credited against the sentence pursuant to the provisions of subdivisions three, four and five of this section.

2. Multiple sentences.

(a) When more than one reformatory sentence of imprisonment is imposed on a young adult at the same time, or when a young adult who is subject to a reformatory sentence imposed at a previous time receives an additional reformatory sentence, the periods of the sentences shall run concurrently, and all of the sentences shall be treated as if they had commenced at the time of the first to commence and terminate at the time of the first to terminate.

(b) The service of a reformatory sentence of imprisonment by a young adult shall satisfy any definite sentence of imprisonment imposed on such person for an offense committed prior to the time the reformatory sentence was imposed. A young adult who is serving a definite sentence at the time a reformatory sentence is imposed shall be delivered to the custody of the state department of correction to commence service of the reformatory sentence immediately.

(c) When a person who is subject to a reformatory sentence of imprisonment imposed at a previous time is convicted of an additional crime in a court of this state and is sentenced therefor to a term of imprisonment in excess of one year, the reformatory sentence shall be affected in the following manner:

(i) if the reformatory sentence was imposed for a misdemeanor, such sentence shall be satisfied by service of the new sentence of imprisonment;

(ii) if the reformatory sentence was imposed for a felony, the state board of parole shall fix a termination date for the reformatory sentence, and the amount of time that remains to be served to satisfy such termination date shall be added to the maximum term of the new sentence to arrive at an aggregate maximum term.

3. Jail time. The period of a reformatory sentence imposed on a young adult shall be credited with and diminished by the amount of time spent in custody prior to commencement of the sentence, which shall be determined and calculated in accordance with the provisions of subdivision three of section 70.30.

4. Time served under vacated sentence. When a sentence of imprisonment that has been imposed on a young adult is vacated and a reformatory sentence is imposed on that person for the same offense, or for an offense that is based upon the same act, all time credited against the vacated sentence shall be credited against the period of such reformatory sentence.

5. Escape. When a young adult who is serving a reformatory sentence of imprisonment escapes from custody, the period of such sentence shall be affected in the same manner as the term of a sentence of imprisonment, in accordance with the provisions of subdivision six of section 70.30.

§ 75.15 Parole under reformatory sentence

1. Parole. A young adult who is serving a reformatory sentence may be paroled from the institution in which he is confined at any time. Release on parole shall be in the discretion of the state board of parole, and such person shall continue service of the sentence while on parole, in accordance with and subject to the provisions of the correction law.

2. Delinquency. When a young adult who is serving a reformatory sentence has violated the terms of his parole and the state board of parole has declared such person to be delinquent, the period of such sentence shall be affected in the same manner as the term of a sentence of imprisonment, in accordance with the provisions of subdivision three of section 70.40.

§ 75.20 Alternative local reformatory sentence of imprisonment for young adults

1. Applicability. The sentence authorized by this section may be imposed only by a court within a city or county that has:

(a) Established a reformatory which is certified by the state commission of correction, in accordance with the provisions of the correction law, as an institution with adequate facilities for the rehabilitation of young adults; and

(b) Established a parole and conditional release commission in accordance with the provisions of the correction law.

2. Local reformatory sentence. When a court sentences a male young adult it may, in any case where a reformatory sentence of imprisonment is authorized by section 75.00, impose a local reformatory sentence of imprisonment. This shall be a sentence to imprisonment for a period of unspecified duration which shall commence and terminate as provided in subdivision four of this section and the court shall not fix the minimum or maximum length of the period.

In addition to the limitations provided in subdivision three of section 75.00, the court shall not impose a local reformatory sentence upon any young adult who has previously completed service of a local reformatory sentence.

3. Place of imprisonment under local reformatory sentence. When a local reformatory sentence of imprisonment is imposed, the court shall commit the young adult to the reformatory established by the city or county for a reformatory period and until released in accordance with the law.

4. Commencement and termination. A reformatory period imposed pursuant to subdivision two of this section commences when the young adult is received in such reformatory and terminates upon the first to occur of (a) discharge of the person by the parole and conditional release commission, or (b) service by the person of three years from the date the period commenced. In calculating such three year period the provisions of subdivisions three, four and five of section 75.10 shall apply.

5. Multiple local reformatory sentences. When more than one local reformatory sentence of imprisonment is imposed on a young adult at the same time, or when a young adult who is subject to a local reformatory sentence imposed at a previous time receives an additional local reformatory sentence, the periods of the sentences shall run concurrently, and all of the sentences shall be treated as if they had commenced at the time of the first to commence and terminate at the time of the first to terminate.

6. Merger of certain definite and local reformatory sentences. The service of a local reformatory sentence of imprisonment by a young adult shall satisfy any definite sentence of imprisonment imposed on such person, by a court within the same city or county as the court that imposed the reformatory sentence, for an offense committed prior to the time the reformatory sentence was imposed. In any such case the local reformatory sentence shall commence and terminate without regard to the existence of the definite sentence.

7. Credit for time served under certain definite sentences. Where a young adult is under a definite sentence of imprisonment imposed by any court of this state and a local reformatory sentence is subsequently imposed, all credits due against the term of the definite sentence to the date of commencement of the local reformatory sentence shall be applied in reduction of the period of the local reformatory sentence.

8. Merger of local reformatory and state institution sentences. Where a person is under both a local reformatory sentence and an indeterminate sentence of imprisonment, or a reformatory sentence of imprisonment authorized by section 75.00, imposed at the same or at different times, the local reformatory sentence shall be satisfied by service of the other sentence of imprisonment. Any person who is under a local reformatory sentence at the time an indeterminate sentence, or a reformatory sentence authorized by section 75.00, is imposed shall be delivered to the custody of the state department of correction to commence service of the new sentence immediately.

9. Parole under local reformatory sentence.

(a) Parole. A young adult who is serving a local reformatory sentence may be paroled from the reformatory in which he is confined at any time. Release on parole shall be in the discretion of the parole and conditional release commission and such person shall continue service of the sentence, while on parole, in accordance with and subject to the provisions of the correction law.

(b) Delinquency. When a young adult who is serving a local reformatory sentence has violated the terms of his parole, and the parole and conditional release commission has declared such person to be delinquent, the declaration of delinquency shall interrupt the period of the sentence as of the date of the delinquency. Such interruption shall continue until the return of the person to the reformatory from which he was released, but the credit authorized by subdivision three (c) of section 70.40 shall be applied in calculating the period of the sentence.

ARTICLE 80—FINES

Section
80.00 Fine for felony.
80.05 Fines for misdemeanors and violation.
80.10 Fines for corporations.
80.15 Multiple offenses.

§ 80.00 Fine for felony

1. Criterion for fine. The court may impose a fine for a felony if the defendant has gained money or property through the commission of the crime.

2. Amount of fine. A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime.

3. Determination of amount. As used in this section the term "gain" means the amount of money or the value of property derived from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority prior to the time sentence is imposed.

When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue.

4. Exception. The provisions of this section shall not apply to a corporation.

§ 80.05 Fines for misdemeanors and violation

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

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

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

4. Violation. A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding two hundred fifty dollars.

In the case of a violation defined outside this chapter, if the amount of the fine is expressly specified in the law or ordinance that defines the offense, the amount of the fine shall be fixed in accordance with that law or ordinance.

5. Alternative sentence. If a person has gained money or property through the commission of any misdemeanor or violation then upon conviction thereof the court, in lieu of imposing the fine authorized for the offense under one of the above subdivisions, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In such event the provisions of subdivision three of section 80.00 shall be applicable to the sentence.

6. Exception. The provisions of this section shall not apply to a corporation.

§ 80.10 Fines for corporations

1. In general. A sentence to pay a fine, when imposed on a corporation for an offense defined in this chapter or for an offense defined outside this chapter for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) Ten thousand dollars, when the conviction is of a felony;

(b) Five thousand dollars, when the conviction is of a class A misdemeanor or of an unclassified misdemeanor for which a term of imprisonment in excess of three months is authorized;

(c) Two thousand dollars, when the conviction is of a class B misdemeanor or of an unclassified misdemeanor for which the authorized term of imprisonment is not in excess of three months;

(d) Five hundred dollars, when the conviction is of a violation;

(e) Any higher amount not exceeding double the amount of the corporation's gain from the commission of the offense.

2. Exception. In the case of an offense defined outside this chapter, if a special fine for a corporation is expressly specified in the law or ordinance that defines the offense, the fine fixed by the court shall be as follows:

(a) An amount within the limits specified in the law or ordinance that defines the offense; or

(b) Any higher amount not exceeding double the amount of the corporation's gain from the commission of the offense.

3. Determination of amount or value. When the court imposes the fine authorized by paragraph (e) of subdivision one or paragraph (b) of subdivision two for any offense the provisions of subdivision three of section 80.00 shall be applicable to the sentence.

§ 80.15 Multiple offenses

Where a person is convicted of two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, and the court imposes a sentence of imprisonment or a fine or both for one of the offenses, a fine shall not be imposed for the other.

PART THREE—SPECIFIC OFFENSES

TITLE G—ANTICIPATORY OFFENSES

ARTICLE 100—CRIMINAL SOLICITATION

Section
100.00 Criminal solicitation in the third degree.
100.05 Criminal solicitation in the second degree.
100.10 Criminal solicitation in the first degree.
100.15 Criminal solicitation; no defense.
100.20 Criminal solicitation; exemption.

§ 100.00 Criminal solicitation in the third degree

A person is guilty of criminal solicitation in the third degree when, with intent that another person engage in conduct constituting a crime, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct.

Criminal solicitation in the third degree is a **violation.**

§ 100.05 Criminal solicitation in the second degree

A person is guilty of criminal solicitation in the second degree when, with intent that another person engage in conduct constituting a felony, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct.

Criminal solicitation in the second degree is a **class A misdemeanor.**

§ 100.10 Criminal solicitation in the first degree

A person is guilty of criminal solicitation in the first degree when, with intent that another person engage in conduct constituting murder or kidnapping in the first degree, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct.

Criminal solicitation in the first degree is a **class D felony.**

§ 100.15 Criminal solicitation; no defense

It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime solicited owing

to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the conduct solicited or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of the crime in question.

§ 100.20 Criminal solicitation; exemption

A person is not guilty of criminal solicitation when his solicitation constitutes conduct of a kind that is necessarily incidental to the commission of the crime solicited. When under such circumstances the solicitation constitutes an offense other than criminal solicitation which is related to but separate from the crime solicited, the actor is guilty of such related and separate offense only and not of criminal solicitation.

ARTICLE 105—CONSPIRACY

Section

105.00 Conspiracy in the fourth degree.
105.05 Conspiracy in the third degree.
105.10 Conspiracy in the second degree.
105.15 Conspiracy in the first degree.
105.20 Conspiracy; pleading and proof; necessity of overt act.
105.25 Conspiracy; jurisdiction and venue.
105.30 Conspiracy; no defense.

§ 105.00 Conspiracy in the fourth degree

A person is guilty of conspiracy in the fourth degree when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or causes the performance of such conduct.

Conspiracy in the fourth degree is a **class B misdemeanor.**

§ 105.05 Conspiracy in the third degree

A person is guilty of conspiracy in the third degree when, with intent that conduct constituting a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the third degree is a **class A misdemeanor.**

§ 105.10 Conspiracy in the second degree

A person is guilty of conspiracy in the second degree when, with intent that conduct constituting a class B or class C felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the second degree is a **class E felony.**

§ 105.15 Conspiracy in the first degree

A person is guilty of conspiracy in the first degree when, with intent that conduct constituting murder or kidnapping in the first degree be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the first degree is a **class C felony.**

§ 105.20 Conspiracy; pleading and proof; necessity of overt act

A person shall not be convicted of conspiracy unless an overt act is alleged and proved to have been committed by one of the conspirators in furtherance of the conspiracy.

§ 105.25 Conspiracy; jurisdiction and venue

1. A person may be prosecuted for conspiracy in the county in which he entered into such conspiracy or in any county in which an overt act in furtherance thereof was committed.

2. An agreement made within this state to engage in or cause the performance of conduct in another jurisdiction is punishable herein as a conspiracy only when such conduct would constitute a crime both under the laws of this state if performed herein and under the laws of the other jurisdiction if performed therein.

3. An agreement made in another jurisdiction to engage in or cause the performance of conduct within this state, which would constitute a crime herein, is punishable herein only when an overt act in furtherance of such conspiracy is committed within this state. Under such circumstances, it is no defense to a prosecution for conspiracy that the conduct which is the objective of the conspiracy would not constitute a crime under the laws of the other jurisdiction if performed therein.

§ 105.30 Conspiracy; no defense

It is no defense to a prosecution for conspiracy that, owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the agreement or the object conduct or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of conspiracy or the object crime, one or more of the defendant's co-conspirators could not be guilty of conspiracy or the object crime.

ARTICLE 110—ATTEMPT

Section

110.00 Attempt to commit a crime.
110.05 Attempt to commit a crime; punishment.
110.10 Attempt to commit a crime; no defense.

§ 110.00 Attempt to commit a crime

A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime.

§ 110.05 Attempt to commit a crime; punishment

An attempt to commit a crime is a:

1. Class B felony when the crime attempted is murder or kidnapping in the first degree;

2. Class C felony when the crime attempted is a class B felony;

3. Class D felony when the crime attempted is a class C felony;

4. Class E felony when the crime attempted is a class D felony;

5. Class A misdemeanor when the crime attempted is a class E felony;

6. Class B misdemeanor when the crime attempted is a misdemeanor.

§ 110.10 Attempt to commit a crime; no defense

If the conduct in which a person engages otherwise constitutes an attempt to commit a crime pursuant to section 110.00, it is no

defense to a prosecution for such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission, if such crime could have been committed had the attendant circumstances been as such person believed them to be.

ARTICLE 115—CRIMINAL FACILITATION

Section
115.00 Criminal facilitation in the second degree.
115.05 Criminal facilitation in the first degree.
115.10 Criminal facilitation; no defense.
115.15 Criminal facilitation; corroboration.

§ 115.00 Criminal facilitation in the second degree

A person is guilty of criminal facilitation in the second degree when, believing it probable that he is rendering aid to a person who intends to commit a crime, he engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony.

Criminal facilitation in the second degree is a **class A misdemeanor.**

§ 115.05 Criminal facilitation in the first degree

A person is guilty of criminal facilitation in the first degree when, believing it probable that he is rendering aid to a person who intends to commit murder or kidnapping in the first degree, he engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit murder or kidnapping in the first degree.

Criminal facilitation in the first degree is a **class C felony.**

§ 115.10 Criminal facilitation; no defense

It is no defense to a prosecution for criminal facilitation that:

1. The person facilitated was not guilty of the underlying felony owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the conduct in question or to other factors precluding the mental state required for the commission of such felony; or

2. The person facilitated has not been prosecuted for or convicted of the underlying felony, or has previously been acquitted thereof; or

3. The defendant himself is not guilty of the felony which he facilitated because he did not act with the intent or other culpable mental state required for the commission thereof.

§ 115.15 Criminal facilitation; corroboration

A person shall not be convicted of criminal facilitation upon the testimony of a person who has committed the felony charged to have been facilitated unless such testimony be corroborated by such other evidence as tends to connect the defendant with such facilitation.

TITLE H—OFFENSES AGAINST THE PERSON INVOLVING PHYSICAL INJURY, SEXUAL CONDUCT, RESTRAINT AND INTIMIDATON

ARTICLE 120—ASSAULT AND RELATED OFFENSES

Section

120.00 Assault in the third degree.
120.05 Assault in the second degree.
120.10 Assault in the first degree.
120.15 Menacing.
120.20 Reckless endangerment in the second degree.
120.25 Reckless endangerment in the first degree.
120.30 Promoting a suicide attempt.
120.35 Promoting a suicide attempt; when punishable as attempt to commit murder.

§ 120.00 Assault in the third degree

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

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

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

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

Assault in the third degree is a **class A misdemeanor.**

§ 120.05 Assault in the second degree

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

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

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

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

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

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

Assault in the second degree is a **class D felony.**

§ 120.10 Assault in the first degree

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

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

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

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

4. In the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight therefrom, he intentionally or recklessly causes serious physical injury to another person.

Assault in the first degree is a **class C felony.**

§ 120.15 Menacing

A person is guilty of menacing when, by physical menace, he intentionally places or attempts to place another person in fear of imminent serious physical injury.

Menacing is a **class B misdemeanor.**

§ 120.20 Reckless endangerment in the second degree

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

Reckless endangerment in the second degree is a **class A misdemeanor.**

§ 120.25 Reckless endangerment in the first degree

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

Reckless endangerment in the first degree is a **class D felony.**

§ 120.30 Promoting a suicide attempt

A person is guilty of promoting a suicide attempt when he intentionally causes or aids another person to attempt suicide.

Promoting a suicide attempt is a **class E felony.**

§ 120.35 Promoting a suicide attempt; when punishable as attempt to commit murder

A person who engages in conduct constituting both the offense of promoting a suicide attempt and the offense of attempt to commit murder may not be convicted of attempt to commit murder unless he causes or aids the suicide attempt by the use of duress or deception.

ARTICLE 125—HOMICIDE, ABORTION AND RELATED OFFENSES

Section
125.00 Homicide defined.
125.05 Homicide, abortion and related offenses; definitions of terms.
125.10 Criminally negligent homicide.
125.15 Manslaughter in the second degree.
125.20 Manslaughter in the first degree.
125.25 Murder.
125.30 Murder; punishment; plea of guilty.
125.35 Murder; proceeding to determine sentence; appeal.
125.40 Abortion in the second degree.
125.45 Abortion in the first degree.
125.50 Self-abortion in the second degree.
125.55 Self-abortion in the first degree.
125.60 Issuing abortional articles.

§ 125.00 Homicide defined

Homicide means conduct which causes the death of a person or an unborn child with which a female has been pregnant for more than twenty-four weeks under circumstances constituting murder, manslaughter in the first degree, manslaughter in the second degree, criminally negligent homicide, abortion in the first degree or self-abortion in the first degree.

§ 125.05 Homicide, abortion and related offenses; definitions of terms

The following definitions are applicable to this article:

1. "Person," when referring to the victim of a homicide, means a human being who has been born and is alive.

2. "Abortional act" means an act committed upon or with respect to a female, whether by another person or by the female herself, whether she is pregnant or not, whether directly upon her body or by the administering, taking or prescription of drugs or in any other manner, with intent to cause a miscarriage of such female.

3. "Justifiable abortional act." An abortional act is justifiable when committed upon a female by a duly licensed physician acting under a reasonable belief that such is necessary to preserve the life of such female. A pregnant female's commission of an abortional act upon herself is justifiable when she acts upon the advice of a duly licensed physician that such is necessary to preserve her

life. The submission by a female to an abortional act is justifiable when she believes that it is being committed by a duly licensed physician, and when she acts upon the advice of a duly licensed physician that such is necessary to preserve her life.

§ 125.10 Criminally negligent homicide

A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person.

Criminally negligent homicide is a **class E felony.**

§ 125.15 Manslaughter in the second degree

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

1. He recklessly causes the death of another person; or

2. He commits upon a female an abortional act which causes her death, unless such abortional act is justifiable pursuant to subdivision three of section 125.05; or

3. He intentionally causes or aids another person to commit suicide.

Manslaughter in the second degree is a **class C felony.**

§ 125.20 Manslaughter in the first degree

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

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

2. With intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance, as defined in paragraph (a) of subdivision one of section 125.25. The fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subdivision; or

3. He commits upon a female pregnant for more than twenty-four weeks an abortional act which causes her death, unless such abortional act is justifiable pursuant to subdivision three of section 125.05.

Manslaughter in the first degree is a **class B felony.**

§ 125.25 Murder

A person is guilty of murder when:

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

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

(b) The defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide; or

2. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person; or

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

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

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

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

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

§ 125.30 Murder; punishment; plea of guilty

1. Murder is punishable as a class A felony unless the death sentence is imposed as provided by section 125.35.

2. When the court and the district attorney consent, a person indicted for murder may plead guilty thereto, in which case the court shall sentence him as for a class A felony.

3. When a defendant has been found guilty after trial of murder, the court shall discharge the jury and shall sentence the defendant as for a class A felony if it is satisfied that he was less than eighteen years old at the time of the commission of the crime, or that the sentence of death is not warranted because of substantial mitigating circumstances.

§ 125.35 Murder; proceeding to determine sentence; appeal

1. When a defendant has been found guilty after trial of murder, and such verdict has been recorded upon the minutes, it shall not thereafter be subject to jury reconsideration.

2. Unless the court sentences the defendant as for a class A felony as provided in subdivision two or three of section 125.30, it shall, as promptly as practicable, conduct a proceeding to determine whether defendant should be sentenced as for a class A felony or to death. Such proceeding shall be conducted before the court sitting with the jury that found defendant guilty unless the court for good cause discharges that jury and impanels a new jury for that purpose.

3. In such proceeding, evidence may be presented by either party on any matter relevant to sentence including, but not limited to, the nature and circumstances of the crime, defendant's background and history, and any aggravating or mitigating circumstances. Any relevant evidence, not legally privileged, shall be received regardless of its admissibility under the exclusionary rules of evidence.

4. The court shall charge the jury on any matters appropriate in the circumstances, including the law relating to the maximum and possible minimum terms of imprisonment and to the possible release on parole of a person sentenced as for a class A felony.

5. The jury shall then retire to consider the penalty to be imposed. If the jury report unanimous agreement on the imposition of the penalty of death, the court shall discharge the jury and shall impose the sentence of death. If the jury report unanimous agreement on the imposition of the class A felony sentence, the court shall discharge the jury and shall impose such sentence. If, after the lapse of such time as the court deems reasonable, the jury report themselves unable to agree, the court shall discharge the jury and shall, in its discretion, either impanel a new jury to determine the sentence or impose the sentence for a class A felony.

6. On an appeal by the defendant where the judgment is of death, the court of appeals, if it finds substantial error only in the sentencing proceeding, may set aside the sentence of death and remand the case to the trial court, in which event the trial court shall impose the sentence for a class A felony.

§ 125.40 Abortion in the second degree

A person is guilty of abortion in the second degree when he commits an abortional act upon a female, unless such abortional act is justifiable pursuant to subdivision three of section 125.05.

Abortion in the second degree is a **class E felony.**

§ 125.45 Abortion in the first degree

A person is guilty of abortion in the first degree when he commits upon a female pregnant for more than twenty-four weeks an abortional act which causes the miscarriage of such female, unless such abortional act is justifiable pursuant to subdivision three of section 125.05.

Abortion in the first degree is a **class D felony.**

§ 125.50 Self-abortion in the second degree

A female is guilty of self-abortion in the second degree when, being pregnant, she commits or submits to an abortional act upon herself, unless such abortional act is justifiable pursuant to subdivision three of section 125.05.

Self-abortion in the second degree is a **class B misdemeanor.**

§ 125.55 Self-abortion in the first degree

A female is guilty of self-abortion in the first degree when, being pregnant for more than twenty-four weeks, she commits or submits to an abortional act upon herself which causes her miscarriage, unless such abortional act is justifiable pursuant to subdivision three of section 125.05.

Self-abortion in the first degree is a **class A misdemeanor.**

§ 125.60 Issuing abortional articles

A person is guilty of issuing abortional articles when he manufactures, sells or delivers any instrument, article, medicine, drug or substance with intent that the same be used in unlawfully procuring the miscarriage of a female.

Issuing abortional articles is a **class B misdemeanor.**

ARTICLE 130—SEX OFFENSES

Section
130.00 Sex offenses; definitions of terms.
130.05 Sex offenses; lack of consent.
130.10 Sex offenses; defense.
130.15 Sex offenses; corroboration.
130.20 Sexual misconduct.
130.25 Rape in the third degree.
130.30 Rape in the second degree.
130.35 Rape in the first degree.
130.38 Consensual sodomy.
130.40 Sodomy in the third degree.
130.45 Sodomy in the second degree.
130.50 Sodomy in the first degree.
130.55 Sexual abuse in the third degree.
130.60 Sexual abuse in the second degree.
130.65 Sexual abuse in the first degree.

§ 130.00 Sex offenses; definitions of terms

The following definitions are applicable to this article:

1. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight.

2. "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and penis, or the mouth and the vulva.

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

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

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

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

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

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

§ 130.05 Sex offenses; lack of consent

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

2. Lack of consent results from:

(a) Forcible compulsion; or

(b) Incapacity to consent; or

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

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

(a) less than seventeen years old; or

(b) mentally defective; or

(c) mentally incapacitated; or

(d) physically helpless.

As amended L.1965, c. 1038, § 1.

Historical Note

Subd. 1 amended L.1965, c. 1038, § 1, which inserted exception as to consensual sodomy.

§ 130.10 Sex offenses; defense

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

§ 130.15 Sex offenses; corroboration

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

§ 130.20 Sexual misconduct

A person is guilty of sexual misconduct when:

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

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

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

Sexual misconduct is a **class A misdemeanor.**

§ 130.25 Rape in the third degree

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

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

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

Rape in the third degree is a **class E felony.**

§ 130.30 Rape in the second degree

A male is guilty of rape in the second degree when, being eighteen years old or more, he engages in sexual intercourse with a female less than fourteen years old.

Rape in the second degree is a **class D felony.**

§ 130.35 Rape in the first degree

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

1. By forcible compulsion; or

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

3. Who is less than eleven years old.

Rape in the first degree is a **class B felony.**

§ 130.38 Consensual sodomy

A person is guilty of consensual sodomy when he engages in deviate sexual intercourse with another person.

Consensual sodomy is a **class B midemeanor.** Added L.1965, c. 1038, § 2.

§ 130.40 Sodomy in the third degree

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

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

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

Sodomy in the third degree is a **class E felony.**

§ 130.45 Sodomy in the second degree

A person is guilty of sodomy in the second degree when, being eighteen years old or more, he engages in deviate sexual intercourse with another person less than fourteen years old.

Sodomy in the second degree is a **class D felony.**

§ 130.50 Sodomy in the first degree

A person is guilty of sodomy in the first degree when he engages in deviate sexual intercourse with another person:

1. By forcible compulsion; or

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

3. Who is less than eleven years old.

Sodomy in the first degree is a **class B felony.**

§ 130.55 Sexual abuse in the third degree

A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a **class B misdemeanor.**

§ 130.60 Sexual abuse in the second degree

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

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or

2. Less than fourteen years old.

Sexual abuse in the second degree is a **class A misdemeanor.**

§ 130.65 Sexual abuse in the first degree

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

1. By forcible compulsion; or

2. When the other person is incapable of consent by reason of being physically helpless; or

3. When the other person is less than eleven years old.

Sexual abuse in the first degree is a **class D felony.**

ARTICLE 135—KIDNAPPING, COERCION AND RELATED OFFENSES

Section
135.00 Unlawful imprisonment, kidnapping and custodial interference; definitions of terms.
135.05 Unlawful imprisonment in the second degree.
135.10 Unlawful imprisonment in the first degree.
135.15 Unlawful imprisonment; defense.
135.20 Kidnapping in the second degree.
135.25 Kidnapping in the first degree.
135.30 Kidnapping; defense.
135.35 Kidnapping in the first degree; punishment; plea of guilty.
135.40 Kidnapping in the first degree; proceeding to determine sentence; appeal.
135.45 Custodial interference in the second degree.
135.50 Custodial interference in the first degree.
135.55 Substitution of children.
135.60 Coercion in the second degree.
135.65 Coercion in the first degree.
135.70 Coercion; no defense.
135.75 Coercion; defense.

§ 135.00 Unlawful imprisonment, kidnapping and custodial interference; definitions of terms

The following definitions are applicable to this article:

1. "Restrain" means to restrict a person's movements intentionally and unlawfully in such manner as to interfere substantially with his liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in a place to which he has been moved, without consent and with knowledge that the restriction is unlawful. A person is so moved or confined "without consent" when such is accomplished by (a) physical force, intimidation or deception, or (b) any means whatever, including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of him has not acquiesced in the movement or confinement.

2. "Abduct" means to restrain a person with intent to prevent his liberation by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly physical force.

3. "Relative" means a parent, ancestor, brother, sister, uncle or aunt.

§ 135.05 Unlawful imprisonment in the second degree

A person is guilty of unlawful imprisonment in the second degree when he restrains another person.

Unlawful imprisonment in the second degree is a **class A misdemeanor.**

§ 135.10 Unlawful imprisonment in the first degree

A person is guilty of unlawful imprisonment in the first degree when he restrains another person under circumstances which expose the latter to a risk of serious physical injury.

Unlawful imprisonment in the first degree is a **class E felony.**

§ 135.15 Unlawful imprisonment; defense

In any prosecution for unlawful imprisonment, it is an affirmative defense that (a) the person restrained was a child less than sixteen years old, and (b) the defendant was a relative of such child, and (c) his sole purpose was to assume control of such child.

§ 135.20 Kidnapping in the second degree

A person is guilty of kidnapping in the second degree when he abducts another person.

Kidnapping in the second degree is a **class B felony.**

§ 135.25 Kidnapping in the first degree

A person is guilty of kidnapping in the first degree when he abducts another person and when:

1. His intent is to compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct, or to refrain from engaging in particular conduct; or

2. He restrains the person abducted for a period of more than twelve hours with intent to:

(a) Inflict physical injury upon him or violate or abuse him sexually; or

(b) Accomplish or advance the commission of a felony; or

(c) Terrorize him or a third person; or

(d) Interfere with the performance of a governmental or political function; or

3. The person abducted dies during the abduction or before he is able to return or to be returned to safety. Such death shall be presumed, in a case where such person was less than sixteen years old or an incompetent person at the time of the abduction, from evidence that his parents, guardians or other lawful custodians did not see or hear from him following the termination of the abduction and prior to trial and received no reliable information during such period persuasively indicating that he was alive. In all other cases, such death shall be presumed from evidence that a person whom the person abducted would have been extremely likely to visit or communicate with during the specified period were he alive and free to do so did not see or hear from him during such period and received no reliable information during such period persuasively indicating that he was alive.

§ 135.30 Kidnapping; defense

In any prosecution for kidnapping, it is an affirmative defense that (a) the defendant was a relative of the person abducted, and (b) his sole purpose was to assume control of such person.

§ 135.35 Kidnapping in the first degree; punishment; plea of guilty

1. Kidnapping in the first degree is punishable as a class A felony unless the death sentence is imposed as provided by section 135.40.

2. When the court and the district attorney consent, a person indicted for kidnapping in the first degree may plead guilty thereto, in which case the court shall sentence him as for a class A felony.

3. When a defendant has been found guilty after trial of kidnapping in the first degree, the court shall discharge the jury and shall sentence the defendant as for a class A felony if it is satisfied (a) that he was less than eighteen years old at the time of the commission of the crime, or (b) that the person kidnapped has been voluntarily returned alive or voluntarily released alive under circumstances enabling him to return to safety without substantial risk of death, or (c) that the sentence of death is not warranted because of substantial mitigating circumstances.

§ 135.40 Kidnapping in the first degree; proceeding to determine sentence; appeal

1. When a defendant has been found guilty after trial of kidnapping in the first degree, and such verdict has been recorded upon the minutes, it shall not thereafter be subject to jury reconsideration.

2. Unless the court sentences the defendant as for a class A felony as provided in subdivision two or three of section 135.35, it shall, as promptly as practicable, conduct a proceeding to determine whether defendant should be sentenced as for a class A felony or to death. Such proceeding shall be conducted in the manner prescribed in section 125.35 for determination of the penalty for murder, and all the provisions of said section 125.35 relating to procedure and to determination and imposition of sentence, appeal, remand and re-sentence are here applicable.

§ 135.45 Custodial interference in the second degree

A person is guilty of custodial interference in the second degree when:

1. Being a relative of a child less than sixteen years old, intending to hold such child permanently or for a protracted period, and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; or

2. Knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution.

Custodial interference in the second degree is a **class A misdemeanor.**

§ 135.50 Custodial interference in the first degree

A person is guilty of custodial interference in the first degree when he commits the crime of custodial interference in the second degree under circumstances which expose the person taken or enticed from lawful custody to a risk that his safety will be endangered or his health materially impaired.

Custodial interference in the first degree is a **class E felony.**

§ 135.55 Substitution of children

A person is guilty of substitution of children when, having been temporarily entrusted with a child less than one year old and

intending to deceive a parent, guardian or other lawful custodian of such child, he substitutes, produces or returns to such parent, guardian or custodian a child other than the one entrusted.

Substitution of children is a **class E felony.**

§ 135.60 Coercion in the second degree

A person is guilty of coercion in the second degree when he compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

1. Cause physical injury to a person; or

2. Cause damage to property; or

3. Engage in other conduct constituting a crime; or

4. Accuse some person of a crime or cause criminal charges to be instituted against him; or

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

6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; or

7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

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

9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

Coercion in the second degree is a **class A misdemeanor.**

§ 135.65 Coercion in the first degree

A person is guilty of coercion in the first degree when he commits the crime of coercion in the second degree, and when:

1. He commits such crime by instilling in the victim a fear that he will cause physical injury to a person or cause damage to property; or

2. He thereby compels or induces the victim to:

(a) Commit or attempt to commit a felony; or

(b) Cause or attempt to cause physical injury to a person; or

(c) Violate his duty as a public servant.

Coercion in the first degree is a **class D felony.**

§ 135.70 Coercion; no defense

The crimes of (a) coercion and attempt to commit coercion, and (b) bribe receiving by a labor official as defined in section 180.20, and bribe receiving as defined in section 200.05, are not mutually exclusive, and it is no defense to a prosecution for coercion or an attempt to commit coercion that, by reason of the same conduct, the defendant also committed one of such specified crimes of bribe receiving.

§ 135.75 Coercion; defense

In any prosecution for coercion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

TITLE I—OFFENSES INVOLVING DAMAGE TO AND INTRUSION UPON PROPERTY

ARTICLE 140—BURGLARY AND RELATED OFFENSES

Section
140.00 Criminal trespass and burglary; definitions of terms.
140.05 Criminal trespass in the third degree.
140.10 Criminal trespass in the second degree.
140.15 Criminal trespass in the first degree.
140.20 Burglary in the third degree.
140.25 Burglary in the second degree.
140.30 Burglary in the first degree.
140.35 Possession of burglar's tools.

§ 140.00 Criminal trespass and burglary; definitions of terms

The following definitions are applicable to this article:

1. "Premises" includes the term "building," as defined herein, and any real property.

2. "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein. Where a building consists of two or more units separately secured or occupied, each unit shall be deemed a separate building.

3. "Dwelling" means a building which is usually occupied by a person lodging therein at night.

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

5. "Enter or remain unlawfully." A person "enters or remains unlawfully" in or upon premises when he is not licensed or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with

license and privilege unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner.

§ 140.05 Criminal trespass in the third degree

A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in or upon premises.

Criminal trespass in the third degree is a **violation.**

§ 140.10 Criminal trespass in the second degree

A person is guilty of criminal trespass in the second degree when he knowingly enters or remains unlawfully in a building or upon real property which is fenced or otherwise enclosed in a manner designed to exclude intruders.

Criminal trespass in the second degree is a **class B misdemeanor.**

§ 140.15 Criminal trespass in the first degree

A person is guilty of criminal trespass in the first degree when he knowingly enters or remains unlawfully in a dwelling.

Criminal trespass in the first degree is a **class A misdemeanor.**

§ 140.20 Burglary in the third degree

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

Burglary in the third degree is a **class D felony.**

§ 140.25 Burglary in the second degree

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

1. In effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:

(a) Is armed with explosives or a deadly weapon; or

(b) Causes physical injury to any person who is not a participant in the crime; or

2. The building is a dwelling and the entering or remaining occurs at night.

Burglary in the second degree is a **class C felony.**

§ 140.30 Burglary in the first degree

A person is guilty of burglary in the first degree when he knowingly enters or remains unlawfully in a dwelling at night with intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime:

1. Is armed with explosives or a deadly weapon; or

2. Causes physical injury to any person who is not a participant in the crime.

Burglary in the first degree is a **class B felony.**

§ 140.35 Possession of burglar's tools

A person is guilty of possession of burglar's tools when he possesses any tool, instrument or other article adapted, designed or commonly used for committing or facilitating offenses involving forcible entry into premises, or offenses involving larceny by a physical taking, or offenses involving theft of services as defined in subdivisions four, five and six of section 165.15, under circumstances evincing an intent to use or knowledge that some person intends to use the same in the commission of an offense of such character.

Possession of burglar's tools is a **class A misdemeanor.**

ARTICLE 145—CRIMINAL MISCHIEF AND RELATED OFFENSES

Section
145.00 Criminal mischief in the third degree.
145.05 Criminal mischief in the second degree.
145.10 Criminal mischief in the first degree.
145.15 Criminal tampering in the second degree.
145.20 Criminal tampering in the first degree.
145.25 Reckless endangerment of property.
145.30 Unlawfully posting advertisements.

§ 145.00 Criminal mischief in the third degree

A person is guilty of criminal mischief in the third degree when, having no right to do so nor any reasonable ground to

believe that he has such right, he intentionally or recklessly damages property of another person.

Criminal mischief in the third degree is a **class A misdemeanor.**

§ 145.05 Criminal mischief in the second degree

A person is guilty of criminal mischief in the second degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person in an amount exceeding two hundred fifty dollars.

Criminal mischief in the second degree is a **class E felony.**

§ 145.10 Criminal mischief in the first degree

A person is guilty of criminal mischief in the first degree when with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person:

1. In an amount exceeding one thousand five hundred dollars; or

2. By means of an explosive.

Criminal mischief in the first degree is a **class D felony.**

§ 145.15 Criminal tampering in the second degree

A person is guilty of criminal tampering in the second degree when, having no right to do so nor any reasonable ground to believe that he has such right, he:

1. Tampers with property of another person with intent to cause substantial inconvenience to such person or to a third person; or

2. Tampers or makes connection with property of a gas, electric, steam or water-works corporation, telephone or telegraph corporation, common carrier, or public utility operated by a municipality; except that in any prosecution under this subdivision, it is an affirmative defense that the defendant did not engage in such conduct for a larcenous or otherwise unlawful or wrongful purpose.

Criminal tampering in the second degree is a **class B misdemeanor.**

§ 145.20 Criminal tampering in the first degree

A person is guilty of criminal tampering in the first degree when, with intent to cause a substantial interruption or impairment of a service rendered to the public, and having no right to do so nor any reasonable ground to believe that he has such right, he damages or tampers with property of a gas, electric, steam or water-works corporation, telephone or telegraph corporation, common carrier, or public utility operated by a municipality, and thereby causes such substantial interruption or impairment of service.

Criminal tampering in the first degree is a **class D felony.**

§ 145.25 Reckless endangerment of property

A person is guilty of reckless endangerment of property when he recklessly engages in conduct which creates a substantial risk of damage to the property of another person in an amount exceeding two hundred fifty dollars.

Reckless endangerment of property is a **class B misdemeanor.**

§ 145.30 Unlawfully posting advertisements

1. A person is guilty of unlawfully posting advertisements when, having no right to do so nor any reasonable ground to believe that he has such right, he posts, paints or otherwise affixes to the property of another person any advertisement, poster, notice or other matter designed to benefit a person other than the owner of the property.

2. Where such matter consists of a commercial advertisement, it shall be presumed that the vendor of the specified product, service or entertainment is a person who placed such advertisement or caused it to be placed upon the property.

Unlawfully posting advertisements is a **violation.**

ARTICLE 150—ARSON

Section
150.00 Arson; definition of term.
150.05 Arson in the third degree.
150.10 Arson in the second degree.
150.15 Arson in the first degree.

§ 150.00 Arson; definition of term

As used in this article, "building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for

overnight lodging of persons, or used by persons for carrying on business therein. Where a building consists of two or more units separately secured or occupied, each unit shall not be deemed a separate building.

§ 150.05 Arson in the third degree

1. A person is guilty of arson in the third degree when he recklessly damages a building by intentionally starting a fire or causing an explosion.

2. In any prosecution under this section, it is an affirmative defense that no person other than the defendant had a possessory or proprietary interest in the building.

Arson in the third degree is a **class E felony.**

§ 150.10 Arson in the second degree

1. A person is guilty of arson in the second degree when he intentionally damages a building by starting a fire or causing an explosion.

2. In any prosecution under this section, it is an affirmative defense that (a) no person other than the defendant had a possessory or proprietary interest in the building, or if other persons had such interests, all of them consented to the defendant's conduct, and (b) the defendant's sole intent was to destroy or damage the building for a lawful and proper purpose, and (c) the defendant had no reasonable ground to believe that his conduct might endanger the life or safety of another person or damage another building.

Arson in the second degree is a **class C felony.**

§ 150.15 Arson in the first degree

A person is guilty of arson in the first degree when he intentionally damages a building by starting a fire or causing an explosion, and when (a) another person is present in such building at the time, and (b) the defendant knows that fact or the circumstances are such as to render the presence of a person therein a reasonable possibility.

Arson in the first degree is a **class B felony.**

TITLE J—OFFENSES INVOLVING THEFT

ARTICLE 155—LARCENY

Section
155.00 Larceny; definitions of terms.
155.05 Larceny; defined.
155.10 Larceny; no defense.
155.15 Larceny; defenses.
155.20 Larceny; value of stolen property.
155.25 Petit larceny.
155.30 Grand larceny in the third degree.
155.35 Grand larceny in the second degree.
155.40 Grand larceny in the first degree.
155.45 Larceny; pleading and proof.

§ 155.00 Larceny; definitions of terms

The following definitions are applicable to this title:

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

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

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

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

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

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

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

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

§ 155.05 Larceny; defined

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

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

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

(b) By acquiring lost property.

A person acquires lost property when he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner;

(c) By committing the crime of issuing a bad check, as defined in section 190.05;

(d) By false promise.

A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.

In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed;

(e) By extortion.

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

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

(ii) Cause damage to property; or

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

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

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

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

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

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

(ix) Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

§ 155.10 Larceny; no defense

The crimes of (a) larceny committed by means of extortion and an attempt to commit the same, and (b) bribe receiving by a labor official as defined in section 180.20, and bribe receiving as defined in section 200.05, are not mutually exclusive, and it is no defense to a prosecution for larceny committed by means of extortion or for an attempt to commit the same that, by reason of the same conduct, the defendant also committed one of such specified crimes of bribe receiving.

§ 155.15 Larceny; defenses

1. In any prosecution for larceny committed by trespassory taking or embezzlement, it is an affirmative defense that the property was appropriated under a claim of right made in good faith.

2. In any prosecution for larceny by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

§ 155.20 Larceny; value of stolen property

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

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

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

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

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

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

§ 155.25 Petit larceny

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

Petit larceny is a **class A misdemeanor.**

§ 155.30 Grand larceny in the third degree

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

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

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

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

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

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

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

Grand larceny in the third degree is a **class E felony.**

§ 155.35 Grand larceny in the second degree

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

Grand larceny in the second degree is a **class D felony.**

§ 155.40 Grand larceny in the first degree

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

Grand larceny in the first degree is a **class C felony.**

§ 155.45 Larceny; pleading and proof

1. Where it is an element of the crime charged that property was taken from the person or obtained by extortion, an indictment for larceny must so specify. In all other cases, an indictment, information or complaint for larceny is sufficient if it alleges that the defendant stole property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which such property was stolen or the particular theory of larceny involved.

2. Proof that the defendant engaged in any conduct constituting larceny as defined in section 155.05 is sufficient to support any indictment, information or complaint for larceny other than one charging larceny by extortion. An indictment charging larceny by extortion must be supported by proof establishing larceny by extortion.

ARTICLE 160—ROBBERY

Section
160.00 Robbery; defined.
160.05 Robbery in the third degree.
160.10 Robbery in the second degree.
160.15 Robbery in the first degree.

§ 160.00 Robbery; defined

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

1. Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or

2. Compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.

§ 160.05 Robbery in the third degree

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

Robbery in the third degree is a **class D felony.**

§ 160.10 Robbery in the second degree

A person is guilty of robbery in the second degree when he forcibly steals property and when he is aided by another person actually present.

Robbery in the second degree is a **class C felony.**

§ 160.15 Robbery in the first degree

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

1. Causes serious physical injury to any person who is not a participant in the crime; or

2. Is armed with a deadly weapon; or

3. Is armed with and uses or threatens the immediate use of a dangerous instrument.

Robbery in the first degree is a **class B felony.**

ARTICLE 165—OTHER OFFENSES RELATING TO THEFT

Section
165.00 Misapplication of property.
165.05 Unauthorized use of a vehicle.
165.10 Theft of services; definitions of terms.
165.15 Theft of services.
165.20 Fraudulently obtaining a signature.
165.25 Jostling.
165.30 Fraudulent accosting.
165.35 Fortune telling.
165.40 Criminal possession of stolen property in the third degree.
165.45 Criminal possession of stolen property in the second degree.
165.50 Criminal possession of stolen property in the first degree.
165.55 Criminal possession of stolen property; presumptions.
165.60 Criminal possession of stolen property; no defense.
165.65 Criminal possession of stolen property; corroboration.

§ 165.00 Misapplication of property

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

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

Misapplication of property is a **class A misdemeanor.**

§ 165.05 Unauthorized use of a vehicle

A person is guilty of unauthorized use of a vehicle when:

1. Knowing that he does not have the consent of the owner, he takes, operates, exercises control over, rides in or otherwise uses a vehicle. A person who engages in any such conduct without

the consent of the owner is presumed to know that he does not have such consent; or

2. Having custody of a vehicle pursuant to an agreement between himself or another and the owner thereof whereby he or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, he intentionally uses or operates the same, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

3. Having custody of a vehicle pursuant to an agreement with the owner thereof whereby such vehicle is to be returned to the owner at a specified time, he intentionally retains or withholds possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

Unauthorized use of a vehicle is a **class A misdemeanor.**

§ 165.10 Theft of services; definitions of terms

The following definitions are applicable to section 165.15:

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

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

§ 165.15 Theft of services

A person is guilty of theft of services when:

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

2. With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids or attempts to avoid such payment by

unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false; or

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

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

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

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

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

Theft of services is a **class A misdemeanor.**

§ 165.20 Fraudulently obtaining a signature

A person is guilty of fraudulently obtaining a signature when, with intent to defraud or injure another or to acquire a substantial benefit for himself or a third person, he obtains the signature of a person to a written instrument by means of any misrepresentation of fact which he knows to be false.

Fraudulently obtaining a signature is a **class A misdemeanor.**

§ 165.25 Jostling

A person is guilty of jostling when, in a public place, he intentionally and unnecessarily:

1. Places his hand in the proximity of a person's pocket or handbag; or

2. Jostles or crowds another person at a time when a third person's hand is in the proximity of such person's pocket or handbag.

Jostling is a **class A misdemeanor.**

§ 165.30 Fraudulent accosting

A person is guilty of fraudulent accosting when he accosts a person in a public place and, either at that time and place or subsequently in any place, he makes statements to such person of a sort commonly made or used in the perpetration of a known type of confidence game.

Fraudulent accosting is a **class A misdemeanor.**

§ 165.35 Fortune telling

A person is guilty of fortune telling when, for a fee or compensation which he directly or indirectly solicits or receives, he claims or pretends to tell fortunes, or holds himself out as being able, by claimed or pretended use of occult powers, to answer questions or give advice on personal matters or to exorcise, influence or affect evil spirits or curses; except that this section does not apply to a person who engages in the aforedescribed conduct as part of a show or exhibition solely for the purpose of entertainment or amusement.

Fortune telling is a **class B misdemeanor.**

§ 165.40 Criminal possession of stolen property in the third degree

A person is guilty of criminal possession of stolen property in the third degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.

Criminal possession of stolen property in the third degree is a **class A misdemeanor.**

§ 165.45 Criminal possession of stolen property in the second degree

A person is guilty of criminal possession of stolen property in the second degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when:

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

2. He is a pawnbroker or is in the business of buying, selling or otherwise dealing in property.

Criminal possession of stolen property in the second degree is a **class E felony.**

§ 165.50 Criminal possession of stolen property in the first degree

A person is guilty of criminal possession of stolen property in the first degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the value of the property exceeds one thousand five hundred dollars.

Criminal possession of stolen property in the first degree is a **class D felony.**

§ 165.55 Criminal possession of stolen property; presumptions

1. A person who knowingly possesses stolen property is presumed to possess it with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.

2. A pawnbroker or a person in the business of buying, selling or otherwise dealing in property who possesses stolen property is presumed to know that such property was stolen if he obtained it without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess it.

§ 165.60 Criminal possession of stolen property; no defense

In any prosecution for criminal possession of stolen property, it is no defense that:

1. The person who stole the property has not been convicted, apprehended or identified; or

2. The defendant stole or participated in the larceny of the property; provided that a person may not be convicted of both larceny and criminal possession of stolen property with respect to the same property; or

3. The larceny of the property did not occur in this state.

§ 165.65 Criminal possession of stolen property; corroboration

1. A person charged with criminal possession of stolen property who participated in the larceny thereof may not be convicted of criminal possession of such stolen property solely upon the testimony of an accomplice in the larceny without corroborating evidence of the kind prescribed in section three hundred ninety-nine of the code of criminal procedure.

2. Unless inconsistent with the provisions of subdivision one of this section, a person charged with criminal possession of stolen property may be convicted thereof solely upon the testimony of one from whom he obtained such property or solely upon the testimony of one to whom he disposed of such property.

TITLE K—OFFENSES INVOLVING FRAUD

ARTICLE 170—FORGERY AND RELATED OFFENSES

Section
170.00 Forgery; definitions of terms.
170.05 Forgery in the third degree.
170.10 Forgery in the second degree.
170.15 Forgery in the first degree.
170.20 Criminal possession of a forged instrument in the third degree.
170.25 Criminal possession of a forged instrument in the second degree.
170.30 Criminal possession of a forged instrument in the first degree.
170.35 Forgery and criminal possession of a forged instrument; no defense.
170.40 Criminal possession of forgery devices.
170.45 Criminal simulation.
170.50 Unlawfully using slugs; definitions of terms.
170.55 Unlawfully using slugs in the second degree.
170.60 Unlawfully using slugs in the first degree.

§ 170.00 Forgery; definitions of terms

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

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

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

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

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

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

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

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

§ 170.05 Forgery in the third degree

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

Forgery in the third degree is a **class A misdemeanor.**

§ 170.10 Forgery in the second degree

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

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

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

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

4. Part of an issue of tokens, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services; or

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

Forgery in the second degree is a **class D felony.**

§ 170.15 Forgery in the first degree

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

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

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

Forgery in the first degree is a **class C felony.**

§ 170.20 Criminal possession of a forged instrument in the third degree

A person is guilty of criminal possession of a forged instrument in the third degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses a forged instrument.

Criminal possession of a forged instrument in the third degree is a **class A misdemeanor.**

§ 170.25 Criminal possession of a forged instrument in the second degree

A person is guilty of criminal possession of a forged instrument in the second degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters

or possesses any forged instrument of a kind specified in section 170.10.

Criminal possession of a forged instrument in the second degree is a **class D felony.**

§ 170.30 Criminal possession of a forged instrument in the first degree

A person is guilty of criminal possession of a forged instrument in the first degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in section 170.15.

Criminal possession of a forged instrument in the first degree is a **class C felony.**

§ 170.35 Criminal possession of a forged instrument; no defense

In any prosecution for criminal possession of a forged instrument, it is no defense that the defendant forged or participated in the forgery of the instrument in issue; provided that a person may not be convicted of both criminal possession of a forged instrument and forgery with respect to the same instrument.

§ 170.40 Criminal possession of forgery devices

A person is guilty of criminal possession of forgery devices when:

1. He makes or possesses with knowledge of its character any plate, die or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments; or

2. With intent to use, or to aid or permit another to use, the same for purposes of forgery, he makes or possesses any device, apparatus, equipment or article capable of or adaptable to such use.

Criminal possession of forgery devices is a **class D felony.**

§ 170.45 Criminal simulation

A person is guilty of criminal simulation when:

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

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

Criminal simulation is a **class A misdemeanor.**

§ 170.50 Unlawfully using slugs; definitions of terms

The following definitions are applicable to sections 170.55 and 170.60:

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

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

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

§ 170.55 Unlawfully using slugs in the second degree

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

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

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

Unlawfully using slugs in the second degree is a **class B misdemeanor.**

§ 170.60 Unlawfully using slugs in the first degree

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

Unlawfully using slugs in the first degree is a **class E felony.**

ARTICLE 175—OFFENSES INVOLVING FALSE WRITTEN STATEMENTS

Section
175.00 Falsifying business records; definitions of terms.
175.05 Falsifying business records in the second degree.
175.10 Falsifying business records in the first degree.
175.15 Falsifying business records; defense.
175.20 Tampering with public records in the second degree.
175.25 Tampering with public records in the first degree.
175.30 Offering a false instrument for filing in the second degree.
175.35 Offering a false instrument for filing in the first degree.
175.40 Issuing a false certificate.
175.45 Issuing a false financial statement.
175.50 Presenting a false insurance claim.

§ 175.00 Falsifying business records; definitions of terms

The following definitions are applicable to sections 175.05 and 175.10:

1. "Enterprise" means any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political or governmental activity.

2. "Business record" means any writing or article kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity.

§ 175.05 Falsifying business records in the second degree

A person is guilty of falsifying business records in the second degree when, with intent to defraud, he:

1. Makes or causes a false entry in the business records of an enterprise; or

2. Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or

3. Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law or by the nature of his position; or

4. Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

Falsifying business records in the second degree is a **class A misdemeanor.**

§ 175.10 Falsifying business records in the first degree

A person is guilty of falsifying business records in the first degree when he commits the crime of falsifying business records in the second degree, and when his intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof.

Falsifying business records in the first degree is a **class E felony.**

§ 175.15 Falsifying business records; defense

In any prosecution for falsifying business records, it is an affirmative defense that the defendant was a clerk, bookkeeper or other employee who, without personal benefit, merely executed the orders of his employer or of a superior officer or employee generally authorized to direct his activities.

§ 175.20 Tampering with public records in the second gree

A person is guilty of tampering with public records in the second degree when, knowing that he does not have the authority of anyone entitled to grant it, he knowingly removes, mutilates, destroys, canceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant.

Tampering with public records in the second degree is a **class A misdemeanor.**

§ 175.25 Tampering with public records in the first degree

A person is guilty of tampering with public records in the first degree when, knowing that he does not have the authority of anyone entitled to grant it, and with intent to defraud, he knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant.

Tampering with public records in the first degree is a **class D felony.**

§ 175.30 Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a **class A misdemeanor.**

§ 175.35 Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision thereof, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

Offering a false instrument for filing in the first degree is a **class E felony.**

§ 175.40 Issuing a false certificate

A person is guilty of issuing a false certificate when, being a public servant authorized by law to make or issue official certificates or other official written instruments, and with intent to defraud, deceive or injure another person, he issues such an instrument, or makes the same with intent that it be issued, knowing that it contains a false statement or false information.

Issuing a false certificate is a **class E felony.**

§ 175.45 Issuing a false financial statement

A person is guilty of issuing a false financial statement when, with intent to defraud:

1. He knowingly makes or utters a written instrument which purports to describe the financial condition or ability to pay of some person and which is inaccurate in some material respect; or

2. He represents in writing that a written instrument purporting to describe a person's financial condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas he knows it is materially inaccurate in that respect.

Issuing a false financial statement is a **class A misdemeanor.**

§ 175.50 Presenting a false insurance claim

A person is guilty of presenting a false insurance claim when, with intent to defraud an insurer with respect to an alleged claim of loss upon a contract of insurance, he knowingly presents to the insurer or to an agent thereof a written instrument containing a false material statement relating to such claim.

Presenting a false insurance claim is a **class A misdemeanor.**

ARTICLE 180—BRIBERY NOT INVOLVING PUBLIC SERVANTS, AND RELATED OFFENSES

Section

180.00 Commercial bribing.
180.05 Commercial bribe receiving.
180.10 Bribery of labor official; definition of term.
180.15 Bribing a labor official.
180.20 Bribing a labor official; defense.
180.25 Bribe receiving by a labor official.
180.30 Bribe receiving by a labor official; no defense.
180.35 Sports bribery; definitions of terms.
180.40 Sports bribing.
180.45 Sports bribe receiving.
180.50 Tampering with a sports contest.
180.55 Rent gouging.

§ 180.00 Commercial bribing

A person is guilty of commercial bribing when he confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs.

Commercial bribing is a **class B misdemeanor.**

§ 180.05 Commercial bribe receiving

An employee, agent or fiduciary is guilty of commercial bribe receiving when, without the consent of his employer or principal,

he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs.

Commercial bribe receiving is a **class B misdemeanor.**

§ 180.10 Bribery of labor official; definition of term

As used in this article, "labor official" means any duly appointed representative of a labor organization or any duly appointed trustee or representative of an employee welfare trust fund.

§ 180.15 Bribing a labor official

A person is guilty of bribing a labor official when, with intent to influence a labor official in respect to any of his acts, decisions or duties as such labor official, he confers, or offers or agrees to confer, any benefit upon him.

Bribing a labor official is a **class D felony.**

§ 180.20 Bribing a labor official; defense

In any prosecution for bribing a labor official, it is a defense that the defendant conferred or agreed to confer the benefit involved upon the labor official as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion.

§ 180.25 Bribe receiving by a labor official

A labor official is guilty of bribe receiving by a labor official when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence him in respect to any of his acts, decisions, or duties as such labor official.

Bribe receiving by a labor official is a **class D felony.**

§ 180.30 Bribe receiving by a labor official; no defense

The crimes of (a) bribe receiving by a labor official, and (b) larceny committed by means of extortion, attempt to commit the same, coercion or attempt to commit coercion, are not mutually exclusive, and it is no defense to a prosecution for bribe receiving

by a labor official that, by reason of the same conduct, the defendant also committed one of such other specified crimes.

§ 180.35 Sports bribery; definitions of terms

As used in this article:

1. "Sports contest" means any professional or amateur sport or athletic game or contest viewed by the public.

2. "Sports participant" means any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team.

3. "Sports official" means any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest.

§ 180.40 Sports bribing

A person is guilty of sports bribing when he:

1. Confers, or offers or agrees to confer, any benefit upon a sports participant with intent to influence him not to give his best efforts in a sports contest; or

2. Confers, or offers or agrees to confer, any benefit upon a sports official with intent to influence him to perform his duties improperly.

Sports bribing is a **class D felony.**

§ 180.45 Sports bribe receiving

A person is guilty of sports bribe receiving when:

1. Being a sports participant, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he will thereby be influenced not to give his best efforts in a sports contest; or

2. Being a sports official, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he will perform his duties improperly.

Sports bribe receiving is a **class E felony.**

§ 180.50 Tampering with a sports contest

A person is guilty of tampering with a sports contest when, with intent to influence the outcome of a sports contest, he tam-

pers with any sports participant, sports official or with any animal or equipment or other thing involved in the conduct or operation of a sports contest in a manner contrary to the rules and usages purporting to govern such a contest.

Tampering with a sports contest is a **class A misdemeanor.**

§ 180.55 Rent gouging

A person is guilty of rent gouging when, in connection with the leasing, rental or use of real property, he solicits, accepts or agrees to accept from a person some consideration of value, in addition to lawful rental and other lawful charges, upon an agreement or understanding that the furnishing of such consideration will increase the possibility that some person may obtain the lease, rental or use of such property, or that a failure to furnish it will decrease the possibility that some person may obtain the same.

Rent gouging is a **class B misdemeanor.**

ARTICLE 185—FRAUDS ON CREDITORS

Section

185.00 Fraud in insolvency.
185.05 Fraud involving a security interest.
185.10 Fraudulent disposition of mortgaged property.
185.15 Fraudulent disposition of property subject to a conditional sale contract.

§ 185.00 Fraud in insolvency

1. As used in this section, "administrator" means an assignee or trustee for the benefit of creditors, a liquidator, a receiver or any other person entitled to administer property for the benefit of creditors.

2. A person is guilty of fraud in insolvency when, with intent to defraud any creditor and knowing that proceedings have been or are about to be instituted for the appointment of an administrator, or knowing that a composition agreement or other arrangement for the benefit of creditors has been or is about to be made, he

(a) conveys, transfers, removes, conceals, destroys, encumbers or otherwise disposes of any part of or any interest in the debtor's estate; or

(b) obtains any substantial part of or interest in the debtor's estate; or

(c) presents to any creditor or to the administrator any writing or record relating to the debtor's estate knowing the same to contain a false material statement; or

(d) misrepresents or fails or refuses to disclose to the administrator the existence, amount or location of any part of or any interest in the debtor's estate, or any other information which he is legally required to furnish to such administrator.

Fraud in insolvency is a **class A misdemeanor.**

§ 185.05 Fraud involving a security interest

A person is guilty of fraud involving a security interest when, having executed a security agreement creating a security interest in personal property securing a monetary obligation owed to a secured party, and:

1. Having under the security agreement both the right of sale or other disposition of the property and the duty to account to the secured party for the proceeds of disposition, he sells or otherwise disposes of the property and wrongfully fails to account to the secured party for the proceeds of disposition; or

2. Having under the security agreement no right of sale or other disposition of the property, he knowingly secretes, withholds or disposes of such property in violation of the security agreement.

Fraud involving a security interest is a **class A misdemeanor.**

§ 185.10 Fraudulent disposition of mortgaged property

A person is guilty of fraudulent disposition of mortgaged property when, having theretofore executed a mortgage of real or personal property or any instrument intended to operate as such, he sells, assigns, exchanges, secretes, injures, destroys or otherwise disposes of any part of the property, upon which the mortgage or other instrument is at the time a lien, with intent thereby to defraud the mortgagee or a purchaser thereof.

Fraudulent disposition of mortgaged property is a **class A misdemeanor.**

§ 185.15 Fraudulent disposition of property subject to a conditional sale contract

A person is guilty of fraudulent disposition of property subject to a conditional sale contract when, prior to the performance of the condition of a conditional sale contract and being the buyer or any legal successor in interest of the buyer, he sells, assigns, mortgages, exchanges, secretes, injures, destroys or otherwise disposes of the goods subject to the conditional sale contract under claim of full ownership, with intent thereby to defraud another.

Fraudulent disposition of property subject to a conditional sale contract is a **class A misdemeanor.**

ARTICLE 190—OTHER FRAUDS

Section

190.00 Issuing a bad check; definitions of terms.
190.05 Issuing a bad check.
190.10 Issuing a bad check; presumptions.
190.15 Issuing a bad check; defenses.
190.20 False advertising.
190.25 Criminal impersonation.
190.30 Unlawfully concealing a will.
190.35 Misconduct by corporate director.

§ 190.00 Issuing a bad check; definitions of terms

The following definitions are applicable to this article:

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

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

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

4. "Utter." A person "utters" a check when, as a drawer or representative drawer thereof, he delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to such check. One who draws a check with

intent that it be so delivered is deemed to have uttered it if the delivery occurs.

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

6. "Funds" means money or credit.

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

§ 190.05 Issuing a bad check

A person is guilty of issuing a bad check when:

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

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

Issuing a bad check is a **class B misdemeanor.**

§ 190.10 Issuing a bad check; presumptions

1. When the drawer of a check has insufficient funds with the drawee to cover it at the time of utterance, the subscribing drawer or representative drawer, as the case may be, is presumed to know of such insufficiency.

2. A subscribing drawer or representative drawer, as the case may be, of an ultimately dishonored check is presumed to have intended or believed that the check would be dishonored upon presentation when:

(a) The drawer had no account with the drawee at the time of utterance; or

(b) (i) The drawer had insufficient funds with the drawee at the time of utterance, and (ii) the check was presented to the drawee for payment not more than thirty days after the date of utterance, and (iii) the drawer had insufficient funds with the drawee at the time of presentation.

3. Dishonor of a check by the drawee and insufficiency of the drawer's funds at the time of presentation may properly be proved by introduction in evidence of a notice of protest of the check, or of a certificate under oath of an authorized representative of the drawee declaring the dishonor and insufficiency, and such proof shall constitute presumptive evidence of such dishonor and insufficiency.

§ 190.15 Issuing a bad check; defenses

In any prosecution for issuing a bad check, it is an affirmative defense that:

1. The defendant or a person acting in his behalf made full satisfaction of the amount of the check within ten days after dishonor by the drawee; or

2. The defendant, in acting as a representative drawer, did so as an employee who, without personal benefit, merely executed the orders of his employer or of a superior officer or employee generally authorized to direct his activities.

§ 190.20 False advertising

A person is guilty of false advertising when, with intent to promote the sale or to increase the consumption of property or services, he makes or causes to be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons; except that, in any prosecution under this section, it is an affirmative defense that the allegedly false or misleading statement was not knowingly or recklessly made or caused to be made.

False advertising is a **class A misdemeanor.**

§ 190.25 Criminal impersonation

A person is guilty of criminal impersonation when he:

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

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

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

Criminal impersonation is a **class A misdemeanor.**

§ 190.30 Unlawfully concealing a will

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

Unlawfully concealing a will is a **class E felony.**

§ 190.35 Misconduct by corporate director

A director of a stock corporation is guilty of misconduct by corporate director when he knowingly concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended:

1. To make a dividend except in the manner provided by law; or

2. To divide, withdraw or in any manner pay to any stockholder any part of the capital stock of the corporation except in the manner provided by law; or

3. To discount or receive any note or other evidence of debt in payment of an installment of capital stock actually called in and required to be paid, or with intent to provide the means of making such payment; or

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or

5. To apply any portion of the funds of such corporation, directly or indirectly, to the purchase of shares of its own stock, except in the manner provided by law; or

6. To issue any increase of its capital stock beyond the amount of the capital stock thereof duly authorized by law.

Misconduct by corporate director is a **class B misdemeanor.**

TITLE L—OFFENSES AGAINST PUBLIC ADMINISTRATION

ARTICLE 195—OFFICIAL MISCONDUCT AND OBSTRUCTION OF PUBLIC SERVANTS GENERALLY

Section
195.00 Official misconduct.
195.05 Obstructing governmental administration.
195.10 Refusing to aid a peace officer.
195.15 Obstructing firefighting operations.

§ 195.00 Official misconduct

A public servant is guilty of official misconduct when, with intent to obtain a benefit or to injure or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a **class A misdemeanor.**

§ 195.05 Obstructing governmental administration

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act.

Obstructing governmental administration is a **class A misdemeanor.**

§ 195.10 Refusing to aid a peace officer

A person is guilty of refusing to aid a peace officer when, upon command by a peace officer identifiable or identified to him as such, he unreasonably fails or refuses to aid such peace officer in

effecting an arrest, or in preventing the commission by another person of any offense.

Refusing to aid a peace officer is a **class B misdemeanor.**

§ 195.15 Obstructing firefighting operations

A person is guilty of obstructing firefighting operations when he intentionally and unreasonably obstructs the efforts of any fireman in extinguishing a fire, or prevents or dissuades another from extinguishing or helping to extinguish a fire.

Obstructing firefighting operations is a **class B misdemeanor.**

ARTICLE 200—BRIBERY INVOLVING PUBLIC SERVANTS AND RELATED OFFENSES

Section
200.00 Bribery.
200.05 Bribery; defense.
200.10 Bribe receiving.
200.15 Bribe receiving; no defense.
200.20 Rewarding official misconduct.
200.25 Receiving reward for official misconduct.
200.30 Giving unlawful gratuities.
200.35 Receiving unlawful gratuities.
200.40 Bribe giving and bribe receiving for public office; definition of term.
200.45 Bribe giving for public office.
200.50 Bribe receiving for public office.

§ 200.00 Bribery

A person is guilty of bribery when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery is a **class D felony.**

§ 200.05 Bribery; defense

In any prosecution for bribery, it is a defense that the defendant conferred or agreed to confer the benefit involved upon the public servant involved as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion.

§ 200.10 Bribe receiving

A public servant is guilty of bribe receiving when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving is a **class D felony.**

§ 200.15 Bribe receiving; no defense

The crimes of (a) bribe receiving, and (b) larceny committed by means of extortion, attempt to commit the same, coercion and attempt to commit coercion, are not mutually exclusive, and it is no defense to a prosecution for bribe receiving that, by reason of the same conduct, the defendant also committed one of such other specified crimes.

§ 200.20 Rewarding official misconduct

A person is guilty of rewarding official misconduct when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant.

Rewarding official misconduct is a **class E felony.**

§ 200.25 Receiving reward for official misconduct

A public servant is guilty of receiving reward for official misconduct when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct is a **class E felony.**

§ 200.30 Giving unlawful gratuities

A person is guilty of giving unlawful gratuities when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Giving unlawful gratuities is a **class A misdemeanor.**

§ 200.35 Receiving unlawful gratuities

A public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having

engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Receiving unlawful gratuities is a **class A misdemeanor.**

§ 200.40 Bribe giving and bribe receiving for public office; definition of term

As used in sections 200.45 and 200.50, "party officer" means a person who holds any position or office in a political party, whether by election, appointment or otherwise.

§ 200.45 Bribe giving for public office

A person is guilty of bribe giving for public office when he confers, or offers or agrees to confer, any money or other property upon a public servant or a party officer upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe giving for public office is a **class D felony.**

§ 200.50 Bribe receiving for public office

A public servant or a party officer is guilty of bribe receiving for public office when he solicits, accepts or agrees to accept any money or other property from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe receiving for public office is a **class D felony.**

ARTICLE 205—ESCAPE AND OTHER OFFENSES RELATING TO CUSTODY

Section

205.00 Escape and other offenses relating to custody; definitions of terms.
205.05 Escape in the third degree.
205.10 Escape in the second degree.
205.15 Escape in the first degree.
205.20 Promoting prison contraband in the second degree.
205.25 Promoting prison contraband in the first degree.
205.30 Resisting arrest.

Section
205.35 Bail jumping in the second degree.
205.40 Bail jumping in the first degree.
205.45 Bail jumping; defense.
205.50 Hindering prosecution; definition of term.
205.55 Hindering prosecution in the third degree.
205.60 Hindering prosecution in the second degree.
205.65 Hindering prosecution in the first degree.

§ 205.00 Escape and other offenses relating to custody; definitions of terms

The following definitions are applicable to this article:

1. "Detention facility" means any place used for the confinement, pursuant to an order of a court, of a person (a) charged with or convicted of an offense, or (b) charged with being or adjudicated a youthful offender, wayward minor or juvenile delinquent, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court.

2. "Custody" means restraint by a public servant pursuant to an authorized arrest or an order of a court.

3. "Contraband" means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation or order.

4. "Dangerous contraband" means contraband which is capable of such use as may endanger the safety or security of a detention facility or any person therein.

§ 205.05 Escape in the third degree

A person is guilty of escape in the third degree when he escapes from custody.

Escape in the third degree is a **class A misdemeanor.**

§ 205.10 Escape in the second degree

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

1. He escapes from a detention facility; **or**

2. Having been arrested for, charged with or convicted of a felony, he escapes from custody.

Escape in the second degree is a **class E felony.**

§ 205.15 Escape in the first degree

A person is guilty of escape in the first degree when, having been charged with or convicted of a felony, he escapes from a detention facility.

Escape in the first degree is a **class D felony.**

§ 205.20 Promoting prison contraband in the second degree

A person is guilty of promoting prison contraband in the second degree when:

1. He knowingly and unlawfully introduces any contraband into a detention facility; or

2. Being a person confined in a detention facility, he knowingly and unlawfully makes, obtains or possesses any contraband.

Promoting prison contraband in the second degree is a **class A misdemeanor.**

§ 205.25 Promoting prison contraband in the first degree

A person is guilty of promoting prison contraband in the first degree when:

1. He knowingly and unlawfully introduces any dangerous contraband into a detention facility; or

2. Being a person confined in a detention facility, he knowingly and unlawfully makes, obtains or possesses any dangerous contraband.

Promoting prison contraband in the first degree is a **class D felony.**

§ 205.30 Resisting arrest

A person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a peace officer from effecting an authorized arrest of himself or another person.

Resisting arrest is a **class A misdemeanor.**

§ 205.35 Bail jumping in the second degree

A person is guilty of bail jumping in the second degree when, having been released from custody, with or without bail, by court order or by other lawful authority, upon condition that he will subsequently appear personally in connection with a criminal

action or proceeding, he fails to appear personally on the required date or within thirty days thereafter.

Bail jumping in the second degree is a **class A misdemeanor.**

§ 205.40 Bail jumping in the first degree

A person is guilty of bail jumping in the first degree when, having been released from custody, with or without bail, by court order or by other lawful authority, upon condition that he will subsequently appear personally in connection with a charge against him of committing a felony, he fails to appear personally on the required date or within thirty days thereafter.

Bail jumping in the first degree is a **class E felony.**

§ 205.45 Bail jumping; defense

In any prosecution for bail jumping, it is an affirmative defense that the defendant's failure to appear was unavoidable and due to circumstances beyond his control.

§ 205.50 Hindering prosecution; definition of term

As used in sections 205.55, 205.60 and 205.65, a person "renders criminal assistance" when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person who he knows or believes has committed a crime or is being sought by law enforcement officials for the commission of a crime, or with intent to assist a person in profiting or benefiting from the commission of a crime, he:

1. Harbors or conceals such person; or

2. Warns such person of impending discovery or apprehension; or

3. Provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or

4. Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or

5. Suppresses, by any act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or

6. Aids such person to protect or expeditiously profit from an advantage derived from such crime.

§ 205.55 Hindering prosecution in the third degree

A person is guilty of hindering prosecution in the third degree when he renders criminal assistance to a person who has committed a felony.

Hindering prosecution in the third degree is a **class A misdemeanor.**

§ 205.60 Hindering prosecution in the second degree

A person is guilty of hindering prosecution in the second degree when he renders criminal assistance to a person who has committed a class B or class C felony.

Hindering prosecution in the second degree is a **class E felony.**

§ 205.65 Hindering prosecution in the first degree

A person is guilty of hindering prosecution in the first degree when he renders criminal assistance to a person who has committed murder or kidnapping in the first degree, knowing or believing that such person has engaged in the conduct constituting such murder or kidnapping in the first degree.

Hindering prosecution in the first degree is a **class D felony.**

ARTICLE 210—PERJURY AND RELATED OFFENSES

Section

210.00 Perjury and related offenses; definitions of terms.
210.05 Perjury in the third degree.
210.10 Perjury in the second degree.
210.15 Perjury in the first degree.
210.20 Perjury; pleading and proof where inconsistent statements involved.
210.25 Perjury; defense.
210.30 Perjury; no defense.
210.35 Making an apparently sworn false statement in the second degree.
210.40 Making an apparently sworn false statement in the first degree.
210.45 Making a punishable false written statement.
210.50 Perjury and related offenses; requirement of corroboration.

§ 210.00 Perjury and related offenses; definitions of terms

The following definitions are applicable to this article:

1. "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated.

2. "Swear" means to state under oath.

3. "Testimony" means an oral statement made under oath in a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer the oath or cause it to be administered.

4. "Oath required by law." An affidavit, deposition or other subscribed written instrument is one for which an "oath is required by law" when, absent an oath or swearing thereto, it does not or would not, according to statute or appropriate regulatory provisions, have legal efficacy in a court of law or before any public or governmental body, agency or public servant to whom it is or might be submitted.

5. "Swear falsely." A person "swears falsely" when he intentionally makes a false statement which he does not believe to be true (a) while giving testimony, or (b) under oath in a subscribed written instrument. A false swearing in a subscribed written instrument shall not be deemed complete until the instrument is delivered by its subscriber, or by someone acting in his behalf, to another person with intent that it be uttered or published as true.

6. "Attesting officer" means any notary public or other person authorized by law to administer oaths in connection with affidavits, depositions and other subscribed written instruments, and to certify that the subscriber of such an instrument has appeared before him and has sworn to the truth of the contents thereof.

7. "Jurat" means a clause wherein an attesting officer certifies, among other matters, that the subscriber has appeared before him and sworn to the truth of the contents thereof.

§ 210.05 Perjury in the third degree

A person is guilty of perjury in the third degree when he swears falsely.

Perjury in the third degree is a **class A misdemeanor.**

§ 210.10 Perjury in the second degree

A person is guilty of perjury in the second degree when he swears falsely and when his false statement is (a) made in a

subscribed written instrument for which an oath is required by law, and (b) made with intent to mislead a public servant in the performance of his official functions, and (c) material to the action, proceeding or matter involved.

Perjury in the second degree is a **class E felony.**

§ 210.15 Perjury in the first degree

A person is guilty of perjury in the first degree when he swears falsely and when his false statement (a) consists of testimony, and (b) is material to the action, proceeding or matter in which it is made.

Perjury in the first degree is a **class D felony.**

§ 210.20 Perjury; pleading and proof where inconsistent statements involved

Where a person has made two statements under oath which are inconsistent to the degree that one of them is necessarily false, where the circumstances are such that each statement, if false, is perjuriously so, and where each statement was made within the jurisdiction of this state and within the period of the statute of limitations for the crime charged, the inability of the people to establish specifically which of the two statements is the false one does not preclude a prosecution for perjury, and such prosecution may be conducted as follows:

1. The indictment or information may set forth the two statements and, without designating either, charge that one of them is false and perjuriously made.

2. The falsity of one or the other of the two statements may be established by proof or a showing of their irreconcilable inconsistency.

3. The highest degree of perjury of which the defendant may be convicted is determined by hypothetically assuming each statement to be false and perjurious. If under such circumstances perjury of the same degree would be established by the making of each statement, the defendant may be convicted of that degree at most. If perjury of different degrees would be established by the making of the two statements, the defendant may be convicted of the lesser degree at most.

§ 210.25 Perjury; defense

In any prosecution for perjury, it is an affirmative defense that the defendant retracted his false statement in the course of the

proceeding in which it was made before such false statement substantially affected the proceeding and before it became manifest that its falsity was or would be exposed.

§ 210.30 Perjury; no defense

It is no defense to a prosecution for perjury that:

1. The defendant was not competent to make the false statement alleged; or

2. The defendant mistakenly believed the false statement to be immaterial; or

3. The oath was administered or taken in an irregular manner or that the authority or jurisdiction of the attesting officer who administered the oath was defective, if such defect was excusable under any statute or rule of law.

§ 210.35 Making an apparently sworn false statement in the second degree

A person is guilty of making an apparently sworn false statement in the second degree when (a) he subscribes a written instrument knowing that it contains a statement which is in fact false and which he does not believe to be true, and (b) he intends or believes that such instrument will be uttered or delivered with a jurat affixed thereto, and (c) such instrument is uttered or delivered with a jurat affixed thereto.

Making an apparently sworn false statement in the second degree is a **class A misdemeanor.**

§ 210.40 Making an apparently sworn false statement in the first degree

A person is guilty of making an apparently sworn false statement in the first degree when he commits the crime of making an apparently sworn false statement in the second degree, and when (a) the written instrument involved is one for which an oath is required by law, and (b) the false statement contained therein is made with intent to mislead a public servant in the performance of his official functions, and (c) such false statement is material to the action, proceeding or matter involved.

Making an apparently sworn false statement in the first degree is a **class E felony.**

§ 210.45 Making a punishable false written statement

A person is guilty of making a punishable false written statement when he knowingly makes a false statement, which he does not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable.

Making a punishable false written statement is a **class A misdemeanor.**

§ 210.50 Perjury and related offenses; requirement of corroboration

In any prosecution for perjury, except a prosecution based upon inconsistent statements pursuant to section 210.20, or in any prosecution for making an apparently sworn false statement, or making a punishable false written statement, falsity of a statement may not be established by the uncorroborated testimony of a single witness.

ARTICLE 215—OTHER OFFENSES RELATING TO JUDICIAL AND OTHER PROCEEDINGS

Section
215.00 Bribing a witness.
215.05 Bribe receiving by a witness.
215.10 Tampering with a witness.
215.15 Bribing a juror.
215.20 Bribe receiving by a juror.
215.25 Tampering with a juror.
215.30 Misconduct by a juror.
215.35 Tampering with physical evidence; definitions of terms.
215.40 Tampering with physical evidence.
215.45 Compounding a crime.
215.50 Criminal contempt.
215.55 Criminal contempt; prosecution and punishment.
215.60 Criminal contempt of the legislature.
215.65 Criminal contempt of a temporary state commission.
215.70 Unlawful grand jury disclosure.
215.75 Unlawful disclosure of an indictment.

§ 215.00 Bribing a witness

A person is guilty of bribing a witness when he confers, or offers or agrees to confer, any benefit upon a witness or a person about to be called as a witness in any action or proceeding upon an

agreement or understanding that (a) the testimony of such witness will thereby be influenced, or (b) such witness will absent himself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.

Bribing a witness is a **class D felony.**

§ 215.05 Bribe receiving by a witness

A witness or a person about to be called as a witness in any action or proceeding is guilty of bribe receiving by a witness when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that (a) his testimony will thereby be influenced, or (b) he will absent himself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.

Bribe receiving by a witness is a **class D felony.**

§ 215.10 Tampering with a witness

A person is guilty of tampering with a witness when, knowing that a person is or is about to be called as a witness in an action or proceeding, (a) he wrongfully induces or attempts to induce such person to absent himself from, or otherwise to avoid or seek to avoid appearing or testifying at, such action or proceeding, or (b) he knowingly makes any false statement or practices any fraud or deceit with intent to affect the testimony of such person.

Tampering with a witness is a **class A misdemeanor.**

§ 215.15 Bribing a juror

A person is guilty of bribing a juror when he confers, or offers or agrees to confer, any benefit upon a juror upon an agreement or understanding that such juror's vote, opinion, judgment, decision or other action as a juror will thereby be influenced.

Bribing a juror is a **class D felony.**

§ 215.20 Bribe receiving by a juror

A juror is guilty of bribe receiving by a juror when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, decision or other action as a juror will thereby be influenced.

Bribe receiving by a juror is a **class D felony.**

§ 215.25 Tampering with a juror

A person is guilty of tampering with a juror when, with intent to influence the outcome of an action or proceeding, he communicates with a juror in such action or proceeding, except as authorized by law.

Tampering with a juror is a **class A misdemeanor.**

§ 215.30 Misconduct by a juror

A juror is guilty of misconduct by a juror when, in relation to an action or proceeding pending or about to be brought before him, he agrees to give a vote, opinion, judgment, decision or report for or against any party to such action or proceeding.

Misconduct by a juror is a **class A misdemeanor.**

§ 215.35 Tampering with physical evidence; definitions of terms

The following definitions are applicable to section 215.40:

1. "Physical evidence" means any article, object, document, record or other thing of physical substance which is or is about to be produced or used as evidence in an official proceeding.

2. "Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence may properly be received.

§ 215.40 Tampering with physical evidence

A person is guilty of tampering with physical evidence when:

1. With intent that it be used or introduced in an official proceeding or a prospective official proceeding, he (a) knowingly makes, devises or prepares false physical evidence, or (b) produces or offers such evidence at such a proceeding knowing it to be false; or

2. Believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent such production or use, he suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person.

Tampering with physical evidence is a **class E felony.**

§ 215.45 Compounding a crime

1. A person is guilty of compounding a crime when:

(a) He solicits, accepts or agrees to accept any benefit upon an agreement or understanding that he will refrain from initiating a prosecution for a crime; or

(b) He confers, or offers or agrees to confer, any benefit upon another person upon an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

2. In any prosecution under this section, it is an affirmative defense that the benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

Compounding a crime is a **class A misdemeanor.**

§ 215.50 Criminal contempt

A person is guilty of criminal contempt when he engages in any of the following conduct:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of a court, in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority; or

2. Breach of the peace, noise, or other disturbance, directly tending to interrupt a court's proceedings; or

3. Intentional disobedience or resistance to the lawful process or other mandate of a court except in cases involving or growing out of labor disputes as defined by subdivision two of section seven hundred fifty-three-a of the judiciary law; or

4. Contumacious and unlawful refusal to be sworn as a witness in any court proceeding or, after being sworn, to answer any legal and proper interrogatory; or

5. Knowingly publishing a false or grossly inaccurate report of a court's proceedings; or

6. Intentional failure to obey any mandate, process or notice, issued pursuant to articles sixteen, seventeen, eighteen, eighteen-a or eighteen-b of the judiciary law,[1] or to rules adopted pursuant to any such statute or to any special statute establishing commissioners of jurors and prescribing their duties or who refuses to be sworn as provided therein; or

7. On or along a public street or sidewalk within a radius of two hundred feet of any building established as a courthouse, he calls aloud, shouts, holds or displays placards or signs containing written or printed matter, concerning the conduct of a trial being held in such courthouse or the character of the court or jury engaged in such trial or calling for or demanding any specified action or determination by such court or jury in connection with such trial.

Criminal contempt is a **class A misdemeanor.**

[1] Judiciary Law, §§ 500 to 749-aa.

§ 215.55 Criminal contempt; prosecution and punishment

Adjudication for criminal contempt under subdivision A of section seven hundred fifty of the judiciary law shall not bar a prosecution for the crime of criminal contempt under section 215.50 based upon the same conduct but, upon conviction thereunder, the court, in sentencing the defendant shall take the previous punishment into consideration.

§ 215.60 Criminal contempt of the legislature

A person is guilty of criminal contempt of the legislature when, having been duly subpoenaed to attend as a witness before either house of the legislature or before any committee thereof, he:

1. Fails or refuses to attend without lawful excuse; or
2. Refuses to be sworn; or
3. Refuses to answer any material and proper question; or
4. Refuses, after reasonable notice, to produce books, papers, or documents in his possession or under his control which constitute material and proper evidence.

Criminal contempt of the legislature is a **class A misdemeanor.**

§ 215.65 Criminal contempt of a temporary state commission

A person is guilty of criminal contempt of a temporary state commission when, having been duly subpoenaed to attend as a witness at an investigation or hearing before a temporary state commission, he fails or refuses to attend without lawful excuse.

Criminal contempt of a temporary state commission is a **class B misdemeanor.**

§ 215.70 Unlawful grand jury disclosure

A person is guilty of unlawful grand jury disclosure when, being a grand juror, a public prosecutor, a grand jury stenographer, a grand jury interpreter, a peace officer guarding a witness in a grand jury proceeding, or a clerk, attendant, warden or other public servant having official duties in or about a grand jury room or proceeding, he intentionally discloses to another the nature or substance of any grand jury testimony, or any decision, result or other matter attending a grand jury proceeding which is required by law to be kept secret, except in the proper discharge of his official duties or upon written order of the court.

Unlawful grand jury disclosure is a **class B misdemeanor.**

§ 215.75 Unlawful disclosure of an indictment

A public servant is guilty of unlawful disclosure of an indictment when, except in the proper discharge of his official duties, he intentionally discloses the fact that an indictment has been found or filed before the accused person is in custody.

Unlawful disclosure of an indictment is a **class B misdemeanor.**

TITLE M—OFFENSES AGAINST PUBLIC HEALTH AND MORALS

ARTICLE 220—DANGEROUS DRUG OFFENSES

Section

220.00 Dangerous drug offenses; definitions of terms.
220.05 Criminal possession of a dangerous drug in the fourth degree.
220.10 Criminal possession of a dangerous drug in the third degree.
220.15 Criminal possession of a dangerous drug in the second degree.
220.20 Criminal possession of a dangerous drug in the first degree.
220.25 Criminal possession of a dangerous drug; presumption.
220.30 Criminally selling a dangerous drug in the third degree.
220.35 Criminally selling a dangerous drug in the second degree.
220.40 Criminally selling a dangerous drug in the first degree.
220.45 Criminally possessing a hypodermic instrument.

§ 220.00 Dangerous drug offenses; definitions of terms

The following definitions are applicable to this article:

1. "Narcotic drug" means any drug, article or substance declared to be "narcotic drugs" in section three thousand three hundred one of the public health law.

2. "Barbiturate" means a "barbiturate drug," as referred to in section three thousand three hundred seventy of the public health law, and includes barbituric acid, also known as malonyl urea, and any derivatives or compounds of any preparations or mixtures thereof.

3. "Amphetamine" means "amphetamine," as referred to in section three thousand three hundred seventy-one of the public health law, and includes any of its derivatives.

4. "Dangerous drug" means any narcotic drug, barbiturate or amphetamine.

5. "Sell" means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.

6. "Unlawfully" means in violation of article thirty-three or article thirty-three-A of the public health law.[2]

7. "Ounce" means an avoirdupois ounce as applied to solids and semi-solids, and a fluid ounce as applied to liquids.

[2] Public Health Law, §§ 3300 et seq., 3370 et seq.

§ 220.05 Criminal possession of a dangerous drug in the fourth degree

A person is guilty of criminal possession of a dangerous drug in the fourth degree when he knowingly and unlawfully possesses a dangerous drug.

Criminal possession of a dangerous drug in the fourth degree is a **class A misdemeanor.**

§ 220.10 Criminal possession of a dangerous drug in the third degree

A person is guilty of criminal possession of a dangerous drug in the third degree when he knowingly and unlawfully possesses a dangerous drug with intent to sell the same.

Criminal possession of a dangerous drug in the third degree is a **class E felony.**

§ 220.15 Criminal possession of a dangerous drug in the second degree

A person is guilty of criminal possession of a dangerous drug in the second degree when he knowingly and unlawfully possesses a narcotic drug:

1. With intent to sell the same; or

2. Consisting of (a) twenty-five or more cigarettes containing cannabis; or (b) one or more preparations, compounds, mixtures or substances of an aggregate weight of (i) one-eighth ounce or more, containing any of the respective alkaloids or salts of heroin, morphine or cocaine, or (ii) one-quarter ounce or more, containing any cannabis, or (iii) one-half ounce or more, containing raw or prepared opium, or (iv) one-half ounce or more, containing one or more than one of any of the other narcotic drugs.

Criminal possession of a dangerous drug in the second degree is a **class D felony.**

§ 220.20 Criminal possession of a dangerous drug in the first degree

A person is guilty of criminal possession of a dangerous drug in the first degree when he knowingly and unlawfully possesses a narcotic drug consisting of (a) one hundred or more cigarettes containing cannabis; or (b) one or more preparations, compounds, mixtures or substances of an aggregate weight of (i) one or more ounces, containing any of the respective alkaloids or salts of heroin, morphine or cocaine, or (ii) one or more ounces, containing any cannabis, or (iii) two or more ounces, containing raw or prepared opium, or (iv) two or more ounces, containing one or more than one of any of the other narcotic drugs.

Criminal possession of a dangerous drug in the first degree is a **class C felony.**

§ 220.25 Criminal possession of a dangerous drug; presumption

The presence of a dangerous drug in an automobile, other than a public omnibus, is presumptive evidence of knowing possession thereof by each and every person in the automobile at the time such drug was found; except that such presumption does not apply (a) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of his trade, or (b) to any person in the automobile if one of them, having obtained the drug and not being under duress, is authorized to possess it and such drug is in the same container as when he received possession thereof, or (c) when the drug is concealed upon the person of one of the occupants.

§ 220.30 Criminally selling a dangerous drug in the third degree

A person is guilty of criminally selling a dangerous drug in the third degree when he knowingly and unlawfully sells a dangerous drug.

Criminally selling a dangerous drug in the third degree is a **class D felony.**

§ 220.35 Criminally selling a dangerous drug in the second degree

A person is guilty of criminally selling a dangerous drug in the second degree when he knowingly and unlawfully sells a narcotic drug.

Criminally selling a dangerous drug in the second degree is a **class C felony.**

§ 220.40 Criminally selling a dangerous drug in the first degree

A person is guilty of criminally selling a dangerous drug in the first degree when he knowingly and unlawfully sells a narcotic drug to a person less than twenty-one years old.

Criminally selling a dangerous drug in the first degree is a **class B felony.**

§ 220.45 Criminally possessing a hypodermic instrument

A person is guilty of criminally possessing a hypodermic instrument when he knowingly and unlawfully possesses or sells a hypodermic syringe or hypodermic needle.

Criminally possessing a hypodermic instrument is a **class A misdemeanor.**

ARTICLE 225—GAMBLING OFFENSES

Section

225.00 Gambling offenses; definitions of terms.
225.05 Promoting gambling in the second degree.
225.10 Promoting gambling in the first degree.
225.15 Possession of gambling records in the second degree.
225.20 Possession of gambling records in the first degree.
225.25 Possession of gambling records; defense.

Section
225.30 Possession of a gambling device.
225.35 Gambling offenses; presumptions.
225.40 Lottery offenses; no defense.

§ 225.00 Gambling offenses; definitions of terms

The following definitions are applicable to this article:

1. "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

2. "Gambling." A person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.

3. "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in "bookmaking", as defined in this section is not a "player."

4. "Advance gambling activity." A person "advances gambling activity" when, acting other than as a player, he engages in conduct which materially aids any form of gambling activity. Such conduct includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. One advances gambling activity when, having substantial proprietary or other authoritative control over premises

being used with his knowledge for purposes of gambling activity, he permits such to occur or continue or makes no effort to prevent its occurrence or continuation.

5. "Profit from gambling activity." A person "profits from gambling activity" when, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

6. "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

7. "Gambling device" means any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether such activity consists of gambling between persons or gambling by a person involving the playing of a machine. Notwithstanding the foregoing, lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices.

8. "Slot machine" means a gambling device which, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of some physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value. A device so constructed, or readily adaptable or convertible to such use, is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because, apart from its use or adaptability as such, it may also sell or deliver something of value on a basis other than chance.

9. "Bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

10. "Lottery" means an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the

winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value.

11. "Policy" or "the numbers game" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

12. "Unlawful" means not specifically authorized by law.

§ 225.05 Promoting gambling in the second degree

A person is guilty of promoting gambling in the second degree when he knowingly advances or profits from unlawful gambling activity.

Promoting gambling in the second degree is a **class A misdemeanor.**

§ 225.10 Promoting gambling in the first degree

A person is guilty of promoting gambling in the first degree when he knowingly advances or profits from unlawful gambling activity by:

1. Engaging in bookmaking to the extent that he receives or accepts in any one day more than five bets totaling more than five thousand dollars; or

2. Receiving, in connection with a lottery or policy scheme or enterprise, (a) money or written records from a person other than a player whose chances or plays are represented by such money or records, or (b) more than five hundred dollars in any one day of money played in such scheme or enterprise.

Promoting gambling in the first degree is a **class E felony.**

§ 225.15 Possession of gambling records in the second degree

A person is guilty of possession of gambling records in the second degree when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:

1. Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

2. Of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise; except that in any prosecution under this subdivision, it is a defense that the writing, paper, instrument or article possessed by the defendant constituted, reflected or represented plays, bets or chances of the defendant himself in a number not exceeding ten.

Possession of gambling records in the second degree is a **class A misdemeanor.**

§ 225.20 Possession of gambling records in the first degree

A person is guilty of possession of gambling records in the first degree when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:

1. Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than five bets totaling more than five thousand dollars; or

2. Of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise, and constituting, reflecting or representing more than five hundred plays or chances therein.

Possession of gambling records in the first degree is a **class E felony.**

§ 225.25 Possession of gambling records; defense

In any prosecution for possession of gambling records, it is a defense that the writing, paper, instrument or article possessed by the defendant was neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise, or in the operation, promotion or playing of a lottery or policy scheme or enterprise.

§ 225.30 Possession of a gambling device

A person is guilty of possession of a gambling device when, with knowledge of the character thereof, he manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:

1. A slot machine; or

2. Any other gambling device, believing that the same is to be used in the advancement of unlawful gambling activity.

Possession of a gambling device is a **class A misdemeanor.**

§ 225.35 Gambling offenses; presumptions

1. Proof of possession of any gambling device or of any gambling record specified in sections 225.15 and 225.20, is presumptive evidence of possession thereof with knowledge of its character or contents.

2. In any prosecution under this article in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine or other periodically printed publication of general circulation shall be admissible in evidence and shall constitute presumptive proof of the occurrence of such event.

§ 225.40 Lottery offenses; no defense

Any offense defined in this article which consists of the commission of acts relating to a lottery is no less criminal because the lottery itself is drawn or conducted without the state and is not violative of the laws of the jurisdiction in which it was so drawn or conducted.

ARTICLE 230—PROSTITUTION OFFENSES

Section
230.00 Prostitution.
230.05 Patronizing a prostitute.
230.10 Prostitution and patronizing a prostitute; no defense.
230.15 Promoting prostitution; definitions of terms.
230.20 Promoting prostitution in the third degree.
230.25 Promoting prostitution in the second degree.
230.30 Promoting prostitution in the first degree.
230.35 Promoting prostitution; corroboration.
230.40 Permitting prostitution.

§ 230.00 Prostitution

A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

Prostitution is a violation.

§ 230.05 Patronizing a prostitute

A person is guilty of patronizing a prostitute when:

1. Pursuant to a prior understanding, he pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him; or

2. He pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him; or

3. He solicits or requests another person to engage in sexual conduct with him in return for a fee.

Patronizing a prostitute is a violation.

§ 230.10 Prostitution and patronizing a prostitute; no defense

In any prosecution for prostitution or patronizing a prostitute, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated or solicited is immaterial, and it is no defense that:

1. Such persons were of the same sex; or

2. The person who received, agreed to receive or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was a female.

§ 230.15 Promoting prostitution; definitions of terms

The following definitions are applicable to this article:

1. "Advance prostitution." A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.

2. "Profit from prostitution." A person "profits from prostitution" when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.

§ 230.20 Promoting prostitution in the third degree

A person is guilty of promoting prostitution in the third degree when he knowingly advances or profits from prostitution.

Promoting prostitution in the third degree is a **class A misdemeanor.**

§ 230.25 Promoting prostitution in the second degree

A person is guilty of promoting prostitution in the second degree when he knowingly:

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes; or

2. Advances or profits from prostitution of a person less than nineteen years old.

Promoting prostitution in the second degree is a **class D felony.**

§ 230.30 Promoting prostitution in the first degree

A person is guilty of promoting prostitution in the first degree when he knowingly:

1. Advances prostitution by compelling a person by force or intimidation to engage in prostitution, or profits from such coercive conduct by another; or

2. Advances or profits from prostitution of a person less than sixteen years old.

Promoting prostitution in the first degree is a **class C felony.**

§ 230.35 Promoting prostitution; corroboration

A person shall not be convicted of promoting prostitution or of an attempt to commit the same solely on the uncorroborated testimony of a person whose prostitution activity he is alleged to have advanced or attempted to advance, or from whose prostitution activity he is alleged to have profited or attempted to profit.

§ 230.40 Permitting prostitution

A person is guilty of permitting prostitution when, having possession or control of premises which he knows are being used for prostitution purposes, he fails to make reasonable effort to halt or abate such use.

Permitting prostitution is a **class B misdemeanor.**

ARTICLE 235—OBSCENITY AND RELATED OFFENSES

Section

235.00 Obscenity; definitions of terms.
235.05 Obscenity.
235.10 Obscenity; presumptions.
235.15 Obscenity; defense.
235.20 Disseminating indecent material to minors.
235.25 Disseminating indecent comic books.
235.30 Failing to identify a comic book publication.

§ 235.00 Obscenity; definitions of terms

The following definitions are applicable to sections 235.05, 235.-10 and 235.15:

1. "Obscene." Any material or performance is "obscene" if (a) considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism, and (b) 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.

2. "Material" means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.

3. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

4. "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

§ 235.05 Obscenity

A person is guilty of obscenity when, knowing its content and character, he:

1. Promotes, or possesses with intent to promote, any obscene material; or

2. Produces, presents or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity.

Obscenity is a **class A misdemeanor.**

§ 235.10 Obscenity; presumptions

1. A person who promotes obscene material, or possesses the same with intent to promote it, in the course of his business is presumed to do so with knowledge of its content and character.

2. A person who possesses six or more identical or similar obscene articles is presumed to possess them with intent to promote the same.

§ 235.15 Obscenity; defense

In any prosecution for obscenity, it is an affirmative defense that the persons to whom allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing or viewing the same.

§ 235.20 Disseminating indecent material to minors

A person is guilty of disseminating indecent material to minors when he knowingly sells, lends, gives away, shows, advertises for sale or distributes commercially to any person under the age of eighteen years or has in his possession with intent to give, lend, show, sell, distribute commercially, or otherwise offer for sale or commercial distribution to any individual under the age of eighteen years any pornographic motion picture; or any still picture or photograph, or any book, "pocket book", pamphlet or magazine the cover or content of which exploits, is devoted to, or is principally made up of descriptions of illicit sex or sexual immorality or which is obscene, lewd, lascivious, filthy, indecent or disgusting, or which contains pictures of nude or partially denuded figures, posed or presented in a manner to provoke or arouse lust or passion or to exploit sex, lust or perversion for commercial gain or any article or instrument of indecent or immoral use. For the purposes of this section, "knowingly" shall mean having knowledge of the character and content of the publication or failure to exercise reasonable inspection which would disclose the character and content of same.

Disseminating indecent material to minors is a **class A misdemeanor.**

§ 235.25 Disseminating indecent comic books

A person is guilty of disseminating indecent comic books when he publishes or distributes for resale any book, pamphlet or

magazine consisting of narrative material in pictorial form, colored or uncolored, and commonly known as comic books, the title or titles of which contain the words crime, sex, horror or terror or the content of which is devoted to or principally made up of pictures or accounts of methods of crime, of illicit sex, horror, terror, physical torture, brutality or physical violence.

Disseminating indecent comic books is a **class A misdemeanor.**

§ 235.30 Failing to identify a comic book publication

1. Any person who publishes or prints any book, pamphlet or magazine consisting of narrative material in pictorial form, colored or uncolored, and commonly known as comic books, shall have the name and address of such publisher or printer imprinted on such book, pamphlet or magazine.

2. A person is guilty of failing to identify a comic book publication when he violates any duty prescribed in subdivision one of this section.

Failing to identify a comic book publication is a **class B misdemeanor.**

TITLE N—OFFENSES AGAINST PUBLIC ORDER, PUBLIC SENSIBILITIES AND THE RIGHT TO PRIVACY

ARTICLE 240—OFFENSES AGAINST PUBLIC ORDER

Section

240.00 Offenses against public order; definitions of terms.
240.05 Riot.
240.10 Unlawful assembly.
240.15 Criminal anarchy.
240.20 Disorderly conduct.
240.25 Harassment.
240.30 Aggravated harassment.
240.35 Loitering.
240.40 Public intoxication.
240.45 Criminal nuisance.
240.50 Falsely reporting an incident.

§ 240.00 Offenses against public order; definitions of terms

The following definitions are applicable to this article:

1. "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not

limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

2. "Transportation facility" means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations and all appurtenances thereto.

§ 240.05 Riot

A person is guilty of riot when, with four or more other persons, he wrongfully engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm.

Riot is a **class E felony.**

§ 240.10 Unlawful assembly

A person is guilty of unlawful assembly when he assembles with four or more other persons for the purpose of engaging in conduct constituting the crime of riot, or when, being present at an assembly which either has or develops such a purpose, he remains there with intent to advance that purpose.

Unlawful assembly is a **class A misdemeanor.**

§ 240.15 Criminal anarchy

A person is guilty of criminal anarchy when (a) he advocates the overthrow of the existing form of government of this state by violence, or (b) with knowledge of its contents, he publishes, sells or distributes any document which advocates such violent overthrow, or (c) with knowledge of its purpose, he becomes a member of any organization which advocates such violent overthrow.

Criminal anarchy is a **class E felony.**

§ 240.20 Disorderly conduct

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or

2. He makes unreasonable noise; or

3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or

4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or

5. He obstructs vehicular or pedestrian traffic; or

6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or

7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

Disorderly conduct is a **violation.**

§ 240.25 Harassment

A person is guilty of harassment when, with intent to harass, annoy or alarm another person:

1. He strikes, shoves, kicks or otherwise touches a person or subjects him to physical contact; or

2. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or

3. He follows a person in or about a public place or places; or

4. As a student in school, college or other institution of learning, he engages in conduct commonly called hazing; or

5. He engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

Harassment is a **violation.**

§ 240.30 Aggravated harassment

A person is guilty of aggravated harassment when, with intent to harass, annoy or alarm another person, he:

1. Communicates with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm; or

2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication.

Aggravated harassment is a **class A misdemeanor.**

§ 240.35 Loitering

A person is guilty of loitering when he:

1. Loiters, remains or wanders about in a public place for the purpose of begging; or

2. Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia; or

3. Loiters or remains in a public place for the purpose of engaging, or soliciting another person to engage, in deviate sexual intercourse or other sexual behavior of a deviate nature; or

4. Being masked or in any manner disguised by unusual or unnatural attire or facial alteration, loiters, remains or congregates in a public place with other persons so masked or disguised, or knowingly permits or aids persons so masked or disguised to congregate in a public place; except that such conduct is not unlawful when it occurs in connection with a masquerade party or like entertainment if, when such entertainment is held in a city which has promulgated regulations in connection with such affairs, permission is first obtained from the police or other appropriate authorities; or

5. Loiters or remains in or about a school building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or any other specific, legitimate reason for being there, and not having written permission from the principal; or

6. Loiters, remains or wanders in or about a place without apparent reason and under circumstances which justify suspicion that he may be engaged or about to engage in crime, and, upon inquiry by a peace officer, refuses to identify himself or fails to give a reasonably credible account of his conduct and purposes; or

7. Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services, or for the purpose of entertaining persons by singing, dancing or playing any musical instrument; or

8. Loiters or remains in any transportation facility, or is found sleeping therein, and is unable to give a satisfactory explanation of his presence; or

9. Loiters or remains in any place with one or more persons for the purpose of unlawfully using or possessing a dangerous drug, as defined in section 220.00.

Loitering is a **violation.**

§ 240.40 Public intoxication

A person is guilty of public intoxication when he appears in a public place under the influence of alcohol, narcotics or other drug to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

Public intoxication is a **violation.**

§ 240.45 Criminal nuisance

A person is guilty of criminal nuisance when:

1. By conduct either unlawful in itself or unreasonable under all the circumstances, he knowingly or recklessly creates or maintains a condition which endangers the safety or health of a considerable number of persons; or

2. He knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

Criminal nuisance is a **class B misdemeanor.**

§ 240.50 Falsely reporting an incident

A person is guilty of falsely reporting an incident when, knowing the information reported, conveyed or circulated to be false or baseless, he:

1. Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe or emergency under circumstances in which it is not unlikely that public alarm or inconvenience will result; or

2. Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion or other catastrophe or emergency which did not in fact occur or does not in fact exist; or

3. Gratuitously reports to a law enforcement officer or agency (a) the alleged occurrence of an offense or incident which did not in fact occur; or (b) an allegedly impending occurrence of an

offense or incident which in fact is not about to occur; or (c) false information relating to an actual offense or incident or to the alleged implication of some person therein.

Falsely reporting an incident is a **class B misdemeanor.**

ARTICLE 245—OFFENSES AGAINST PUBLIC SENSIBILITIES

Section
245.00 Public lewdness.
245.05 Offensive exhibition.

Historical Note

This article as enacted by L.1965, c. 1030, also contained sections 245.10, 245.15 and 245.20, relating to cruelty to animals. Such sections were repealed by L.1965, c. 1047, which transferred the subject matter to Agriculture & Markets Law, § 350 et seq.

§ 245.00 Public lewdness

A person is guilty of public lewdness when, in a public place, he intentionally exposes the private or intimate parts of his body in a lewd manner or commits any other lewd act.

Public lewdness is a **class B misdemeanor.**

§ 245.05 Offensive exhibition

A person is guilty of offensive exhibition when he knowingly produces, operates, manages or furnishes premises for, or in any way promotes or participates in, an exhibition in the nature of public entertainment or amusement in which:

1. A person competes continuously without respite for a period of more than eight consecutive hours in a dance contest, bicycle race or other contest involving physical endurance; or

2. A person is held up to ridicule or contempt by voluntarily submitting to indignities such as the throwing of balls or other articles at his head or body; or

3. A firearm is discharged or a knife, arrow or other sharp or dangerous instrument is thrown or propelled at or toward a person; or

4. A person is projected or thrown for a considerable distance by a cannon or comparable device.

Offensive exhibition is a **violation.**

ARTICLE 250—OFFENSES AGAINST THE RIGHT TO PRIVACY

Section
250.00 Eavesdropping; definitions of terms.
250.05 Eavesdropping.
250.10 Possession of eavesdropping devices.
250.15 Failure to report wiretapping.
250.20 Divulging an eavesdropping order.
250.25 Tampering with private communications.
250.30 Unlawfully obtaining communications information.
250.35 Failing to report criminal communications.

§ 250.00 Eavesdropping; definitions of terms

The following definitions are applicable to this article:

1. "Wiretapping" means the intentional overhearing or recording of a telephonic or telegraphic communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any instrument, device or equipment. The normal operation of a telephone or telegraph corporation and the normal use of the services and facilities furnished by such corporation pursuant to its tariffs shall not be deemed "wiretapping."

2. "Mechanical overhearing of a conversation" means the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment.

3. "Unlawfully" means not specifically authorized pursuant to section eight hundred thirteen-a or section eight hundred thirteen-b of the code of criminal procedure.

§ 250.05 Eavesdropping

A person is guilty of eavesdropping when he unlawfully engages in wiretapping or mechanical overhearing of a conversation.

Eavesdropping is a **class E felony.**

§ 250.10 Possession of eavesdropping devices

A person is guilty of possession of eavesdropping devices when, under circumstances evincing an intent to use or to permit the

same to be used in violation of section 250.05, he possesses any instrument, device or equipment designed for, adapted to or commonly used in wiretapping or mechanical overhearing of a conversation.

Possession of eavesdropping devices is a **class A misdemeanor.**

§ 250.15 Failure to report wiretapping

A telephone or telegraph corporation is guilty of failure to report wiretapping when, having knowledge of the occurrence of unlawful wiretapping, it does not report such matter to an appropriate law enforcement officer or agency.

Failure to report wiretapping is a **class B misdemeanor.**

§ 250.20 Divulging an eavesdropping order

A person is guilty of divulging an eavesdropping order when, possessing information concerning the existence or content of a court order issued pursuant to section eight hundred thirteen-a of the code of criminal procedure, or concerning any circumstance attending an application for such an order, he discloses such information to another person; except that such disclosure is not criminal or unlawful when made in a legal proceeding, or to a law enforcement officer or agency connected with the application for such order, or to a legislative committee or temporary state commission, or to the telephone or telegraph corporation whose facilities are involved.

Divulging an eavesdropping order is a **class A misdemeanor.**

§ 250.25 Tampering with private communications

A person is guilty of tampering with private communications when:

1. Knowing that he does not have the consent of the sender or receiver, he opens or reads a sealed letter or other sealed private communication; or

2. Knowing that a sealed letter or other sealed private communication has been opened or read in violation of subdivision one of this section, he divulges without the consent of the sender or receiver, the contents of such letter or communication, in whole or in part, or a resume of any portion of the contents thereof; or

3. Knowing that he does not have the consent of the sender or receiver, he obtains or attempts to obtain from an employee,

officer or representative of a telephone or telegraph corporation, by connivance, deception, intimidation or in any other manner, information with respect to the contents or nature thereof of a telephonic or telegraphic communication; except that the provisions of this subdivision do not apply to a law enforcement officer who obtains information from a telephone or telegraph corporation pursuant to section 250.35; or

4. Knowing that he does not have the consent of the sender or receiver, and being an employee, officer or representative of a telephone or telegraph corporation, he knowingly divulges to another person the contents or nature thereof of a telephonic or telegraphic communication; except that the provisions of this subdivision do not apply to such person when he acts pursuant to section 250.35.

Tampering with private communications is a **class B misdemeanor.**

§ 250.30 Unlawfully obtaining communications information

A person is guilty of unlawfully obtaining communications information when, knowing that he does not have the authorization of a telephone or telegraph corporation, he obtains or attempts to obtain, by deception, stealth or in any other manner, from such corporation or from any employee, officer or representative thereof:

1. Information concerning identification or location of any wires, cables, lines, terminals or other apparatus used in furnishing telephone or telegraph service; or

2. Information concerning a record of any communication passing over telephone or telegraph lines of any such corporation.

Unlawfully obtaining communications information is a **class B misdemeanor.**

§ 250.35 Failing to report criminal communications

1. It shall be the duty of a telephone or telegraph corporation and of any employee, officer or representative thereof having knowledge that the facilities of such corporation are being used to conduct any criminal business, traffic or transaction, to furnish or attempt to furnish to an appropriate law enforcement officer or agency all pertinent information within his possession relating to such matter, and to cooperate fully with any law enforcement officer or agency investigating such matter.

2. A person is guilty of failing to report criminal communications when he knowingly violates any duty prescribed in subdivision one of this section.

Failing to report criminal communications is a **class B misdemeanor.**

TITLE O—OFFENSES AGAINST MARRIAGE, THE FAMILY, AND THE WELFARE OF CHILDREN AND INCOMPETENTS

ARTICLE 255—OFFENSES AFFECTING THE MARITAL RELATIONSHIP

Section

255.00 Unlawfully solemnizing a marriage.
255.05 Unlawfully issuing a dissolution decree.
255.10 Unlawfully procuring a marriage license.
255.15 Bigamy.
255.17 Adultery.
255.20 Unlawfully procuring a marriage license, bigamy, adultery; defense.
255.25 Incest.
255.30 Incest; corroboration.

§ 255.00 Unlawfully solemnizing a marriage

A person is guilty of unlawfully solemnizing a marriage when:

1. Knowing that he is not authorized by the laws of this state to do so, he performs a marriage ceremony or presumes to solemnize a marriage; or

2. Being authorized by the laws of this state to perform marriage ceremonies and to solemnize marriages, he performs a marriage ceremony or solemnizes a marriage knowing that a legal impediment to such marriage exists.

Unlawfully solemnizing a marriage is a **class A misdemeanor.**

§ 255.05 Unlawfully issuing a dissolution decree

A person is guilty of unlawfully issuing a dissolution decree when, not being a judicial officer authorized to issue decrees of divorce or annulment, he issues a written instrument reciting or certifying that he or some other purportedly but not actually au-

thorized person has issued a valid decree of civil divorce, annulment or other dissolution of a marriage.

Unlawfully issuing a dissolution decree is a **class A misdemeanor.**

§ 255.10 Unlawfully procuring a marriage license

A person is guilty of unlawfully procuring a marriage license when he procures a license to marry another person at a time when he has a living spouse, or the other person has a living spouse.

Unlawfully procuring a marriage license is a **class A misdemeanor.**

§ 255.15 Bigamy

A person is guilty of bigamy when he contracts or purports to contract a marriage with another person at a time when he has a living spouse, or the other person has a living spouse.

Bigamy is a **class E felony.**

§ 255.17 Adultery

A person is guilty of adultery when he engages in sexual intercourse with another person at a time when he has a living spouse, or the other person has a living spouse.

Adultery is a **class B misdemeanor.** Added L.1965, c. 1037, § 1.

§ 255.20 Unlawfully procuring a marriage license, bigamy, adultery; defense

In any prosecution for unlawfully procuring a marriage license, bigamy, or adultery, it is an affirmative defense that the defendant acted under a reasonable belief that both he and the other person to the marriage or prospective marriage or to the sexual intercourse, as the case may be, were unmarried. As amended L.1965, c. 1037, § 2.

Historical Note

L.1965, c. 1037, § 2, included "adultery" and inserted "or to the sexual intercourse, as the case may be".

§ 255.25 Incest

A person is guilty of incest when he marries or engages in sexual intercourse with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.

Incest is a **class E felony.**

§ 255.30 Incest; corroboration

A person shall not be convicted of incest or of an attempt to commit incest upon the uncorroborated testimony of the person with whom the offense is alleged to have been committed.

ARTICLE 260—OFFENSES RELATING TO CHILDREN AND INCOMPETENTS

Section

260.00 Abandonment of a child.
260.05 Non-support of a child.
260.10 Endangering the welfare of a child.
260.15 Endangering the welfare of a child; defense.
260.20 Unlawfully dealing with a child.
260.25 Endangering the welfare of an incompetent person.

§ 260.00 Abandonment of a child

A person is guilty of abandonment of a child when, being a parent, guardian or other person legally charged with the care or custody of a child less than fourteen years old, he deserts such child in any place with intent to wholly abandon it.

Abandonment of a child is a **class E felony.**

§ 260.05 Non-support of a child

A person is guilty of non-support of a child when, being a parent, guardian or other person legally charged with the care or custody of a child less than sixteen years old, he fails or refuses without lawful excuse to provide support for such child when he is able to do so.

Non-support of a child is a **class A misdemeanor.**

§ 260.10 Endangering the welfare of a child

A person is guilty of endangering the welfare of a child when:

1. He knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than sixteen years old; or

2. Being a parent, guardian or other person legally charged with the care or custody of a male child less than sixteen years old or of a female child less than eighteen years old, he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming a "neglected child," a "juvenile delinquent" or a "person in need of supervision," as those terms are defined in articles three and seven of the family court act.

Endangering the welfare of a child is a **class A misdemeanor.**

§ 260.15 Endangering the welfare of a child; defense

In any prosecution for endangering the welfare of a child, pursuant to section 260.10, based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the defendant (a) is a parent, guardian or other person legally charged with the care or custody of such child; and (b) is a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principal treatment for illness; and (c) treated or caused such ill child to be treated in accordance with such tenets; provided that the defendant may not avail himself of this defense when he has violated the laws, rules or regulations relating to communicable or reportable diseases and to sanitary matters.

§ 260.20 Unlawfully dealing with a child

A person is guilty of unlawfully dealing with a child when:

1. Being an owner, lessee, manager or employee of a public dance hall, public pool or billiard room, public bowling alley, theatre, motion picture theatre, skating rink, or of a place where alcoholic beverages are sold or given away, he permits a child less than sixteen years old to enter or remain in such place unless:

(a) The child is accompanied by his parent, guardian or an adult authorized by a parent or guardian; or

(b) The entertainment or activity is being conducted for the benefit or under the auspices of a non-profit school, church or other educational or religious institution; or

(c) Otherwise permitted by law to do so; or

2. He knowingly permits a child less than eighteen years old to enter or remain in a place where illicit sexual activity or illegal narcotics activity is maintained or conducted; or

3. He marks the body of a child less than eighteen years old with indelible ink or pigments by means of tattooing; or

4. He gives or sells or causes to be given or sold any alcoholic beverage, as defined by section three of the alcoholic beverage control law, to a child less than eighteen years old; except that this subdivision does not apply to the parent or guardian of such a child; or

5. He sells or causes to be sold tobacco in any form to a child less than eighteen years old.

It is no defense to a prosecution pursuant to subdivision four or five of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child is a **class B misdemeanor.**

§ 260.25 Endangering the welfare of an incompetent person

A person is guilty of endangering the welfare of an incompetent person when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself because of mental disease or defect.

Endangering the welfare of an incompetent person is a **class A misdemeanor.**

TITLE P—OFFENSES AGAINST PUBLIC SAFETY

ARTICLE 265—FIREARMS AND OTHER DANGEROUS WEAPONS

Section

265.00 Definitions.
265.05 Possession of weapons and dangerous instruments and appliances.
265.10 Manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances.
265.15 Presumptions of possession, unlawful intent and defacement.
265.20 Exemptions.
265.25 Certain wounds to be reported.
265.30 Certain convictions to be reported.
265.35 Prohibited use of weapons.

§ 265.00 Definitions

As used in this article and in article four hundred, the following terms shall mean and include:

1. "Machine-gun" means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.

2. "Firearm silencer" means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearms to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearms.

3. "Firearm" means any pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed upon the person.

4. "Switchblade knife" means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

5. "Gravity knife" means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.

6. "Dispose of" means to dispose of, give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.

7. "Deface" means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

8. "Gunsmith" means any person, firm, partnership, corporation or company who engages in the business of repairing, altering [1] assembling, cleaning, polishing, engraving or trueing, or who performs any mechanical operation on, any pistol or revolver. Gunsmith shall not include a wholesale dealer.

9. "Dealer in firearms" means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any pistol or revolver. Dealer in firearms shall not include a wholesale dealer.

[1] So in original. A comma probably should follow "altering".

10. "Licensing officer" means in the city of New York the police commissioner of that city; in the county of Nassau the commissioner of police of that county; and elsewhere in the state a judge or justice of a court of record having his office in the county of issuance.

11. "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

12. "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

§ 265.05 Possession of weapons and dangerous instruments and appliances

1. Any person who has in his possession any bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use is guilty of a **class D felony.**

2. Any person who has in his possession any firearm which is loaded with ammunition, or who has in his possession any firearm and, at the same time, has in his possession a quantity of ammunition which may be used to discharge such firearm is guilty of a **class D felony.** Such possession shall not, except as provided in subdivision three of this section, constitute a felony if such possession takes place in such person's home or place of business.

3. Any person who has in his possession any firearm, gravity knife, switchblade knife, billy, blackjack, bludgeon, metal knuckles, sandbag, sandclub or slungshot is guilty of a **class A misdemeanor,** and he is guilty of a **class D felony** if he has previously been convicted of any crime.

4. Any person under the age of sixteen years who has in his possession any of the weapons, instruments, appliances or substances specified in the first three subdivisions of this section, or any air-gun, spring-gun or other instrument or weapon in which the propelling force is a spring or air, or any gun, or any instrument or weapon in or upon which any loaded or blank cartridges may be used, or any loaded or blank cartridges or ammunition

therefor, or any dangerous knife, shall be adjudged a juvenile delinquent.

5. Any person not a citizen of the United States who has in his possession any dangerous or deadly weapon other than those prohibited to him in the first two subdivisions of this section is guilty of a **class A misdemeanor,** and he is guilty of a **class D felony** if he has previously been convicted of any crime.

6. Any person who has in his possession a rifle or shotgun and who has been convicted anywhere of a felony or any one of the misdemeanors or offenses mentioned in section five hundred fifty-two of the code of criminal procedure is guilty of a **class A misdemeanor.**

7. Any person who has in his possession any explosive substance with intent to use the same unlawfully against the person or property of another is guilty of a **class D felony.**

8. Any person who knowingly has in his possession a machine-gun or firearm which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun or firearm is guilty of a **class D felony.**

9. Any person who has in his possession any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another is guilty of a **class A misdemeanor,** and he is guilty of a **class D felony** if he has previously been convicted of any crime.

10. Whenever the director or physician in charge of any hospital or institution for mental illness, public or private, shall certify to the superintendent of state police or to any organized police department of a county, city, town or village of this state, that a person who has been judicially adjudicated incompetent, or who has been confined to such institution for mental illness pursuant to judicial authority, upon the release of such person from such institution, is not suitable to possess a rifle or shotgun, a member of such police department or of the state police shall forthwith seize any rifle or shotgun possessed by such person. Any such person who refuses to yield possession of such rifle or shotgun to such police officer is guilty of a **class A misdemeanor.** A rifle or shotgun seized as herein provided shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certif-

icate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction.

§ 265.10 Manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances

1. Any person who manufactures or causes to be manufactured any machine-gun is guilty of a **class D felony.** Any person who manufactures or causes to be manufactured any switchblade knife, gravity knife, billy, blackjack, bludgeon, metal knuckles, sandbag, sandclub or slungshot is guilty of a **class A misdemeanor.**

2. Any person who transports or ships any machine-gun or firearm silencer is guilty of a **class D felony.** Any person who transports or ships as merchandise any firearm, switchblade knife, gravity knife, billy, blackjack, bludgeon, metal knuckles, sandbag or slungshot is guilty of a **class A misdemeanor.**

3. Any person who disposes of any machine-gun or firearm silencer is guilty of a **class D felony.** Any person who knowingly buys, receives, disposes of, or conceals a machine-gun or firearm which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun or firearm is guilty of a **class D felony.**

4. Any person who disposes of any of the weapons, instruments or appliances specified in subdivision three of section 265.05 is guilty of a **class A misdemeanor,** and he is guilty of a **class D felony** if he has previously been convicted of any crime.

5. Any person who disposes of any of the weapons, instruments, appliances or substances specified in subdivision four of section 265.05 to any other person under the age of sixteen years is guilty of a **class A misdemeanor.**

6. Any person who wilfully defaces any machine-gun or firearm is guilty of a **class D felony.**

7. Any person, other than a wholesale dealer, or gunsmith or dealer in firearms duly licensed pursuant to section 400.00, lawfully in possession of a firearm, who disposes of the same without first notifying in writing the licensing officer in the city of New York and county of Nassau and elsewhere in the state the executive department, division of state police, Albany, is guilty of a **class A misdemeanor.**

§ 265.15 Presumptions of possession, unlawful intent and defacement

1. The presence in any room, dwelling, structure or vehicle of any machine-gun is presumptive evidence of its unlawful possession by all persons occupying the place where such machine-gun is found.

2. The presence in any stolen vehicle of any weapon, instrument, appliance or substance specified in section 265.05 is presumptive evidence of its possession by all persons occupying such vehicle at the time such weapon, instrument, appliance or substance is found.

3. The presence in an automobile, other than a stolen one or a public omnibus, of any firearm, defaced firearm, firearm silencer, bomb, bombshell, gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckles, sandbag, sandclub or slungshot is presumptive evidence of its possession by all persons occupying such automobile at the time such weapon, instrument or appliance is found, except under the following circumstances: (a) if such weapon, instrument or appliance is found upon the person of one of the occupants therein; (b) if such weapon, instrument or appliance is found in an automobile which is being operated for hire by a duly licensed driver in the due, lawful and proper pursuit of his trade, then such presumption shall not apply to the driver; or (c) if the weapon so found is a pistol or revolver and one of the occupants, not present under duress, has in his possession a valid license to have and carry concealed the same.

4. The possession by any person of the substance as specified in subdivision seven of section 265.05 is presumptive evidence of possessing such substance with intent to use the same unlawfully against the person or property of another. The possession by any person of any dagger, dirk, stiletto, dangerous knife or any other weapon, instrument, appliance or substance designed, made or adapted for use primarily as a weapon, is presumptive evidence of intent to use the same unlawfully against another.

5. The possession by any person of a defaced machine-gun or firearm is presumptive evidence that such person defaced the same.

§ 265.20 Exemptions

a. Sections 265.05, 265.10 and 265.15 shall not apply to:

1. Possession of any of the weapons, instruments, appliances or substances specified in section 265.05 by the following:

(a) Persons in the military service of the state of New York when duly authorized by regulations issued by the chief of staff to the governor to possess the same, and peace officers as defined in section one hundred fifty-four of the code of criminal procedure.

(b) Persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to possess the same.

(c) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the same is necessary for manufacture, transport, installation and testing under the requirements of such contract.

(d) During the month of June only each year, a person voluntarily surrendering such weapon, instrument, appliance or substance, provided that such surrender shall be made to the sheriff of the county in which such person resides and in the county of Nassau to the commissioner of police or a member of the police department thereof designated by him, or if such person resides in a city having a population of seventy-five thousand or more to the police commissioner or head of the police force or department, or to a member of the force or department designated by such commissioner or head; and provided, further, that the same shall be surrendered by such person only after he gives notice in writing to the appropriate authority, stating his name, address, the nature of the weapon to be surrendered, and the approximate time of day and the place where such surrender shall take place. Such notice shall be acknowledged immediately upon receipt thereof by such authority. Nothing in paragraph (d) of subdivision one hereof shall be construed as granting immunity from prosecution for any crime or offense except that of unlawful possession of such weapons, instruments, appliances or substances surrendered as herein provided.

2. Possession of a machine-gun, firearm, switchblade knife, gravity knife, billy or blackjack by a warden, superintendent, headkeeper or deputy of a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons con-

victed or accused of crime or detained as witnesses in criminal cases, in pursuit of official duty or when duly authorized by regulation or order to possess the same.

3. Possession of a pistol or revolver by a person to whom a license therefor has been issued as provided under section 400.00.

4. Possession of a rifle or shotgun by a person who has been convicted as specified in section 265.05, subdivision six to whom a certificate of good conduct has been issued pursuant to section two hundred forty-two, subdivision three of the executive law.

5. Possession of a switchblade or gravity knife for use while hunting, trapping or fishing by a person carrying a valid license issued to him pursuant to article four, part four of the conservation law.[3]

6. Possession, at an indoor or outdoor rifle range for the purpose of loading and firing the same, of a rifle of not more than twenty-two calibre rim fire, the propelling force of which may be either gunpowder, air or springs, by a person under sixteen years of age but not under twelve, who is a duly enrolled member of any club, team or society organized for educational purposes and maintaining as a part of its facilities, or having written permission to use, such rifle range under the supervision, guidance and instruction of (a) a duly commissioned officer of the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York; or (b) a duly qualified adult citizen of the United States who has been granted a certificate as an instructor in small arms practice issued by the United States army, navy or marine corps, or by the adjutant general of this state, or by the national rifle association of America, a membership corporation duly organized under the laws of this state.

7. The manufacturer of machine-guns, switchblade or gravity knives, billies or blackjacks as merchandise and the disposal and shipment thereof direct to a regularly constituted or appointed state or municipal police department, sheriff, policeman or other peace officer, or to a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, or to the military service of this state or of the United States.

8. The regular and ordinary transport of firearms as merchandise, provided that the person transporting such firearms, where he knows or has reasonable means of ascertaining what he is transporting, notifies in writing the police commissioner, police

[3] Conservation Law, § 180 et seq.

chief or other law enforcement officer performing such functions at the place of delivery, of the name and address of the consignee and the place of delivery, and withholds delivery to the consignee for such reasonable period of time designated in writing by such police commissioner, police chief or other law enforcement officer as such official may deem necessary for investigation as to whether the consignee may lawfully receive and possess such firearms.

9. Engaging in the business of gunsmith or dealer in firearms by a person to whom a valid license therefor has been issued pursuant to section 400.00.

b. At any time, any person who voluntarily delivers to a peace officer any weapon, instrument, appliance or substance specified in section 265.05, under circumstances not suspicious, peculiar or involving the commission of any crime, shall not be arrested. Instead, the officer who might make the arrest shall issue or cause to be issued in a proper case a summons or other legal process to the person for investigation of the source of the weapon, instrument, appliance or substance.

§ 265.25 Certain wounds to be reported

Every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by the discharge of a gun or firearm, and every case of a wound which is likely to or may result in death and is actually or apparently inflicted by a knife, icepick or other sharp or pointed instrument, shall be reported at once to the police authorities of the city, town or village where the person reporting is located by: (a) the physician attending or treating the case; or (b) the manager, superintendent or other person in charge, whenever such case is treated in a hospital, sanitarium or other institution. Failure to make such report is a **class A misdemeanor.** This subdivision shall not apply to such wounds, burns or injuries received by a member of the armed forces of the United States or the state of New York while engaged in the actual performance of duty.

§ 265.30 Certain convictions to be reported

Every conviction under this article or section 400.00, of a person who is not a citizen of the United States, shall be certified to the proper officer of the United States government by the district attorney of the county in which such conviction was had.

§ 265.35 Prohibited use of weapons

1. Except as permitted in section 265.20, any person who uses a machine-gun is guilty of a **class D felony.** Any person who attempts to use against another an imitation pistol is guilty of a **class A misdemeanor,** and he is guilty of a **class D felony** if he has previously been convicted of any crime.

2. Any person hunting with a dangerous weapon in any county wholly embraced within the territorial limits of a city is guilty of a **class A misdemeanor.**

3. Any person who wilfully discharges a loaded firearm or any other gun, the propelling force of which is gunpowder, at an aircraft while such aircraft is in motion in the air or in motion or stationary upon the ground, or at any railway or street railroad train as defined by the public service law, or at a locomotive, car, bus or vehicle standing or moving upon such railway, railroad or public highway, is guilty of a **class D felony** if thereby the safety of any person is endangered, and in every other case, of a **class E felony.**

4. Any person who, otherwise than in self defense or in the discharge of official duty, (a) wilfully discharges any species of firearms, air-gun or other weapon, or throws any other deadly missile, either in a public place, or in any place where there is any person to be endangered thereby, or, in Putnam county, within one-quarter mile of any occupied school building other than under supervised instruction by properly authorized instructors although no injury to any person ensues; (b) intentionally, without malice, points or aims any firearm or any other gun, the propelling force of which is gunpowder, at or toward any other person; (c) discharges, without injury to any other person, firearms or any other guns, the propelling force of which is gunpowder, while intentionally without malice, aimed at or toward any person; or (d) maims or injures any other person by the discharge of any firearm or any other gun, the propelling force of which is gunpowder, pointed or aimed intentionally, but without malice, at any such person, is guilty of a **class A misdemeanor.**

ARTICLE 270—OTHER OFFENSES RELATING TO PUBLIC SAFETY

Section
270.00 Unlawfully dealing with fireworks.
270.05 Unlawfully possessing noxious material.
270.10 Creating a hazard.
270.15 Unlawfully refusing to yield a party line.

§ 270.00 Unlawfully dealing with fireworks

1. Definition of "fireworks." The term "fireworks," as used in this section, is defined and declared to be and to include any blank cartridge, blank cartridge pistol, or toy cannon in which explosives are used, firecrackers, torpedoes, skyrockets, Roman candles, bombs, sparklers or other combustible or explosive of like construction, or any preparation containing any explosive or inflammable compound or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus or any compound containing any of the same or other explosives, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, or other device containing any explosive substance. The provisions of this definition however, shall not be deemed to include (1) flares of the type used by railroads or any warning lights commonly known as red flares, or marine distress signals of a type approved by the United States coast guard or (2) toy pistols, toy canes, toy guns or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for use, and toy pistol paper caps which contain less than twenty-hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times.

2. Offense. Except as herein otherwise provided, or except where a permit is obtained pursuant to section 405.00, any person who shall offer or expose for sale, possess or sell, furnish, use, explode or cause to explode any fireworks is guilty of a **class B misdemeanor.**

3. The provisions of this section shall not apply to articles of the kind and nature herein mentioned, while in possession of railroads and transportation agencies for the purpose of transporta-

tion, the shipment of which is not prohibited by the interstate commerce commission regulations as formulated and published from time to time, unless the same be held voluntarily by such railroads or transportation companies as warehousemen; provided, that none of the provisions of this section shall apply to signaling devices used by railroad companies or motor vehicles referred to in subdivision seventeen of section three hundred seventy-five of the vehicle and traffic law, or to high explosives for blasting or similar purposes; provided that none of the provisions of this section shall apply to fireworks and the use thereof by the army and navy departments of the state and federal government; nor shall anything in this act contained be construed to prohibit any manufacturer, wholesaler, dealer or jobber from manufacturing, possessing or selling at wholesale such fireworks to municipalities, religious or civil organizations, fair associations, amusement parks, or other organizations or groups of individuals authorized to possess and use fireworks under this act, or the sale or use of blank cartridges for a show or theatre, or for signal purposes in athletic sports, or the use, or the storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts; nor shall anything in this act contained be construed to prohibit the manufacture of fireworks, nor the sale of any kind of fireworks, provided the same are to be shipped directly out of the state.

4. Sales of ammunition not prohibited. Nothing contained in this section shall be construed to prevent, or interfere in any way with, the sale of ammunition for revolvers or pistols of any kind, or for rifles, shot guns, or other arms, belonging or which may belong to any persons whether as sporting or hunting weapons or for the purpose of protection to them in their homes, or, as they may go abroad; and manufacturers are authorized to continue to manufacture, and wholesalers and dealers to continue to deal in and freely to sell ammunition to all such persons for such purposes.

§ 270.05 Unlawfully possessing noxious material

1. As used in this section, "noxious material" means any container which contains any drug or other substance capable of generating offensive, noxious or suffocating fumes, gases or vapors.

2. A person is guilty of unlawfully possessing noxious material when he possesses such material under circumstances evinc-

ing an intent to use it or to cause it to be used to inflict physical injury upon or to cause annoyance to a person, or to damage property of another, or to disturb the public peace.

3. Possession of noxious material is presumptive evidence of intent to use it or cause it to be used in violation of this section.

Unlawfully possessing noxious material is a **class B misdemeanor.**

§ 270.10 Creating a hazard

A person is guilty of creating a hazard when:

1. Having discarded in any place where it might attract children, a container which has a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot easily be opened from the inside, he fails to remove the door, lid, locking or fastening device; or

2. Being the owner or otherwise having possession of property upon which an abandoned well or cesspool is located, he fails to cover the same with suitable protective construction.

Creating a hazard is a **class B misdemeanor.**

§ 270.15 Unlawfully refusing to yield a party line

1. As used in this section:

(a) "Party line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(b) "Emergency call" means a telephone call to a police or fire department, or for medical aid or ambulance service, necessitated by a situation in which human life or property is in jeopardy and prompt summoning of aid is essential.

2. A person is guilty of unlawfully refusing to yield a party line when, being informed that a party line is needed for an emergency call, he refuses immediately to relinquish such line.

Unlawfully refusing to yield a party line is a **class B misdemeanor.**

PART FOUR—ADMINISTRATIVE PROVISIONS

TITLE W—PROVISIONS RELATING TO FIREARMS, FIREWORKS AND PORNOGRAPHY EQUIPMENT

ARTICLE 400—LICENSING AND OTHER PROVISIONS RELATING TO FIREARMS

Section

400.00 Licenses to carry, possess, repair and dispose of firearms.
400.05 Destruction of weapons and dangerous instruments, appliances and substances.

§ 400.00 Licenses to carry, possess, repair and dispose of firearms

1. Eligibility. No license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) of good moral character; (b) who has not been convicted anywhere of a felony or any one of the misdemeanors or offenses mentioned in section five hundred fifty-two of the code of criminal procedure; (c) who has stated whether he has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness; and (d) concerning whom no good cause exists for the denial of the license. No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all of the requirements set forth in this subdivision and if the applicant is a corporation, each officer thereof shall so comply.

2. Types of licenses. A license for gunsmith or dealer in firearms shall be issued to engage in such business. A license for a pistol or revolver shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry con-

cealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; and (e) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof.

3. Applications. Applications shall be made and renewed, in the case of a license to carry or possess a pistol or revolver, to the licensing officer in the city or county, as the case may be, where the applicant resides, is principally employed or has his principal place of business as merchant or storekeeper; and, in the case of a license as gunsmith or dealer in firearms, to the licensing officer where such place of business is located. Blank applications shall, except in the city of New York, be approved as to form by the superintendent of state police. An application shall state the full name, date of birth, residence, present occupation of each person or individual signing the same, whether or not he is a citizen of the United States, whether or not he complies with each requirement for eligibility specified in subdivision one of this section and such other facts as may be required to show the good character, competency and integrity of each person or individual signing the application. An application shall be signed and verified by the applicant. Each individual signing an application shall submit one photograph of himself and a duplicate for each required copy of the application. Such photographs shall have been taken within thirty days prior to filing the application. In case of a license as gunsmith or dealer in firearms, the photographs submitted shall be two inches square, and the application shall also state the previous occupation of each individual signing the same and the location of the place of such business, or of the bureau, agency, subagency, office or branch office for which the license is sought, specifying the name of the city, town or village, indicating the street and number and otherwise giving such apt description as to point out reasonably the location thereof. In such case, if the applicant is a firm, partnership or corporation, its name, date and place of formation, and principal place of

business shall be stated. For such firm or partnership, the application shall be signed and verified by each individual composing or intending to compose the same, and for such corporation, by each officer thereof.

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made. For that purpose, the records of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed and verified. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation. When completed, one standard card shall be forwarded to and retained by the division of criminal identification, department of correction, at Albany. A search of the files of such division and written notification of the results of the search to the investigating officer shall be made without unnecessary delay. Thereafter, such division shall notify the licensing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the license, and the other remain on file with the investigating police authority. No such fingerprints may be inspected by any person other than a peace officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay.

5. Filing of approved applications. The application for any license, if granted, shall be a public record. Such application shall be filed by the licensing officer with the clerk of the county

of issuance, except that in the city of New York and county of Nassau, the licensing officer shall designate the place of filing in the appropriate division, bureau or unit of the police department thereof. A duplicate copy of such application shall be filed by the licensing officer in the executive department, division of state police, Albany, within ten days after issuance of the license.

6. License: validity. Any license issued pursuant to this section shall be valid notwithstanding the provisions of any local law or ordinance. No license shall be transferable to any other person or premises. A license to carry or possess a pistol or revolver, not otherwise limited as to place or time of possession, shall be effective throughout the state, except that the same shall not be valid within the city of New York unless a special permit granting validity is issued by the police commissioner of that city. Such license to carry or possess shall be valid within the city of New York in the absence of a permit issued by the police commissioner of that city, provided that (a) the firearms covered by such license are being transported by the licensee in a locked container; and (b) the trip through the city of New York is continuous and uninterrupted; and (c) such licensee exhibits upon demand by a peace officer proof of registration in a pistol match which such licensee is about to attend or has attended and is returning therefrom. A license as gunsmith or dealer in firearms shall not be valid outside the city or county, as the case may be, where issued.

7. License: form. Any license issued pursuant to this section shall, except in the city of New York, be approved as to form by the superintendent of state police. A license to carry or possess a pistol or revolver shall have attached the licensee's photograph, and a coupon which shall be removed and retained by any person disposing of a firearm to the licensee. Such license shall specify the weapon covered by calibre, make, model, manufacturer's name and serial number, or if none, by any other distinguishing number or identification mark, and shall indicate whether issued to carry on the person or possess on the premises, and if on the premises shall also specify the place where the licensee shall possess the same. If such license is issued to an alien, or to a person not a citizen of and usually a resident in the state, the licensing officer shall state in the license the particular reason for the issuance and the names of the persons certifying to the good character of the applicant. Any license as gunsmith or dealer in firearms shall mention and describe the premises for which it is issued and shall be valid only for such premises.

8. License: exhibition and display. Every licensee while carrying a pistol or revolver shall have on his person a license to carry the same. Every person licensed to possess a pistol or revolver on particular premises shall have the license for the same on such premises. Upon demand, the license shall be exhibited for inspection to any peace officer. A license as gunsmith or dealer in firearms shall be prominently displayed on the licensed premises. Failure of any licensee to so exhibit or display his license, as the case may be, shall be presumptive evidence that he is not duly licensed.

9. License: amendment. Elsewhere than in the city of New York, a person licensed to carry or possess a pistol or revolver may apply at any time to his licensing officer for amendment of his license to include one or more such weapons or to cancel weapons held under license. If granted, a record of the amendment describing the weapons involved shall be filed by the licensing officer in the executive department, division of state police, Albany. Notification of any change of residence shall be made in writing by any licensee within ten days after such change occurs, and a record of such change shall be inscribed by such licensee on the reverse side of his license. Elsewhere than in the city of New York, such notification shall be made to the executive department, division of state police, Albany, and in the city of New York to the police commissioner of that city.

10. License: expiration and renewal. Any license for gunsmith or dealer in firearms and, in the city of New York and the counties of Nassau and Suffolk, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire on the first day of the second January after the date of issuance. Elsewhere than in the city of New York and the counties of Nassau and Suffolk, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not previously revoked or cancelled, shall be in force and effect until revoked as herein provided. Any application to renew a license that has not previously expired, been revoked or cancelled shall thereby extend the term of the license until disposition of the application by the licensing officer. In the case of a license for gunsmith or dealer in firearms, in counties having a population of less than two hundred thousand inhabitants, photographs and fingerprints shall be submitted on original applications and

upon renewal thereafter only at six year intervals. Upon satisfactory proof that a currently valid original license has been despoiled, lost or otherwise removed from the possession of the licensee and upon application containing an additional photograph of the licensee, the licensing officer shall issue a duplicate license.

11. License: revocation. The conviction of a licensee anywhere of a felony or any one of the misdemeanors or offenses mentioned in section five hundred fifty-two of the code of criminal procedure shall operate as a revocation of the license. A license may be revoked and cancelled at any time in the city of New York and county of Nassau by the licensing officer, and elsewhere than in the city of New York by any judge or justice of a court of record. The official revoking a license shall give written notice thereof without unnecessary delay to the executive department, division of state police, Albany, and shall also notify immediately the duly constituted police authorities of the locality.

12. Records required of gunsmiths and dealers in firearms. Any person licensed as gunsmith or dealer in firearms shall keep a record book approved as to form, except in the city of New York, by the superintendent of state police. In the record book shall be entered at the time of every transaction involving a firearm the date, name, age, occupation and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the calibre, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm. Before delivering a firearm to any person, the licensee shall require him to produce either a license valid under this section to carry or possess the same, or proof of lawful authority as a peace officer or other exempt person pursuant to section 265.20. The licensee shall remove and retain the attached coupon and enter in the record book the date of such license, number, if any, and name of the licensing officer, in the case of the holder of a license to carry or possess, or the shield or other number, if any, assignment and department or unit, in the case of an exempt person. The record book shall be maintained on the premises mentioned and described in the license and shall be open at all reasonable hours for inspection by any peace officer. In the event of cancellation or revocation of the license for gunsmith or dealer in firearms, or discontinuance of business by a licensee, such record book shall be immediately surrendered to the licensing officer in the city of New York and

county of Nassau, and elsewhere in the state to the executive department, division of state police.

13. Expenses. The expense of providing a licensing officer with blank applications, licenses and record books for carrying out the provisions of this section shall be a charge against the county, and in the city of New York against the city.

14. Fees. In the city of New York, the annual license fee shall be twenty-five dollars for gunsmiths and fifty dollars for dealers in firearms. In such city, the city council shall fix the fee to be charged for a license to carry or possess a pistol or revolver and provide for the disposition of such fees. Elsewhere in the state, the licensing officer shall collect and pay into the county treasury the following fees: for each license to carry or possess a pistol or revolver, not less than three dollars nor more than five dollars as may be determined by the board of supervisors of the county; for each amendment thereto, one dollar, and two dollars in the county of Suffolk; and for each license issued to a gunsmith or dealer in firearms, four dollars. The fee for a duplicate license shall be two dollars.

15. Any violation by any person of any provision of this section is a **class A misdemeanor.**

§ 400.05 Destruction of weapons and dangerous instruments, appliances and substances

1. Any weapon, instrument, appliance or substance specified in article two hundred sixty-five, when unlawfully possessed, manufactured, transported or disposed of, or when surrendered or voluntarily delivered pursuant to section 265.20, is hereby declared a nuisance. When the same shall come into the possession of any peace officer, it shall be surrendered immediately to the official mentioned in paragraph (d) of subdivision one of section 265.20, except that such weapon, instrument, appliance or substance coming into the possession of the state police shall be surrendered to the superintendent of state police.

2. The official to whom the weapon, instrument, appliance or substance is so surrendered shall, at any time but at least once each year, destroy the same or cause it to be destroyed, or render the same or cause it to be rendered ineffective and useless for its intended purpose and harmless to human life.

3. Notwithstanding subdivision two of this section, the official to whom the weapon, instrument, appliance or substance is so surrendered shall not destroy the same if (a) a judge or justice

of a court of record, or a district attorney, shall file with the official a certificate that the non-destruction thereof is necessary or proper to serve the ends of justice; or (b) the official directs that the same be retained in any laboratory conducted by any police or sheriff's department for the purpose of research, comparison, identification or other endeaver toward the prevention and detection of crime.

4. In the case of any machine-gun or firearm taken from the possession of any person, the official to whom such weapon is surrendered pursuant to subdivision one of this section shall immediately notify the executive department, division of state police, Albany, giving the calibre, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark. A search of the files of such division and notification of the results of the search to such official shall immediately be made.

5. Before any machine-gun or firearm is destroyed pursuant to subdivision two of this section, (a) the official to whom the same has been surrendered shall forward to the executive department, division of state police, Albany, a notice of intent to destroy and the calibre, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark of the machine-gun or firearm; (b) such division shall make and keep a record of such description together with the name and address of the official reporting the same and the date such notice was received; and (c) a search of the files of such division and notification of the results of the search to such official shall be made without unnecessary delay.

ARTICLE 405—LICENSING AND OTHER PROVISIONS RELATING TO FIREWORKS

Section

405.00 Permits for public displays of fireworks.
405.05 Seizure and destruction of fireworks.

§ 405.00 Permits for public displays of fireworks

1. Definition of "permit authority." The term "permit authority," as used in this section, means and includes the agency authorized to grant and issue the permits provided in this section, which agency in the territory within a state park shall be the regional state park commission, in the territory within a county park shall be the county park commission, or such other

agency having jurisdiction, control and/or operation of the parks or parkways within which any fireworks are to be displayed, in a city shall be the duly constituted licensing agency thereof and, in the absence of such agency, shall be an officer designated for the purpose of the legislative body thereof, in a village shall be an officer designated for the purpose by the board of trustees thereof and in the territory of a town outside of villages shall be an officer designated for the purpose by the town board thereof.

2. Permits for public displays. Notwithstanding the provisions of section 270.00, the permit authority of a state park, county park, city, village or town may upon application in writing, grant a permit for the public display of fireworks by municipalities, fair associations, amusement parks or organizations of individuals. The application for such permit shall set forth:

(a) The name of the body sponsoring the display and the names of the persons actually to be in charge of the firing of the display.

(b) The date and time of day at which the display is to be held.

(c) The exact location planned for the display.

(d) The age, experience and physical characteristics of the persons who are to do the actual discharging of the fireworks.

(e) The number and kind of fireworks to be discharged.

(f) The manner and place of storage of such fireworks prior to the display.

(g) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways and other lines of communication, the lines behind which the audience will be restrained and the location of all nearby trees, telegraph or telephone lines or other overhead obstructions.

(h) Such other information as the permit authority may deem necessary to protect persons or property.

3. Applications for permits. All applications for permits for the public display of fireworks shall be made at least five days in advance of the date of the display and the permit shall contain provisions that the actual point at which the fireworks are to be fired shall be at least two hundred feet from the nearest permanent building, public highway or railroad or other means of

travel and at least fifty feet from the nearest above ground telephone or telegraph line, tree or other overhead obstruction, that the audience at such display shall be restrained behind lines at least one hundred and fifty feet from the point at which the fireworks are discharged and only persons in active charge of the display shall be allowed inside these lines, that all fireworks that fire a projectile shall be so set up that the projectile will go into the air as nearby as possible in a vertical direction, unless such fireworks are to be fired from the shore of a lake or other large body of water, when they may be directed in such manner that the falling residue from the deflagration will fall into such lake or body of water, that any fireworks that remain unfired after the display is concluded shall be immediately disposed of in a way safe for the particular type of fireworks remaining, that no fireworks display shall be held during any wind storm in which the wind reaches a velocity of more than thirty miles per hour, that all the persons in actual charge of firing the fireworks shall be over the age of eighteen years, competent and physically fit for the task, that there shall be at least two such operators constantly on duty during the discharge and that at least two soda-acid or other approved type fire extinguishers of at least two and one-half gallons capacity each shall be kept at as widely separated points as possible within the actual area of the display. The legislative body of a state park, county park, city, village or town may provide for approval of such permit by the head of the police or fire department or both where there are such departments. No permit granted and issued hereunder shall be transferable. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful solely therefor.

4. Bonds. Before granting and issuing a permit for a public display of fireworks as herein provided, the permit authority shall require an adequate bond from the applicant therefor, unless it is a state park, county park, city, village or town, or from the person to whom a contract for such display shall be awarded, in a sum to be fixed by the permit authority, which, however, shall not be less than five thousand dollars, conditioned for the payment of all damages, which may be caused to a person or persons or to property, by reason of the display so permitted and arising from any acts of the permittee, his agents, employees, contractors or subcontractors. Such bond shall run to the state park, county park, city, village or town in which the permit is granted and issued and shall be for the use and benefit of any person or persons or any owner or owners of any property so

injured or damaged, and such person or persons or such owner or owners are hereby authorized to maintain an action thereon, which right of action also shall accrue to the heirs, executors, administrators, successors or assigns of such person or persons or such owner or owners. The permit authority may accept, in lieu of such bond, an indemnity insurance policy with liability coverage and indemnity protection equivalent to the terms and conditions upon which such bond is predicated and for the purposes herein provided.

5. Local ordinances superseded. All local ordinances regulating or prohibiting the display of fireworks are hereby superseded by the provisions of this section. Every city, town or village shall have the power to enact ordinances or local laws regulating or prohibiting the use, or the storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts.

§ 405.05 Seizure and destruction of fireworks

Fireworks possessed unlawfully may be seized by any peace officer, who must deliver the same to the magistrate before whom the person arrested is required to be taken. The magistrate must, upon the examination of the defendant, or if such examination is delayed or prevented, without awaiting such examination, determine whether the fireworks had been possessed by the defendant in violation of the provisions of section 270.00; and if he finds that the fireworks had been so possessed by the defendant, he must cause such fireworks to be destroyed, in a way safe for the particular type of such fireworks, or to be delivered to the district attorney of the county in which the defendant is liable to indictment or trial, as the interests of justice and public safety may, in his opinion, require. Upon the conviction of the defendant, the district attorney must cause to be destroyed, in a way safe for the particular type of such fireworks, the fireworks in respect whereof the defendant stands convicted, and which remain in the possession or under the control of the district attorney.

ARTICLE 410—SEIZURE AND FORFEITURE OF EQUIPMENT USED IN PROMOTING PORNOGRAPHY

Section
410.00 Seizure and forfeiture of equipment used in photographing, filming, producing, manufacturing, projecting or distributing pornographic still or motion pictures.

§ 410.00 Seizure and forfeiture of equipment used in photographing, filming, producing, manufacturing, projecting or distributing pornographic still or motion pictures

1. Any peace officer of this state may seize any equipment used in the photographing, filming, printing, producing, manufacturing or projecting of pornographic still or motion pictures and may seize any vehicle or other means of transportation, other than a vehicle or other means of transportation used by any person as a common carrier in the transaction of business as such common carrier, used in the distribution of such obscene prints and articles and such equipment or vehicle or other means of transportation shall be subject to forfeiture as hereinafter in this section provided.

2. The seized property shall be delivered by the peace officer having made the seizure to the custody of the district attorney of the county wherein the seizure was made, except that in the cities of New York and Buffalo, the seized property shall be delivered to the custody of the police department of such cities, together with a report of all the facts and circumstances of the seizure.

3. It shall be the duty of the district attorney of the county wherein the seizure was made, if elsewhere than in the cities of New York or Buffalo, and where the seizure is made in either such city it shall be the duty of the corporation counsel of the city, to inquire into the facts of the seizure so reported to him and if it appears probable that a forfeiture has been incurred, for the determination of which the institution of proceedings in the supreme court is necessary, to cause the proper proceedings to be commenced and prosecuted, at any time after thirty days from the date of seizure, to declare such forfeiture, unless, upon inquiry and examination such district attorney or corporation counsel decides that such proceedings can not probably be sustained or that the ends of public justice do not require that they

should be instituted or prosecuted, in which case, the district attorney or corporation counsel shall cause such seized property to be returned to the owner thereof.

4. Notice of the institution of the forfeiture proceeding shall be served either (a) personally on the owners of the seized property or (b) by registered mail to the owners' last known address and by publication of the notice once a week for two successive weeks in a newspaper published or circulated in the county wherein the seizure was made.

5. Forfeiture shall not be adjudged where the owners established by preponderance of the evidence that (a) the use of such seized property was not intentional on the part of any owner, or (b) said seized property was used by any person other than an owner thereof, while such seized property was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or of any state.

6. The district attorney or the police department having custody of the seized property, after such judicial determination of forfeiture, shall, by a public notice of at least five days, sell such forfeited property at public sale. The net proceeds of any such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the county wherein the seizure was made except that the net proceeds of the sale of property seized in the cities of New York and Buffalo shall be paid into the respective general funds of such cities.

7. Whenever any person interested in any property which is seized and declared forfeited under the provisions of this section files with a justice of the supreme court a petition for the recovery of such forfeited property, the justice of the supreme court may restore said forfeited property upon such terms and conditions as he deems reasonable and just, if the petitioner establishes either of the affirmative defenses set forth in subdivision five of this section and that the petitioner was without personal or actual knowledge of the forfeiture proceeding. If the petition be filed after the sale of the forfeited property, any judgment in favor of the petitioner shall be limited to the net proceeds of such sale, after deduction of the lawful expenses and costs incurred by the district attorney, police department or corporation counsel.

8. No suit or action under this section for wrongful seizure shall be instituted unless such suit or action is commenced within two years after the time when the property was seized.

9. For the purposes of this section only, a pornographic still or motion picture, is defined as a still or motion picture showing acts of sexual intercourse or acts of sexual perversion. This section shall not be construed as applying to bona fide medical photographs or films.

TITLE Z—LAWS REPEALED; TIME OF TAKING EFFECT

ARTICLE 500—SAVINGS CLAUSES; LAWS REPEALED; TIME OF TAKING EFFECT

Section

500.00 Savings clauses.
500.05 Laws repealed.
500.10 Time of taking effect.

Historical Note

Title of article amended L.1965, c. 1046, § 1, which inserted "Savings Clauses".

§ 500.00 Savings clauses

1. An act of the legislature of the year nineteen hundred sixty-five which, in form, amends or repeals or purports to amend or repeal any provision or provisions of the former penal law, as in force immediately prior to September first, nineteen hundred sixty-seven, shall be legally effective notwithstanding the repeal of such former law by this chapter and shall be construed as an amendment, or repeal, as the case may be, of the corresponding provision or provisions of this chapter irrespective of whether such provision or provisions are contained in this chapter in one or more than one article, section, subdivision or other part thereof and such corresponding provision or provisions shall be deemed and construed to be amended, modified, changed or repealed as though the same had been expressly and in terms so amended or repealed.

2. Any act of the legislature of the year nineteen hundred sixty-five which adds or purports to add a new article, section, subdivision or other provision of law to the former penal law, as in force and effect immediately prior to September first, nineteen hundred sixty-seven, shall be legally effective notwithstanding the repeal of such former penal law by this chapter and shall be construed as having been added to this chapter and shall be given full effect according to its context as if the same had been added expressly and in terms to this chapter and shall be

deemed and construed to have been inserted in this chapter in juxtaposition to and as modifying the effect of the corresponding provision or provisions of this chapter. Added L.1965, c. 1046, § 2.

§ 500.05 Laws repealed

Chapter eight-eight of the laws of nineteen hundred nine, entitled "An act providing for the punishment of crime, constituting chapter forty of the consolidated laws," and all acts amendatory thereof and supplemental thereto, constituting the penal law as heretofore in force, are hereby repealed. Formerly § 500.00; renumbered 500.05, L.1965, c. 1046, § 2.

§ 500.10 Time of taking effect

This act shall take effect September first, nineteen hundred sixty-seven. Formerly § 500.05; renumbered 500.10, L.1965, c. 1046, § 2.

INDEX TO
REVISED PENAL LAW

References are to Sections of the Revised Penal Law

ABANDONMENT
Attempt to commit crime, defense, § 35.45.
Cesspool, covering, § 270.10.
Children, § 260.00.
Refrigerators and ice boxes, § 270.10.
Wells, covering, § 270.10.

ABDUCT
Defined, § 135.00.

ABORTION
Abortional act, defined, § 125.05.
First degree, § 125.45.
Issuing abortional articles, § 125.60.
Justifiable abortional act, § 125.05.
Manslaughter,
First degree, § 125.20.
Second degree, § 125.15.
Second degree, § 125.40.
Self-abortion,
First degree, § 125.55.
Second degree, § 125.50.

ABUSIVE OR OBSCENE LANGUAGE
Using in public place,
Disorderly conduct, § 240.20.
Harassment, § 240.25.

ACCOMPLICES AND ACCESSORIES
Generally, § 20.00 et seq.
Hindering prosecutions, § 205.50 et seq.
Suicide, attempt, promoting, §§ 120.30, 120.35.

ACCOSTING
Fraudulent, § 165.30.

ACCOUNTS AND ACCOUNTING
Falsifying, § 175.00 et seq.
Security interest, fraud involving, § 185.05.

ACQUITTAL
Conduct of another, criminal liability for, § 20.05.

ACT
Defined, culpability provisions, § 15.00.

ADDRESS
Change of address, probation officer, notice, § 65.10.

ADMINISTRATION OF GOVERNMENT
Obstructing, § 195.05.

ADMINISTRATIVE ORDERS
Mistaken belief founded upon, § 15.20.

ADMINISTRATORS
Defined, fraud in insolvency, § 185.00.
Insolvency, fraud in, § 185.00.

ADULTERY
Defense, § 255.20.
Definition and classification of offense, § 255.17.

ADVANCE GAMBLING ACTIVITY
Defined, gambling provisions, § 225.00.

ADVANCE PROSTITUTION
Defined, promoting prostitution provisions, § 230.15.

ADVERTISING AND ADVERTISEMENTS
False advertising, § 190.20.
Posting unlawfully, § 145.30.

AFFIDAVITS
Perjury, § 210.00 et seq.

AFFIRMATIVE DEFENSES
Defenses, this index.

AGE
Knowledge of, element, offense, § 15.20.
Prostitution offenses, §§ 230.25, 230.30.
Rape, § 130.25 et seq.
Sodomy, § 130.40 et seq.

AGENTS
Commercial bribing and bribe receiving, §§ 180.00, 180.05.
Defined, corporate criminal liability, § 20.20.
Minors, unlawful dealings, § 260.20.

AGGRAVATED HARASSMENT
Generally, § 240.30.

AGGRAVATING CIRCUMSTANCES
Murder, sentencing, § 125.35.

AGREEMENTS
Contracts, generally, this index.

AID AND ASSISTANCE
Citizens aiding public servants, justifiable acts, § 35.05.
Fire fighting operations, obstructing, § 195.15.
Peace officer, refusal to aid, § 195.10.

AIDERS AND ABETTORS
Accomplices and Accessories, generally, this index.

AIR SERVICE
Theft, § 165.15.

AIR-GUNS
Discharge in public places prohibited, § 265.35.
Disposition, § 265.10.
Possession by minors, § 265.05.

INDEX

References are to Sections of the Revised Penal Law

AIRPLANES
Discharging firearms at prohibited, § 265.35.
Offenses against public order. Public Order, generally, this index.
Passengers, justification for use of force against, § 35.10.

ALCOHOLIC BEVERAGES
Intoxication, generally, this index.
Minors, selling or giving to, § 260.20.
Permitting minor to enter or remain in place where sold or given away, § 260.20.

ALIENS
Reports, convictions under dangerous weapon provisions, § 265.30.
Weapons and dangerous instruments and appliances, possession, § 265.05.

ALTERATION
Entry. Business Records, generally, this index.
Forgery, generally, this index.
Public Records, generally, this index.

AMENDMENTS
Licenses to carry, possess, etc., firearms, § 400.00.

AMMUNITION
Firearms, possession, § 265.05.
Sale not prohibited by law governing fire works, § 270.00.

AMPHETAMINE
See, also, Dangerous Drugs, generally, this index.
Criminal possession, § 220.05 et seq.
Criminally selling, § 220.30 et seq.
Defined, dangerous drug provisions, § 220.00.

AMUSEMENT PARKS
Fireworks,
Display, permit, § 405.00.
Sale, etc., to authorized parks, § 270.00.

AMUSEMENT PLACES
Fortune telling, § 165.35.
Offenses against public order. Public Order, generally, this index.

ANARCHY
Criminal anarchy, § 240.15.

ANIMALS
Sexual misconduct with, § 130.20.

ANNULMENT OF MARRIAGE
Decrees, unlawfully issuing, § 255.05.

ANONYMOUS COMMUNICATION
Aggravated harassment, § 240.30.

ANONYMOUS PERSONS
Telephonic communications, § 240.30.

ANTICIPATORY OFFENSES
Attempt, § 110.00 et seq.
Conspiracy, § 105.00 et seq.
Criminal facilitation, § 115.00 et seq.
Criminal solicitation, § 100.00 et seq.

ANTIQUES
Simulation, § 170.45.

APARTMENT HOUSES
Lobbies and hallways, offenses against public order. Public Order, generally, this index.

APPARATUS
Possession, forgery devices, § 170.40.

APPEALS
Death penalty, § 125.35.
Kidnapping, proceedings to determine sentence, § 135.40.
Murder, proceedings, determination, sentence, § 125.35.

APPLICATIONS
Licenses to carry, possess, etc., firearms, § 400.00.

APPROPRIATE
Defined, larceny provisions, § 155.00.

ARCHERY
Arrows, throwing or propelling, § 245.05.

ARMY DEPARTMENT
Fire works, exemption from law, § 270.00.

ARREST
Physical force, use. Justification, generally, this index.
Resisting, § 205.30.
Weapons and dangerous instruments and appliances, person delivering to peace officer not to be arrested, § 265.20.

ARROWS
Throwing or propelling at or toward person, offensive exhibition, § 245.05.

ARSON
Building, defined, § 150.00.
Defenses, §§ 150.05, 150.10.
First degree, § 150.15.
Murder, § 125.25.
Prevention, deadly physical force, justification, § 35.20.
Second degree, § 150.10.
Third degree, § 150.05.

ARTICLES
Grand larceny, § 155.30.

ASSAULT AND BATTERY
First degree, § 120.10.
Harassment, § 240.25.
Second degree, § 120.05.
Third degree, § 120.00.

ASSEMBLY
Disturbing lawful assembly, disorderly conduct, § 240.20.
Unlawful assembly, § 240.10.

ASSIGNMENTS
Forgery, second degree, § 170.10.
Mortgaged property, fraudulent disposition, § 185.10.

ASSIGNMENTS FOR BENEFIT OF CREDITORS
Insolvency, fraud in, § 185.00.

INDEX

References are to Sections of the Revised Penal Law

ASSOCIATIONS AND SOCIETIES
Criminal impersonation, § 190.25.

ATHLETICS
Sports bribery, § 180.35 et seq.

ATTEMPT TO COMMIT CRIME
Coercion, first degree, compelling, § 135.65.
Defenses, § 110.10.
Defined, § 110.00.
Extortion, larceny by, no defense, § 155.10.
Felony, § 110.05.
Misdemeanor, § 110.05.
Renunciation, defense, § 35.45.
Services, theft, § 165.15.
Suicide, promoting, §§ 120.30, 120.35.
Telecommunication services, theft, § 165.15.

ATTESTATION
Forgery, § 170.00 et seq.

ATTESTING OFFICER
Defined, perjury provisions, § 210.00.

AUTHORS
Simulation, § 170.45.

AUTOMOBILES
Motor Vehicles, generally, this index.

B B GUNS
Air Guns, generally, this index.

BABIES
Substitution, § 135.55.

BAD CHECKS
Issuing, § 190.05.
- Check, defined, § 190.00.
- Defenses, § 190.15.
- Definitions, § 190.00.
- Dishonor, proof, § 190.10.
- Drawer, defined, § 190.00.
- Funds, defined, § 190.00.
- Insufficient funds, defined, § 190.00.
- Larceny, § 155.05.
- Pass, defined, § 190.00.
- Presumptions, § 190.10.
- Representative drawer, defined, § 190.00.
- Utter, defined, § 190.00.

BADGES
Impersonation, wearing, etc., § 190.25.

BAIL
Jumping bail,
- Defenses, § 205.45.
- First degree, § 205.40.
- Second degree, § 205.35.

BANKS AND BANKING
Messengers, license to have and carry concealed pistols or revolvers, § 400.00.

BARBITURATES
See, also, Dangerous Drugs, generally, this index.
Criminal possession, § 220.05 et seq.
Criminally selling, § 220.30 et seq.
Defined, dangerous drug provisions, § 220.00.

BATTERY
See Assault and Battery, generally, this index.

BAWDY HOUSES
See Prostitution and Houses of Prostitution, generally, this index.

BEGGING
Loitering in public place for purpose of, § 240.35.

BENEFITS
Defined, § 10.00.

BETTING
Gambling offenses, § 225.00 et seq.
Loitering, § 240.35.

BICYCLE RACES
Competing continuously without respite for more than 8 consecutive hours, offensive exhibition, § 245.05.

BIGAMY
Generally, § 255.15.
Defenses, § 255.20.

BILLIARD ROOMS
Permitting minor to enter or remain in, § 260.20.

BILLIES
Disposition, § 265.10.
Exemptions from provisions governing manufacture, § 265.20.
Manufacture, § 265.10.
Possession, § 265.05.
Transportation, § 265.10.

BILLS
Slugs, generally, this index.

BLACKJACKS
Disposition, § 265.10.
Exemptions from provisions governing manufacture, § 265.20.
Manufacture, § 265.10.
Possession, § 265.05.
Transportation, § 265.10.

BLANK CARTRIDGE PISTOLS
Fireworks, generally, this index.

BLANK CARTRIDGES
Fireworks, generally, this index.

BLANKS
Applications, licenses to carry, possess, etc., firearms, § 400.00.

BLASTING
Fire works, exemption of high explosives used for blasting from provisions governing, § 270.00.

INDEX

References are to Sections of the Revised Penal Law

BLUDGEONS
Disposition, § 265.10.
Manufacture, § 265.10.
Possession, § 265.05.
Transportation, § 265.10.

BOATS
Arson, § 150.00 et seq.
Offenses against public order, § 240.00 et seq.

BOMBS
Fireworks, generally, this index.
Possession, § 265.05.
Stink bombs, § 270.05.

BOMBSHELLS
Possession, § 265.05.

BONDS
Forgery, first degree, § 170.15.
Probation, etc., conditions, § 65.10.

BOOKMAKING
Defined, gambling provisions, § 225.00.
Gambling, promoting, first degree, § 225.10.
Gambling records, possession of,
First degree, § 225.20.
Second degree, § 225.15.

BOOKS
Obscenity and related offenses, § 235.00 et seq.

BOWLING ALLEYS
Permitting minor to enter or remain in, § 260.20.

BOYCOTTS
Coercion, second degree, § 135.60.
Extortion by, § 155.05.

BREACH OF THE PEACE
Criminal contempt, §§ 215.50, 215.55.

BRIBERY AND CORRUPTION
Coercion, no defense, § 135.65.
Commercial bribe receiving, § 180.05.
Commercial bribing, § 180.00.
Compounding a crime, § 215.45.
Jurors,
Bribe receiving by, § 215.20.
Bribing, § 215.15.
Misconduct by, § 215.30.
Tampering with, § 215.25.
Labor officials,
Generally, § 180.15.
Bribe receiving, § 180.25.
No defense, § 180.30.
Defenses, § 180.20.
Defined, § 180.10.
Larceny, no defense, § 155.10.
Not involving public servants, § 180.00 et seq.
Party officer, defined, § 200.40.

BRIBERY AND CORRUPTION—Continued
Public office,
Bribe giving for, § 200.45.
Bribe receiving for, § 200.50.
Public servants,
Bribe giving for public office, § 200.45.
Bribe receiving, § 200.10.
Defenses, § 200.15.
For public office, § 200.50.
Bribery, § 200.00.
Defenses, § 200.05.
Sports,
Generally, § 180.40.
Bribe receiving, § 180.45.
Contest, defined, § 180.35.
Definitions, § 180.35.
Official, defined, § 180.35.
Participant defined, § 180.35.
Witnesses,
Bribe receiving by, § 215.05.
Bribing, § 215.00.
Tampering with, § 215.10.

BRUTALITY
Comic books, § 235.25.

BUFFALO
Police department, pornography, seized equipment delivered to, § 410.00.

BUILDINGS
See, also, specific heads.
Arson, generally, this index.
Burglary, generally, this index.
Criminal nuisance, § 240.45.
Defined,
Arson provisions, § 150.00.
Burglary, etc., provisions, § 140.00.
Trespass, etc., provisions, § 140.00.
Fireworks, display, restrictions, § 405.00.

BULLET WOUNDS
Failure to report, § 265.25.

BURDEN OF PROOF
Defenses, § 25.00.

BURGLARY
Defense, person, physical force, justification, § 35.15.
Definitions, § 140.00.
Enters or remains unlawfully, defined, § 140.00.
First degree, § 140.30.
Murder, § 125.25.
Night, defined, § 140.00.
Possession, burglar's tools, § 140.35.
Second degree, § 140.25.
Third degree, § 140.20.
Tools, burglar's, possession, § 140.35.

BURNING
Arson, generally, this index.

INDEX

References are to Sections of the Revised Penal Law

BUSES
Loitering, § 240.35.
Offenses against public order, § 240.00 et seq.
Passengers, justification for physical force against, § 35.10.

BUSINESS
Coercion, second degree, § 135.60.
Extortion, harming as, § 155.05.
Records. Business Records, generally, this index.

BUSINESS RECORDS
Defined, § 175.00.
Falsifying,
- Defense, § 175.15.
- Definitions, § 175.00.
- First degree, § 175.10.
- Second degree, § 175.05.

BUSSES
Discharging firearms at prohibited, § 265.35.
Services, theft, § 165.15.

CALLING
See Profession, generally, this index.

CANCELLATION
Licenses, § 60.00.

CANNABIS
Dangerous drugs, § 220.00 et seq.

CANNONS
Projecting or throwing persons from, offensive exhibition, § 245.05.
Toy cannons. Fireworks, generally, this index.

CAPITAL PUNISHMENT
Death Penalty, generally, this index.

CAPITAL STOCK
Misconduct, corporate directors, § 190.35.

CARDS
Gambling offenses, § 225.00 et seq.
Loitering, § 240.35.

CAREER
Coercion, second degree, § 135.60.
Extortion, harming as, § 155.05.

CARRIERS
Physical force, use, justification, § 35.10.
Tampering, property, §§ 145.15, 145.20.

CATASTROPHES
False reports, § 240.50.

CERTIFICATES
False, issuing, § 175.40.

CESSPOOLS
Failure to cover abandoned cesspool, § 270.10.

CHANGE OF ADDRESS
Probation officer notice, § 65.10.

CHARGE PLATE
Services, theft provisions, § 165.10.

CHATTEL MORTGAGES
Fraud, § 185.00 et seq.

CHEATS
See Frauds and Cheats, generally, this index.

CHECKS
Bad Checks, generally, this index.

CHILDREN
See Infants, generally, this index.

CHLORATES
Devices containing. Fireworks, generally, this index.

CHOSES IN ACTION
Larceny, generally, this index.

CIGARETTES
Dangerous drugs, possession, § 220.00 et seq.
Sale to minors, § 260.20.

CITIES
Municipalities, generally, this index.

CIVIC ORGANIZATIONS
Fireworks, sale, etc., to authorized organizations, § 270.00.

CLAIMS
Insurance, false, presenting, § 175.50.

CLERGYMEN
Solemnizing marriage unlawfully, § 255.00.

CLERICAL PERSONNEL
Grand jury disclosure, § 215.70.

COCAINE
Dangerous drugs, § 220.00 et seq.

CODICILS
Forgery, second degree, § 170.10.
Unlawfully concealing, § 190.30.

COERCION
Duress or Coercion, generally, this index.

COIN MACHINES OR BOXES
Slugs, generally, this index.

COINS
Slugs, generally, this index.

COLLEGES AND UNIVERSITIES
Hazing, § 240.25.

COMBAT
Animal combat, cruelty to animals, § 245.10.

COMIC BOOKS
Disseminating indecent comic books, § 235.25.
Failing to identify publication, § 235.30.

INDEX

References are to Sections of the Revised Penal Law

COMMERCIAL INSTRUMENTS
Bad Checks, generally, this index
Forgery, second degree, § 170.10.

COMMON CARRIERS
See Carriers, generally, this index.

COMMON OWNERS
Larceny, generally, this index.

COMMUNICATIONS
Criminal, failure to report, § 250.35.
Private, tampering with, § 250.25.

COMPOUNDING A CRIME
Generally, § 215.45.

CONCEALMENT
Hindering prosecution, § 205.50 et seq.
Insolvency, fraud in, § 185.00.
Public Records, generally, this index.
Wills, unlawfully, § 190.30.

CONDITIONAL DISCHARGE
Additional period, § 65.05.
Alteration or revocation, §§ 60.00, 65.05.
Authorization, § 60.00.
Calculation, periods, § 65.15.
Conditions, §§ 65.05, 65.10.
Conduct and rehabilitation, conditions, § 65.10.
Corporations, § 60.00.
Dangerous drug offenses, probation, § 65.05.
Delinquency, interruption, sentence, § 65.15.
Final judgment of conviction, § 60.00.
Indeterminate sentence, service, satisfaction, § 65.15.
Modification, etc., conditions, § 65.05.
Periods, § 65.05.
    Calculation, § 65.15.
Satisfaction, service, indeterminate sentence, § 65.15.
Tentative sentence, § 60.00.
Violations, § 65.15.

CONDITIONAL SALES
Contract, fraudulent disposition, property subject to, § 185.15.
Property, right of possession, § 155.00.

CONDUCT
Defined, culpability provisions, § 15.00.

CONFIDENCE GAMES
Fraudulently accosting, § 165.30.

CONSENSUAL SODOMY
Generally, §§ 130.05, 130.38.

CONSENT
See specific heads.

CONSPIRACY
Agreements made in and outside state, § 105.25.
Defenses, §§ 105.25, 105.30.
First degree, § 105.15.
Fourth degree, § 105.00.

CONSPIRACY—Continued
Jurisdiction and venue, § 105.25.
Overt act, necessity, § 105.20.
Pleading and proof, § 105.20.
Renunciation, defense, § 35.45.
Second degree, § 105.10.
Third degree, § 105.05.

CONSTRUCTION AND APPLICATION
Definitions, generally, this index.
Not strictly construed, § 5.00.
Offenses before and after enactment, § 5.05.
Other limitations, § 5.10.

CONTEMPT
Criminal contempt,
Generally, § 215.50.
Legislature, § 215.60.
Prosecution and punishment, § 215.55.
Temporary state commission, § 215.65.
Subjecting to,
Coercion, § 135.60.
Extortion, § 155.05.
Offensive exhibitions, § 245.05.

CONTEST OF CHANCE
Defined, gambling provisions, § 225.00.

CONTESTS
Competing continuously without respite for 8 or more consecutive hours, offensive exhibition, § 245.05.

CONTRABAND
Defined, escape and other offenses relating to custody, § 205.00.
Prisons and Prisoners, this index.

CONTRACTS
Forgery, second degree, § 170.10.
Larceny, generally, this index.
Vehicles, unauthorized use, § 165.05.

CONVEYANCES
See Deeds and Conveyances, generally, this index.

CONVICTION
Different degrees of offense, § 20.15.
Sentence and Punishment, generally, this index.

CORPORATION COUNSEL
Pornography, institution, proceedings, § 410.00.

CORPORATIONS
Conditional discharge, § 60.00.
Criminal liability, § 20.20.
Individual for corporate conduct, § 20.25.
Directors, misconduct, § 190.35.
Fines and penalties, §§ 60.00, 80.10.
Exceptions, §§ 80.00, 80.05.
Misconduct, directors, § 190.35.
Unconditional discharge, § 60.00.

INDEX

References are to Sections of the Revised Penal Law

CORRECTION DEPARTMENT
Calculation, terms, imprisonment, institutions under, § 70.30.
Indeterminate sentence, commitment to, § 70.20.

CORRECTIONAL INSTITUTIONS
Definite sentence, imprisonment, commitment to, § 70.20.
Employees, license to have and carry concealed pistols or revolvers, § 400.00.
Guards, physical force, justifiable use, § 35.30.
Physical force, use, justification, § 35.10.

CORROBORATION
Criminal facilitation, § 115.15.
Incest, § 255.30.
Perjury, § 210.50.
Promoting prostitution, § 230.35.
Sex offenses, § 130.15.
Stolen property, possession, § 165.65.

CORRUPTION
See Bribery and Corruption, generally, this index.

COUNTERFEITING
Possession, forgery devices, § 170.40.

COUNTIES
Fireworks, display, permit, § 405.00.
General fund, pornography, proceeds, sale, forfeited material, payment, § 410.00.
Parks, fireworks, display, permits, approval, etc., § 405.00.

COUNTY JAILS
Employees, license to have and carry concealed pistols or revolvers, § 400.00.
Weapons and dangerous instruments and appliances, exemption, wardens, etc., provisions governing possession, § 265.20.

COUNTY PARK COMMISSION
Fireworks, display, permit authority, § 405.00.

COURTS
Kidnapping, guilty plea, consent, § 135.35.
Murder, guilty plea, consent, § 125.30.
Sentence and Punishment, generally, this index.

CREDIT CARDS
Defined, theft provisions, § 165.10.
Theft of services, § 165.15.

CREDITORS
Frauds on, § 185.00 et seq.

CRIMES AND OFFENSES
See, also, specific heads.
Accusing person of,
Coercion, second degree, § 135.60.
Extortion, obtaining property by, § 155.05.
Anticipatory, § 100.00 et seq.
Classification, § 55.00 et seq.
Defined, § 10.00.
Designation, § 55.10.
Felonies, generally, this index.
Misdemeanors, generally, this index.
Strict liability, § 15.10.
Traffic infraction, exclusion, § 55.00.

CRIMINAL ANARCHY
Generally, § 240.15.

CRIMINAL COMMUNICATIONS
Failing to report, § 250.35.

CRIMINAL CONTEMPT
See Contempt, this index.

CRIMINAL LIABILITY
Agent, defined, corporate liability, § 20.20.
Conduct of another, § 20.00.
    Exemption, § 20.10.
    No defense, § 20.05.
Corporations, § 20.20.
    Individual for corporate conduct, § 20.25.
Culpability, generally, this index.
Defenses, generally, this index.
Degrees of Offense, generally, this index.
High managerial agent, defined, § 20.20.
Ignorance, effect, § 15.20.
Intoxication, effect, § 15.25.
Minimal requirements, § 15.10.
Mistake, effect, § 15.20.
Principles, § 15.00 et seq.

CRIMINAL NEGLIGENCE
Assault, § 120.00.
Culpability, generally, this index.
Defined, culpability provisions, § 15.05.
Homicide, §§ 125.05, 125.10.
Police officers, § 35.30.

CRIMINAL NUISANCE
Generally, § 240.45.

CRIMINAL POSSESSION
Dangerous Drugs, this index.

CRIMINAL SOLICITATION
Generally, § 100.00 et seq.

CRUELTY TO ANIMALS
See Animals, this index.

CULPABILITY
Act, defined, § 15.00.
Age, infants, knowledge, § 15.20.
Conduct, defined, § 15.00.
Construction, statutory requirements, § 15.15.
Criminal negligence, defined, § 15.05.
Defenses, this index.
Definitions, § 15.00.
    Mental states, §§ 15.00, 15.05.
Ignorance, effect, § 15.20.
Intentionally, defined, § 15.05.
Intoxication, effect, § 15.25.
Knowingly, defined, § 15.05.
Mental culpability,
    Defined, § 15.10.
    Statutory construction, § 15.15.

CULPABILITY—Continued
Mental states,
Defined, §§ 15.00, 15.05.
Statutory requirements, § 15.15.
Mistake, effect, § 15.20.
Omission, defined, § 15.00.
Recklessly, defined, § 15.05.
Strict liability, § 15.10.
To act, defined, § 15.00.
Voluntary act, defined, § 15.00.

CULTURES
Grand larceny, § 155.30.

CUSTODY
Arrest, generally, this index.
Defined, escape and other offenses relating to custody, § 205.00.
Escape, generally, this index.
Hindering Prosecution, generally, this index.
Interference,
First degree, § 135.50.
Second degree, § 135.45.
Jumping bail. Bail, generally, this index.
Prisons and Prisoners, generally, this index.
Substitution of children, § 135.55.

DAGGERS
Possession, § 265.05.
Presumptions, unlawful intent, § 265.15.

DAMAGES
Civil actions, effect on, § 5.10.
Property, offenses involving, § 140.00 et seq.

DANCE CONTESTS
Competing continuously without respite for more than 8 consecutive hours, offensive exhibition, § 245.05.

DANCE HALLS
Permitting minor to enter or remain in, § 260.20.

DANCES
Loitering, § 240.35.
Obscenity and related offenses, § 235.00 et seq.

DANGEROUS CONTRABAND
Defined, escape and other offenses relating to custody, § 205.00.

DANGEROUS DRUGS
Amphetamine, defined, § 220.00.
Barbiturate, defined, § 220.00.
Criminal possession,
First degree, § 220.20
Fourth degree, § 220.05.
Presumptions, § 220.20.
Second degree, § 220.15.
Third degree, § 220.10.
Criminally selling,
First degree, § 220.40.
Second degree, § 220.35.
Third degree, § 220.30.
Defined, § 220.00.

DANGEROUS DRUGS—Continued
Definitions, § 220.00.
Hypodermic instruments, criminally possessing, § 220.45.
Infants, permitting minor to enter or remain in place where illegal narcotics activity is maintained or conducted, § 260.20.
Loitering for purpose of unlawfully using or possessing, § 240.35.
Narcotic drug, defined, § 220.00
Ounce, defined, § 220.00.
Sell, defined, § 220.00.
Unlawfully, defined, § 220.00.

DANGEROUS INSTRUMENTS
Assault, § 120.00 et seq.
Defined, § 10.00.
Robbery, first degree, § 160.15.

DEAD BODIES
Sexual misconduct, § 130.20.

DEADLY PHYSICAL FORCE
Defined, § 10.00.
Justification, generally, this index.

DEADLY WEAPONS
Assault, § 120.00 et seq.
Burglary,
First degree, § 140.30.
Second degree, § 140.25.
Defined, § 10.00.
Robbery, first degree, § 160.15.

DEALERS IN FIREARMS
Defined, dangerous weapon provisions, § 265.00.
Exemptions from provisions governing possession, etc., of weapons and dangerous instruments and appliances, § 265.20.
License to engage in business, § 400.00.
Records required to be kept, § 400.00.

DEATH
Homicide, generally, this index.
Kidnapping, presumptions, § 135.25.
Manslaughter, §§ 125.15, 125.20.
Murder, generally, this index.
Suicide,
Manslaughter, § 125.15.
Murder, § 125.25.
Promoting attempt, §§ 120.30, 120.35.

DEATH PENALTY
Appeal, § 125.35.
Kidnapping, §§ 135.35, 135.40.
Murder, proceedings to determine sentence, § 125.35.
Setting aside, § 125.35.

DECEPTION
Frauds and Cheats, generally, this index.
Services, theft, § 165.15.
Suicide attempt, aiding, § 120.35.

DECISION OF COURT
Mistaken belief founded upon, § 15.20.

INDEX

References are to Sections of the Revised Penal Law

DECREES
See Judgments and Decrees, generally, this index.

DEEDS AND CONVEYANCES
Forgery, second degree, § 170.10.
Insolvency, fraud in, § 185.00.

DEFACE
Defined, dangerous weapon provisions, § 265.00.

DEFACEMENT
Weapons and dangerous instruments and appliances, § 265.10.

DEFECTIVE PERSONS
See Mentally Ill or Defective Persons, generally, this index.

DEFENSE CONTRACTS
Weapons and dangerous instruments and appliances, exemptions, persons fulfilling contracts, provisions governing possession, § 265.20.

DEFENSES
Adultery, § 255.20.
Affirmative defenses,
- Arson,
  - Second degree, § 150.10.
  - Third degree, § 150.05.
- Bad checks, issuing, § 190.15.
- Bail jumping, § 205.45.
- Burden of proof, § 25.00.
- Coercion, § 135.75.
- Compounding a crime, § 215.45.
- Duress, § 35.35.
- Endangering the welfare of child, § 260.15.
- Entrapment, § 35.40.
- Larceny, § 155.15.
- Obscenity, § 235.15.
- Perjury, § 210.25.
- Renunciation, § 35.45.

Age, infants, knowledge, § 15.20.
Arson,
- Second degree, § 150.10.
- Third degree, § 150.05.

Attempt to commit crime, § 110.10.
- Abandonment, § 35.45.
- Renunciation, § 35.45.

Bad checks, issuing, § 190.15.
Bigamy, § 255.20.
Bribe receiving, public servants, § 200.15.
Bribery, public servants, § 200.05.
Burden of proof, § 25.00.
Business records, falsifying, § 175.15.
Coercion, §§ 135.70, 135.75.
Conduct of another, criminal liability for, § 20.05.
Conspiracy, §§ 105.25, 105.30.
- Renunciation, § 35.45.

Criminal facilitation, §§ 35.45, 115.10.
Criminal responsibility, lack of, §§ 30.00, 30.05.
Culpability, lack of. Justification, generally, this index.
False advertising, § 190.20.
Forged instruments, possession, § 170.35.
Gambling records, possession of, § 225.25.

DEFENSES—Continued
Infancy, § 30.00.
Infants, unlawfully dealing with, § 260.20.
Intoxication, § 15.25.
Justification, generally, this index.
Kidnapping, § 135.30.
Labor officials,
    Bribe receiving, § 180.30.
    Bribing, § 180.20.
Larceny, §§ 155.10, 155.15.
Lottery offenses, § 225.40.
Marriage license, unlawfully procuring, § 255.20.
Mental disease or defect, § 30.05.
Misapplication, property, § 165.00.
Mistake or ignorance, § 15.20.
Murder, § 125.25.
Prior law, § 5.05.
Prostitution and patronizing a prostitute, § 230.10.
Sex offenses, § 130.10.
Sexual abuse, third degree, § 130.55.
Solicitation, § 100.15.
    Renunciation, § 35.45.
Stolen property, possession, § 165.60.
Tampering, § 145.15.
Unlawful imprisonment, § 135.15.
Withholding information respecting, extortion, § 155.05.
Withholding testimony, etc., coercion, second degree, § 135.60.

DEFINITIONS
Abduct, kidnapping, etc., provisions, § 135.00.
Abortional act, § 125.05.
Act, culpability provisions, § 15.00.
Administrator, fraud in insolvency, § 185.00.
Advance gambling activity, gambling provisions, § 225.00.
Advance prostitution, promoting prostitution provisions, § 230.15.
Agent, criminal liability, corporations, § 20.20.
Amphetamine, dangerous drug provisions, § 220.00.
Appropriate, larceny provisions, § 155.00.
Attesting officer, perjury provisions, § 210.00.
Barbiturate, dangerous drug provisions, § 220.00.
Benefit, § 10.00.
Bookmaking, gambling provisions, § 225.00.
Building,
    Arson provisions, § 150.00.
    Trespass, etc., provisions, § 140.00.
Business record, falsifying provisions, § 175.00.
Check, bad check provisions, § 190.00.
Coin machine, slug provisions, § 170.50.
Complete written instrument, forgery provisions, § 170.00.
Conduct, culpability provisions, § 15.00.
Contest of chance, gambling provisions, § 225.00.
Contraband, escape and other offenses relating to custody, § 205.00.
Credit card, theft provisions, § 165.10.
Crime, § 10.00.
Criminal negligence, culpability provisions, § 15.05.
Culpable mental state, § 15.00.
Custody, escape and other offenses relating to custody, § 205.00.
Dangerous contraband, escape and other offenses relating to custody, § 205.00.
Dangerous drug, dangerous drug provisions, § 220.00.

INDEX

References are to Sections of the Revised Penal Law

DEFINITIONS—Continued
Dangerous instrument, § 10.00.
Deadly physical force, § 10.00.
Deadly weapon, § 10.00.
Dealer in firearms, dangerous weapon provisions, § 265.00.
Deface, dangerous weapon provisions, § 265.00.
Deprive, larceny provisions, § 155.00.
Detention facility, escape and other offenses relating to custody, § 205.00.
Deviate sexual intercourse, § 130.00.
Dispose of, dangerous weapon provisions, § 265.00.
Drawer, bad check provisions, § 190.00.
Dwelling, trespass, etc., provisions, § 140.00.
Emergency call, unlawfully refusing to yield party line provisions, § 270.15.
Encouragement to commit offense, entrapment, § 35.40.
Enter or remain unlawfully, burglary, etc., provisions, § 140.00.
Enterprise, falsifying business records, § 175.00.
Falsely alter, forgery provisions, § 170.00.
Falsely complete, forgery provisions, § 170.00.
Falsely make, forgery provisions, § 170.00.
Felony, § 10.00.
Female, sex offenses, § 130.00.
Firearm, dangerous weapon provisions, § 265.00.
Firearm silencer, dangerous weapon provisions, § 265.00.
Fireworks, unlawfully dealing with fireworks provisions, § 270.00.
Forcible compulsion, sex offenses, § 130.00.
Forged instrument, § 170.00.
Funds, bad check provisions, § 190.00.
Gain, fine provisions, § 80.00.
Gambling, gambling provisions, § 225.00.
Gambling device, gambling provisions, § 225.00.
Gravity knife, dangerous weapon provisions, § 265.00.
Gunsmith, dangerous weapon provisions, § 265.00.
High managerial agent, corporate criminal liability, § 20.20.
Homicide, § 125.00.
Incomplete written instrument, forgery provisions, § 170.00.
Inducement to commit offense, entrapment, § 35.40.
Insufficient funds, bad check provisions, § 190.00.
Intentionally, culpability provisions, § 15.05.
Jurat, perjury provisions, § 210.00.
Juror, § 10.00.
Justifiable abortional act, § 125.05.
Knowingly, culpability provisions, § 15.05.
Larceny, § 155.05.
Licensing officer, dangerous weapon provisions, § 265.00.
Lottery, gambling provisions, § 225.00.
Machine-gun, dangerous weapon provisions, § 265.00.
Material, obscenity provisions, § 235.00.
Mechanical overhearing of a conversation, eavesdropping provisions, § 250.00.
Mental culpability, § 15.10.
Mentally defective, sex offenses, § 130.00.
Mentally incapacitated, sex offenses, § 130.00.
Misdemeanor, § 10.00.
Narcotic drug, dangerous drug provisions, § 220.00.
Night, burglary, etc., provisions, § 140.00.
Noxious materials, unlawful possession of noxious material provisions, § 270.05.
Numbers game, gambling provisions, § 225.00.
Oath, perjury provisions, § 210.00.

DEFINITIONS—Continued

Oath required by law, perjury provisions, § 210.00.
Obscene, obscenity provisions, § 235.00.
Obtain, larceny provisions, § 155.00.
Offense, § 10.00.
Official proceeding, tampering with physical evidence provisions, § 215.35.
Omission, culpability provisions, § 15.00.
Ounce, dangerous drug provisions, § 220.00.
Owner, larceny provisions, § 155.00.
Party line, unlawfully refusing to yield party line provisions, § 270.15.
Party officer, bribery provisions, § 200.40.
Pass, bad check provisions, § 190.00.
Performance, obscenity provisions, § 235.00.
Permit authority, fireworks provisions, § 405.00.
Persistent felony offender, § 70.10.
Person, § 10.00.
    Homicide provisions, § 125.05.
Physical evidence, tampering with physical evidence provisions, § 215.35.
Physical injury, § 10.00.
Physically helpless, sex offenses, § 130.00.
Player, gambling provisions, § 225.00.
Policy, gambling provisions, § 225.00.
Pornographic still or motion picture, § 410.00.
Possess, § 10.00.
Premises, trespass, etc., provisions, § 140.00.
Profit from gambling activity, gambling provisions, § 225.00.
Profit from prostitution, promoting prostitution provisions, § 230.15.
Promote, obscenity provisions, § 235.00.
Property, larceny provisions, § 155.00.
Public place, offenses against public order, § 240.00.
Public servant, § 10.00.
Recklessly, culpability provisions, § 15.05.
Reformatory sentence, young adults, § 75.00.
Relative, kidnapping, etc., provisions, § 135.00.
Renders criminal assistance, hindering prosecution provisions, § 205.50.
Representative drawer, bad check provisions, § 190.00.
Restrain, kidnapping, etc., provisions, § 135.00.
Rifle, dangerous weapon provisions, § 265.00.
Robbery, § 160.00.
Services, theft provisions, § 165.10.
Sexual contact, § 130.00.
Sexual intercourse, sex offenses, § 130.00.
Sell, dangerous drug provisions, § 220.00.
Serious physical injury, § 10.00.
Shotgun, dangerous weapon provisions, § 265.00.
Slot machine, gambling provisions, § 225.00.
Slugs, § 170.50.
Something of value, gambling provisions, § 225.00.
Sports contest, bribery provisions, § 180.35.
Sports official, bribery provisions, § 180.35.
Sports participant, bribery provisions, § 180.35.
Swear, perjury provisions, § 210.00.
Swear falsely, perjury provisions, § 210.00.
Switchblade knife, dangerous weapon provisions, § 265.00.
Testimony, perjury provisions, § 210.00.
To act, culpability provisions, § 15.00.
Transportation facility, offenses against public order, § 240.00.
Unlawful, gambling provisions, § 225.00.

DEFINITIONS—Continued
Unlawfully,
Dangerous drug provisions, § 220.00.
Eavesdropping provisions, § 250.00.
Utter, bad check provisions, § 190.00.
Value, slug provisions, § 170.50.
Vehicle, § 10.00.
Violation, § 10.00.
Voluntary act, culpability provisions, § 15.00.
Wire tapping, eavesdropping provisions, § 250.00.
Written instrument, forgery provisions, § 170.00.
Young adult, reformatory sentence, § 75.00.

DEGREES OF OFFENSE
See, also, specific heads.
Conviction, § 20.15.

DELETIONS
Entry. Business Records, generally, this index.
Forgery, generally, this index.

DELINQUENCIES
See specific heads.

DEPOSITIONS
Perjury, § 210.00 et seq.

DEPOSITS
Slugs, generally, this index.

DEPRIVE
Defined, larceny provisions, § 155.00.

DESERTION
Children, § 260.00.

DESTRUCTION
Entry. Business Records, generally, this index.
Firearms and other dangerous weapons, § 400.05.
Fireworks possessed unlawfully, § 405.05.
Insolvency, fraud in, § 185.00.
Mortgaged property, fraudulent disposition, § 185.10.
Public Records, generally, this index.
Wills, etc., as unlawful concealment, § 190.35.

DETENTION FACILITIES
Defined, escape and other offenses relating to custody, § 205.00.
Escape, physical force to prevent, justification, § 35.30.

DEVIATE SEXUAL INTERCOURSE
Defined, § 130.00.

DEVICES
Eavesdropping, possession, § 250.10.
Forgery, possession, § 170.40.
Gambling, possession, § 225.30.
Grand larceny, § 155.30.

DICE
Gambling offenses, § 225.00 et seq.
Loitering, § 240.35.

DIES
Forgery devices, possession, § 170.40.

DIRECTORS
Corporations, misconduct, § 190.35.

DIRKS
Possession, § 265.05.
Presumptions, unlawful intent, § 265.15.

DISCHARGE
Conditional Discharge, generally, this index.
Unconditional Discharge, generally, this index.

DISCIPLINE
Physical force, use, justification, § 35.10.

DISCLOSURE
Grand jury, unlawful disclosure, § 215.70.
Indictment, unlawful disclosure, § 215.75.

DISCOUNTS
Misconduct, corporate directors, § 190.35.

DISFIGUREMENT
Assault, § 120.10.

DISGUISES
Loitering in public place with, § 240.35.

DISHONOR
Bad Checks, generally, this index.

DISORDERLY CONDUCT
Generally, § 240.20.
Criminal contempt, §§ 215.50, 215.55.

DISORDERLY HOUSES
See Prostitution and Houses of Prostitution, generally, this index.

DISPOSE OF
Defined, dangerous weapon provisions, § 265.00.

DISPOSITION
Weapons and dangerous instruments and appliances, § 265.10.

DISREPUTABLE PERSONS OR PLACES
Probation or conditional discharge, conditions, § 65.10.

DISTRICT ATTORNEYS
Fireworks, delivery to, § 405.05.
Grand jury disclosure, § 215.70.
Kidnapping, guilty plea, consent, § 135.35.
Murder, guilty plea, consent, § 125.30.
Pornography, seized equipment delivered to, § 410.00.
Reports, aliens convicted under dangerous weapon provisions, § 265.30.

DIVIDENDS
Misconduct, corporate directors, § 190.35.

DIVORCE
Decrees, unlawfully issuing, § 255.05.

DOCUMENTS
Grand larceny, § 155.30.

DOUBLE AMOUNT
Fines,
Corporations, § 80.10.
Felony, § 80.00.

DRAFTS
Bad Checks, generally, this index.

DRAWER
Bad Checks, generally, this index.
Defined, bad check provisions, § 190.00.
Forgery, generally, this index.

DRAWINGS
Grand larceny, § 155.30.

DRUGS AND DRUGGISTS
Abortion, generally, this index.
Assault, § 120.05.
Dangerous Drugs, generally, this index.
Narcotic Drugs, generally, this index.
Prescriptions, forgery, second degree, § 170.10.
Public intoxication, § 240.40.

DRUNKARDS AND DRUNKENNESS
Intoxication, generally, this index.

DURESS OR COERCION
Affirmative defense, § 35.35.
Defense, §§ 35.35, 135.70, 135.75.
First degree, § 135.65.
Hindering prosecutions, § 205.50.
Menacing, § 120.15.
No defense, § 135.70.
Obstructing governmental administration, § 195.05.
Second degree, § 135.60.
Services, theft, § 165.15.
Suicide attempt, aiding, § 120.35.

DWELLINGS
See, also, specific heads.
Defined, trespass, etc., provisions, § 140.00.

EAVESDROPPING
Generally, § 250.00 et seq.
Definitions, § 250.00.
Devices, possession, § 250.10.
Mechanical overhearing of a conversation, defined, § 250.00.
Order, divulging, § 250.20.
Private communications, tampering with, § 250.25.
Unlawfully, defined, § 250.00.
Wire tapping,
Defined, § 250.00.
Failure to report, § 250.15.

ECONOMIC COERCION
Generally, § 135.60.

ECONOMIC LOSS
Misapplication of property, § 165.00.

EFFECTIVE DATE
Applicability of law, § 5.05.
Penal Law, § 500.10.

ELECTRIC
Larceny, generally, this index.
Tampering, property, §§ 145.15, 145.20.

ELECTRICITY
Services, theft, § 165.15.

ELECTRONIC DEVICES
Eavesdropping, generally, this index.
Slugs, generally, this index.

EMBEZZLEMENT
Larceny, generally, this index.

EMERGENCIES
False reports, § 240.50.
Imminent public or private injury, avoidance, § 35.05.
Physical force, use, physician, justification, § 35.10.

EMERGENCY CALL
Defined, unlawfully refusing to yield party line provisions, § 270.15.

EMOTIONAL DISTURBANCE
Mitigation, murder, reduction to manslaughter, § 125.20.
Murder, defenses, § 125.25.

EMPLOYERS AND EMPLOYEES
Commercial bribing and bribe receiving, §§ 180.00, 180.05.

EMPLOYMENT
Probation or conditional discharge, conditions, § 65.10.

ENDANGERMENT
Children, welfare of, § 260.10.
Incompetent persons, welfare of, § 260.25.
Reckless Endangerment, generally, this index.

ENDORSEMENT
Forgery, § 170.00 et seq.

ENDURANCE CONTESTS
Offensive exhibitions, § 245.05.

ENTER OR REMAIN UNLAWFULLY
Defined, burglary, etc., provisions, § 140.00.

ENTERPRISE
Defined, falsifying business records, § 175.00.

ENTERTAINMENT
Services, theft, § 165.15.

ENTRAPMENT
Defense, § 35.40.

ENTRY
Falsifying. Business Records, generally, this index.

EQUIPMENT
Possession, forgery devices, § 170.40.

INDEX

References are to Sections of the Revised Penal Law

ERASURES
Entry. Business Records, generally, this index.
Forgery, generally, this index.

ESCAPE
Custody, defined, § 205.00.
Detention facility, defined, § 205.00.
First degree, § 205.15.
Interruption,
Reformatory sentence, § 75.10.
Sentence, § 70.30.
Murder, § 125.25.
Physical force, use. Justification, generally, this index.
Reformatory sentence, § 75.10.
Second degree, § 205.10.
Third degree, § 205.05.

ESTATES
Debtors, insolvency, fraud in, § 185.00.

EVIDENCE
Burden of proof, defenses, § 25.00.
Corroboration, generally, this index.
Entrapment, § 35.40.
Larceny, proof, § 155.45.
Murder, sentencing procedure, § 125.35.
Perjury, inconsistent statements, § 210.20.
Presumptions, generally, this index.
Suppression, hindering prosecution, § 205.50.
Tampering with physical evidence,
Generally, § 215.40.
Definitions, § 215.35.
Official proceeding, defined, § 215.35.
Physical evidence, defined, § 215.35.

EVIDENCES OF INDEBTEDNESS
Larceny, generally, this index.
Misconduct, corporate directors, § 190.35.

EXCHANGE
Mortgaged property, fraudulent disposition, § 185.10.

EXCRETION
Obscenity and related offenses, § 235.00 et seq.

EXEMPTIONS
Conduct of another, criminal liability for, §§ 20.05, 20.10.
Solicitation, § 100.20.

EXHIBITION
Licenses to carry, possess, etc., firearms, § 400.00.
Obscenity and related offenses, § 235.00 et seq.
Offensive exhibition, § 245.05.

EXHIBITS
Tampering with evidence, §§ 215.35, 215.40.

EXPENSES
Licenses to carry, possess, etc., firearms, charges against county, § 400.00.

EXPLOSIONS
Arson, generally, this index.
False reports, § 240.50.

EXPLOSIVES
Burglary,
First, degree, § 140.30.
Second degree, § 140.25.
Fire works, exemption of explosives used for blasting from provisions governing, § 270.00.
Mischief, first degree, § 145.10.
Possession, § 265.05.
Presumptions, possession and unlawful intent, § 265.15.

EXPRESS COMPANIES
Messengers, license to have and carry concealed pistols or revolvers, § 400.00.

EXTORTION AND THREATS
Grand larceny, § 155.30.
Indictment or information, § 155.45.
Larceny by, § 155.05.
No defense, § 155.10.
Larceny committed by, § 155.10.
Obtaining property by, § 155.05.

FACILITATION
Affirmative defense, § 35.45.
Corroboration, § 115.15.
Defenses, §§ 35.45, 115.10.
First degree, § 115.05.
Second degree, § 115.00.

FAIR ASSOCIATIONS
Fireworks,
Display, permit, § 405.00.
Sale, etc., to authorized associations, § 270.00.

FALSE PRETENSES
Obtaining property by. Larceny, generally, this index.

FALSE PROMISE
Larceny, § 155.05.

FALSE REPORTS
Generally, § 240.50.

FALSE SWEARING
Generally, § 210.00 et seq.

FALSE SWORN STATEMENTS
Making,
First degree, § 210.40.
Second degree, § 210.35.

FALSE WRITTEN STATEMENTS
Business Records, generally, this index.
False certificates, issuing, § 175.40.
Financial statement, issuing, § 175.45.
Insurance claim, presenting, § 175.50.
Offenses involving, § 175.00 et seq.
Offering false instrument for filing, §§ 175.30, 175.35.
First degree, § 175.35.
Second degree, § 175.30.
Public records, tampering with, §§ 175.20, 175.25.
Punishable false written statement, making, § 210.45.

INDEX

References are to Sections of the Revised Penal Law

FAMILY
Support, probation, etc., conditions, § 65.10.

FEAR
Duress or Coercion, generally, this index.

FEES
Licenses to carry, possess, etc., firearms, § 400.00.

FELONIES
Abortion,
First degree, § 125.45.
Second degree, § 125.40.
Arson,
First degree, § 150.15.
Second degree, § 150.10.
Third degree, § 150.05.
Assault,
First degree, § 120.10.
Second degree, § 120.05.
Attempt to commit, coercion, § 135.65.
Attempt to commit crime, § 110.05.
Bail jumping, first degree, § 205.40.
Bigamy, § 255.15.
Burglary,
First degree, § 140.30.
Second degree, § 140.25.
Third degree, § 140.20.
Business records, falsifying, § 175.10.
Classification, §§ 55.05, 55.10.
Coercion, § 135.65.
Conspiracy,
First degree, § 105.15.
Second degree, § 105.10.
Criminal anarchy, § 240.15.
Criminally negligent homicide, § 125.10.
Custodial interference, § 135.50.
Dangerous drugs,
Criminal possession,
First degree, § 220.20.
Second degree, § 220.15.
Third degree, § 220.10.
Criminally selling,
First degree, § 220.40.
Second degree, § 220.35.
Third degree, § 220.30.
Defined, § 10.00.
Designation of offenses, § 55.10.
Eavesdropping, § 250.05.
Escape,
First degree, § 205.15.
Second degree, § 205.10.
Facilitation, first degree, § 115.05.
False certificates, issuing, § 175.40.
False statements, making apparently sworn false statement, first degree, § 210.40.
Forged instruments, possession,
First degree, § 170.30.
Second degree, § 170.25.

FELONIES—Continued
Forgery,
First degree, § 170.15.
Second degree, § 170.10.
Forgery devices, possession, § 170.40.
Gambling, promoting, first degree, § 225.10.
Gambling records, possession of, first degree, § 225.20.
Grand larceny,
First degree, § 155.40.
Second degree, § 155.35.
Third degree, § 155.30.
Hindering prosecution,
First degree, § 205.65.
Second degree, § 205.60.
Incest, § 255.25.
Infants, abandonment of, § 260.00.
Juror,
Bribe receiving by, § 215.20.
Bribing, § 215.15.
Kidnapping,
First degree, § 135.35.
Second degree, § 135.20.
Labor officials,
Bribe receiving, § 180.25.
Bribing, § 180.15.
Manslaughter,
First degree, § 125.20.
Second degree, § 125.15.
Mischief,
First degree, § 145.10.
Second degree, § 145.05.
Murder, § 125.30.
Offering, false instrument for filing, § 175.35.
Perjury,
First degree, § 210.15.
Second degree, § 210.10.
Persistent felony offender, defined, § 70.10.
Physical evidence, tampering with, § 215.40.
Prisons and prisoners, promoting contraband, first degree, § 205.25.
Prostitution, promoting,
First degree, § 230.30.
Second degree, § 230.25.
Public office,
Bribe giving for, § 200.45.
Bribe receiving for, § 200.50.
Public records, tampering, § 175.25.
Public servants,
Bribe receiving, § 200.10.
Bribery, § 200.00.
Official misconduct,
Receiving reward for, § 200.25.
Rewarding, § 200.20.
Rape,
First degree, § 130.35.
Second degree, § 130.30.
Third degree, § 130.25.
Reckless endangerment, § 120.25.
Riot, § 240.05.

FELONIES—Continued
Robbery,
First degree, § 160.15.
Second degree, § 160.10.
Third degree, § 160.05.
Sentence and Punishment, generally, this index.
Sexual abuse, first degree, § 130.65.
Slugs, unlawfully using, § 170.60.
Sodomy,
First degree, § 130.50.
Second degree, § 130.45.
Third degree, § 130.40.
Solicitation, first degree, § 100.10.
Sports,
Bribe receiving, § 180.45.
Bribing, § 180.40.
Stolen property, possession,
First degree, § 165.50.
Second degree, § 165.45.
Substitution of children, § 135.55.
Suicide attempt, promoting, § 120.30.
Tampering, § 145.20.
Public records, § 175.25.
Unlawful imprisonment, first degree, § 135.10.
Weapons and dangerous instruments and appliances,
Manufacture, transport, etc., § 265.10.
Possession, § 265.05.
Wills, unlawful concealment, § 190.30.
Witnesses,
Bribe receiving by, § 215.05.
Bribing, § 215.00.

FEMALES
See Women, generally, this index.

FENCES
Damage to and intrusion upon property, § 140.00 et seq.

FETUS
Abortion, § 125.00 et seq.
Homicide, § 125.00.

FICTITIOUS PERSONS
Forgery, § 170.00 et seq.

FIDUCIARIES
Commercial bribing and bribe receiving, §§ 180.00, 180.05.

FIGHTING
Disorderly conduct, § 240.20.

FILES AND FILING
See specific heads.

FINANCIAL CONDITION
Coercion, second degree, § 135.60.
Extortion, harming as, § 155.05.

FINES, PENALTIES AND FORFEITURES
Alternative sentence, § 80.05.
Authorized dispositions, offenders, § 60.00.
Civil penalties, § 60.00.
Effect on, § 5.10.
Corporations, §§ 60.00, 80.10.
Felonies, § 80.00.
Gain, defined, § 80.00.
Misdemeanors, § 80.05.
Multiple offenses, § 80.15.
Pornography, equipment use in promoting, § 410.00.
Probation additional to, § 60.00.
Violation, § 80.05.

FINGERPRINTS
License to carry, possess, etc., firearms, § 400.00.

FIRE DEPARTMENTS
Fireworks, display, permit, approval, § 405.00.

FIREARMS
See, also, specific heads.
Administrative provisions, § 400.00 et seq.
Amendment, licenses, § 400.00.
Applications, licenses, § 400.00.
Defaced, possession for purpose of concealing crime, § 265.05.
Defacement, § 265.10.
Defined, dangerous weapon provisions, § 265.00.
Destruction, § 400.05.
Discharge in public places prohibited, § 265.35.
Discharging at person, offensive exhibition, § 245.05.
Disposition, § 265.10.
Eligibility, licenses, § 400.00.
Exhibition and display, licenses, § 400.00.
Expenses, licensing, charge against county, § 400.00.
Expiration, licenses, § 400.00.
Fees, licenses, § 400.00.
Filing, approved applications for licenses, § 400.00.
Form, licenses, § 400.00.
Investigations, licenses, § 400.00.
Licensees, exemption from provisions governing possession, § 265.20.
Licenses to carry, possess, etc., § 400.00.
Pointing or aiming at other persons prohibited, § 265.35.
Possession, § 265.05.
Renewal, licenses, § 400.00.
Revocation, licenses, § 400.00.
Silencer,
Defined, dangerous weapon provisions, § 265.00.
Disposition, § 265.10.
Possession, § 265.05.
Transportation, § 265.10.
Transfer, licenses, § 400.00.
Transportation, § 265.10.
Types of licenses, § 400.00.
Validity, licenses, § 400.00.

FIRECRACKERS
Fireworks, generally, this index.

FIREFIGHTING OPERATIONS
Obstructing, § 195.15.

FIRES
Arson, generally, this index.
False reports, § 240.50.

FIREWORKS
Application, permit, public display, § 405.00.
Audience, display, restrictions, § 405.00.
Bonds, etc., permit, public display, § 405.00.
Contents, application, permit, display, § 405.00.
Dealing unlawfully with, § 270.00.
Defined, § 270.00.
Destruction, § 405.05.
Display, permits, § 405.00.
Fire extinguishers at display, § 405.00.
Operators, display, § 405.00.
Permits, display, § 405.00.
Sale, possession, use, etc., § 270.00.
Seizure, § 405.05.
Unfired, display, disposition, § 405.00.

FISHING
Switchblade or gravity knives, exemption from provisions governing possession, § 265.20.

FLARES
Fireworks, exclusion from definition of, § 270.00.

FLIGHT
Injury to another in course of, § 120.10.
Murder in course of, § 125.25.

FOLLOWING PEOPLE
Harassment, § 240.25.

FORCIBLE COMPULSION
Defined, sex offenses, § 130.00.

FORFEITURES
See Fines, Penalties and Forfeitures, generally, this index.

FORGERY
Complete written instrument, defined, § 170.00.
Credit card, services, theft, § 165.15.
Falsely alter, defined, § 170.00.
Falsely complete, defined, § 170.00.
Falsely make, defined, § 170.00.
First degree, § 170.15.
Forged instrument, defined, § 170.00.
Incomplete written instrument, defined, § 170.00.
Possession,
- Forged instrument,
  - First degree, § 170.30.
  - No defense, § 170.35.
  - Second degree, § 170.25.
  - Third degree, § 170.20.
- Forgery devices, § 170.40.

Second degree, § 170.10.
Third degree, § 170.05.
Written instrument, defined, § 170.00.

FORMS
Licenses to carry, possess, etc., firearms, § 400.00.

FORMULAS
Grand larceny, § 155.30.

FORNICATION
See Sex Offenses, generally, this index.

FORTUNE TELLING
Generally, § 165.35.

FOSTER HOMES
Minors, probation, etc., conditions, § 65.10.

FRAUDS AND CHEATS
Accosting, § 165.30.
Business records, falsifying. Business Records, generally, this index.
Conditional sales contract, disposition, property subject to, § 185.15.
Creditors, frauds on, § 185.00 et seq.
False certificate, issuing, § 175.40.
False financial statement, issuing, § 175.45.
Forgery, generally, this index.
Impersonation, § 190.25.
Insolvency, § 185.00.
Insurance claims, false, presenting, § 175.50.
Mortgaged property, fraudulent disposition, § 185.10.
Offenses involving, § 170.00 et seq.
Security interest, § 185.05.
Signatures, fraudulently obtaining, § 165.20.
Simulation, § 170.45.
Slugs, generally, this index.

FUMES
Substances generating noxious fumes. Noxious Materials, generally, this index.

FUNDS
Defined, bad check provisions, § 190.00.
Misconduct, corporate directors, § 190.35.

GAINS
Defined, fine provisions, § 80.00.

GAMBLING
Advance gambling activity, defined, § 225.00.
Bookmaking, defined, § 225.00.
Contest of chance, defined, § 225.00.
Defined, § 225.00.
Gambling device,
  Defined, § 225.00.
  Possession of, § 225.30.
Loitering in public place for purpose of, § 240.35.
Lottery,
  Defenses, § 225.40.
  Defined, § 225.00.
Numbers game, defined, § 225.00.
Player, defined, § 225.00.
Policy, defined, § 225.00.
Presumptions, § 225.35.
Profit from gambling activity, defined, § 225.00.

GAMBLING—Continued
Promoting,
First degree, § 225.10.
Second degree, § 225.05.
Records, possession of,
Defenses, § 225.25.
First degree, § 225.20.
Second degree, § 225.15.
Slot machine, defined, § 225.00.
Something of value, defined, § 225.00.
Unlawful, defined, § 225.00.

GAMBLING DEVICE
Defined, gambling provisions, § 225.00.
Possession, § 225.30.

GAS
Larceny, generally, this index.
Services, theft, § 165.15.
Substances generating noxious gases. Noxious Materials, generally, this index.
Tampering, property, §§ 145.15, 145.20.

GENERAL FUND
Pornography, proceeds, sale, forfeited material paid to, § 410.00.

GOOD BEHAVIOR
Release on parole, § 70.40.
Sentence, time allowances, § 70.30.

GOOF BALLS
Dangerous Drugs, generally, this index.

GOUGING
Rents, § 180.55.

GOVERNMENT
Advocating violent overthrow, criminal anarchy, § 240.15.

GOVERNMENTAL ADMINISTRATION
Obstructing, § 195.05.

GRAFT
See Bribery and Corruption, generally, this index.

GRAND JURY
Jury, generally, this index.

GRAND LARCENY
Larceny, this index.

GRATUITIES
Public servants,
Giving unlawful gratuities to, § 200.30.
Receiving unlawful gratuities, § 200.35.

GRAVITY KNIVES
Defined, dangerous weapon provisions, § 265.00.
Disposition, § 265.10.
Exemptions, provisions governing manufacture, § 265.20.
Hunters, trappers or fishermen, exemption, provisions governing possession, § 265.20.
Manufacture, § 265.10.
Possession, § 265.05.
Transportation, § 265.10.

GUARDIAN AND WARD
Custody, generally, this index.
Kidnapping, generally, this index.
Physical force, use, justification, § 35.10.
Substitution of children, § 135.55.
Unlawful Imprisonment, generally, this index.

GUARDS
Detention facilities, physical force, justifiable use, § 35.30.

GUILTY
Murder,
Discharge of jury, sentence, § 125.30.
Reconsideration by jury, § 125.30.
Plea,
Kidnapping, § 135.35.
First degree, § 135.35.
Murder, sentence, § 125.30.

GUNSHOT WOUNDS
Failure to report, § 265.25.

GUNSMITHS
Defined, dangerous weapon provisions, § 265.00.
Exemptions, provisions governing possession, etc., of weapons and dangerous instruments and appliances, § 265.20.
License to engage in business, § 400.00.
Records required to be kept, § 400.00.

HABITUAL OFFENDERS
Sentence, § 70.10.

HALLWAYS
Apartment houses and hotels, offenses against public order. Public Order, generally, this index.

HAND BAGS
Jostling, § 165.25.

HARASSMENT
Generally, § 240.25.
Aggravated, § 240.30.

HATRED
Subjecting to,
Coercion, § 135.60.
Extortion, § 155.05.

HAZARD
Creating, § 270.10.

HAZING
Harassment, § 240.25.

HEALTH
Coercion, second degree, § 135.60.
Extortion, harming as, § 155.05.

HEROIN
Dangerous drugs, § 220.00 et seq.

HIGHWAYS
Fireworks, display, restrictions, § 405.00.
Offenses against public order. Public Order, generally, this index.

INDEX

References are to Sections of the Revised Penal Law

HINDERING PROSECUTION
First degree, § 205.65.
Renders criminal assistance, defined, § 205.50.
Second degree, § 205.60.
Third degree, § 205.55.

HOMES
Firearms, possession excepted from dangerous weapons provisions, § 265.05.

HOMICIDE
Abortion, generally, this index.
Criminally negligent, §§ 125.05, 125.10.
Defined, § 125.00.
Manslaughter, generally, this index.
Murder, generally, this index.
Person, defined, § 125.05.
Suicide, generally, this index.

HOMOSEXUALS
Sexual Abuse, generally, this index.
Sexual Misconduct, generally, this index.
Sodomy, generally, this index.

HORROR
Comic books, § 235.25.

HORSE RACES
Gambling offenses, § 225.00 et seq.

HOSPITALS
Bullet wounds, etc., duty to report, § 265.25.

HOSTELS
Minors, probation, etc., conditions, § 65.10.

HOTELS
Lobbies and hallways, offenses against public order. Public Order, generally, this index.
Services, theft, § 165.15.

HOUSEHOLDERS
Pistols or revolvers, licenses to have and possess in dwelling, § 400.00.

HOUSES OF ILL REPUTE
See Prostitution and Houses of Prostitution, generally, this index.

HUNG JURY
Murder, penalty, § 125.35.

HUNTING
Dangerous weapons, use in cities prohibited, § 265.35.
Switchblade or gravity knives, exemption from provisions governing possession, § 265.20.

HUSBAND AND WIFE
Marriage, generally, this index.

HYPODERMIC INSTRUMENTS
Criminally possessing, § 220.45.

ICE BOXES
Abandoning, § 270.10.

ICEPICKS
Wounds, failure to report, § 256.25.

IGNORANCE
Criminal liability, effect, § 15.20.

IMITATION PISTOLS
Possession, § 265.05.
Use prohibited, § 265.35.

IMMUNITY FROM PROSECUTION
Conduct of another, criminal liability for, § 20.05.

IMPERSONATION
Generally, § 190.25.

IMPRISONMENT
See Sentence and Punishment, generally, this index.

INCEST
Generally, § 255.25.
Corroboration, § 255.30.

INCOMPETENTS
See Mentally Ill or Defective Persons, generally, this index.

INDEBTEDNESS
Fraud in insolvency, § 185.00 et seq.

INDETERMINATE SENTENCES
Aggregate maximum term, consecutive sentences, § 70.30.
Calculation, terms, imprisonment, § 70.30.
Concurrent and consecutive terms of imprisonment, § 70.25.
Calculation, § 70.30.
Conditional discharge, satisfaction, service, § 65.15.
Conditional release, § 70.40.
Credits, § 70.30.
Felonies, § 70.00.
Good behavior time, § 70.30.
Jail term, credits, § 70.30.
Life imprisonment, Class A felony, § 70.00.
Maximum term, § 70.00.
Merger with definite sentences, § 70.35.
Minimum period, § 70.00.
Parole, generally, this index.
Persistent felony offender, § 70.10.
Place of imprisonment, § 70.20.
Probation,
Authorization, § 65.00.
Satisfaction, service, § 65.15.
Reformatory, § 75.00 et seq.

INDICTMENT OR INFORMATION
Disclosure, unlawful, § 215.75.
Extortion, larceny by, § 155.45.
Fireworks, unlawful possession, § 405.05.
Larceny, § 155.45.

INDORSEMENT
Forgery, § 170.00 et seq.

INDUSTRIAL EQUIPMENT OR FACILITIES
Services, theft, § 165.15.

INDEX

References are to Sections of the Revised Penal Law

INFANTS
Abandonment, § 260.00.
Age, knowledge of, element, offenses, § 15.20.
Conditional discharge, conditions, § 65.10.
Criminal responsibility, defense, § 30.00.
Custody, generally, this index.
Dealing with child unlawfully, § 260.20.
Defense, criminal responsibility, § 30.00.
Endangering welfare of child, § 260.10.
Defense, § 260.15.
Indecent material, disseminating to minors, § 235.20.
Murder, sentencing, § 125.30.
Non-support of, § 260.05.
Offenses relating to, § 260.00 et seq.
Parent and Child, generally, this index.
Physical force on, use, justification, § 35.10.
Probation, conditions, § 65.10.
Rape, § 130.25 et seq.
Sodomy, § 130.40 et seq.
Substitution of, § 135.55.
Unlawful Imprisonment, generally, this index.
Weapons and dangerous instruments and appliances, possession by minors, § 265.05.

INSANE PERSONS
See Mentally Ill or Defective Persons, generally, this index.

INSERTIONS
Forgery, generally, this index.

INSOLENCE
Criminal contempt, §§ 215.50, 215.55.

INSOLVENCY
Fraud in, § 185.00.

INSTRUCTIONS TO JURY
Murder, penalty, § 125.35.

INSTRUMENTS
Forgery, generally, this index.
Grand larceny, § 155.30.
Signatures, fraudulently obtaining, § 165.20.

INSUFFICIENT FUNDS
Bad Checks, generally, this index.
Defined, bad check provisions, § 190.00.

INSURANCE
False claim, presenting, § 175.50.

INTENT
See specific heads.

INTENTIONALLY
Culpability, generally, this index.

INTERPRETERS
Grand jury disclosure, § 215.70.

INTERRUPTION
Conditional release, violation, interruption of sentence, § 70.40.
Sentence,
- Conditional discharge violation, § 65.15.
- Conditional release, § 70.40.
- Escape, custody, § 70.30.
- Probation violation, § 65.15.
- Reformatories, § 75.15.
  - Local sentences, § 75.20.

INTIMIDATION
Duress or Coercion, generally, this index.

INTOXICATION
Age, knowledge, § 15.20.
Criminal liability, effect, § 15.25.
Culpability, § 15.05.
Defense to criminal charge, § 15.25.
Negating element of crime charged, § 15.25.
Public intoxication, § 240.40.

INVENTIONS
Grand larceny, § 155.30.

INVESTIGATIONS
Licenses to carry, possess, etc., firearms, § 400.00.

JAILS
Credit, time served in, § 70.30.
Employees, license to have and carry concealed pistols or revolvers, § 400.00.
Guards, physical force, justifiable use, § 35.30.
Physical force, use, justification, § 35.10.

JOINT OWNERS
Larceny, generally, this index.

JOSTLING
Generally, § 165.25.

JUDGMENTS AND DECREES
Conviction, final judgment,
- Conditional discharge, § 60.00.
- Probation, § 60.00.
- Unconditional discharge, § 65.20.

Marriage dissolution decrees, unlawfully issuing, § 255.05.
Mistaken belief founded upon, § 15.20.
Obedience, justification for acts, § 35.05.

JUMPING BAIL
See Bail, this index.

JURAT
Defined, perjury provisions, § 210.00.

JURY
Charge, murder, proceedings to determine sentence, § 125.35.
Definition, juror, § 10.00.
Discharge,
- After trial of murder, § 125.30.
- Kidnapping trial, § 135.35.

Grand jury, unlawful disclosure, § 215.70.

JURY—Continued
Juror,
Bribe receiving by, § 215.20.
Bribing, § 215.15.
Misconduct by, § 215.30.
Tampering with, § 215.25.

JUSTIFICATION
Generally, §§ 35.00, 35.05.
Abortion, generally, this index.
Culpability, lack of,
Duress, § 35.35.
Entrapment, § 35.40.
Renunciation, § 35.45.
Mistake supporting defense of, § 15.20.
Physical force, use, § 35.10.
Defense,
Person, § 35.15.
Premises, § 35.20.
Property, § 35.25.
Making an arrest, § 35.30.
Preventing escape, § 35.30.

JUVENILE DELINQUENTS
Air-guns and spring-guns, possession by minors, § 265.05.
Failure or refusal to prevent child from becoming juvenile delinquent, § 260.10.

KICKING
Harassment, § 240.25.

KIDNAPPING
Appeal, § 135.40.
Conspiracy, § 105.15.
Criminal solicitation, § 100.10.
Death, presumption, § 135.25.
Death penalty, §§ 135.35, 135.40.
Defenses, § 135.30.
Person, physical force, justification, § 35.15.
Facilitation, § 115.05.
Felony,
Attempt to commit, first degree, § 110.05.
Criminal facilitation, first degree, § 115.05.
First degree, § 135.25.
Appeal, proceeding, determination, sentence, § 135.40.
Conspiracy, § 105.15.
Criminal solicitation, § 100.10.
Facilitation, § 115.05.
Plea, guilty, § 135.35.
Proceeding to determine sentence, § 135.40.
Punishment, § 135.35.
Guilty, plea, § 135.35.
Hindering prosecution, § 205.65.
Murder, § 125.25.
Presumption, death, § 135.25.
Proceeding to determine sentence, § 135.40.
Punishment, § 135.35.
Second degree, § 135.20.
Solicitation, § 100.10.

KNIVES
Gravity Knives, generally, this index.
Possession, § 265.05.
Presumptions, unlawful intent, § 265.15.
Switchblade Knives, generally, this index.
Throwing or propelling at or toward person, offensive exhibition, § 245.05.
Wounds, failure to report, § 265.25.

KNOWINGLY
Culpability, generally, this index.

LABOR
Collective group action,
Coercion, § 135.60.
Extortion, § 155.05.
Probation and conditional discharge, conditions, §§ 65.10, 65.15.
Services, theft, § 165.15.

LABOR OFFICIALS OR REPRESENTATIVES
Bribery, § 180.10 et seq.
Bribery and larceny, no defense, § 155.10.
Coercion, no defense, § 135.70.
Defined, bribery provisions, § 180.10.

LAKES
Fireworks, display, conditions, § 405.00.

LARCENY
Affirmative defense, § 155.15.
Appropriate, defined, § 155.00.
Bad checks, issuing, § 155.05.
Burglar's tools, possession, § 140.35.
Defenses, § 155.15.
Definitions, §§ 155.00, 155.05.
Deprive, defined, § 155.00.
Extortion and Threats, this index.
False promise, obtaining property by, § 155.05.
Grand Larceny,
First degree, § 155.40.
Second degree, § 155.35.
Third degree, § 155.30.
Lost property, acquisition, § 155.05.
No defense, § 155.10.
Obtain, defined, § 155.00.
Obtaining property by false promises, § 155.05.
Owner, defined, § 155.00.
Petit larceny, § 155.25.
Physical force, defense of property, § 35.25.
Pleading, § 155.45.
Proof, § 155.45.
Property, defined, § 155.00.
Prosecution, false promise, intent, etc., establishment, § 155.05.
Robbery, generally, this index.
Value, stolen property, § 155.20.

LEASES
Misapplication, property, § 165.00.
Physical force, use in defense of premises, § 35.20.
Rent gouging, § 180.55.

INDEX

References are to Sections of the Revised Penal Law

LEGISLATURE
Criminal contempt, § 215.60.

LESBIANS
Sexual Abuse, generally, this index.
Sexual Misconduct, generally, this index.
Sodomy, generally, this index.

LETTERS
Opening or reading sealed letter, § 250.25.

LEWDNESS
See, also, Obscenity, generally, this index.
Public lewdness, § 245.00.

LICENSES OR PERMITS
Bank messengers, have and carry concealed pistols, etc., § 400.00.
Building, enter or remain, § 140.00.
Cancellation, § 60.00.
Correctional institution, employees, have and carry concealed pistols, etc., § 400.00.
County jail employees, have and carry concealed pistols, etc., § 400.00.
Dealer in firearms, engage in business, § 400.00.
Express company messengers, have and carry concealed pistols, etc., § 400.00.
Firearms, carry, possess, etc., § 400.00.
Fireworks, display, § 405.00.
Gunsmiths, engage in business, § 400.00.
Householders, have and possess pistol, etc., in dwelling, § 400.00.
Jail employees, have and carry concealed pistols, etc., § 400.00.
Licensing officer, defined, dangerous weapon provisions, § 265.00.
Marriage, unlawfully procuring, § 255.10.
Merchants, have and possess pistol, etc., place, business, § 400.00.
Penitentiary employees, have and carry concealed pistols, etc., § 400.00.
Permit authority, defined, fireworks provisions, § 405.00.
Pistols, have, possess, etc., § 400.00.
Prison employees, have and carry concealed pistols, etc., or revolvers, § 400.00.
Revolvers, have, possess, etc., § 400.00.
Suspension, § 60.00.
Workhouse employees, have and carry concealed pistols, etc., § 400.00.

LIFE IMPRISONMENT
Class A felony, § 70.00.

LIMITATION OF ACTIONS
Pornography, equipment used in promoting, wrongful seizure action, § 410.00.

LIMITATIONS
Applicability of law, § 5.10.

LIQUIDATORS
Insolvency, fraud in, § 185.00.

LOANS
Misapplication, property, § 165.00.

LOBBIES
Apartment houses and hotels, offenses against public order. Public Order, generally, this index.

LOCOMOTIVES
Discharging firearms at prohibited, § 265.35.

LODGING
Arson, generally, this index.
Burglary, generally, this index.

LOITERING
Generally, § 240.35.

LOST PROPERTY
Larceny, § 155.05.

LOTTERIES
Defined, gambling provisions, § 225.00.
Gambling,
Offenses, defenses, § 225.40.
Promoting, first degree, § 225.10.
Records, possession,
First degree, § 225.20.
Second degree, § 225.15.

MACHINE-GUNS
Defacement of, § 265.10.
Possession, defaced gun to conceal crime, § 265.05.
Defined, dangerous weapon provisions, § 265.00.
Destruction, § 400.05.
Disposition, § 265.10.
Manufacture, § 265.10.
Exemption, § 265.20.
Possession, § 265.05.
Presumption, unlawful possession, § 265.15.
Transportation, § 265.10.
Use prohibited, § 265.35.

MAGAZINES
Obscenity and related offenses, § 235.00 et seq.

MAGISTRATES
Fireworks, possession, examination, etc., § 405.05.

MAIL
Communication anonymously to cause annoyance, aggravated harassment, § 240.30.

MAIMING
Assault, § 120.10.
Firearms, prohibited use, § 265.35.

MALES
See specific heads.

MANSLAUGHTER
First degree, § 125.20.
Mitigation reducing murder to, § 125.20.
Second degree, § 125.15.

MANUFACTURE AND MANUFACTURERS
Weapons and dangerous instruments and appliances, § 265.10.

MARATHON CONTEST
Offensive exhibitions, § 245.05.

MARIJUANA
Dangerous drugs, § 220.00 et seq.

INDEX

References are to Sections of the Revised Penal Law

MARRIAGE
Annulment of marriage, decree, unlawfully issuing, § 255.05.
Bigamy, §§ 255.15, 255.20.
Dissolution decree, unlawfully issuing, § 255.05.
Divorce, decrees, unlawfully issuing, § 255.05.
Incest, §§ 255.25, 255.30.
Licenses, unlawfully procuring, § 255.10.
Defenses, § 255.20.
Offenses affecting marital relationship, § 255.00 et seq.
Solemnizing marriage unlawfully, § 255.00.

MASKS
Loitering in public place with, § 240.35.

MASOCHISM
Obscenity and related offenses, § 235.00 et seq.

MATERIAL
Defined, obscenity provisions, § 235.00.
Grand larceny, § 155.30.

MECHANICAL DEVICES
Services, theft, § 165.15.
Slugs, generally, this index.

MECHANICAL OVERHEARING OF CONVERSATION
Defined, eavesdropping provisions, § 250.00.

MEDICAL TREATMENT
Probation, etc., condition, § 65.10.

MENACING
Generally, § 120.15.

MENTAL DISEASE OR DEFECT
See Mentally Ill or Defective Persons, generally, this index.

MENTALLY ILL OR DEFECTIVE PERSONS
Criminal responsibility, defense, § 30.05.
Custodial interference, § 135.45.
Defense, criminal responsibility, § 30.05.
Endangering welfare of incompetent person, § 260.25.
Kidnapping, generally, this index.
Mental states, defined, culpability provisions, §§ 15.00, 15.05.
Mentally defective, defined, sex offenses, § 130.00.
Mentally incapacitated, defined, sex offenses, § 130.00.
Physical force, use, justification, § 35.10.
Rifles or shot-guns, seizure from, § 265.05.
Unlawful Imprisonment, generally, this index.

MERCHANTS
Pistols or revolvers, license to have and possess in place of business, § 400.00.

MERGER
Concurrent and consecutive terms of imprisonment, § 70.30.
Definite and indeterminate sentences, § 70.35.
Reformatory sentences, § 75.20.

MESSENGERS
Banks or express companies, license, have and carry concealed pistols, etc., § 400.00.

METAL KNUCKLES
Disposition, § 265.10.
Manufacture, § 265.10.
Possession, § 265.05.
Transportation, § 265.10.

METERS
Services, theft, § 165.15.

MICROORGANISM
Grand larceny, § 155.30.

MILITARY SERVICE
Obedience to laws governing, § 35.05.
Weapons, etc., possession, exemption, § 265.20.

MINISTERS
Solemnizing marriage unlawfully, § 255.00.

MINORS
Infants, generally, this index.
Parent and Child, generally, this index.

MISAPPLICATION
Property, § 165.00.

MISCARRIAGE
Abortion, generally, this index.

MISCHIEF
First degree, § 145.10.
Physical force, defense of property, § 35.25.
Second degree, § 145.05.
Third degree, § 145.00.

MISCONDUCT
Corporate directors, § 190.35.
Juror, § 215.30.
Public servants, official misconduct, § 195.00.
    Receiving reward for, § 200.25.
    Rewarding, § 200.20.

MISDEMEANORS
Abortion, issuing abortional articles, § 125.60.
Adultery, § 255.17.
Aggravated harassment, § 240.30.
Arrest, resisting, § 205.30.
Assault, third degree, § 120.00
Attempt to commit crime, § 110.05.
Bad checks, issuing, § 190.05.
Bail jumping, second degree, § 205.35.
Bullet wounds, etc., failure to report, § 265.25.
Burglar's tools, possession, § 140.35.
Business records, falsifying, § 175.05.
Classification, §§ 55.05, 55.10.
Coercion, § 135.60.
Comic books,
    Failing to identify publication, § 235.30.
    Indecent, disseminating, § 235.25.
Commercial bribe receiving, § 180.05.

INDEX

References are to Sections of the Revised Penal Law

MISDEMEANORS—Continued
Commercial bribing, § 180.00.
Communications information, unlawfully obtaining, § 250.30.
Compounding a crime, § 215.45.
Conditional sale contract property, fraudulent disposition, § 185.15.
Consensual sodomy, § 130.38.
Conspiracy,
    Fourth degree, § 105.00.
    Third degree, § 105.05.
Corporate directors, misconduct, § 190.35.
Criminal communications, failing to report, § 250.35.
Criminal contempt, § 215.50.
Criminal nuisance, § 240.45.
Custodial interference, § 135.45.
Dangerous drugs, criminal possession, fourth degree, § 220.05.
Defined, § 10.00.
Designation of offenses, § 55.10.
Eavesdropping,
    Divulging order, § 250.20.
    Possession, devices, § 250.10.
Escape, third degree, § 205.05.
Facilitation, second degree, § 115.00.
False advertising, § 190.20.
False financial statements, issuing, § 175.45.
False insurance claim, presenting, § 175.50.
False statements, making apparently sworn false statement, second degree, § 210.35.
Falsely reporting incident, § 240.50.
Firearms, violations, licensing provisions, § 400.00.
Firefighting operations, obstructing, § 195.15.
Fireworks, dealing with unlawfully, § 270.00.
Forged instruments, possession, third degree, § 170.20.
Forgery, third degree, § 170.05.
Fortune telling, § 165.35.
Fraudulently accosting, § 165.30.
Gambling,
    Devices, possession of, § 225.30.
    Promoting, second degree, § 225.05.
    Records, possession of, second degree, § 225.15.
Governmental administration, obstructing, § 195.05.
Grand jury, unlawful disclosure, § 215.70.
Hazards, creating, § 270.10.
Hindering prosecution, third degree, § 205.55.
Hypodermic instruments, criminal possession, § 220.45.
Impersonation, § 190.25.
Indecent material, disseminating to minors, § 235.20.
Indictment, unlawful disclosure of, § 215.75.
Infants,
    Endangering welfare, § 260.10.
    Non-support, § 260.05.
    Unlawfully dealing with, § 260.20.
Insolvency, fraud in, § 185.00.
Issuing abortional articles, § 125.60.
Jostling, § 165.25.
Juror,
    Misconduct, § 215.30.
    Tampering with, § 215.25.
Legislature, criminal contempt, § 215.60.

MISDEMEANORS—Continued
Marriage,
Dissolution decrees, unlawfully issuing, § 255.05.
License, unlawfully procuring, § 255.10.
Unlawfully solemnizing, § 255.00.
Menacing, § 120.15.
Mentally ill or defective persons, endangering welfare, § 260.25.
Misapplication, property, § 165.00.
Mischief, § 145.00.
Mortgaged property, fraudulent disposition, § 185.10.
Noxious materials, unlawfully possessing, § 270.05.
Obscenity, § 235.05.
Offering false instrument for filing, § 175.30.
Party line, unlawfully refusing to yield, § 270.15.
Peace officers, refusing to aid, § 195.10.
Perjury, third degree, § 210.05.
Petit larceny, § 155.25.
Possession, burglar's tools, § 140.35.
Prisons and prisoners, promoting contraband, second degree, § 205.20.
Private communications, tampering with, § 250.25.
Prostitution,
Permitting, § 230.40.
Promoting, third degree, § 230.20.
Public lewdness, § 245.00.
Public servants,
Official misconduct, § 195.00.
Receiving unlawful gratuities, § 200.35.
Reckless endangerment, § 120.20.
Property, § 145.25.
Reformatory sentence, young adults, § 75.00 et seq.
Rent gouging, § 180.55.
Security interest, fraud involving, § 185.05.
Self-abortion,
First degree, § 125.55.
Second degree, § 125.50.
Sentence and Punishment, generally, this index.
Services, theft, § 165.15.
Sexual abuse,
Second degree, § 130.60.
Third degree, § 130.55.
Sexual misconduct, § 130.20.
Signatures, fraudulently obtaining, § 165.20.
Simulation, § 170.45.
Slugs, unlawfully using, § 170.55.
Solicitation, second degree, § 100.05.
Sports contest, tampering, § 180.50.
Stolen property, possession, § 165.40.
Tampering, § 145.15.
Public records, § 175.20.
Sports contest, § 180.50.
Theft, services, § 165.15.
Temporary state commission, criminal contempt, § 215.65.
Trespass,
First degree, § 140.15.
Second degree, § 140.10.
Unclassified, §§ 55.05, 55.10.
Unlawful assembly, § 240.10.
Unlawful imprisonment, second degree, § 135.05.
Vehicles, unauthorized use, § 165.05.

MISDEMEANORS—Continued
Weapons, etc.,
Manufacture, transport, etc., § 265.10.
Possession of, § 265.05.
Wire tapping, failure to report, § 250.15.
Witnesses, tampering with, § 215.10.
Written statements, false, making punishable, § 210.45.
Young adults, reformatory sentence, § 75.00 et seq.

MISTAKE
Criminal liability, effect, § 15.20.

MITIGATION
Kidnapping, death sentence, § 135.35.
Murder,
Reduction to manslaughter, § 125.20.
Termination of sentence, § 125.35.

M'NAGHTEN RULE
Generally, § 30.05.

MOBS
Offenses against public order, § 240.00 et seq.

MONEY
See, also, specific heads.
Articles usable in place of, forgery, second degree, § 170.10.
Forgery, first degree, § 170.15.
Larceny, generally, this index.
Slugs, generally, this index.

MORPHINE
Dangerous drugs, § 220.00 et seq.

MORTGAGES
Fraudulent disposition, mortgaged property, § 185.10.
Property, right of possession, § 155.00.

MOTELS
Services, theft, § 165.15.

MOTION PICTURE THEATRES
Permitting minor to enter or remain in, § 260.20.

MOTION PICTURES
Obscenity and related offenses, § 235.00 et seq.
Pornography, equipment, seizure, etc., § 410.00.

MOTOR VEHICLES
Discharging firearms at prohibited, § 265.35.
Fireworks, exemption, signaling devices, § 270.00.
Narcotic drugs, possession, §§ 220.20, 220.25.
Obstructing traffic, disorderly conduct, § 240.20.
Offenses against public order. Public Order, generally, this index.
Unauthorized use, § 165.05.
Weapons, etc., presumption, possession, § 265.15.

MULTIPLE OFFENSES
Fines, § 80.15.

MUNICIPALITIES
Fireworks,
Display, permit, § 405.00.
Sale, etc., to authorized municipalities, § 270.00.
Public utilities, tampering, §§ 145.15, 145.20.

MURDER
Charge to jury, proceedings, determination, sentence, § 125.35.
Conspiracy, § 105.15.
Criminal solicitation, § 100.10.
Defenses, § 125.25.
Depraved indifference to human life, § 125.25.
Facilitation, § 115.05.
First degree,
Attempt to commit, § 110.05.
Conspiracy, § 105.15.
Criminal facilitation, § 115.05.
Criminal solicitation, § 100.10.
Guilty plea, sentence, § 125.30.
Hindering prosecution, § 205.65.
Proceedings to determine sentence, § 125.35.
Punishment, § 125.30.
Recklessly engaging in conduct, etc., causing death, § 125.25.
Solicitation, § 100.10.
Suicide, §§ 120.30, 120.35.

MUSIC
Loitering, § 240.35.

MUTILATION
Public Records, generally, this index.
Wills, etc., as unlawful concealment, § 190.35.

NARCOTIC DRUGS
See, also, Dangerous Drugs, generally, this index.
Criminal possession, § 220.05 et seq.
Criminally selling, § 220.30 et seq.
Defined, dangerous drug provisions, § 220.00.
Loitering for purpose of using or possession, § 240.35.
Public intoxication, § 240.40.

NAVY DEPARTMENT
Fireworks, exemption from law, § 270.00.

NEGLECTED CHILDREN
Failure, etc., to prevent child from becoming neglected child, § 260.10.

NEGLIGENCE
See Criminal Negligence, generally, this index.

NEW YORK CITY
Police department, pornography, seized equipment, delivered to, § 410.00.

NEWSPAPERS
Gambling offenses, sporting event, evidence of occurrence, § 225.35.

NIGHT
Burglary, generally, this index.

NITRATES
Devices containing. Fireworks, generally, this index.

INDEX

References are to Sections of the Revised Penal Law

NOISE
Criminal contempt, §§ 215.50, 215.55.
Making unreasonable noise, disorderly conduct, § 240.20.

NOTES
Misconduct, corporate directors, § 190.35.

NOTICE
Pornography, forfeiture proceedings, § 410.00.
Unlawfully posting, § 145.30.

NOXIOUS MATERIALS
Defined, § 270.05.
Possessing unlawfully, § 270.05.
Presumptions, intent, use, violation of law, § 270.05.

NUDITY
Obscenity and related offenses, § 235.00 et seq.

NUISANCE
Criminal nuisance, § 240.45.
Firearms, weapons and dangerous instruments, § 400.05.

NUMBERS GAME
Defined, gambling provisions, § 225.00.

OATHS AND AFFIRMATIONS
Defined, perjury provisions, § 210.00.
Perjury, generally, this index.

OBLITERATIONS
Entry. Business Records, generally, this index.
Forgery, generally, this index.

OBSCENITY
Generally, § 235.05.
Abusive or Obscene Language, generally, this index.
Comic books, indecent, disseminating, § 235.25.
Defenses, § 235.15.
Gestures, public place,
Disorderly conduct, § 240.20.
Harassment, § 240.25.
Material, defined, § 235.00.
Minors, disseminating indecent material to, § 235.20.
Obscene, defined, § 235.00.
Performance, defined, § 235.00.
Pornographic motion, etc., pictures, vehicles, seizure, § 410.00.
Presumptions, § 235.10.
Promote, defined, § 235.00.

OBTAIN
Defined, larceny provisions, § 155.00.

OFFENSIVE EXHIBITION
Generally, § 245.05.

OFFICIAL PROCEEDINGS
Defined, tampering with physical evidence provisions, § 215.35.

OMISSION
Defined, culpability provisions, § 15.00.

OPIUM
Dangerous drugs, § 220.00 et seq.

ORDERS OF COURT
Eavesdropping, divulging, § 250.20.

ORDINANCES
Designation of offenses, § 55.10.
Local, fireworks, display, supersedure, § 405.00.

ORGANIZATIONS
Fireworks, display, permit, § 405.00.

OUNCE
Defined, dangerous drug provisions, § 220.00.

OVERT ACT
Conspiracy, § 105.00 et seq.

OWNER
See, also, specific heads.
Defined, larceny provisions, § 155.00.

OXALATES
Devices containing. Fireworks, generally, this index.

PAINTS AND PAINTING
Advertisements, § 145.30.

PAPER CAPS
Fireworks, exclusion, devices using caps from definition, § 270.00.

PARENT AND CHILD
Abandonment of child, § 260.00.
Custody, generally, this index.
Endangering welfare of child, § 260.10.
Kidnapping, generally, this index.
Non-support of child, § 260.05.
Physical force, use, justification, § 35.10.
Substitution of children, § 135.55.
Unlawful Imprisonment, generally, this index.

PARKS AND PARKWAYS
Fireworks, display, permit authority, § 405.00.
Offenses against public order. Public Order, generally, this index.

PAROLE
Board,
Discretion, release, § 70.40.
Imprisonment, minimum period, fixing, § 70.00.
Conditional release, indeterminate sentence, § 70.40.
Definite sentence, §§ 70.35, 70.40.
Delinquency, violation, terms, § 70.40.
Reformatories, § 75.15.
Local sentences, § 75.20.
Indeterminate sentence, §§ 70.35, 70.40.
Reformatory sentence, § 75.15.
Local sentences, § 75.20.
Release on, § 70.40.
Violation, interruption, sentence, §§ 70.40, 75.15.

PARTY LINE
Defined, § 270.15.
Emergency call, defined, § 270.15.
Refusing unlawfully to yield, § 270.15.

INDEX

References are to Sections of the Revised Penal Law

PARTY OFFICER
Defined, bribery provisions, § 200.40.
Public office, bribes, §§ 200.45, 200.50.

PASS
Defined, bad check provisions, § 190.00.

PASSENGERS
Carriers, physical force, justification for use, § 35.10.

PAWNBROKERS
Misapplication, property, § 165.00.
Stolen property, possession, §§ 165.45, 165.55.

PAYMENT
See, also, specific heads.
Services, theft, § 165.15.

PEACE OFFICERS
Fireworks, seizure, § 405.05.
Physical force, use. Justification, generally, this index.
Pornography, seizure, equipment used in promoting, § 410.00.
Refusing to aid, § 195.10.
Weapons, etc., possession, exemption, § 265.00.

PENALTIES
See Fines, Penalties and Forfeitures, generally, this index.

PENETRATION
Sexual intercourse, defined, sex offenses, § 130.00.

PENITENTIARIES
Employees, license, have and carry concealed pistols, etc., § 400.00.
Weapons, etc., wardens, etc., possession, exemption, § 265.20.

PEP PILLS
Dangerous Drugs, generally, this index.

PERFORMANCE
Defined, obscenity provisions, § 235.00.

PERJURY
Attesting officer, defined, § 210.00.
Corroboration of evidence, § 210.50.
Defenses, §§ 210.25, 210.30.
Definition, oath required by law, § 210.00.
First degree, § 210.15.
Jurat, defined, § 210.00.
Making apparently sworn false statement,
First degree, § 210.40.
Second degree, § 210.35.
Making punishable false written statement, § 210.45.
Oath, defined, § 210.00.
Pleading and proof, inconsistent statements involved, § 210.20.
Second degree, § 210.10.
Swear, defined, § 210.00.
Swear falsely, defined, § 210.00.
Testimony, defined, § 210.00.
Third degree, § 210.05.

PERMITS
See Licenses or Permits, generally, this index.

PERSISTENT FELONY OFFENDER
Sentence, § 70.10.

PERSON
Defined,
General provisions, § 10.00.
Homicide provisions, § 125.05.

PERSONAL PROPERTY
Larceny, generally, this index.
Misapplication, § 165.00.

PERSONAL RELATIONSHIPS
Coercion, second degree, § 135.60.
Extortion, harming as, § 155.05.

PERSON IN NEED OF SUPERVISION
Failure, etc., to prevent child from becoming, § 260.10.

PETIT LARCENY
Larceny, this index.

PETITION
Pornography, forfeiture, material promoting, recovery, § 410.00.

PHOTOGRAPHS AND PHOTOGRAPHY
Applications, licenses, carry, possess, etc., firearms, § 400.00.
Pornography, seizure and forfeiture, material promoting, § 410.00.

PHYSICAL CONTACT
Subjecting person to, harassment, § 240.25.

PHYSICAL EVIDENCE
Evidence, generally, this index.

PHYSICAL FORCE
Justification, this index.

PHYSICAL INJURY
See, also, specific heads.
Defined, § 10.00.
Physical force to thwart, justification, § 35.10.

PHYSICALLY HELPLESS
Defined, sex offenses, § 130.00.

PHYSICIANS AND SURGEONS
Abortion, generally, this index.
Bullet wounds, etc., duty to report, § 265.25.
Physical force, use, justification, § 35.10.

PICKPOCKETS
Generally, § 155.25.

PICTURES
Obscenity and related offenses, § 235.00 et seq.

PIMPING
Prostitution offenses, § 230.00 et seq.

PISTOLS
See Firearms, generally, this index.

PLACARDS
Criminal contempt, §§ 215.50, 215.55.

INDEX

References are to Sections of the Revised Penal Law

PLACE OF BUSINESS
Firearms, possession, exception, dangerous weapon provisions, § 265.05.

PLATES
Forgery devices, possession, § 170.40.

PLAYER
Defined, gambling provisions, § 225.00.

PLAYGROUNDS
Offenses against public order. Public Order, generally, this index.

PLAYS
Obscenity and related offenses, § 235.00 et seq.

PLEA
Guilty, this index.

PLEADINGS
Indictment or Information, generally, this index.
Perjury, inconsistent statements, § 210.20.

PLEDGES
Misapplication, property, § 165.00.

POCKETS
Jostling, § 165.25.

POLICE COMMISSIONERS
Weapons, surrender to, § 265.20.

POLICE DEPARTMENTS
Fireworks, display, permit, approval, § 405.00.
Pornography, seized equipment, delivery to, § 410.00.

POLICY
Defined, gambling provisions, § 225.00.
Gambling,
- Promoting, first degree, § 225.10.
- Records, possession,
  - First degree, § 225.20.
  - Second degree, § 225.15.

POLITICAL PARTIES
Party Officer, generally, this index.

POOL ROOMS
Permitting minor to enter or remain in, § 260.20.

PORNOGRAPHY
Seizure and forfeiture, equipment promoting, § 410.00.

POSSESSION
Burglar's tools, § 140.35.
Definition, possess, § 10.00.
Forgery, this index.
Larceny, generally, this index.
Slugs, generally, this index.
Stolen Property, this index.

POSTING
Advertisements unlawfully, § 145.30.

POWDER BURNS
Failure to report, § 265.25.

PRAYER
Ill child, treatment, §§ 260.10, 260.15.

PREGNANCY
Abortion, generally, this index.

PREMISES
See, also, specific heads.
Defense, physical force, justification, § 35.20.
Defined, trespass, etc., provisions, § 140.00.

PRESCRIPTIONS
Forgery, second degree, § 170.10.

PRESUMPTIONS
Advertisements, unlawfully posting, § 145.30.
Bad checks, issuing, § 190.10.
Criminal possession, dangerous drug, § 220.25.
Culpability, construction, statutes, § 15.15.
Death, kidnapping, § 135.25.
Failure, exhibit, etc., license, carry, possess, etc., firearms, § 400.00.
Gambling offenses, § 225.35.
Obscenity, § 235.10.
Stolen property, possession, § 165.55.
Unlawfully possessing noxious materials, § 270.05.
Vehicles, unauthorized use, § 165.05.
Weapons and dangerous instruments, etc., § 265.15.

PRINCIPAL AND ACCESSORY
Accomplices and Accessories, generally, this index.

PRIOR LAW
Applicability, § 5.05.

PRISONS AND PRISONERS
Calculation, terms, imprisonment, § 70.30.
Concurrent and consecutive terms of imprisonment, § 70.25.
Contraband,
- Dangerous, defined, § 205.00.
- Defined, § 205.00.
- Detention facility, defined, § 205.00.
- Promoting,
  - First degree, § 205.25.
  - Second degree, § 205.20.

Employees, license, have and carry concealed pistols, etc., § 400.00.
Guards, physical force, justifiable use, § 35.30.
Officials, etc., physical force, justification, § 35.10.
Physical force, justification, § 35.10.
Place of imprisonment, § 70.20.
Reformatories, generally, this index.
Unlawful Imprisonment, generally, this index.
Weapons, etc., possession, wardens, etc., exemption, § 265.20.

PRIVATE COMMUNICATIONS
Tampering with, § 250.25.

PROBATION
Alteration or revocation, §§ 60.00, 65.00.
Authorization, §§ 60.00, 65.00.
Calculation, periods, § 65.15.
Conditions, §§ 65.00, 65.10.

PROBATION—Continued
Conduct and rehabilitation, conditions, § 65.10.
Delinquency, interruption, sentence, § 65.15.
Final judgment of conviction, § 60.00.
Fine additional to, § 60.00.
Indeterminate sentence, service, satisfaction, § 65.15.
Modification, etc., conditions, § 65.00.
Officers, condition, sentence, § 65.10.
Periods, § 65.00.
    Calculation, § 65.15.
Satisfaction, service, indeterminate sentence, § 65.15.
Tentative sentence, § 60.00.
Violations, § 65.15.

PROCESS
Criminal contempt, §§ 215.50, 215.55.
Execution of legal process, § 35.05.
Grand larceny, § 155.30.

PRODUCTION OF BOOKS AND PAPERS
Criminal contempt, Legislature, § 215.60.

PROFANITY
Disorderly conduct, § 240.20.
Harassment, § 240.25.

PROFESSION
Coercion, second degree, § 135.60.
Extortion, harming as, § 155.05.

PROFITS
Gambling activity, defined, § 225.00.
Prostitution, defined, § 230.15.

PROMOTE
Defined, obscenity provisions, § 235.00.

PROPERTY
Coercion, second degree, damage, § 135.60.
Criminal mischief, § 145.00 et seq.
Damages to and intrusion upon, offenses, § 140.00 et seq.
Larceny, generally, this index.
Misapplication, § 165.00.
Reckless endangerment, § 145.25.
Slugs, generally, this index.
Tampering, generally, this index.

PROSTITUTION AND HOUSES OF PROSTITUTION
    Generally, § 230.00.
Defenses, § 230.10.
Patronizing prostitutes, § 230.05.
    Defenses, § 230.10.
Permitting, § 230.40.
Profit from, defined, § 230.15.
Promoting,
    Corroboration of evidence, § 230.35.
    Defined, § 230.15.
    First degree, § 230.30.
    Second degree, § 230.25.
    Third degree, § 230.20.

PRURIENT INTEREST
Obscenity and related offenses, § 235.00 et seq.

PSYCHIATRIC TREATMENT
Probation, etc., condition, § 65.10.

PUBLIC ADMINISTRATION
Offenses against, § 195.00 et seq.
- Bribery and Corruption, generally, this index.
- Contempt, generally, this index.
- Escape, generally, this index.
- Hindering Prosecution, generally, this index.
- Jumping bail. Bail, generally, this index.
- Jury, generally, this index.
- Obstructing,
  - Firefighting operations, § 195.15.
  - Governmental administration, § 195.05.
- Perjury, generally, this index.
- Prisons and Prisoners, generally, this index.
- Public Servants, generally, this index.
- Refusing to aid peace officer, § 195.10.
- Resisting arrest, § 205.30.
- Rewarding official misconduct, § 200.20.

PUBLIC HEALTH AND MORALS
Offenses against, § 220.00 et seq.
- Dangerous Drugs, generally, this index.
- Gambling, generally, this index.
- Obscenity, generally, this index.
- Prostitution and Houses of Prostitution, generally, this index.

PUBLIC INTOXICATION
Generally, § 240.40.

PUBLIC LEWDNESS
Generally, § 245.00.

PUBLIC OFFICE
Bribery and Corruption, this index.
Instrument issued by, forgery, second degree, § 170.10.

PUBLIC ORDER
Offenses against, § 240.00 et seq.
- Aggravated harassment, § 240.30.
- Criminal anarchy, § 240.15.
- Criminal nuisance, § 240.45.
- Definitions, § 240.00.
- Disorderly conduct, § 240.20.
- Falsely reporting incident, § 240.50.
- Harassment, § 240.25.
- Loitering, § 240.35.
- Public intoxication, § 240.40.
- Public place, defined, § 240.00.
- Riot, § 240.05.
- Transportation facility, defined, § 240.00.
- Unlawful assembly, § 240.10.

PUBLIC PLACE
Defined, offenses against public order, § 240.00.
Fraudulent accosting, § 165.30.
Jostling, § 165.25.

PUBLIC RECORDS
Application, licenses, carry, possess, etc., firearms, § 400.00.
Forgery, second degree, § 170.10.
Grand larceny, § 155.30.
Tampering with,
First degree, § 175.25.
Second degree, § 175.20.

PUBLIC SAFETY
Offenses against, § 265.00 et seq.
Creating a hazard, § 270.10.
Firearms, generally, this index.
Fireworks, generally, this index.
Knives, generally, this index.
Machine-Guns, generally, this index.
Unlawfully,
Possessing noxious material, § 270.05.
Refusing to yield party line, § 270.15.
Weapons, generally, this index.

PUBLIC SENSIBILITIES
Offenses against, § 245.00 et seq.
Animals, generally, this index.
Failing to report criminal communications, § 250.35.
Offensive exhibition, § 245.05.
Public lewdness, § 245.00.
Tampering with private communications, § 250.25.
Unlawfully obtaining communications, information, § 250.30.

PUBLIC SERVANTS
Bribery and Corruption, this index.
Coercion, second degree, § 135.60.
Defined, § 10.00.
Duty, violation, coercion, first degree, § 135.65.
Entrapment by, defense, § 35.40.
Extortion, § 155.05.
Grand larceny, first degree, § 155.40.
Gratuities,
Giving, § 200.30.
Receiving, § 200.35.
Impersonation, § 190.25.
Instrument issued by, forgery, second degree, § 170.10.
Official misconduct, § 195.00.
Receiving reward for, § 200.25.
Rewarding, § 200.20.

PUBLIC UTILITIES
Commodities. Larceny, generally, this index.
Municipalities, tampering, §§ 145.15, 145.20.

PUBLICATION
Coercion, second degree, § 135.60.
Comic books, failing to identify, § 235.30.
Extortion by, § 155.05.
Pornography, forfeiture proceedings, notice, § 410.00.

PUNISHMENT
See Sentence and Punishment, generally, this index.

PUPILS
Physical force, use, justification, § 35.10.

PURPOSE
Penal Law, § 1.05.

RACING
Gambling offenses, § 225.00 et seq.

RAILROADS
Discharging firearms at trains prohibited, § 265.35.
Fireworks,
Display, restrictions, § 405.00.
Transportation, exemption from law, § 270.00.
Loitering, § 240.35.
Offenses against public order. Public Order, generally, this index.
Passengers, justification for physical force against, § 35.10.
Services, theft, § 165.15.
Signaling devices, exemption, fire works provisions, § 270.00.

RANSOM
Generally, § 135.00 et seq.
Kidnapping, generally, this index.

RAPE
Age, knowledge, § 15.20.
Defense, person, physical force, justification, § 35.15.
First degree, § 130.35.
Murder, § 125.25.
Second degree, § 130.30.
Third degree, § 130.25.

RARE OBJECTS
Simulation, § 170.45.

RAZORS
Possession, § 265.05.

REAL PROPERTY
Rent gouging, § 180.55.
Trespass and Trespassers, generally, this index.

REASON OR BELIEF
Danger, justification for physical force use, § 35.00 et seq.

REASONABLE DOUBT
Defense, disproving, § 25.00.

RECEIVERS
Insolvency, fraud in, § 185.00.

RECIDIVIST
Summons, § 70.10.

RECKLESS ENDANGERMENT
Assault, § 120.00 et seq.
Criminal nuisance, § 240.45.
First degree, § 120.25.
Police officers, justification for conduct, § 35.30.
Property, § 145.25.
Second degree, § 120.20.

RECKLESSLY
Culpability, generally, this index.

RECORDS
Business Records, generally, this index.
Gambling, generally, this index.
Gunsmiths and dealers in firearms, § 400.00.
Public Records, generally, this index.

REFEREES
Sports bribery, § 180.35 et seq.

REFORMATORIES
Guards, physical force, justifiable use, § 35.30.
Sentence, young adults, § 60.00.
Generally, § 75.00.
Alternative local sentence, § 75.20.
Calculation, § 75.10.
Commencement, §§ 75.10, 75.20.
Credits,
Jail term, § 75.10.
Time served, § 75.20.
Defined, § 75.00.
Escape, interruption, sentence, § 75.10.
Interruption, § 75.15.
Limitations, § 75.00.
Merger, definite and local sentences, § 75.20.
Multiple local sentences, § 75.20.
Multiple sentences, § 75.10.
Parole, § 75.15.
Local sentence, § 75.20.
Place, imprisonment, § 75.05.
Local sentence, § 75.20.
Probation, § 65.00.
Satisfaction, service, imprisonment, § 65.15.
State institution and local sentences, merger, § 75.20.
Termination, §§ 75.10, 75.20.
Vacated sentence, time served, credit, § 75.10.

REFRIGERATORS
Abandoning, § 270.10.

REGIONAL STATE PARK COMMISSION
Fireworks, display, permit authority, § 405.00.

REGISTERED MAIL
Pornography, forfeiture proceedings, notice, § 410.00.

REHABILITATION
Probation and conditional discharge, conditions, § 65.10.

RELATIVES
Custodial interference. Custody, generally, this index.
Defined, kidnapping, etc., provisions, 135.00.
Incest, §§ 255.25, 255.30.
Unlawful Imprisonment, generally, this index.

RELEASE
See specific heads.

RELIGIOUS ORGANIZATIONS
Fireworks, sale, etc., to authorized organizations, § 270.00.

RELIGIOUS SECT
Ill child, endangering welfare, §§ 260.10, 260.15.

REMAND
Kidnapping trial, § 135.40.
Murder trial, death sentence set aside, § 125.35.

REMOVAL
Entry. Business Records, generally, this index.
Insolvency, fraud in, § 185.00.
Public Records, generally, this index.

REMOVAL FROM OFFICE
Civil penalties, § 60.00

RENDERS CRIMINAL ASSISTANCE
Defined, hindering prosecution provisions, § 205.50.

RENEWALS
Licenses to carry, possess, etc., firearms, § 400.00.

RENT
Gouging, § 180.55.

RENUNCIATION
Defense, § 35.45.

REPARATION
Probation, etc., conditions, §§ 65.05, 65.10.

REPEALS
Penal Law, § 500.05.

REPORTS
Bullet wounds, etc., failure to report, § 265.25.
Criminal communications, failing to report, § 250.35.
Falsely reporting incident, § 240.50.
Wire tapping, failure to report, § 250.15.

REPRESENTATIVE DRAWER
Defined, bad check provisions, § 190.00.

REPUTATION
Coercion, second degree, § 135.60.
Extortion, harming as, § 155.05.

RESTAURANTS
Services, theft, § 165.15.

RESTITUTION
Probation, etc., conditions, §§ 65.05, 65.10.

RESTRAIN
Kidnapping, generally, this index.
Unlawful Imprisonment, generally, this index.

REVOLVERS
See Firearms, generally, this index.

REVOCATION
Licenses, carry, possess, etc., firearms, § 400.00.

RIDICULE
Subjecting to,
- Coercion, § 135.60.
- Extortion, § 155.05.
- Offensive exhibitions, § 245.05.

INDEX

References are to Sections of the Revised Penal Law

RIFLE RANGES
Minors, possession, rifle, exemption, dangerous weapons provisions, § 265.20.

RIFLES
Defined, dangerous weapon provisions, § 265.00.
Mentally ill or defective persons, seizure, rifles from, § 265.05.
Possession, persons previously convicted of felony, § 265.05.

RIGHT TO PRIVACY
Offenses against, § 250 et seq.
Eavesdropping, generally, this index.

RIOT
Generally, § 240.05.
Unlawful assembly, § 240.10.

ROBBERY
Defense, person, physical force, justification, § 35.15.
Defined, § 160.00.
First degree, § 160.15.
Murder, § 125.25.
Second degree, § 160.10.
Third degree, § 160.05.

ROLLER SKATES
Marathons, § 245.05.

ROMAN CANDLES
Fireworks, generally, this index.

ROOMING HOUSES
Services, theft, § 165.15.

RUMORS
False reports, § 240.50.

SADISM
Obscenity and related offenses, § 235.00 et seq.

SAFETY
Coercion, second degree, § 135.60.
Extortion, harming as, § 155.05.
Public Safety, generally, this index.

SALES
Criminally selling dangerous drugs. Dangerous Drugs, this index.
False advertising, § 190.20.
Fireworks, ordinance, regulation, § 405.00.
Mortgaged property, fraudulent disposition, § 185.10.
Pornography, forfeited material used to promote, § 410.00.
Security interest, fraud involving, § 185.05.

SAMPLES
Grand larceny, § 155.30.

SANDBAGS
Disposition, § 265.10.
Manufacture, § 265.10.
Possession, § 265.05.
Transportation, § 265.10.

SANDCLUBS
Disposition, § 265.10.
Manufacture, § 265.10.
Possession, § 265.05.

SANITARIUMS
Bullet wounds, etc., duty to report, § 265.25.

SAVINGS CLAUSES
Penal Law, § 500.00.

SAWED-OFF SHOT-GUNS
See Firearms, generally, this index.

SCHOOLS
Attendance, probation, etc., conditions, § 65.10.
Hazing, § 240.25.
Loitering, buildings or grounds, § 240.35.
Offenses against public order. Public Order, generally, this index.
Physical force, justification for use, § 35.10.

SCIENTIFIC PROCESS
Grand larceny, § 155.30.

SEARCHES AND SEIZURES
Fireworks possessed unlawfully, § 405.05.
Pornography, equipment used in promoting, § 410.00.

SECOND AND SUBSEQUENT OFFENSES
Sentence, § 70.10.

SECRETION
Mortgaged property, fraudulent disposition, § 185.10.
Wills, etc., as unlawful concealment, § 190.30.

SECRETS
Exposing,
    Coercion, second degree, § 135.60.
    Extortion, § 155.05.
Process, invention, etc., grand larceny, § 155.30.

SECURED TRANSACTIONS
Fraud, § 185.00 et seq.

SECURITIES
Forgery, first degree, § 170.15.
Fraud involving security interest, § 185.05.
Probation, etc., conditions, § 65.10.

SECURITY INTERESTS
Property, right of possession, § 155.00.

SEIZURES
Searches and Seizures, generally, this index.

SENTENCE AND PUNISHMENT
Alternative definite sentence, felonies, § 70.05.
Class A felony, § 60.00.
Classification, felonies and misdemeanors, § 55.05.
Concurrent and consecutive terms of imprisonment, § 70.25.
Conditional Discharge, generally, this index.
Conditional release, § 70.40.
Credits, §§ 70.30, 70.40.

SENTENCE AND PUNISHMENT—Continued
Definite sentence,
Alternative, felonies, § 70.05.
Calculation, terms, imprisonment, § 70.30.
Concurrent and consecutive terms of imprisonment, calculation, § 70.25.
Conditional release, § 70.40.
Credits, § 70.30.
Good behavior time, § 70.30.
Jail term, credit, § 70.30.
Merger with indeterminate sentences, § 70.35.
Misdemeanors, § 70.15.
Unclassified misdemeanor, § 70.15.
Violation, § 70.15.
Delinquency, conditional release, violation, § 70.40.
Designation of offenses, § 55.10.
Dispositions authorized, § 60.00.
Escape, interruption of sentence, § 70.30.
Felonies, classification, § 55.05.
Good behavior time, § 70.30.
Release on parole, § 70.40.
Indeterminate Sentence, generally, this index.
Interruption, §§ 70.30, 70.40.
Conditional release, violation, § 70.40.
Escape, custody, § 70.30.
Kidnapping, §§ 135.35, 135.40.
Merger, definite and indeterminate sentences, § 70.35.
Misdemeanors, § 70.15.
Murder, § 125.30.
Proceedings to determine, § 125.35.
Parole, generally, this index.
Persistent felony offender, § 70.10.
Place of imprisonment, § 70.20.
Plea of guilty, murder, § 125.30.
Probation, generally, this index.
Reformatories, this index.
Release, §§ 65.05, 65.20.
Revocable dispositions, § 60.00.
Unclassified misdemeanors, § 70.15.
Unconditional Discharge, generally, this index.
Vacated sentence, time served under, § 70.30.
Violations, § 70.15.

SERIOUS PHYSICAL INJURY
Defined, § 10.00.

SERVICE OF PROCESS
Justification for acts, § 35.05.

SERVICES
Credit card, defined, theft provisions, § 165.10.
Defined, theft provisions, § 165.10.
False advertising, § 190.20.
Slugs, generally, this index.
Theft, § 165.15.

SEX
Obscenity and related offenses, § 235.00 et seq.

SEX OFFENSES
Generally, § 130.00 et seq.
Age, knowledge, § 15.20.
Consent, lack of, § 130.05.
Corroboration, testimony, § 130.15.
Defense, § 130.10.
Definitions, § 130.00.
Deviate sexual intercourse, defined, § 130.00.
Female, defined, § 130.00.
Forcible compulsion, defined, § 130.00.
Incest, §§ 255.25, 255.30.
Mentally defective, defined, § 130.00.
Mentally incapacitated, defined, § 130.00.
Physically helpless, defined, § 130.00.
Prostitution, § 230.00 et seq.
Rape, generally, this index.
Sexual Abuse, generally, this index.
Sexual contact, defined, § 130.00.
Sexual intercourse, defined, § 130.00.
Sexual Misconduct, generally, this index.
Sodomy, generally, this index.

SEXUAL ABUSE
Defenses, § 130.55.
First degree, § 130.65.
Kidnapping in first degree, § 135.25.
Murder, § 125.25.
Second degree, § 130.60.
Third degree, § 130.55.

SEXUAL CONTACT
Defined, sex offenses, § 130.00.

SEXUAL INTERCOURSE
Adultery, §§ 255.17, 255.20.
Age, knowledge, § 15.20.
Defined, sex offenses, § 130.00.
Incest, §§ 255.25, 255.30.
Loitering, public place, engaging or soliciting person to engage in, § 240.35.
Prostitution, § 230.00 et seq.

SEXUAL MISCONDUCT
Generally, § 130.20.
Loitering, § 240.35.

SHERIFFS
Weapons, etc., surrender to, § 265.20.

SHIPS AND SHIPPING
Arson, § 150.00 et seq.
Offenses against public order, § 240.00 et seq.
Passengers, justification for use of force against, § 35.10.

SHORT TITLE
Penal Law, § 1.00.

SHOTGUNS
Defined, dangerous weapon provisions, § 265.00.
Mentally ill or defective persons, seizure from, § 265.05.
Possession, persons previously convicted of felony, § 265.05.

SHOVING
Harassment, § 240.25.

SIGHT ORDERS
Bad Checks, generally, this index.

SIGNALING DEVICES
Fireworks, exemption, provisions governing, § 270.00.

SIGNATURES
Fraudulently obtaining, § 165.20.

SIGNS
Criminal contempt, §§ 215.50, 215.55.

SILENCERS
Firearms, this index.

SIMULATION
Generally, § 170.45.

SINGING
Loitering, § 240.35.

SKATING RINKS
Permitting minor to enter or remain in, § 260.20.

SKY ROCKETS
Fireworks, generally, this index.

SLOT MACHINES
Defined, gambling provisions, § 225.00.
Gambling devices, possession of, § 225.30.

SLUGS
Unlawfully using,
- Coin machine, defined, § 170.50.
- Definitions, § 170.50.
- First degree, § 170.60.
- Second degree, § 170.55.
- Slug defined, § 170.50.
- Value, defined, § 170.50.

SLUNGSHOTS
Disposition, § 265.10.
Manufacture, § 265.10.
Possession, § 265.05.
Transportation, § 265.10.

SODOMY
Consensual, § 130.38.
- Lack of consent, exception, § 130.05.

Defense, person, physical force, justification, § 35.15.
First degree, § 130.50.
Murder, § 125.25.
Second degree, § 130.45.
Third degree, § 130.40.

SOLICITATION
Bribery and Corruption, generally, this index.
Exemption, § 100.20.
First degree, § 100.10.
No defense, § 100.15.

SOLICITATION—Continued
Renunciation, defense, § 35.45.
Second degree, § 100.05.
Third degree, § 100.00.

SOMETHING OF VALUE
Defined, gambling provisions, § 225.00.

SOURCE
Objects, simulation, § 170.45.

SPARKLERS
Fireworks, generally, this index.

SPECIMENS
Grand larceny, § 155.30.

SPORTS
Bribery, § 180.35 et seq.
Fireworks, use for signal purposes, § 270.00.

SPRING-GUNS
Disposition, § 265.10.
Possession, minors, § 265.05.

STAMPS
Forgery, first degree, § 170.15.

STATEMENTS
See specific heads.

STATUTES
Mistaken belief founded upon, § 15.20.

STEALING
Larceny, generally, this index.
Robbery, generally, this index.

STEALTH
Services, theft, payment, § 165.15.

STEAM
Larceny, generally, this index.
Services, theft, § 165.15.
Tampering, property, §§ 145.15, 145.20.

STENOGRAPHERS
Grand jury disclosure, § 215.70.

STILETTOES
Possession, § 265.05.
Presumption, unlawful intent, § 265.15.

STILL PICTURES
Pornography, equipment, seizure, etc., § 410.00.

STINK BOMBS
Unlawfully possessing noxious material, § 270.05.

STOCK AND STOCKHOLDERS
Forgery, first degree, § 170.15.
Misconduct, corporate directors, § 190.35.

STOLEN PROPERTY
Possession,
Corroboration, § 165.65.
First degree, § 165.50.
No defense, § 165.60.
Presumptions, § 165.55.
Second degree, § 165.45.
Third degree, § 165.40.
Value, § 155.20.
Vehicles, weapons, etc., presumption, possession, § 265.15.

STORAGE
Fireworks, ordinance, regulation, § 405.00.

STREET RAILROAD TRAINS
Discharging firearms at prohibited, § 265.35.

STRICT LIABILITY
Requirements for criminal liability, § 15.10.

STRIKES
Coercion, second degree, § 135.60.
Extortion by, § 155.05.

STRUCTURES
Arson, generally, this index.
Burglary, generally, this index.

STUDENTS
Physical force, justification, § 35.10.

SUB-MACHINE GUNS
Machine-Guns, generally, this index.

SUBSTANCES
Grand larceny, § 155.30.

SUBSTITUTION
Children, felony, § 135.55.

SUICIDE
Attempt, promoting, §§ 120.30, 120.35.
Manslaughter, § 125.15.
Murder, § 125.25.
Physical force to thwart, justification, § 35.10.

SULPHIDES
Devices containing. Fireworks, generally, this index.

SUMMONS
Weapons, etc., investigation, persons delivering to peace officer, § 265.20.

SUPERINTENDENT OF STATE POLICE
Forms, licenses, carry, possess, etc., firearms, approval, § 400.00.
Mentally ill or defective persons, seizure, rifles or shot-guns from, § 265.05.

SUPPORT
Dependents, probation, etc., conditions, § 65.10.
Infant contribution, probation, etc., condition, § 65.10.
Infants, failure to provide for, § 260.05.

SUPPRESSION
Evidence, hindering prosecution, § 205.50.
Wills, etc., as unlawful concealment, § 190.30.

SUPREME COURT
Pornography, forfeiture, material promoting, petition, recovery, § 410.00.

SURGEONS
See Physicians and Surgeons, generally, this index.

SWEAR
Defined, perjury provisions, § 210.00.

SWEAR FALSELY
Defined, perjury provisions, § 210.00.

SWEETHEART CONTRACTS
Commercial bribing, § 180.00.

SWITCHBLADE KNIVES
Defined, dangerous weapon provisions, § 265.00.
Disposition, § 265.10.
Hunters, etc., exemption, possession, § 265.20.
Manufacture, § 265.10.
Exemption, § 265.20.
Possession, § 265.05.
Transportation, § 265.10.

TAMPERING
Defenses, § 145.15.
First degree, § 145.20.
Jurors, § 215.25.
Meters, services, theft, § 165.15.
Physical evidence, § 215.40.
Private communications, § 250.25.
Public records, §§ 175.20, 175.25.
Second degree, § 145.15.
Sports contest, § 180.50.
Witnesses, § 215.10.

TATTOOING
Minors, § 260.20.

TAXICABS
Narcotic drugs, presence, § 220.25.
Offenses against public order, § 240.00 et seq.
Services, theft, § 165.15.

TEACHERS
Physical force, use, justification, § 35.10.

TECHNICAL PROCESS
Grand larceny, § 155.30.

TELECOMMUNICATIONS
Gambling offenses, § 225.00 et seq.
Services, theft, § 165.15.

TELEGRAPHS AND TELEPHONES
Communication with person anonymously to cause annoyance, aggravated harassment, § 240.30.
Eavesdropping, generally, this index.
Failing to report criminal communications, § 250.35.
Fireworks, display, restrictions, § 405.00.
Gambling offenses, § 225.00 et seq.
Obtaining communications information unlawfully, § 250.30.
Party line, obstructing use, § 270.15.

TELEGRAPHS AND TELEPHONES—Continued
Services, theft, § 165.15.
Tampering,
Private communications, § 250.25.
Property, §§ 145.15, 145.20.
Wire Tapping, generally, this index.

TELEVISION
Broadcasts, fireworks, regulation, § 405.00.
Fireworks, use in broadcasting, § 270.00.

TEMPORARY STATE COMMISSION
Criminal contempt of, § 215.65.

TENANTS IN COMMON
Right of possession, larceny provisions, § 155.00.

TERROR
Comic books, § 235.25.

TESTAMENTARY INSTRUMENTS
Forgery, § 170.10.
Unlawfully concealing, § 190.30.

TESTIMONY
Coercion, second degree, withholding, etc., § 135.60.
Defined, perjury provisions, § 210.00.
Extortion, obtaining property by, § 155.05.

THEATRES
Blank cartridges, use in shows, § 270.00.
Permitting minor to enter or remain in, § 260.20.

THEFT
Larceny, generally, this index.
Services, § 165.15.

THIEF
Right of possession, § 155.00.

THREATS
Duress or Coercion, generally, this index.
Extortion and Threats, generally, this index.

TOBACCO
Minors, selling to, § 260.20.

TOKENS
Forgery, second degree, § 170.10.
Slugs, generally, this index.

TOOLS
Burglar's, possession, § 140.35.

TORPEDOES
Fireworks, generally, this index.

TORTURE
Comic books, § 235.25.

TOURIST CABINS
Services, theft, § 165.15.

TOWNS
Fireworks, ordinances, authority, § 405.00.
Permit authority, display, fireworks, § 405.00.

TRAFFIC
Obstructing, disorderly conduct, § 240.20.

TRAFFIC INFRACTIONS
Offenses, exclusion, § 55.00.

TRANSFERS
Insolvency, fraud in, § 185.00.
Licenses to carry, possess, etc., firearms, § 400.00.
Transportation, forgery, second degree, § 170.10.

TRANSIENT GUESTS
Services, theft, § 165.15.

TRANSPORTATION
Fireworks, ordinance, regulation, § 405.00.
Services, theft, § 165.15.
Weapons and dangerous instruments and appliances, § 265.10.

TRANSPORTATION AGENCIES
Fireworks, transportation, exemption from law, § 270.00.

TRANSPORTATION FACILITY
Defined, offenses against public order, § 240.00.
Loitering in for purpose of soliciting or engaging in business, trade or commercial transactions, § 240.35.

TRANSPOSITIONS
Forgery, generally, this index.

TRAPPING
Switchblade or gravity knives, exemptions, provisions governing possession, § 265.20.

TREES
Fireworks, display, restrictions, § 405.00.

TRESPASS AND TRESPASSERS
Building, defined, § 140.00.
Definitions, § 140.00.
Enters or remains unlawfully, defined, § 140.00.
First degree, § 140.15.
Larceny, generally, this index.
Physical force, use in defense of premises, § 35.20.
Premises, defined, § 140.00.
Second degree, § 140.10.
Third degree, § 140.05.

TRICK
Larceny by. Larceny, generally, this index.

TRUSTEES
Benefit of creditors, insolvency, fraud in, § 185.00.

TURNSTILES
Slugs, generally, this index.

UMPIRE
Sports bribery, § 180.35 et seq.

UNBORN CHILD
Abortion, § 125.00 et seq.

UNCONDITIONAL DISCHARGE
Corporations, § 60.00.

UNIFORMS
Impersonation, wearing, etc., § 190.25.

UNLAWFUL
Defined, gambling provisions, § 225.00.

UNLAWFUL ASSEMBLY
Generally, § 240.10.

UNLAWFUL IMPRISONMENT
Defenses, § 135.15.
First degree, § 135.10.
Second degree, § 135.05.

UNLAWFULLY
Defined,
Dangerous drug provisions, § 220.00.
Eavesdropping provisions, § 250.00.

UTTERING
Bad Checks, generally, this index.
Forgery, generally, this index.

VAGRANCY
Loitering, § 240.35.

VALUE
Larceny, generally, this index.
Slugs, generally, this index.

VAPORS
Substances generating noxious vapors. Noxious Materials, generally, this index.

VEHICLES
See, also, Motor Vehicles, generally, this index.
Arson, generally, this index.
Burglary, generally, this index.
Defined, § 10.00.
Pornographic still or motion pictures, seizure and forfeiture, § 410.00.
Trespass and Trespassers, generally, this index.
Unauthorized use, § 165.05.

VENDING MACHINES
Slugs, generally, this index.

VENUE
Conspiracy prosecution, § 105.25.

VICIOUS HABITS
Probation or conditional discharge, conditions, § 65.10.

VILLAGE
Fireworks, ordinances, authority, § 405.00.
Permit authority, display, fireworks, § 405.00.

VIOLATIONS
Advertisements, unlawfully posting, § 145.30.
Defined, § 10.00.
Designations, § 55.10.
Disorderly conduct, § 240.20.
Fines, Penalties, and Forfeitures, generally, this index.
Harassment, § 240.25.
Loitering, § 240.35.
Offensive exhibition, § 245.05.
Patronizing a prostitute, § 230.05.
Prostitution, § 230.00.
Public intoxication, § 240.40.
Solicitation, third degree, § 100.00.
Term of imprisonment, § 70.15.
Trespass, third degree, § 140.05.

VOCATIONAL TRAINING
Probation or conditional discharge, conditions, § 65.10.

VOLUNTARY ACT
Defined, culpability provisions, § 15.00.

WAR
Justification for acts, § 35.05.

WARDENS OF PRISONS
Physical force, justification, § 35.10.
Weapons and dangerous instruments and appliances, exemptions, provisions governing possession, § 265.20.

WATER
Larceny, generally, this index.
Services, theft, § 165.15.

WATERCRAFT
Arson, generally, this index.
Burglary, generally, this index.
Offenses against public order, § 240.00 et seq.
Trespass and Trespassers, generally, this index.

WATERWORKS
Tampering, property, §§ 145.15, 145.20.

WEAPONS
See, also, specific heads.
Firearms and other dangerous weapons, § 265.00 et seq.
Aliens, possession of, § 265.05.
Certain convictions to be reported, § 265.30.
Certain wounds to be reported, § 265.25.
Dealer in firearms, defined, § 265.00.
Deface, defined, § 265.00.
Definitions, § 265.00.
Destruction, § 400.05.
Dispose of, defined, § 265.00.
Exemptions from provisions governing, § 265.20.
Firearm, defined, § 265.00.
Firearm silencer, defined, § 265.00.
Gravity knife, defined, § 265.00.
Gunsmith, defined, § 265.00.
Licensing officer, defined, § 265.00.
Machine-gun, defined, § 265.00.

WEAPONS—Continued
Firearms and other dangerous weapons—Continued
Manufacture, transport, etc., § 265.10.
Minors, possession, by, § 265.05.
Possession, § 265.05.
Presumptions, possession, unlawful intent and defacement, § 265.15.
Prohibited uses of, § 265.35.
Rifle, defined, § 265.00.
Shotgun, defined, § 265.00.
Switchblade knife, defined, § 265.00.
Murder, use of, effect upon, § 125.25.

WELLS
Failure to cover abandoned well, § 270.10.

WILLS
Forgery, second degree, § 170.10.
Unlawfully concealing, § 190.30.

WIND STORMS
Fireworks, display, restriction, § 405.00.

WIRE TAPPING
Defined, eavesdropping provisions, § 250.00.
Failure to report, § 250.15.
Right to privacy, § 250.00 et seq.

WITNESSES
Bribe, receiving by, § 215.05.
Bribing, § 215.00.
Perjury, generally, this index.
Tampering with, § 215.10.

WOMEN
See, also, specific heads.
Abortion, generally, this index.
Rape, generally, this index.

WORDS AND PHRASES
Definitions, generally, this index.

WORKHOUSES
Employees, license to have and carry concealed pistols or revolvers, § 400.00.
Weapons and dangerous instruments and appliances, exemption, wardens, etc., provisions governing possession, § 265.20.

WORTHLESS CHECKS
Bad Checks, generally, this index.

WOUNDS
Reports, § 265.25.

WRITING
See specific heads.

YOUNG ADULTS
Reformatories, generally, this index.

COMMISSION STAFF COMMENTS ON CHANGES IN THE NEW PENAL LAW SINCE THE 1964 STUDY BILL

These comments relate only to those sections in which changes in text were made since the bill was introduced for study purposes at the 1964 session of the Legislature. The comments on the major changes that will be effected by the new Penal Law will be found on pages 251 et seq. of the pamphlet entitled "Proposed New York Penal Law", which contained the 1964 study bill, and was published as part of the McKinney service in 1964. Because of the renumbering of sections of the Penal Law as enacted in 1965, it will be necessary to consult Table 1 in Appendix A, post, to determine the corresponding section number of the 1964 study bill.

The new Penal Law enacted at the 1965 legislative session differs in a number of respects from the study bill submitted at the 1964 session. There are some important changes of substance, many minor changes of substance, some structural changes and literally hundreds of purely phraseological changes made for purposes of clarity and conformity. The ensuing comments do not, in the main, explain alterations of mere form and language but are largely addressed to changes of substance.

These comments will be more comprehensible to the reader if he has before him both the 1964 study bill and the final or 1965 bill as enacted. For purposes of brevity, the comments refer to the 1964 bill as the "old bill," and to the 1965 bill as the "new bill." Section and article citations of the "old bill" are designated by the letter "O" (*e.g.*, O § 10.20, and O Art. 10), and those of the new bill by the letter "N" (*e. g.*, N § 10.20, and N Art. 10).

One over-all structural change should be noted at the outset. The old bill is divided into three "Parts":

Part One: General Provisions
Part Two: Specific Offenses
Part Three: Administrative and Civil Provisions

The new bill contains a fourth "Part." This results simply from the extraction of virtually the entire Title B ("Offenses and Sentences") from the old bill's "Part One" or "General Provisions" and the relocation thereof in a new "Part Two"

entitled "Sentences" and devoted exclusively to that subject (N Tit. E., Arts. 55–80).

The new "Part" structure, therefore, is as follows:

Part One: General Provisions
Part Two: Sentences
Part Three: Specific Offenses
Part Four: Administrative Provisions

PART ONE:

GENERAL PROVISIONS

TITLE A: GENERAL PURPOSES, RULES OF CONSTRUCTION, AND DEFINITIONS

ARTICLE 1: GENERAL PURPOSES

No changes have been made in this article.

ARTICLE 5: GENERAL RULES OF CONSTRUCTION AND APPLICATION

No substantial changes have been made in this article.

ARTICLE 10: DEFINITIONS

§ 10.00 Definitions of terms of general use in this chapter

This solitary section of Article 10 has been revised in several respects.

(1) As previously stated, nearly all of old Title B, labeled "Offenses and Sentences" (O Arts. 15–40), is, in the new bill, removed from the "General Provisions" and transferred to a new and separate "Part" (N Part Two, Tit. E). The only portion retained in the "General Provisions" consists of those phases of the Title's first article (O Art. 15) containing definitions of the terms "offense," "violation," "misdemeanor," "felony" and "crime" (O §§ 15.00–15.15). With some clarifying changes of language, these definitions are placed in the new general definitions section (N § 10.00 [1–5]).

(2) The definition of a "deadly weapon" is materially changed. In the old section, it is defined in general terms as an instrument designed as a weapon the primary function of which is the infliction of death or serious physical injury (O § 10.00[6]). The new section abandons this definition as too vague and expressly enumerates the kinds of weapons deemed "deadly" (N § 10.00[11]). The list includes loaded guns and most of the other weapons designated *per se* contraband (possession thereof, without more, being criminal) in the article dealing with "firearms and other dangerous weapons" (O Art. 270, § 270.05[1, 2, 3]; N Art. 265, § 265.05[1, 2, 3]).

(3) The term "dangerous weapon" (O § 10.00[7]) is relabeled "dangerous instrument" and re-defined (N § 10.00 [12]). The old definition is in terms of an instrument or substance "readily capable of being used to produce death or serious physical injury" (O subd. 7), which encompasses virtually every tangible item on earth. The new definition is in terms of an instrument having such a potential "under the circumstances in which it is used, attempted to be used or threatened to be used" (N subd. 12). As so defined, "dangerous instrument" is not a meaningful term with respect to offenses of mere *possession* but has utility only in connection with offenses involving *use* or attempted or threatened *use* thereof (see N § 120.00[3], 120.05[2], 120.10[1], 160.-15[3]).

A "dangerous instrument" is further and expressly declared to include a "vehicle" (N subd. 12); and an added subdivision of the new section defines a "vehicle" as a Vehicle and Traffic Law version of a "motor vehicle," plus aircraft and certain vessels (N subd. 13).

(4) Another new definition is that of the term "benefit" (N § 10.00[16]). This definition is useful in that it permits simpler and clearer drafting of several sections defining specific offenses in which the word "benefit" is used (see *e. g.*, N §§ 180.00, 200.00, 200.30).

TITLE B: (FORMERLY TITLE C): PRINCIPLES OF CRIMINAL LIABILITY

ARTICLE 15: (FORMERLY ART. 45): CULPABILITY

This article has been somewhat revised with respect to structure, form and phraseology, but has undergone little substantive change. Only two items seem worthy of comment.

(1) Some of the provisions have been recast to clarify the proposition that a person acts "recklessly" not only when he is aware of and consciously disregards certain specified risks, but also when he fails to perceive or to be aware of such risks by reason of voluntary intoxication (compare N § 15.05 [3] with O §§ 45.00[6], 45.10[2]).

(2) The old "sex offenses" article (O Art. 135) contains a provision declaring that, where the fact of the victim being under a specified age is an element of an offense defined in such article, lack of knowledge by the defendant of the victim's age does not constitute a defense to any prosecution for such offense (O § 135.10[2]). The new "Culpability" article, in a new subdivision of its section dealing with the "effect of ignorance or mistake upon liability" (N § 15.20[3]), extends

this "no defense" principle to prosecutions for any offense defined in the entire new Penal Law which involves the age of the victim as an element (see *e. g.*, N §§ 220.40, 230.30 [2], 260.10).

ARTICLE 20: (FORMERLY ART. 50): PARTIES TO OFFENSES AND LIABILITY THROUGH ACCESSORIAL CONDUCT

This article, though rephrased to a considerable extent, has undergone no material substantive change.

The old article's provision defining the defense of renunciation as it applies to prosecutions for consummated offenses based upon conduct of an accessorial nature (O § 50.10[2]), is deleted from the new article (Art. 20) and removed to the comprehensive section of the "General Provisions" defining all ramifications of the defense of "renunciation" (N § 35.-45[1]).

TITLE C: DEFENSES (FORMERLY TITLE D: EXEMPTIONS FROM CRIMINAL LIABILITY)

For reasons partially indicated immediately below, old Title C has been re-labeled, re-structured and reduced from five articles to three:

Article 25: Defenses in general
Article 30: Defenses involving lack of criminal responsibility
Article 35: Defenses involving lack of culpability

ARTICLE 25: DEFENSES IN GENERAL (FORMERLY ART. 55: "AFFIRMATIVE DEFENSE")

This article's solitary section, newly labeled "defenses; burden of proof" (N § 25.00), is a most important one.

The corresponding section of the old bill defines an "affirmative defense" as one which, when raised, places upon the People the burden of disproving it beyond a reasonable doubt (O § 55.00[2]). All the defenses postulated in the "General Provisions" (infancy, mental disease or defect, justification, duress, etc.) are then classified as "affirmative defenses" (O § 55.00[3]), as are most of those predicated in connection with the "Specific Offenses" (see, *e. g.*, O §§ 140.30, 140.60, 155.-10[2], 160.15, 170.75[3]). With one exception (O § 195.20 [2]), no attention is paid to another kind of defense: that

which the defendant has the burden of proving by a preponderance of the evidence.

Attaching importance to the latter concept, the new bill does considerable re-defining and re-labeling in this area. The defense which the People have the burden of disproving beyond a reasonable doubt—the old bill's "affirmative defense" (O § 55.00[2])—is re-named a plain "defense" (N § 25.00[1]); and that which the defendant has the burden of proving by a preponderance of the evidence is termed an "affirmative defense" (*id.*, subd. [2]).

With this new foundation, every "defense" provision has been re-examined and expressly designated in the new bill either an ordinary "defense" or an "affirmative defense" as the equities seem to dictate.

This re-examination reveals that three of the so-called "Exemptions from criminal liability" defined in the old bill (O Tit. D) are not actually "defenses" within the true meaning of that term. Contentions of "immunity" (O §§ 70.00–70.20), "previous prosecution," or double jeopardy (O § 75.10), and "untimely prosecution," or the statute of limitations (O § 75.15), are not trial "defenses" and are never presented to or determined by a jury. Rather, they involve legal impediments to prosecution which are collateral to the issue of guilt or innocence and which are litigated and determined upon pre-trial motions. These contentions or "exemptions" are comparable to the grounds which support demurrers or motions to dismiss indictments for alleged insufficiency of grand jury evidence or lack of a speedy trial; and, like the latter, they are more appropriately defined in the Code of Criminal Procedure than in the Penal Law. Accordingly, they are excised from the new Penal Law bill to await inclusion in the prospective new Code of Criminal Procedure.

ARTICLE 30: DEFENSES INVOLVING LACK OF CRIMINAL RESPONSIBILITY (FORMERLY ART. 60):

Important changes have been made in each of the defenses (infancy and mental disease or defect) defined in this article.

Infancy (N § 30.00; O § 60.00)

Under existing Penal Law § 2186, a child less than sixteen years old is not deemed criminally responsible for conduct, with one exception: a fifteen year old child may be tried and convicted in the same manner as an adult for any crime (other than one punishable by a "one-day-to-life" sentence) punish-

able by death or life imprisonment. However, an indictment against a fifteen year old child charging such a crime may, in the discretion of the court, be removed to the Family Court. These rules are carried over and restated in the old bill (O § 60.00).

The new "infancy" section keeps the general "responsibility" age of sixteen years but omits the excepting provisions lowering it to fifteen in capital cases with the option of removal to the Family Court (N § 30.00[1]). This exception of the existing law appears illogical in that, if a child of fifteen is not deemed sufficiently mature to be responsible for robbery, burglary or assault, he can hardly be deemed mature enough to be responsible for murder or kidnapping.

Infancy is designated an ordinary "defense" (N § 30.00[2]).

Mental disease or defect (N § 30.05; O § 60.05)

The insanity defense contained in the old bill (O § 60.05) has been significantly revised. The study bill proposed adoption of the American Law Institute's Model Penal Code standard, to replace the McNaghten Rule, now employed as the test of criminal insanity in the existing Penal Law (§ 1120). The section in the old bill provided:

> "1. 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:
>
> "(a) To know or to appreciate the wrongfulness of his conduct; or
>
> "(b) To conform his conduct to the requirements of law.
>
> "2. As used in this section, the terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct."

This formulation was vigorously opposed by the district attorneys of the state on the ground that subdivision 1(b) was too broad and would tend to exempt from criminal liability the so-called sociopath or psychopath. The prosecutors were not sufficiently reassured by the exclusion provided in subdivision 2 of the section.

After a lengthy discussion with the prosecutors and consultation with a number of leading psychiatrists, a majority of the commission approved the new section, which rewords subdivision 1(a) of the old provision and eliminates subdivisions 1(b) and 2 altogether. Lack of criminal responsibility by reason of mental disease or defect is made an ordinary "defense."

This formula, while perhaps more limited than that of the old bill, considerably expands the McNaghten Rule presently

in vogue in New York. Lack of "substantial capacity" is a more realistic measure than the total impairment required for exculpation under the existing statute. Further, by relating the test to the defendant's mental "capacity", the standard is clarified, for, indeed, it is the defendant's power or capacity to know or appreciate about which the psychiatric witness actually testifies.

A new dimension is accorded the word "know" by following it with "or appreciate." This is designed to permit the defendant possessed of mere surface knowledge or cognition to be excused, and to require that he have some understanding of the legal and moral import of the conduct involved if he is to be held criminally responsible.

It should be noted that a bill is being introduced at the current session of the Legislature to amend the existing Penal Law in this respect and to amend the Code of Criminal Procedure to permit wider latitude in psychiatric testimony on the question of responsibility. That bill carries an immediate effective date.

ARTICLE 35: DEFENSE INVOLVING LACK OF CULPABILITY

This article, new in structure if not in general content, defines four separate defenses:

(1) Justification (N §§ 35.00–35.30)
(2) Duress (N § 35.35)
(3) Entrapment (N § 35.40)
(4) Renunciation (N § 35.45)

Justification (O §§ 65.00–65.30; N §§ 35.00–35.30)

Several significant changes have been made in the "justification" provisions.

(1) A provision of the first "justification" section of the old bill, entitled "justification generally," accords a defense to a person who engages in proscribed conduct under circumstances in which such "conduct is necessary to avoid a public or private injury or evil greater than that sought to be prevented by the law defining the offense charged" (O § 65.00 [2]). This provision is intended to apply only to limited and unusual types of situations (*e. g.*, assaulting a person who has a contagious disease in order to prevent him from going out and starting an epidemic; breaking into an unoccupied rural house to make a telephone call vital to a person's life, and the like). The fear has been expressed, however, that the clause in issue might be construed too broadly and thereby give effect

to defense contentions beyond its intended scope. In order to confine this form of justification within its proper boundaries, the new provision has been tightened by the use of such terms as "emergency measure," "urgency," etc.; and a sentence has been added to assure that the trial court may preliminarily rule upon the admissibility of such evidence and exclude proof of this nature which does not or would not constitute a valid defense even if the asserted facts were accepted as true (N § 35.05[2]).

(2) The old section defining when and to what extent physical force is justifiable "in defense of a person" (O § 65.10) has been substantially rephrased (N § 35.15), partially for purposes of clarification. One of the points clarified is that such justification exists not only when the physical force to be repelled is in fact "unlawful" but also when it is in fact lawful but the actor "reasonably believes" it to be unlawful (compare O § 65.10[1] with N § 35.15[1]).

(3) The same section has been expanded to permit the use of "deadly physical force" in defense of a person not only to repel "deadly physical force" by the assailant and to prevent the commission of a "kidnapping, robbery, forcible rape or forcible sodomy" (O § 65.10[2]), but also to prevent a person's "use of physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling" (N § 35.15[1(b)]).

(4) The justification section dealing with "use of physical force in making an arrest or in preventing an escape" has in some respects been substantially revised (compare O § 65.30 with N § 35.30).

The old section does not distinguish between the principles applicable to an arrest by a peace officer and the quite different principles applicable to an arrest by a private person assisting a peace officer at the latter's direction (O § 65.30 [1, 2]). The new section devotes its first three subdivisions to the peace officer and the next two to the private person assisting him (N § 35.30[1–5]).

With respect to an arrest by a peace officer, the new section, in general, justifies the use of physical force which is not of the "deadly" variety when the officer "reasonably believes" that the arrested person has "committed an offense" (N § 35.30[1(a)]). This may be somewhat more liberal toward the officer than is the comparable provision of the old section, which speaks in cloudy terms of an arrest which the officer "reasonably believes to be lawful" (O § 65.30[1(a)]). In some instances, an arrest may not be "lawful," it may be noted, even though the officer has reasonable grounds for believing

that an offense has been committed (see Code Crim.Proc., § 177).

The new provisions dealing with a private person assisting a peace officer are not drafted in similar terms of reasonable belief of the commission of an offense (*cf.* O § 65.30[1, 2]). In consonance with the predicament of a legally unsophisticated private citizen ordered to assist in an arrest—a command which the law ordinarily requires him to obey (N § 195.10)—the new section justifies his use of physical force when, generally speaking, he acts within the limits of the officer's directions, whether they be authorized or unauthorized (N § 35.30[4, 5]).

(5) The new bill designates "justification" as an ordinary "defense" (N § 35.00).

Duress (O § 75.00; N § 35.35) and Entrapment (O § 75.05; N § 35.40)

No substantial changes have been made in the definitions of either "duress" or "entrapment." Each is designated an "affirmative defense" (N §§ 35.35[1], 35.40).

Renunciation (N § 35.45)

This section collates and condenses in one statute of the "General Provisions" a series of "renunciation" defenses which, in the old bill, are scattered and defined in various articles dealing with the particular offenses and kinds of criminal conduct to which they attach: Criminal liability for the conduct of another (O § 50.10[2]), criminal solicitation (O § 100.20[2]), conspiracy (O § 105.35) and attempt to commit a crime (O § 110.15).

In addition, the new comprehensive section renders the defense of renunciation applicable to the crime of "criminal facilitation" (N § 35.45[2]), which is not the case under the old bill (O Art. 115).

"Renunciation" is designated an "affirmative defense" (N § 35.45).

PART TWO

SENTENCES

TITLE E (FORMERLY TITLE B): SENTENCES

Very few substantive changes have been made in the sentencing provisions (O Tit. B). Most of the changes are mechanical in nature and relate to the fact that some of the provisions which were in old Title B have been relocated in new § 10.00.

The provisions that have been transferred to new § 10.00 set forth the definition of the term "offense," the classification of offenses (O § 15.00), and the definitions of the terms "felony" (O 15.05[1]), "misdemeanor" (O 15.10[1]) and "violation" (O 15.15[1]). These provisions are basic to an understanding of the entire Penal Law and the logical place for them is with the other basic provisions in Part I of the bill.

ARTICLE 55 (FORMERLY ART. 15): CLASSIFICATION AND DESIGNATION OF OFFENSES

Offense; exclusion of traffic infraction (N § 55.00)

This section is completely new but makes no substantive change. The old § 15.00 excluded the "traffic infraction" from the definition of the term "offense". This achieved the desirable aim of excluding traffic infractions from the proposed uniform sentencing system (see staff notes to study bill, p. 253). However, it also had the undesirable effect of excluding traffic infractions from all the other principles of general applicability set forth in the proposed Penal Law, because the provisions defining these principles utilize the term "offense" and do not make special mention of the "traffic infraction" (See *e. g.*, N Arts. 35, 205).

Therefore, the definition of the term "offense" has been changed so that it now includes the "traffic infraction" (N § 10.00[1]), and the "traffic infraction" is specifically excluded from the operations of the sentencing structure (N § 55.00). For sentencing purposes, the result is the same as that achieved under old § 15.00.

It might be noted that in order to complete the change it was deemed desirable, for the purpose of clarity, to also amend the definitions of the terms "misdemeanor" and "violation" so as to specifically exclude the "traffic infraction" (compare O §§ 15.10[1], 15.15[1] with N § 10.00[2, 3]).

Classifications of felonies and misdemeanors (N § 55.05; O §§ 15.05[2], 15.10[2])

The provisions of this section are identical to those of the old §§ 15.05[2] and 15.10[2].

Designation of offenses (N § 55.10; O §§ 15.05[3], 15.10[3], [4], 15.15[2])

The provisions of new § 55.10 correspond to the following provisions of the old bill: §§ 15.05[3], 15.10[3], [4], 15.15[2]. There have been several changes in language but no change in substance is intended.

The cross references to the definitions of the terms felony, misdemeanor and violation, used in the designation provisions of the old sections, have been replaced by specific guidelines for ascertaining the designation of the various offenses defined outside the Penal Law (see N § 55.10[1], [2(c)], [3(a) (b)]). These guidelines achieve the same result as the former cross references. The sole reason for the change is that the definition provisions are now in new § 10.00 and cross referencing would be impracticable.

Paragraph (d) of subdivision two now contains the substance of the provision that formerly was set forth as subdivision four of old § 15.15. This provision has been redrafted for purposes of clarity but serves precisely the same function as it did under the old bill. It creates an exception to the rule set forth in the provision that designates unclassified misdemeanors (paragraph [c]) and, thereby, saves the non-criminal offenses defined outside the Penal Law that presently carry terms of imprisonment in excess of fifteen days from falling into the "unclassified misdemeanor" category.

The offenses covered by the aforesaid exception are designated as "violations" under subdivision three (b) of new § 55.10 (see staff notes to study bill, pp. 255–257).

ARTICLE 65 (FORMERLY ART. 25): SENTENCES OF PROBATION, CONDITIONAL DISCHARGE AND UNCONDITIONAL DISCHARGE

Sentence of probation (N § 65.00; O § 25.00)

A slight change has been made in subdivision one of this section. The old section prohibits the court from imposing a sentence of probation in *any* case where the defendant is, at the time of sentence, under a previously imposed indeterminate or reformatory sentence of imprisonment (O § 25.00[1]).

The rationale behind this sort of prohibition is that persons who are serving state prison and state reformatory sentences cannot receive probation supervision in an institution and will be under parole supervision when released (see staff notes to study bill, p. 262). However, it was correctly pointed out to the Commission, at its public hearings, that an absolute prohibition goes too far, because it prohibits the use of a sentence of probation in a situation where the sentence of imprisonment has only a short time left to run.

Therefore, the Commission created an exception that would be applicable where a person is, at the time of sentence, under an indeterminate or a reformatory sentence that has one year or less to run. In such a case probation could be a useful disposition and would not be in substantial conflict with the sentence the defendant is serving.

Sentence of conditional discharge (N § 65.05; O § 25.05)

Subdivision three of new § 65.05 has been changed so as to provide that a court may extend the period of conditional discharge by imposing an additional period in any case where restitution or reparation is a condition of the sentence and the condition has not been satisfied. The length of the additional period would be fixed by the court but could not exceed two years. All of the incidents of the original sentence would continue to apply and the court could, at any time prior to expiration of the additional period, modify or enlarge the conditions of the sentence.

The reason for this change is that where large sums are involved, or where the defendant's means are slender, the standard periods of conditional discharge set forth—*i. e.*, three years in the case of a felony and one year in the case of a misdemeanor or a violation—may not afford adequate time for the defendant to make any meaningful restitution or reparation, or to cure defaults in making payment. The additional period will provide the necessary time in these cases.

Conditions of probation and of conditional discharge (N § 65.10; O § 25.10)

Paragraph (f) of subdivision two of new § 65.10 has been amended so as to provide that, in any case where the court directs restitution or reparation, the court must specify the amount and the manner of performance.

The provision requiring the court to fix the amount restates existing law (Code Crim.Proc., § 483[2]), and the provision requiring the court to fix the manner of performance is new. These two items are essential elements of any direc-

tion to make restitution or reparation. Therefore, they should be determined by the court and imposed on the defendant along with the basic direction.

Calculation of periods of probation and of conditional discharge (N § 65.15; O § 25.15)

Subdivision one of new § 65.15 has been changed so as to provide a method of calculating the new two year additional period of conditional discharge, discussed in the comments to new § 65.05, *supra*.

Subdivision three of new § 65.15 has been amended by the addition of an exception, which is set forth at the end of the paragraph. The sole purpose of this amendment is to accommodate the change in new § 65.00, discussed *supra*.

Sentence of unconditional discharge (N § 65.20; O § 25.20)

The name of this disposition has been changed from "absolute discharge" to "unconditional discharge" and no other change has been made in the section.

ARTICLE 70 (FORMERLY ART. 30): SENTENCES OF IMPRISONMENT

Concurrent and consecutive terms of imprisonment (N § 70.25; O § 30.25)

Subdivision two of this section has been revised. The standard used in the old bill (O § 30.25[2]) consists of the double jeopardy principles set forth in old § 75.10. However, the Commission deleted the double jeopardy provisions from the Penal Law and will deal with the subject in its forthcoming revision of the Code of Criminal Procedure. This left the instant provision without a standard.

The standard adopted consists of a restatement of the consecutive sentence restriction in existing Penal Law § 1938, as interpreted by the Court of Appeals in People ex rel. Maurer v. Jackson, 2 N.Y.2d 259, 264, 159 N.Y.S.2d 203, 140 N.E.2d 282 (1957). In the event the Commission decides to adopt a broader standard, for double jeopardy purposes, it will reconsider the standard set forth in the instant provision.

Release on parole; conditional release (N § 70.40; O § 30.40)

Subdivisions one and two of new § 70.40 have been rewritten. However, the revisions were primarily made for the purpose of clarity and the substantive changes are relatively minor.

The only substantive change in subdivision one is a change in the minimum period of supervision prescribed in paragraph (b). Under the old bill (O § 30.40[1(b)]), an indeterminate sentence prisoner who is conditionally released would have had to accept parole supervision for a period equal to the unserved portion of his maximum term, *or three years,* whichever is longer. Under the new bill, the period of supervision is a period equal to the unserved portion of the maximum term, *or one year,* whichever is longer.

The reduction in the minimum period of supervision from three years to one year is based upon experience under the existing mandatory "good time" parole statute (Correction Law, § 230[4]). Reasoning from this experience, it appears that a large number of prisoners would have only a few months left to serve at the time they become eligible for conditional release under the proposed law. It would be unrealistic to expect such prisoners to elect to take three years of parole supervision in lieu of three or six months additional incarceration. (Three or six months seems a relatively short time when a prisoner has already served five or six years.)

As is the case with subdivision one of this section, the major change in subdivision two relates to the authorized period of supervision. Under the old bill, the period is two years in every case (O § 30.40[2]). The new bill provides that the period of supervision shall be one year, if the prisoner has one hundred and twenty days or less to serve, and two years in any other case. In calculating the one hundred and twenty days, all credits against the sentence would be deducted.

The purpose of this change is basically the same as the purpose set forth in connection with the change in subdivision one: to make conditional release a practical device in a broad base of cases. With the authorized period of supervision fixed at one year, conditional release will be a more feasible alternative for persons who have only a short time left to serve.

Two other significant changes in subdivision two should be noted. These relate to eligibility for conditional release. Under the new bill, conditional release would only be available where the term or aggregate term is *in excess of* sixty days, rather than sixty days or more; and in calculating the period that must be served, before the offender is eligible for conditional release, no credit is included for "jail time" or "good time". The purpose of the first change is to eliminate the large number of sentences that are precisely sixty days. Persons with such sentences are unlikely to elect conditional release after having served thirty days, and exclusion of the group will facilitate efficient and economic planning and

supervision. The purpose of the other change is merely to make it clear that thirty days of the sentence must actually be served (see discussion in staff notes to study bill, pp. 303–304).

Subdivision two of old § 30.40 employs the term "institution's conditional release board". Notwithstanding the description in the staff notes of the proposed composition of such boards (p. 303), some persons interpreted the term as indicating that the Commission intended to recommend that the conditional release board be part of the institution's administration. The Commission had no such intention and, in order to allay all doubts, changed the term to read "county or regional conditional release commission."

ARTICLE 75 (FORMERLY ART. 35): REFORMATORY SENTENCES OF IMPRISONMENT FOR YOUNG ADULTS

A new alternative local reformatory sentence has been added to Article seventy-five (N § 75.20). This is designed for use in a city or county that elects to maintain special local facilities for rehabilitation of convicted male young adults. The primary reason for adding it to the sentencing structure is to enable the City of New York to continue its well developed programs for institutional training and parole supervision of males in the sixteen to twenty-one year age group. However, the sentence could be used by courts in any community that elects to establish similar facilities and programs on an individual or a regional basis (see discussion with respect to regional institutions in staff notes to study bill, p. 290).

Basically, the alternative local reformatory sentence parallels the state reformatory sentence provided in new §§ 75.00–75.15. The significant differences are: (1) that the local reformatory sentence can be used only by a court in a city or county that has established an institution with adequate facilities for rehabilitation of young adults and a local parole commission (N § 75.20[1]); (2) that commitment would be to a local institution and parole supervision would be administered by a local commission as it is under existing Article 7–A of the Correction Law (*id.*, [3], [9]); and (3) that the maximum duration of the period of the sentence would be three years, rather than the four years provided in the case of a state reformatory sentence (compare N § 75.10[1] with N § 75.20[4]).

Where the alternative local reformatory sentence is in effect, parole under such sentence and conditional release under

a definite sentence (see N § 70.40[2] and discussion in staff notes to study bill, pp. 303–304) would be administered by the same local or regional commission. The provisions to implement this, as well as the provisions setting forth the procedure for establishing and certifying reformatories, will be in recommendations to be made by the Commission in connection with its work on the Correction Law.

ARTICLE 80 (FORMERLY ART. 40): FINES

Fine for felony (N § 80.00; O § 40.00)

This section has been rewritten but there is only one real change. A new provision has been added that specifies the manner of calculating the amount of the defendant's gain from the crime. The old section (O § 40.00[2]) merely stated that the fine could be an amount not exceeding double the amount gained by the defendant from the crime. This left a question as to whether the term "gain" meant immediate gain or ultimate gain. Subdivision three of new § 80.00 clarifies this matter. The standard set forth in this provision is the amount derived by the defendant from the commission of the crime, less the amount returned prior to sentencing.

The above standard is still fairly broad and leaves some matters open for judicial resolution, but this is one area where the details must be tailored on a case by case basis.

Fines for misdemeanors and violation (N § 80.05; O § 40.05)

This section has been changed by the addition of a new subdivision (subd. 5) which authorizes the court to apply the criterion of pecuniary gain in lieu of the specific fines authorized for misdemeanors and violations. The purpose of the change is simply to give the court additional flexibility when sentencing for these categories.

Fines for corporations (N § 80.10; O § 40.10)

Three minor changes have been made in this section. The first two changes are in paragraphs (e) of subdivision one and (b) of subdivision two, where the term "equal to" has been changed to "not exceeding". The use of the term "equal to" in that context does not express the idea that the fine could be fixed in any amount up to a particular sum. The third change is in subdivision three. The method of calculating pecuniary gain has been changed to the one used for felonies, and the subdivision incorporates that standard by reference.

Multiple offenses (N § 80.15)

This section is new. It sets forth the prohibition against double punishment for a single act presently contained in existing Penal Law, § 1938. The old bill covers this principle as it applies to sentences of imprisonment (O § 30.25[2]) but does not have a provision to cover fines. In principle, new § 85.15 is the same as new § 70.25[2], discussed *supra*.

PART THREE
(formerly Part Two)
SPECIFIC OFFENSES

TITLE G: ANTICIPATORY OFFENSES

ARTICLE 100: CRIMINAL SOLICITATION

This article has, for clarification purposes, been materially rearranged with respect to structure and form, and makes a few relatively minor changes of substance.

The old bill's punishment section (O § 100.10) has been replaced by a degree structure (N §§ 100.00–100.10) which, with one exception, leaves the penalties the same as before. Under the old bill solicitation to commit a class D or class E felony is a class A misdemeanor; and solicitation to commit a class B or class C felony is a class E felony (O § 100.10). The new degree scheme condenses these two gradations into one. Solicitation to commit *any* felony constitutes second degree criminal solicitation, a class A misdemeanor (N § 100.05).

Under the new arrangement, criminal solicitation is repeatedly defined in the degree sections themselves (N §§ 100.00–100.10) rather than in an individual definitive statute (O § 100.05). The definition has been elaborated by the addition of certain indicated *mens rea* requirements in order to assure that the crime does not encompass an insincere or facetious exhortation to crime, such as "Kill the umpire" (compare O § 100.05 with N §§ 100.00–100.10).

The "no defense" section (§ 100.15) has been extended to assure that infancy and insanity, as well as lack of culpability (see O § 100.15), of the person solicited do not constitute defenses to a prosecution for criminal solicitation.

The defense of renunciation as it applies to criminal solicitation has been transplanted from this article (O § 100.20[2]) to the comprehensive section of the General Provisions defining and prescribing that defense as it applies to a variety of offenses (N § 35.45[4]).

ARTICLE 105: CONSPIRACY

This article has also undergone formal renovation without major substantive changes.

The definition of conspiracy, as contained in the degree statutes, has been made more precise by the addition of language specifying that conspiracy requires intent by the actor that the object crime be committed (compare O §§ 105.05–105.20 with N §§ 105.00–105.15).

Conspiracy in the first degree has been raised from a class D to a class C felony (compare O § 105.20 with N § 105.15).

A new "no defense" section has been added (N § 105.30), providing that lack of criminal responsibility or lack of culpability on the part of a person or persons with whom a defendant "agrees" or "conspires" do not absolve the defendant from liability for conspiracy.

The old provision prescribing the defense of renunciation as applied to a conspiracy prosecution (O § 105.35) has been transplanted to the new comprehensive "renunciation" defense section of the General Provisions (N § 35.45[4]).

ARTICLE 110: ATTEMPT

The only noteworthy change in this article is a language change in the definition of "attempt to commit a crime." The old bill defines "attempt" in terms of "conduct which constitutes a substantial step toward the execution or commission" of the crime intended (O § 110.00). This definition was not designed materially to change the existing concept of "attempt," which is defined in the existing Penal Law (§ 2, last par.) as an act "tending but failing to effect" the commission of the crime intended. Since no material change was intended, a return substantially to the existing standard was deemed desirable so that prior judicial construction of an "attempt" would remain applicable. The return to the existing standard —of "tending but failing to effect" the commission of a crime (existing P.L. § 2)—is not, however, complete, for the words "but failing" have been omitted. The effect of those words is to preclude a conviction for attempt in any case where it appears that the attempted crime has been consummated. That principle is not deemed salutary and is here rejected.

The old provision prescribing the defense of renunciation as applied to a prosecution for attempt (O § 110.15) has been transplanted to the new comprehensive "renunciation" defense section of the General Provisions (N § 35.45[3]).

ARTICLE 115: CRIMINAL FACILITATION

The old bill contains a lengthy and rather complex definition of the phrase "facilitate the commission of a crime" (O §

115.00[2]) and then, using that phrase to define the offense of "criminal facilitation," creates three degrees thereof, distinguished largely by the seriousness of the crime facilitated: (1) a "crime," (2) a "class B or class C felony," and (3) "murder or kidnapping" (O §§ 115.05–115.15).

The new bill divides the crime into only two degrees (N §§ 115.00, 115.05) which, without the aid of prior definitions, define "criminal facilitation" in simpler language built right into the degree sections themselves. Facilitation of a misdemeanor is no longer made criminal; the lower or second degree offense is facilitation of a "felony" (N § 115.00) and the higher or first degree offense is facilitation of "murder or kidnapping in the first degree" (N § 115.05). It is felt that, in view of the relatively low kind of culpability required for "criminal facilitation" (in effect, *scienter* without intent to commit the crime facilitated), criminal sanctions against the facilitation of misdemeanors are not desirable.

TITLE H: OFFENSES AGAINST THE PERSON INVOLVING PHYSICAL INJURY, SEXUAL CONDUCT, RESTRAINT AND INTIMIDATION

ARTICLE 120 (FORMERLY ART. 125): ASSAULT AND RELATED OFFENSES

The crime of "assault" (N §§ 120.00–120.10; O §§ 125.00–125.10) has been appreciably altered with respect to the forms of that crime contained within its three-degree structure.

Assault in the Third Degree (N § 120.00; O § 125.00)

Third degree assault remains much as before except for certain largely technical changes in the third subdivision. This deals with physical injury caused by "criminal negligence" in the use of a "deadly weapon" or—in the language of the old bill—"a motor vehicle or a vessel equipped for propulsion by mechanical means" (O § 125.00). The new bill deletes the latter language involving motor vehicles and vessels, and substitutes therefor "a dangerous instrument" (N § 120.00). The altered definition of the term "dangerous instrument" (N § 10.00[12]) now includes motor vehicles and vessels. The net result of all this is that the third degree assault provision in question (N § 120.00[3]) is expanded to cover criminally negligent infliction of physical injury not only by means of a "deadly weapon," motor vehicle or vessel —as under the old bill (O § 125.00[3])—but, in addition, by

means of *any* "dangerous instrument" (*e. g.*, baseball bats, knives, wrenches, etc.).

Assault in the Second Degree (N § 120.05; O § 125.05)

Assault in the second degree has undergone four changes.

(1) Subdivision 2, proscribing intentional infliction of physical injury "by means of a deadly weapon" (O § 125.05 [2]) has been expanded by the addition of the words, "or a dangerous instrument" (N § 120.05[2]), thus including assaults committed with knives, crowbars, etc., as well as those committed with firearms, blackjacks, metal knuckles, etc. (see, N § 10.00[6, 7, 8]).

(2) A new subdivision 3 has been added (old subd. 3 is renumbered subd. 5) making it second degree assault to inflict ordinary "physical injury" upon a peace officer with intent to prevent him from performing an official duty (*cf.* existing P.L. § 242[5]).

(3) Old subdivision 5, proscribing reckless causing of "serious physical injury," has been narrowed by the requirement that such injury be caused by "a deadly weapon or a dangerous instrument" (N § 120.05[4]). Under the old bill, intentional and reckless causing of serious physical injury are on a par (O § 125.05[1, 5]), despite the greater culpability of the former. Accordingly, the indicated increase of culpability requirements (use of a weapon) for the *reckless* crime seems logical.

(4) Subdivision 4 of the old second degree section (O § 125.05) has been deleted for reasons, described immediately below, relating to a change in the first degree section.

Assault in the First Degree (N § 120.10; O § 125.10)

The most striking first degree assault crime in the old bill (O § 125.10) appears in its first subdivision, proscribing the infliction of serious physical injury with intent to kill. This includes but goes beyond attempted murder, which requires intent to kill but no physical injury, serious or otherwise (N §§ 110.00, 125.25[1]). Because of the seriousness of this assault offense, first degree assault is graded in the old bill as high as practicably possible, namely a class B felony (the same as the less serious offense of attempted murder).

The various incongruities inherent in this scheme dictated elimination in the new bill of the crime and subdivision in question. Under the new bill, assault with intent to kill, with or without actual physical injury, is not necessarily first degree assault but is prosecutable as attempted murder, which carries the same extremely severe class B felony penalty.

Since the old assault subdivision under discussion was responsible for the grading of first degree assault as a class B felony, its elimination prompted a downgrading of first degree assault to a class C felony in the new bill (N § 120.10). Another effect of its elimination is the concomitant deletion of a second degree assault provision of the old bill (O § 125.05[4]) which, following the pattern of certain homicide provisions (see, O §§ 130.20[2], 130.25[1(a)]), reduced first degree assault of the homicidal intent variety to the second degree when committed "under the influence of extreme emotional disturbance." Since there is no longer any such assault crime to reduce, the old second degree reducing provision becomes meaningless.

The deleted first degree crime of old subdivision 1 is replaced by a new offense: intentionally causing serious physical injury by means of a deadly weapon or a dangerous instrument (N § 120.10[1]).

Finally, the last offense of the old first degree statute—intentionally or recklessly causing serious physical injury "by means of a deadly or dangerous weapon" in the course of a felony or felony attempt (O § 125.10[4])—has been changed by deletion of the weapon requirement (N § 120.10[4]). The two aggravating factors of (a) "*serious* physical injury" and (b) infliction thereof *during a felony* or felony attempt, seem ample bases for attaching first degree liability without the addition of the weapon requirement, especially in view of the downgrading of the first degree crime from a class B to a class C felony.

ARTICLE 125 (FORMERLY ART. 130): HOMICIDE, ABORTION AND RELATED OFFENSES

This article has undergone several changes of form and a few changes of substance.

Abortion and Abortion-homicide

The "definitions of terms" section (N § 125.05; O § 130.05), dealing almost entirely with the abortion and abortion-homicide area, has been substantially revised.

The key terms of the old section are "abortional act" and "unlawful abortional act" (O § 130.05[3, 4]), and all the crimes involving abortion are defined in the old article in terms of committing an "unlawful abortional act" (O §§ 130.15 [2], 130.20[3], 130.40, 130.45, 130.50, 130.55). This places an unfair and frequently impossible burden upon the People of proving in each instance that the abortion was not lawful or

justifiable pursuant to the stipulated standards. That defect is cured in the new article by: (a) defining a new term, "*justifiable* abortional act," in place of "*unlawful* abortional act" (N § 125.05[3]); (b) defining the substantive crimes in terms of a plain "abortional act"; and (c) adding in each instance the clause, "unless such abortional act is justifiable pursuant to" the earlier specified standards (N §§ 125.15[2], 125.20[3], 125.40, 125.45, 125.50, 125.55).

The old definition of an "abortional act" (O § 130.05[3]) is deemed unsatisfactory in several respects and has been substantially revised (N § 125.05[2]). The principal change involves a definition in terms of an act done "*with intent* to cause a miscarriage," rather than in terms of one which the actor "*believes is calculated* to" cause such. Also, the new definition of a "justifiable abortional act" (N § 125.05[3]) is, in its reverse fashion, more precise than the old definition of an "unlawful abortional act" (O § 130.05[4]).

The old article defines an "unborn child" as "a child with which a female has been pregnant for more than twenty-six weeks" (O § 130.05[2]), and then uses the term "unborn child" in the ensuing criminal sections wherever a pregnancy of twenty-six weeks or more is an element of the offense (O §§ 130.20[3], 130.45, 130.55). The new article eliminates the term "unborn child" (N § 125.05) and, instead, expressly mentions the period of pregnancy in each criminal section where such is an element of the offense; the only substantive change in this respect is that the pregnancy period in question—which is always an aggravating factor raising the degree of the crime involved—is reduced from twenty-six to twenty-four weeks (N §§ 125.20[3], 125.45, 125.55).

With the elimination of the term "unborn child," the titles of the old crimes of "Killing an unborn child" (O § 130.45) and "Filicide of an unborn child" (O § 130.55) have been changed. Since these crimes are really higher degrees of, respectively, "Abortion" (O § 130.40) and "Self-abortion" (O § 130.50), they are realistically labeled in the new article, "Abortion in the first degree" (N § 125.45) and "Self-abortion in the first degree" (N § 125.55), and second degree labels are attached to the basic Abortion and Self-abortion offenses (N §§ 125.40 and 125.50).

Murder Mitigated to Manslaughter in the First Degree (N §§ 125.20[2], 125.25[1(a)]; O §§ 130.20[2], 130.25[1(a)])

The old murder and first degree manslaughter sections collectively pronounce the doctrine that intentional killing is reduced from murder to manslaughter in the first degree when committed "under the influence of extreme emotional disturb-

ance for which there is a reasonable explanation or excuse" (O §§ 130.20[2], 130.25[1(a)]). Without any real substantive change, the corresponding new provisions are rephrased in order to clarify this proposition, to point out where the burden of proof lies in a murder prosecution with respect to "extreme emotional disturbance," and to assure that such "disturbance" is neither an element of first degree manslaughter nor a defense thereto and need not be alleged by the People or proved by either party in a prosecution therefor (N §§ 125.20[2], 125.25[1(a)]).

Felony Murder (N § 125.25[3]; O § 130.25[3])

Under existing law, felony murder includes any killing, whether culpable in itself or accidental, committed in the course of *any* felony or felony attempt (existing P.L. § 1044 [2]).

The old study bill felony murder section modifies that doctrine in two respects: first, it limits the underlying crimes to a list of specified felonies of an inherently violent or dangerous nature; and, second, it requires that the killing itself be caused by "an act inherently dangerous to human life" (O § 130.25[3]).

The latter element is eliminated in the new section by deletion of the last quoted words (N § 125.25[3]). It is believed that the harshness of the existing doctrine is sufficiently alleviated by the requirement that the underlying crime be one of the dangerous offenses enumerated without a further requirement that the particular homicidal conduct also be of an "inherently dangerous" nature.

ARTICLE 130 (FORMERLY ART. 135): SEX OFFENSES

The old bill eliminates criminal sanctions for sodomy committed by acquiescent, competent adults (O §§ 135.20, 135.40–135.50; compare only by the "victim." In view of the difficulty of obtaining the form of a crime labeled "consensual sodomy", graded a class B misdemeanor (N § 130.38).

The other noteworthy changes in this article relate to the offense of "sexual abuse" (N §§ 130.55, 130.60, 130.65; O §§ 135.60, 135.65).

In the old article, "sexual abuse" is defined in two degrees: the lower offense (O § 135.60), a class A misdemeanor, consists of any non-consensual "sexual contact"—a salacious "touching" of a person's "sexual or other intimate parts" (O § 135.00[3])—and the higher offense, a class D felony, requires, in addition, either forcible compulsion, or physical

helplessness of the victim, or a victim less than eleven years old (O § 135.65).

The old second degree offense (O § 135.60), a class A misdemeanor, proscribes a number of relatively trivial acts. The new article limits the second degree with its class A misdemeanor penalty to more serious cases where the "victim" is "less than fourteen years old" or incapable of consent by virtue of some other factor, such as incompetency (N § 130.-60); and it leaves the less serious residue to a new "third degree," a class B misdemeanor, which thereby becomes the lowest and basic offense of "sexual abuse" (N § 130.55).

The latter, moreover, is qualified by an exception excluding from criminality a certain form of comparative trivia, namely, the "heavy necking party" between a fourteen, fifteen or sixteen year old "victim" and another young though criminally responsible person of sixteen years or slightly greater age. Under the stated exception, a person cannot commit "sexual abuse" upon an acquiescent "victim" of the age of fourteen, fifteen or sixteen unless he (the actor) is at least five years older than such "victim" (N § 130.55).

In general, much of the conduct covered by third degree sexual abuse is of a sort that can be testimonially established only by the "victim." In view of the difficulty of obtaining corroborative evidence in such cases, and of the low penalty for this offense, the requirement of corroboration is dispensed with in prosecutions under this section (N § 130.15).

Finally, it may be noted that the provision rendering it "no defense" to a prosecution under this article, in which the victim's age is an element of the offense charged, that the defendant did not know his age (O § 135.10[2]), is deleted; this is covered in the new bill by an across-the-board provision of the General Provisions which applies the principle in issue not only to this article but to every offense in the entire code where the victim's age is an element (N § 15.20 [3]; see comments upon N Art. 15).

ARTICLE 135 (FORMERLY ART. 140): KIDNAPPING, COERCION AND RELATED OFFENSES

This article has been substantially revised.

The kidnapping area (N §§ 135.00–135.50; O §§ 140.00–140.40)

The kidnapping area is one of the most troublesome of the entire criminal law because of the wide variety of factors involved in so-called "kidnapping" situations.

"Kidnapping" cases vary greatly in such respects as the purpose of the abduction or confinement, the duration thereof, the removal distance, the fate of the victim, and the relationship between abductor and victim. These factors and divers combinations thereof produce a host of "kidnapping" cases differing immensely in many respects, including culpability. The principal difficulty with the existing law is that the entire spectrum of "kidnapping" conduct is blanketed under a single "kidnapping" offense carrying the severest penalties and making little distinction between conduct of the most heinous nature and that involving relatively minor culpability.

The old bill, seeking to rectify this situation, presents a "kidnapping" statute designed to limit that crime to its more serious forms (O § 140.15), and flanks it with two lesser crimes (of two degrees each) entitled "false imprisonment" (O §§ 140.05, 140.10) and "custodial interference" (O §§ 140.35, 140.40), intended to cover less serious conduct of this general character. Dissatisfied with the result, however, the Commission, though retaining the indicated structure, has overhauled this article in the new bill (N §§ 135.00–135.50) in an effort to attain greater equity and precision.

The new scheme is founded upon two defined terms: "restrain" and "abduct" (N § 135.00[1, 2]). The word "restrain" is defined much as in the old article (O § 140.00[3]), as an unlawful, non-consensual removal or confinement of a person of a sort "to interfere substantially with his liberty" (N § 135.00[1]). As such, it is a broad term covering everything from the most serious cases down to removals and confinements not involving a high degree of isolation, disappearance or violence.

The term "abduct" is new and represents an important innovation. To "abduct means to restrain a person with intent to prevent his liberation by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly physical force" (N § 135.00 [2]). Thus, *abduction* is a very serious form of *restraint,* savoring strongly of the substantial removal, isolation and/or violence usually associated with genuine kidnapping. In the new scheme, restraint constitutes the crime of "unlawful imprisonment" (N §§ 135.05, 135.10)—the title being changed from "false imprisonment" (O §§ 145.05, 145.10)—and abduction constitutes "kidnapping" (N §§ 135.20, 135.25).

With this foundation the new article first presents the relatively mild crime of "unlawful imprisonment"—simply *restraining* a person pursuant to the definition thereof—which, as before (O §§ 145.05, 145.10), is a class A misdemeanor in its basic or second degree form (N § 135.05) and

is raised to the first degree (a class E felony) when the victim is restrained "under circumstances which expose" him "to a risk of serious physical injury" (N § 135.10). The article then proceeds to "kidnapping," which, as indicated, consists of *abduction*. Because of wide variations in the culpability involved in different kinds of abductions, kidnapping is divided into two degrees.

Second degree kidnapping is the basic, all-inclusive offense, being committed simply when the culprit "abducts another person" (N § 135.20). This includes all abductions—except those of a custodial nature (see *infra*)—regardless of the length of confinement and the fate of the victim, and regardless of whether the purpose is ransom, child stealing, physical injury, terrorizing or any other objective.

Kidnapping in the first degree is, of course, reserved for the most reprehensible kinds of abduction and is predicated in three situations only (N § 135.25). The first (subd. 1) is abduction for the familiar and vicious purpose of compelling a third person to pay ransom, "or to engage in other particular conduct, or to refrain from engaging in particular conduct" (*e. g.*, abducting a sheriff's son with intent to compel the sheriff to release a prisoner or to refrain from arresting a criminal).

The second kind of first degree kidnapping (N § 135.25[2]) is based upon a combination of unsavory purpose and the duration of the abduction. Abductions with intent to inflict physical injury or sexual abuse upon the victim, to terrorize him or a third person, to accomplish or advance the commission of a felony, or to interfere with the performance of a governmental or political function, do not *a fortiori* constitute more than second degree kidnapping; but in such instances the crime is raised to the first degree if the abduction endures for more than twelve hours.

The third kind of first degree kidnapping (N § 135.25[2]) rests upon a single, significant aggravating factor: death of the victim (which is presumed if he is not returned alive or has not been seen or heard from before trial). This is made sufficient for first degree liability no matter what the purpose or duration of the abduction.

One of the seemingly incongruous features of the existing crime of kidnapping is its application to the parent who, having lost legal custody of a child, takes or entices it from the other parent or person having legal custody (existing P.L. § 1250[A(2)]). Despite the basically civil nature of these "custody battle" cases, they constitute "kidnapping"; and the harshness of the situation is hardly eradicated by reduction of the penalty from death or life imprisonment to a sentence

carrying a ten year maximum term in the case of a "parent" (*id.*, last par.)—a concession made only to a "parent," it may be noted, and not to a grandparent, aunt or other close relative.

The old bill excludes these cases from the kidnapping ambit and transfers most of them to a crime entitled "custodial interference," a class A misdemeanor in its basic or second degree form and a class E felony in its first degree form, which involves a substantial risk of impairment of the child's health or safety (O §§ 140.30, 140.35, 140.40). Moreover, this exemption from kidnapping is extended not only to a "parent" but to a "relative"—defined as a parent, ancestor, aunt or uncle (O § 140.00[4]).

Retaining this general scheme, the new bill makes certain changes, largely concerning the age of the child taken, restrained or abducted. Without analyzing the old bill in this respect (see, O §§ 140.00[5(b)], 140.35), the new article, making *sixteen* years the key age, applies as follows to a "relative" who takes, entices, restrains or abducts a "child" without his parents' or lawful guardians' consent, solely for the purpose of assuming control over him:

(1) Under no circumstances is such "relative" guilty of "kidnapping" in either degree (N § 135.30).

(2) If the child is less than sixteen years old, the "relative" is guilty of "custodial interference" (N §§ 135.45[1]; 135.-50), whether or not the child acquiesces in the conduct.

(3) If the child is sixteen years old or more and acquiesces or consents (as he is capable of doing), the "relative" is not guilty of any offense.

(4) If the child is sixteen years old or more and is restrained or abducted (in short, taken against his will), the "relative" is guilty of "unlawful imprisonment" (N §§ 135.05, 135.10), but not of "custodial interference" (N §§ 135.45, 135.50).

Coercion; no defense (N § 135.70)

This section has been added as part of a statutory scheme in the new bill which eliminates the existing mutual exclusiveness of crimes of extortion and coercion, on the one hand, and certain crimes of bribe receiving, on the other hand. A full explanation of this and the other new sections forming a part of the indicated scheme is contained in the comments to new Article 200, *infra*.

TITLE I: OFFENSES INVOLVING DAMAGE TO AND INTRUSION UPON PROPERTY

ARTICLE 140 (FORMERLY ART. 145): BURGLARY AND RELATED OFFENSES

Definition of "Enter or remain unlawfully" (N § 140.00[5]; O § 145.00[5])

The definition of this phrase, which is basic to the concepts of "criminal trespass" and "burglary," is amended in the new section by the addition of two sentences (N § 140.00[5]), each having a different purpose.

The first of these slightly qualifies the stated proposition that one who "enters or remains in or upon premises which are at the time open to the public does so with license and privilege" unless he is authoritatively directed not to do so (*id.*). The qualification is that a privilege to enter or remain in a building partly open to the public does not include a privilege to enter or remain in that part not open to the public (*id.*). This assures that one who, for example, properly enters the public portion of a department store is not exempted from criminal trespass or burglary sanctions when he unauthorizedly intrudes in a stock room or other part of the building closed to the public.

Under the old article, the bare unauthorized entry upon any "premises" constitutes criminal trespass in the third degree, even if the "premises" consist merely of wild forest land indicating no apparent prohibition against intrusion (O §§ 145.00 [1, 5], 145.05). The second sentence added to the "definitions" section at hand alleviates this situation by, in effect, exempting from criminal trespass one who intrudes "upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders," unless the intruder is warned against trespass either personally or by conspicuously posted notice (N § 140.00 [5]).

Burglary—forms and degrees thereof (N §§ 140.20–140.30; O §§ 145.20–145.35)

The old article defines burglary in four degrees, the crime being raised in degree by aggravating factors of "dwelling," "night," "explosives or a deadly weapon," and assault (O §§ 145.20–145.35). Though retaining this general pattern, the new article restructures the offense in three degrees, making certain changes with respect to the nature and combinations of the aggravating factors (N §§ 140.20–140.30).

The lowest or third degree, like the old fourth degree, presents the basic burglary offense of entering or remaining unlawfully in a building with intent to commit a crime therein, but raises it from a class E to a class D felony (N § 140.20; O § 145.20).

The new second degree, a class C felony, is committed either by a burglary of a *dwelling at night,* or by a burglary of *any building by day or night* when the actor or a confederate is armed with explosives or a deadly weapon or causes physical injury (N § 140.25; *cf.* O §§ 145.20, 145.25).

The new first degree, a class B felony, requires collective rather than alternative existence of the second degree factors; in brief, a dwelling at night *plus* (rather than "or") explosives or a deadly weapon or physical injury (N § 140.30). Although this is roughly equivalent to the old first degree offense (§ 145.35), it is more serious in that, whereas the old section is satisfied by an armed or assaultive burglary of any building at any time, the new section requires that such occur in a dwelling at night.

It is to be noted that those phases of the two new higher degrees based upon explosives, weapons and physical injury do not require that, in a multiple offender burglary, the actor himself be armed or commit the assault, but are satisfied by such conduct on the part of any of his confederates (N §§ 140.25[1], 140.30).

Possession of burglar's tools (N § 140.35; O § 145.40)

The old "burglar's tools" section is limited to possession of tools and instruments commonly used for breaking into premises, safes, etc. (O § 145.40). The new section, by reference to instruments "involving larceny" and certain "theft of services" offenses (N § 140.35), expands the crime to include possession of numerous other tools, such as those used for breaking into motor vehicles, stealing from public telephone coin boxes, tampering with gas and electric meters, and the like.

ARTICLE 145 (FORMERLY ART. 150): CRIMINAL MISCHIEF AND RELATED OFFENSES

The old article (O Art. 150) contains but three sections, of two subdivisions each, defining three degrees of "criminal mischief" (O §§ 150.00, 150.05, 150.10). The three "subdivision 1's" present a degree structure of "criminal mischief" in its traditional concept of damage to property, the degrees being differentiated largely by the pecuniary amount of prop-

erty damage. The three "subdivision 2's" predicate three miscellaneous offenses of "tampering with" (but not necessarily damaging) property, with resultant risks of property damage or impairment of public utility service.

The new article, while retaining the three degrees of "criminal mischief," limits that offense to its pure property damage forms (N §§ 145.00, 145.05, 145.10) and, extracting the "tampering" provisions (O §§ 150.00[2], 150.05[2], 150.10 [2]), separately defines certain "tampering" offenses (N §§ 145.15, 145.20; see, also, § 145.25).

Thus, the new "criminal mischief" sections simply proscribe intentional damage to property, or reckless damage also as applied to the third degree (N § 145.00). As in the old article, the crime is raised to the second degree upon damage of more than $250 (N § 145.05) and to the first degree upon damage of more than $1,500 (N § 145.10[1]). By virtue of a new provision, however, first degree liability also attaches when the damage, regardless of its pecuniary amount, is caused by means of explosives (N § 145.10[2]). While the arson provisions cover such damage to a "building" (N §§ 150.05–150.15), it may be noted, they do not cover damage by explosives to personal property or many kinds of real property (*e. g.*, statues, monuments, equipment, highways, etc.).

The "tampering" area is covered in the new article largely by a new offense of "criminal tampering," defined in two degrees (N §§ 145.15, 145.20).

The second or lowest degree, graded a class B misdemeanor, contains two subdivisions, the first of which proscribes tampering with property "with intent to cause substantial inconvenience" to the owner or another (N § 145.15[1]). Illustrative of the kinds of conduct included therein is malicious strewing about or disarrangement of papers, files, etc., which take hours to rearrange.

The second subdivision of this section is addressed to unauthorized tampering with gas, electric, telephone and certain other public utility equipment (N § 145.15[2]). This is an important and useful inclusive section covering a host of offenses against public utility property which are now separately defined in exhaustive and unnecessary detail in the existing Penal Law (see §§ 1423[6, 7, 8], 1423–a, 1423–b, 1424, 1431, 1432, 1432–a). In order to exclude innocent and trivial cases of such "tampering," the provision supplies an "affirmative defense" to one who acts without "larcenous or otherwise unlawful or wrongful purpose" (N § 145.15[2]).

"Criminal tampering in the first degree" (N § 145.20) is, for the most part, the same offense (and carries the same class D felony penalty) as that proscribed in the second subdivision

of the old first degree "criminal mischief" section (O § 150.10 [2]), namely damaging or tampering with public utility property with intent to cause a substantial interruption or impairment of the service involved. The new offense, however, contains an additional element: that the intended interruption or impairment of service actually occur (N § 145.20).

Another offense of a "tampering" nature added in the new article is "reckless endangerment of property," a class B misdemeanor, which is committed by reckless conduct creating a substantial risk of property damage in an amount exceeding $250.00 (N § 145.25). This is in the nature of a corollary to the crime of "reckless endangerment" of a person (N § 120.20; O § 125.20).

Finally, the new article adds a further offense (a violation), entitled "unlawfully posting advertisements" (N § 145.30), which deals with the unauthorized affixing of commercial and other forms of advertising material upon another's property. This section, not included in the old proposed bill, substantially restates an existing Penal Law offense (§ 2036–a) which has been useful in connection with the promiscuous posting of such matter on telephone poles.

ARTICLE 150 (FORMERLY ART. 155): ARSON

Two changes in this article merit comment.

(1) In defining a "building" for purposes of the arson article, the old "definitions" section repeats the definition of "building" in the burglary article (O § 145.00[2]), and, as does the latter, specifies that, "where a building consists of two or more units separately secured or occupied [*e. g.*, an apartment house], each unit [apartment] shall be deemed a separate building" (O § 155.00). The difficulty with this proposition in the arson setting lies in its application to arson in the first degree, which requires the presence of another person in the damaged "building" at the time of the crime (N § 150.15; O § 155.15). Under the indicated definition, one who starts a fire in an individual apartment is not guilty of first degree arson if such apartment (the "building" by definition) is unoccupied at the time even though the apartment house as a whole (the "building" in a realistic sense) is teeming with humanity. Accordingly, the definition of a "building" for arson purposes is changed in this respect so that each individual unit "shall *not* be deemed a separate building" (N § 150.00).

(2) The old article's offense of "reckless burning" (O § 155.20), involving reckless endangerment of a building by

the intentional starting of a fire, is omitted from the new bill because it is adequately covered by the "criminal mischief" article's new offense of "reckless endangerment of property" (N § 145.25).

TITLE J: OFFENSES INVOLVING THEFT

ARTICLE 155 (FORMERLY ART. 160): LARCENY

Larceny by false promise (N § 155.05[2(d)]; O § 160.05[2(d)])

The old proposed section, "Larceny; defined," extends the existing concept of larceny of the fraudulent misrepresentation brand to thefts committed by fraudulent promises as well as to those committed by misrepresentation of existing fact (false pretenses) (O § 160.05[2(d)]). In order to tighten the definition of this new and rather controversial form of larceny, the new section requires that the acquisition of property by "false promise" be "pursuant to a scheme to defraud" (N § 155.05 [2(d)]).

Larceny; no defense (N § 155.10; O § 160.10)

In 1942, the larceny article of the existing Penal Law was revised to eliminate the distinctions between the old common law forms, to define larceny broadly enough to cover all such offenses, and to simplify the pleading and proof of larceny accordingly. In this process, provisions were inserted to assure that fine technical distinctions between the old common law forms of theft—relating to whether title or possession passed or was intended to pass with the transfer of the property, whether possession was obtained in the first instance lawfully or with the owner's consent, etc.—were immaterial and constituted no defense to a larceny prosecution (existing P.L. § 1290 [last 4 pars.]).

These provisions are carried over into the old proposed article (O § 160.10) but are omitted in the new one. As under the existing law (P.L. § 1290 [1st par.]), there is nothing in the new bill's broad definition of larceny (N § 155.05[1]) which even intimates that the indicated factors relating to title, possession, consent, etc., constitute a defense to any larceny charge. While in 1942 these provisions may have been deemed appropriate, if not vital, to emphasize the drastic change of law then enacted, the propositions expounded are now deemed elementary and are taken for granted; and, if any doubt could remain concerning their continued applicability under the new bill, it is conclusively removed by the section dealing with "pleading and proof" of larceny (N §

155.45). Thus, their omission does not change the law but merely excises superfluous matter.

The aforementioned content of the old "no defense" section (O § 160.10) has been replaced by new "no defense" matter (N § 155.10), dealing with the elimination of the mutual exclusiveness of larceny by extortion and bribe receiving (see comment N Art. 200, *infra*).

Larceny; pleading and proof (N § 155.45; O § 160.20)

The old proposed section (O § 160.20) is substantially taken from an existing Penal Law section (P.L. § 1290–a) which greatly simplifies the pre-1942 method of pleading and proving larceny. Its phraseology, however, while appropriate to the existing Penal Law's definition and general pattern of larceny (see existing P.L. §§ 1290, 1294), does not fit the new Penal Law's larceny formulations precisely enough, especially with respect to the pleading and proof of larceny "by extortion," which is not a form of larceny but a separate crime under the existing Penal Law.

Out of these considerations, the section in question (O § 160.20) has been substantially revised, and, in addition, its location in the new larceny article has been changed (N § 155.45). Broadly speaking, the extremely simplified pleading and proof has been retained for all larceny cases except those committed or allegedly committed by extortion. Where extortion is the theory of the prosecution, the indictment must so specify; and an indictment for larceny by extortion is not supported by proof of larceny committed by some other means or theory.

Grand larceny in the third degree (N § 155.30; O § 160.35)

In 1964, the existing second degree grand larceny statute was amended by the addition of a subdivision expanding that crime to include larceny of tangible property, regardless of its value, constituting or reflecting secret scientific processes, formulae, etc. (existing P.L. § 1296[4]). This provision, not included in the old proposed bill, is included virtually *verbatim* in the new bill as a new subdivision of the section defining grand larceny in the third degree (N § 155.30[3]), which is roughly the counterpart of the existing Penal Law's grand larceny in the second degree (P.L. § 1296).

ARTICLE 160 (FORMERLY ART. 165): ROBBERY

Robbery; defined (N § 160.00; O § 165.05)

The old proposed section (O § 165.05) substantially retains the existing Penal Law's definition of robbery (existing P.L. §§ 2120–2123). Both contain certain unrealistic limitations emanating from old common law principles, chief of which is the requirement that the property be taken "from the person or in the presence of" the owner or victim (existing P.L. § 2120; O § 165.05). This appears to exclude from the robbery ambit a variety of forcible thefts, such as the following:

(1) Intending to steal property from a farm house, the defendant, coming upon the farmer-owner in a field a mile from the house, knocks him unconscious and then proceeds to the house and consummates the larceny.

(2) At gunpoint, the defendant forces the victim to telephone his office and direct an employee to take money from his safe and deliver it at an appointed time and place to an agent of the defendant.

The new section (N § 160.00), eliminating "from the person" and "in the presence" requirements, rephrases and expands the definition of robbery to cover the above-illustrated types of cases and other forcible larcenies which, though robberies in spirit, are not presently classified as such owing to the indicated technical restrictions of language.

Robbery in the first degree (N § 160.15; O § 165.20)

The old proposed section (O § 165.20) raises robbery to the first degree on the basis of either of two aggravating factors: causing serious physical injury or being armed with a deadly weapon, during and in furtherance of the commission of the crime. The new section adds a third subdivision attaching first degree liability when the robbery is accomplished by the use or threatened use of a "dangerous instrument" (N § 160.15[3]). It is noteworthy that, while *bare possession* of a "deadly weapon" (*e. g.*, a pistol, blackjack, metal knuckles, etc.) is sufficient for this crime (subd. 2), *use or threatened use* of a "dangerous instrument" (*e. g.*, a knife, wrench, club, etc.) is required.

The new section makes two other changes in the structure and scope of first degree robbery.

The old section applies, or appears to apply in most instances, only when the actor himself causes serious physical injury or carries a deadly weapon, and not to multiple-offender situations where not he but one or more of his confederates is

so armed or causes such injury (O § 165.20). The new section extends liability to the latter situation throughout (N § 160.15).

Also, while the old section requires that the infliction of injury and the armed condition occur in the course of the robbery (O § 165.20), the new section is satisfied if such occurs during either the robbery or "immediate flight therefrom" (N § 160.15).

ARTICLE 165 (FORMERLY ART. 170): OTHER OFFENSES RELATING TO THEFT

The only substantial changes in this article involve the addition of two offenses and the deletion of another.

Jostling (N § 165.25) and Fraudulent Accosting (N § 165.30)

The old section defining "harassment," contained in another article (N Art. 240; O Art. 250), lists several types of conduct, which if performed with a *harassing* intent, constitute "harassment" (N § 240.25; O § 250.10). Among the types of conduct enumerated in the old "harassment" section are jostling a person or placing one's hand near his pocket, handbag, etc., in a public place (O § 250.10[6]), and accosting a person in a public place for the purpose of obtaining money or property from him by confidence game methods. (*id.* [7]).

Those offenses are substantially carried over to the old bill from the existing Penal Law's "disorderly conduct" statute (§ 722[6]), where they have been of great utility, in New York City at least, as the principal weapons against pickpockets and certain kinds of confidence men. As "disorderly conduct," these offenses are punishable under the existing Penal Law by a term of imprisonment of up to six months (existing P.L. § 723); but, as "harassment" in the old proposed bill (O § 250.10)—an offense graded a violation—the maximum prison term imposable is fifteen days. This is regarded as grossly inadequate by many judges, prosecutors and police officers familiar with the problems involved in apprehending, prosecuting and protecting society from the professional pickpocket and confidence man.

Upon the premise that these are basically "theft" offenses requiring fairly severe penalties, the new bill removes them from the "harassment" section (O § 250.10[6, 7]); defines them in similar phraseology as individual offenses entitled "jostling" (N § 165.25) and "fraudulent accosting" (N § 165.30); places them in the Article, "Other offenses relating to theft" (N Art. 165); and grades each a class A misdemeanor.

Obscuring identity of a machine (O §§ 170.65–170.75)

This crime, defined in two degrees, appears in the old bill as a substantial restatement of an existing Penal Law offense penalizing the defacing, removal, etc., of serial numbers and other distinguishing marks upon motor vehicles and other machines, and the possession, sale, etc., of machines so tampered with (existing P.L. § 436–a). In both the existing Penal Law and the old proposed bill (O §§ 170.65, 170.70), the crime is a felony as applied to motor vehicles and a misdemeanor as applied to other kinds of machines.

This crime and all the sections pertaining to it (O §§ 170.65–170.75) are omitted in the new bill. In their application to machines other than motor vehicles (the misdemeanor phases), the provisions are difficult of application and of little or no utility or consequence. The important felony phases of the offense, applying solely to motor vehicles, are fully covered by comparable criminal sanctions in the Vehicle and Traffic Law (§§ 421, 422).

TITLE K: OFFENSES INVOLVING FRAUD

ARTICLE 170 (FORMERLY ART. 175): FORGERY AND RELATED OFFENSES

No substantial changes have been made in this article.

ARTICLE 175 (FORMERLY ART. 180): OFFENSES INVOLVING FALSE WRITTEN STATEMENTS

No substantial changes have been made in this article.

ARTICLE 180 (FORMERLY ART. 185): BRIBERY NOT INVOLVING PUBLIC SERVANTS AND RELATED OFFENSES

The only material changes in this article appear in the addition of two new sections: "Bribing a labor official; defense" (N § 180.20) and "Bribe receiving by a labor official; no defense (N § 180.30). These sections are part of the aforementioned statutory scheme of the new bill which abolishes the mutual exclusiveness of certain crimes of bribe receiving, on the one hand, and larceny by extortion and coercion on the other. The statutory scheme is fully explained in the comment upon new Article 200, *infra*.

ARTICLE 185 (FORMERLY ART. 190): FRAUDS ON CREDITORS

No substantial changes have been made in this article.

ARTICLE 190 (FORMERLY ART. 195): OTHER FRAUDS

No substantial changes have been made in this article.

TITLE L: OFFENSES AGAINST PUBLIC ADMINISTRATION

ARTICLE 195 (FORMERLY ART. 200): OFFICIAL MISCONDUCT AND OBSTRUCTION OF PUBLIC SERVANTS GENERALLY

No substantial changes have been made in this article.

ARTICLE 200 (FORMERLY ART. 205): BRIBERY INVOLVING PUBLIC SERVANTS AND RELATED OFFENSES

Elimination of mutual exclusiveness of bribe receiving and extortion

The most important changes in this article relate to two added sections (N §§ 200.05, 200.15) forming part of a scheme in the new bill to eliminate what is, under existing case law, mutual exclusiveness of (a) bribe receiving and (b) extortion (larceny by extortion in the proposed Penal Law) and coercion.

When a public servant receives or solicits money from a private citizen for performing or omitting to perform some official act, or for a promise to perform or to omit to perform the same, difficult questions often arise as to whether the crime is bribe receiving or extortion (or attempted extortion). A license commissioner who demands and receives $1,000 for issuing a license to a person who he knows is clearly entitled to it is doubtless guilty of extortion. If he knows that the person is not entitled to the license but he issues it anyway in return for a $1,000 gratuity, the commissioner is doubtless guilty of bribe receiving. Between these and other fairly clear examples of extortion and bribe receiving, however, there is an extensive gray area of cases which, especially in view of the lack of a precise distinction between the two crimes, are

difficult if not impossible to pinpoint as bribe receiving or as extortion.

The troublesome feature of this situation lies in the case law doctrine that bribe receiving and extortion are mutually exclusive crimes; that it is a defense to a bribe receiving prosecution that the defendant is guilty of extortion, and *vice versa,* [People v. Dioguardi, 8 N.Y.2d 260, 273–274, 203 N.Y.S.2d 870, 168 N.E.2d 683 (1960); People v. Feld, 262 App. Div. 909, 28 N.Y.S.2d 796 (2d Dept.1941)]. This frequently places prosecutor and court in the precarious position of being forced to choose between two crimes having the finest of distinctions, and permits highly technical but possibly effective defense argumentation that the wrong offense was prosecuted or submitted to the jury.

This state of affairs would probably have to be deemed unavoidable if the two crimes are indeed mutually exclusive by definition or are inconsistent in law. Upon analysis, however, such does not appear to be the case, at least under the formulations of the new proposed bill. Examination of the appropriate sections discloses that a public servant who obtains money or property upon representations or threats of using his official position in a particular manner is always guilty of bribe receiving and sometimes of extortion (larceny by extortion) as well; in short, that extortion of this nature is always bribe receiving also, although bribe receiving does not always amount to extortion.

Thus, the license commissioner who obtains money from an applicant clearly entitled to a license upon a threat not to issue a license to him, though clearly guilty of larceny by extortion under the new bill (N § 155.05[2(e) (viii)]), is equally guilty of bribe receiving; for, regardless of the extortionate means employed, he "accepts" a "benefit from another person upon an agreement or understanding that his . . . action, decision or exercise of discretion as a public servant will thereby be influenced" (N § 200.10).

The same rationale applies as between bribe receiving and "coercion" (N §§ 135.60, 135.65) where the "benefit" obtained by the public servant is not money or property but some other boon, such as a political favor. Where the "benefit" is coercively *solicited,* though not actually obtained by the public servant, the concomitantly committed crime is either attempted larceny by extortion or attempted coercion. And all the foregoing principles apply with equal force when the bribe offense is bribe receiving by a labor official (N § 180.25) rather than by a public official.

Since both logic and practicality dictate erasure of the principle of mutual exclusiveness, the new bill does so: by a

series of new "no defense" provisions located in the appropriate bribery, extortion and coercion areas (N §§ 135.70, 155.10, 180.30, 200.15).

One further facet of this new scheme requires discussion, namely that relating to the position of the bribe *giver*. Under existing law, a *giver* who is a victim of extortion by a public servant or a labor official enjoys the perfect defense that, since the *receiver* is guilty of extortion and not of bribe receiving, he (the giver) cannot be guilty of bribe giving (People v. Dioguardi, 8 N.Y.2d 260, 274 *supra*). Under the above-treated provisions of the new bill without more, however, he is deprived of that defense by the erasure of the doctrine of mutual exclusiveness. Even though the victim of an extortion, he is still guilty of bribery by virtue of conferring a benefit upon a public servant or a labor official "upon an agreement or understanding that" the latter's decision or action "will thereby be influenced" (N §§ 180.15, 200.00). Out of obvious equitable considerations, the new bill arbitrarily restores the coerced "bribe giver's" defense (N §§ 180.20, 200.05).

Giving and receiving unlawful gratuities (N §§ 200.30, 200.35; O §§ 205.25, 205.30)

Both the old and new proposed articles penalize as a felony the conferring of a benefit upon a public servant and the receipt of a benefit by a public servant "for having violated his duty as a public servant" ("Rewarding" and "Receiving reward for official misconduct": N §§ 200.20, 200.25; O §§ 205.15, 205.20). The old article penalizes as a misdemeanor the same kind of conduct when the benefit is conferred upon or received by the public servant "for performing or having performed an official service which his duties required him to perform without special or additional compensation" ("Giving" and "Receiving unlawful gratuities": O §§ 205.25, 205.30).

These sections cover all cases of reward for (a) *improper* conduct and (b) *proper* conduct which the public servant is "required" to perform. Left uncovered is reward for *proper* conduct which he is *not "required"* to perform but which, as a matter of discretion, he is *authorized* to perform. This gap is plugged in the new bill by adding the words "or authorized" after the word "required" in the sections defining the crimes of "giving" and "receiving unlawful gratuities" (N §§ 200.30, 200.35).

ARTICLE 205 (FORMERLY ART. 210): ESCAPE AND OTHER OFFENSES RELATING TO CUSTODY

This article has undergone several changes of form and a few changes of substance.

Escape (N §§ 205.05–205.15; O §§ 210.05–210.15)

As in the old bill, the three degrees of escape are distinguished by the seriousness of the underlying offense with which the prisoner was charged or for which he was committed. The new bill deletes subdivisions 2 and 3 from each of the old three escape sections, since this conduct is proscribed by the bill's broad accessoryship provision (N § 20.00).

Harboring an escapee (O §§ 210.20–210.25)

This crime, defined in two degrees, appears in the old bill as a substantial restatement of existing Penal Law § 1698. This crime is omitted in the new bill since the act of "harboring an escapee" is adequately proscribed by the new "hindering prosecution" provisions (N §§ 205.50–205.65).

Hindering prosecution (N §§ 205.50–205.65; O §§ 120.00–120.20)

This crime is treated in the old bill as an accessorial offense (O Art. 120 "Accessory after the fact"). In the new bill, it is dealt with as a substantive offense, in three degrees. The conduct proscribed is somewhat similar to that in the old bill (compare N § 205.50 with O § 120.00). There are two significant changes. Under the old bill the actor was required to know or believe that the fugitive had committed the specific crime which he had in fact committed. Under the new bill it is enough, insofar as the two lower degrees are concerned, that the actor know or believe that the fugitive is being sought by law enforcement officials for the commission of some crime. Under the new bill, the offense of hindering prosecutions in the case of misdemeanors is eliminated. This is similar to existing Penal Law § 2.

ARTICLE 210 (FORMERLY ART. 215): PERJURY AND RELATED OFFENSES

The only substantial change in this article consists of the elimination of "subornation of perjury," a crime defined in the existing Penal Law (§§ 1632, 1632–a) which the old bill carries over and presents in three degrees (O §§ 215.55, 215.-60, 215.65).

Since one who *suborns* or procures another to commit perjury is, by virtue of principles of accessorial liability, guilty of the actual perjury committed, the crime of "subornation" is largely superfluous. Its only utility under existing law lies in a case where the person solicited refuses or fails for one reason or another to commit the suggested perjury. Here, the unsuccessful importuner, while not guilty of perjury nor, ordinarily, of attempted perjury (though possibly of conspiracy), is guilty of *attempted* "subornation of perjury."

The fact that such cases would be prosecutable under the new Penal Law as "criminal solicitation" (N §§ 100.00, 100.05)—an offense not included in the existing Penal Law—deprives the subornation crime of its solitary and limited function and dictates its omission.

ARTICLE 215 (FORMERLY ART. 220): OTHER OFFENSES RELATING TO JUDICIAL AND OTHER PROCEEDINGS

The only changes in this article worthy of mention are the upgrading of the crimes of "Criminal contempt" and "Criminal contempt of the legislature" from class B to class A misdemeanors (N §§ 215.50, 215.60; O §§ 220.50, 220.60).

TITLE M: OFFENSES AGAINST PUBLIC HEALTH AND MORALS

ARTICLE 220 (FORMERLY ART. 225): DANGEROUS DRUG OFFENSES

Article 166 of the existing Penal Law, entitled "Public Health," contains thirty-one sections, most of which deal with drugs, labeling, etc., and are of a highly specialized and regulatory nature (existing P.L. §§ 1740–1764). The old bill omits some of these sections, proposes the transfer of most of the others to the Public Health Law, Agriculture and Markets Law and Education Law, and retains or carries over in a revised form only the principal sections dealing with narcotics (existing P.L. §§ 1751, 1751–a). These are collated in the old bill in an article entitled "Narcotics offenses" (O Art. 225, §§ 225.00–225.30).

Upon the recommendations of prosecutors and police, the criminal portions of three sections slated for transfer to the Public Health Law are, in the new bill, returned to the Penal Law in a revised form. These are the sections making it a misdemeanor to sell or possess barbiturate drugs (existing

P.L. § 1747–b), the drug known as "amphetamine" (*id.*, § 1747–c) and hypodermic syringes and needles (*id.*, § 1747–d).

The hypodermic needle crime (existing P.L. § 1747–d) is merely added to the new article in the form of an individual statute couched in simplified language (N § 220.45). The "barbiturate" and "amphetamine" crimes, however, are not defined in individual statutes but are woven into the new scheme of "Dangerous drug offenses," which is the altered label of the new article (N Art. 220; formerly Art. 225, entitled "Narcotics offenses").

The innovations of the new scheme commence with certain changes in the "definitions" section (N § 220.00; O § 225.00). The terms "barbiturate" and "amphetamine," in addition to "narcotic drug," are there defined, followed by a definition of "dangerous drug," which "means any narcotic drug, barbiturate or amphetamine" (N § 220.00[1–4]). The "criminal possession" and "criminally selling" degree crimes, formerly limited to narcotics (O §§ 225.05–225.15, 225.25, 225.30), are then expanded to cover possession and sale of any "dangerous drug" (N §§ 220.05–220.20, 220.30–220.40).

The "possession" crimes are presented in four degrees instead of the three found in the old article. The two highest degrees deal solely with narcotics and are precisely the same in substance and penalty as those of the old article (compare N §§ 220.15, 220.20 with O §§ 225.10, 225.15). The lowest or fourth degree offense—the misdemeanor *addict* crime covering possession of *any* quantity of a "dangerous drug" (N § 220.05)—corresponds to the old third degree section (O § 225.05), the only difference being that possession of barbiturates and amphetamine as well as of narcotics is included within its proscription.

The new third degree offense, covering possession of "a dangerous drug with intent to sell" (N § 220.10), has no counterpart in the old article. Its main application is not to narcotics—possession of narcotics with intent to sell is still a second degree offense of class D felony status (N § 220.15) —but to barbiturates and amphetamine. The net result of this new section is to make possession of barbiturates or amphetamine "with intent to sell" a class E felony (N § 220.10) instead of a misdemeanor as it ordinarily is under the existing Penal Law (§§ 1747–b, 1747–c).

The same technique has been employed with respect to the "selling" crimes, which are defined in three degrees in the new "dangerous drug" article instead of in the two degrees of the old "narcotics" article. Again, the two highest degrees pertain only to narcotics and are identical in substance and penalty with the old "selling" sections (compare N §§ 220.35,

220.40 with O §§ 225.25, 225.30). And again the new third degree section applies mainly to barbiturates and amphetamine. The effect of the latter section is to raise the existing Penal Law's misdemeanor penalties for these "selling" offenses (existing P.L. §§ 1747–b, 1747–c) to class D felony grade (N § 220.30).

One of the over-all advantages of the new "dangerous drug" scheme, it may be observed, is its flexibility with respect to future legislation. Under the existing Penal Law pattern, a new penal statute has to be enacted every time a new drug (such as barbiturates or amphetamine) deemed "dangerous" to health appears on the scene. Under the new proposed article, possession and sale of a new drug can be brought within the criminal orbit by the simple process of expanding the definition of the term "dangerous drug" to include the new contraband item (N § 220.00[4]).

ARTICLE 225 (FORMERLY ART. 230): GAMBLING OFFENSES

The significant changes in this article relate to the crime of "possession of gambling records," which, as defined, are limited to records and instruments used in the operation of (a) bookmaking enterprises and (b) lottery and policy schemes (N §§ 225.15, 225.20; O § 230.15). The new article divides the offense into two degrees, the higher of which is a class E felony (N § 225.20) and the lower of which is—like the single, degreeless crime of the old article (O § 230.15)—a class A misdemeanor (N § 225.15).

With respect to the basic misdemeanor offense, the new (second degree) section, unlike the old degreeless section (O § 230.15), treats bookmaking records, on the one hand, and lottery and policy records on the other, in two separate subdivisions (N § 225.15). The greatest substantive change here concerns possession of bookmaking records.

In the old article, a "bookmaking record" is defined, much as in the existing Penal Law (§ 986–b), as a record or instrument "made by a person engaged in bookmaking activity" and in effect constituting a record of his business wagers (O § 230.00[11]). With that definition, the crime of "possession of gambling records" as applied to "bookmaking records" has little or no utility, for if the prosecution can prove, as it must, that the defendant was "a person engaged in bookmaking activity" (O § 230.00[11]), it can also prove him guilty of the basic crime of "promoting gambling" (N § 225.05; O § 230.05) and does not need the "records" offense.

In view of that factor, the new article abandons the old definition of a "bookmaking record" (O § 230.00[11]). This phase of the possession offense is no longer defined in terms of a record "made by" a bookmaker but in terms of a record "of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise" (N § 225.15[1]).

The same type of phraseology is used in the second subdivision of this section, relating to lottery and policy records (N § 225.15[2]), and also in both subdivisions of the first degree section (N § 225.20). Since the requirements of proof are thus relaxed to a showing that the records possessed are of "a kind commonly used in" bookmaking, lottery and policy enterprises, a "defense" section is added for the protection of defendants who, though possessing such contraband, might be able to demonstrate innocent intent or motives. This section renders its a defense to any prosecution for possession of gambling records that, "in fact," the records possessed were neither used nor intended to be used for the indicated criminal purposes (N § 225.25).

The new first degree section raises the crime to a class E felony when the records possessed are of a kind that persuasively depict the possessor as a substantial bookmaking, lottery or policy operator (N § 225.20); in short, bookmaking records reflecting "more than five bets totaling more than five thousand dollars" (*id.*, subd. 1), or lottery or policy records reflecting "more than five hundred plays or chances" (*id.*, subd. 2).

ARTICLE 230 (FORMERLY ART. 235): PROSTITUTION OFFENSES

The most important change in this article is the addition of a new offense: "Patronizing a prostitute."

Patronizing a prostitute (N § 230.05)

In substance, this section makes it a violation for a person to hire or attempt to hire a prostitute or anyone else to engage in sexual conduct with him.

Though not presently an offense in New York, such "patronizing" conduct is proscribed in various forms by the penal codes of several other jurisdictions, including the recently revised codes of Illinois and Wisconsin and it is included as an offense in the American Law Institute's Model Penal Code (§ 251.1[5]).

At the public hearings held by the Commission with respect to the proposed Penal Law, and in conferences and correspond-

ence with the Commission and its staff, a number of persons and organizations have strongly urged the inclusion of a "patronizing" offense. The reasons most vigorously advanced are: (1) that criminal sanctions against the patron as well as the prostitute should aid in the curtailment of prostitution; and (2) that to penalize the prostitute and exempt the equally culpable patron is inherently unjust.

After consideration of these contentions, the Commission decided to include the indicated patronizing offense in the new bill (N § 230.05) as a proper corollary to "prostitution" (N § 230.00).

Following these two sections, it may be observed, a "no defense" provision has been added (N § 230.10): this makes it perfectly clear that both the "prostitution" and the "patronizing" offenses apply not only to the usual situation where a female is hired by a male, but also to those where a male is hired by a male, a female by a female, and a male by a female.

Promoting prostitution (N §§ 230.20–230.30; O §§ 235.10–235.20)

Each of the three sections defining the three degrees of the crime of "promoting prostitution" has been changed in one respect.

The third and lowest degree, constituting the basic crime, has been downgraded from a class E felony to a class A misdemeanor (N § 230.20; O § 235.10).

The second degree offense, a class D felony, has been somewhat expanded. The old section predicates second degree liability only when the promotional conduct involves advancement or exploitation of prostitution activity by two or more prostitutes (O § 235.15). The new section adds an alternative aggravating factor: advancement or exploitation of prostitution "of a person less than nineteen years old" (N § 230.25).

First degree liability under the old section (a class C felony) is based upon either (1) compulsion of prostitution by force or intimidation or (2) advacement or exploitation of prostitution "of a person less than seventeen years old" (O § 235.20). The new section changes the latter by lowering the age of the exploited prostitute to "less than sixteen years old" (N § 230.30[2]).

The result of these "age" changes is to raise the exploitation of seventeen and eighteen-year-olds from a third degree to a second degree offense; to lower the exploitation of a sixteen-year old from the first to the second degree; and to limit the first degree sanction in this respect to the exploitation of fifteen-year-olds and under.

ARTICLE 235 (FORMERLY ART. 240): OBSCENITY AND RELATED OFFENSES

The only substantive change in this article is the elimination of a provision making it an "affirmative defense" to an obscenity prosecution "that the persons to whom allegedly obscene material was disseminated were personal associates of the defendant and that such dissemination was not commercial in character" (N § 235.15; O § 240.15[2]).

TITLE N: OFFENSES AGAINST PUBLIC ORDER, PUBLIC SENSIBILITIES AND THE RIGHT TO PRIVACY

This "Title" has undergone substantial change. Labeled "Offenses Against Public Order" in the old bill, it included three articles:

Art. 245: Riot, Unlawful Assembly and Criminal Anarchy.

Art. 250: Disorderly Conduct, Harassment and Related Offenses.

Art. 255: Offenses Against Privacy of Communications.

With the re-labeling of the Title (Title N) in the new bill ("Offenses Against Public Order, Public Sensibilities and the Right to Privacy"), the included articles have been re-structured and re-labeled, as follows:

Art. 240: Offenses Against Public Order.

Art. 245: Offenses Against Public Sensibilities.

Art. 250: Offenses Against the Right to Privacy.

ARTICLE 240: OFFENSES AGAINST PUBLIC ORDER

This article includes most of the offenses contained in the first two articles of Title N of the old bill (O Arts. 245, 250).

Riot (N § 240.05; O § 245.00) and Unlawful Assembly (N § 240.10; O § 245.05)

The old "riot" section defines that crime largely in terms of three or more persons engaging in "disorderly conduct" with intent to commit a crime or crimes of violence (O § 245.00). The new section materially reformulates this definition. Seeking to express the popular conception of "riot," it defines the crime in terms of *five* or more persons wrongfully engaging in "*tumultuous* and *violent* conduct and thereby intentionally or recklessly" causing or creating "a grave risk of causing *public alarm*" (N § 240.05).

The crime of "unlawful assembly," which is defined in both bills in terms of assembling for the purpose of committing riot, is changed in the new bill to conform to the new "riot" requirement of *five* or more rather than *three* or more persons; in short, the defendant must assemble with "*four* or more other persons" (N § 240.10) rather than with "*two* or more" (O § 245.05).

Disorderly conduct (N § 240.20; O § 250.05)

The old section contains eight subdivisions enumerating eight types of conduct which, when performed with the *mens rea* specified in the preamble, constitute "disorderly conduct" (O § 250.05). Two of these subdivisions are eliminated in the new bill and a new one is added.

Eliminated are the subdivisions relating to indecent exposure (O § 250.05[4]) and circulation of false fire alarms, bomb scares, etc. (*id.*, [7]), each of which is newly defined as an individual offense of higher grade than disorderly conduct and, in that form, shifted to another spot (N §§ 245.00, 240.50 [1]).

The newly added subdivision brings into the disorderly conduct ambit one who, with the indicated *mens rea*, "obstructs vehicular or pedestrian traffic" (N § 240.20 [5]).

Harassment (N § 240.25; O § 250.10) and Aggravated harassment (N § 240.30)

Seven of the eleven subdivisions of the old "harassment" statute (N § 240.25), defining various forms of that offense, have been extracted. One of these, involving annoying "taunts or challenges" (O § 250.10 [1]), has simply been abandoned because of triviality. Conversely, the other six (*id.*, [4, 6, 7, 8, 9, 10]) are deemed to proscribe conduct too serious for "harassment's" limited penalty (a violation) and have been redefined as individual offenses of higher grade and placed in other locations in the new bill.

The old indecent exposure subdivision (O § 250.10[4]), for example, like its old "disorderly conduct" counterpart (O § 250.05 [4]), is now covered by a new "public lewdness" offense, a class B misdemeanor (N § 245.00).

The "jostling" and confidence game subdivisions (O § 250.10 [6, 7]) are removed and defined as separate offenses of a class A misdemeanor grade in the article entitled "Other offenses relating to theft" (N Art. 165, §§ 165.25, 165.30; see comment upon Art. 165, *supra*).

The two subdivisions dealing with threatening, alarming and annoying communications and telephone calls (O § 250.10

[8, 9]) are extracted and relocated in an immediately ensuing section defining a new offense of "aggravated harassment," a class A misdemeanor (N § 240.30).

The subdivision proscribing false reports to law enforcement authorities of crimes and other incidents (O § 250.10 [10]) is removed and incorporated as one phase of a new class B misdemeanor offense entitled "Falsely reporting an incident" (N § 240.50 [3]), which also includes the aforementioned false fire alarm and bomb scare provision transplanted from the old disorderly conduct provision (O § 250.05 [7]) and another offense of similar character (N § 240.50 [1, 2]).

One new subdivision has been added to the "harassment" section, covering repeated commission of "acts which alarm or seriously annoy . . . [another] person and which serve no legitimate purpose" (N § 240.25 [5]). This provision, like its catchall counterpart in the disorderly conduct section N § 240.20 [7]), is deemed necessary because of the impossibility of compiling a comprehensive list of the numerous specific kinds of conduct logically falling within the proscriptions of the "harassment" offense.

ARTICLE 245: OFFENSES AGAINST PUBLIC SENSIBILITIES

This new article of re-structured Title N includes two offenses: (1) "public lewdness" (N § 245.00), a new crime which, however, merely provides a higher penalty (class B misdemeanor) for indecent exposure conduct formerly proscribed as "disorderly conduct" and "harassment" (O §§ 250.05 [4], 250.10 [4]), and (2) the old bill's "offensive exhibition" (O § 250.30; N § 245.05).

It should be noted that the study bill contained a "cruelty to animals" offense (O § 250.35). The legislature, however, at the 1965 session decided that the existing Penal Law provisions in Article 16 ("Animals") should be transferred verbatim to the Agriculture and Markets Law. The new Penal Law, therefore, does not contain a "cruelty to animals" offense.

ARTICLE 250 (FORMERLY ART. 255 WITH SLIGHTLY DIFFERENT LABEL): OFFENSES AGAINST THE RIGHT OF PRIVACY

This article has undergone a number of language changes as well as minor changes of substance and structure, most of which require no comment.

Among the substantive changes are: (1) restriction of the application of the crime of "Failure to report wiretapping," to the remiss telephone or telegraph *corporation*, with employees and representatives thereof excluded from the criminal sanctions (compare O § 255.15 with N § 250.15); and (2) limitation of the crime of "tampering with private communications," as it applies to opening, reading and publicizing sealed documents, to letters and other written *communications*, with private papers and other *non-communication* kinds of instruments excluded (compare O § 255.25 [1, 2] with N § 250.25 [1, 2]).

One new offense has been added to the article. Entitled "Unlawfully obtaining communications information" (N § 250.30), it penalizes (as a class B misdemeanor) the unauthorized acquisition from a telephone or telegraph corporation of information relating to its wires, cables, terminals, etc., and concerning records of communications passing over its lines. This section is derived from an existing Penal Law statute (P.L. § 743[2]) defining, *inter alia*, substantially the same offenses.

ARTICLE 255 (FORMERLY ART. 260): OFFENSES AFFECTING THE MARITAL RELATIONSHIP

The crime of adultery was not carried over from the existing Penal Law (§§ 100–103) into the 1964 study bill. The new Penal Law, however, restores this offense, which is graded a class B misdemeanor (N § 255.17).

ARTICLE 260 (FORMERLY ART. 265): OFFENSES RELATING TO CHILDREN AND INCOMPETENTS

Endangering the welfare of a child; defense (N § 260.15)

This section has been added to provide an affirmative defense to adherents of religious groups which rely on prayer for the treatment of illness, if they are prosecuted for endangering the welfare of a child by failing to provide medical treatment for him (see, N § 265.10; O § 260.10). The provision is derived from existing Penal Law § 295. Although, under the old bill such a situation would probably be covered by the fact that the requisite culpable mental state would not be present, it was decided to state this proposition positively rather than leave it to construction of the statute.

Unlawfully dealing with a child (N § 260.20; O § 265.15)

New subdivision 1 refers specifically to the kinds of places from which an unaccompanied child is barred, rather than the broad descriptive phrase "place of entertainment or amusement" used in old subdivision 1.

Whereas, old subdivision 4 limited the proscribed conduct to *selling* alcoholic beverages to a child, the new subdivision 4 also forbids *giving* it to a child. This restores the scope of forbidden conduct to that of existing Penal Law § 484(3). However, to avoid the possibility of prosecution of a parent who gives his own 17 year old child a glass of beer, the new subdivision specifically excludes a parent or guardian from the application of this provision.

ARTICLE 265 (FORMERLY ART. 270): FIREARMS AND OTHER DANGEROUS WEAPONS

No changes have been made in this article.

ARTICLE 270 (FORMERLY ART. 265): OTHER OFFENSES RELATING TO PUBLIC SAFETY

No changes have been made in this article.

PART FOUR
(formerly Part Three)
ADMINISTRATIVE PROVISIONS

A number of sections in Part Three of the old bill have not been carried over into the new bill. Old Article 400, seizure and destruction of gambling implements, will be dealt with in the revised Code of Criminal Procedure. Old Article 430, dealing with gambling contracts, has been transferred to the General Obligations Law.

ARTICLE 500: SAVINGS CLAUSES; LAWS REPEALED; TIME OF TAKING EFFECT

The purpose of N § 500.00 is to incorporate in the new Penal Law any act of the 1965 Legislature which amends or repeals any provision of the existing Penal Law as in force immediately prior to September 1, 1967. The principal subject affected by N § 500.00 is the abolition of capital punishment. The technical task of drafting amending legislation for the sole purpose of incorporating these changes in the new Penal Law will be undertaken by the Commission.

*

APPENDIX A

TABLE I

1965 PENAL LAW

to

1964 STUDY BILL

The left hand column of this table lists each section of the 1965 revision. The right hand column shows the corresponding section of the 1964 study bill covering the same subject matter. The word "new" indicates that there was no counterpart in the 1964 study bill.

Penal Law Sec. (1965 Revision)	Penal Law Sec. (1964 Study Bill)
1.00	1.00
1.05	1.05
5.00	5.00
5.05	5.05
5.10	5.10
10.00(1)	15.00(1)
10.00(2)	15.00(3), 15.15(1)
10.00(3)	15.10(1)
10.00(4)	15.05(1)
10.00(5)	15.00(2)
10.00(6)	10.00(1)
10.00(7)	10.00(2)
10.00(8)	10.00(3)
10.00(9)	10.00(4)
10.00(10)	10.00(5)
10.00(11)	10.00(6)
10.00(12)	10.00(7)
10.00(13)	new
10.00(14)	10.00(8)
10.00(15)	10.00(9)
10.00(16)	new
15.00	45.00(1), (2), (3)
15.05	45.00(4), (5), (6), (7)
15.10	45.05
15.15	45.05
15.20(1)	45.15(1)
15.20(2)	45.15(2)
15.20(3)	new
15.25	45.10
20.00	50.00
20.05	50.05
20.10	50.10(1)
20.15	50.15
20.20	50.20
20.25	50.25
25.00	new; see, 55.00
30.00	60.00
30.05	60.05
35.00	new
35.05	65.00
35.10	65.05
35.15	65.10
35.20	65.15
35.25	65.20
35.30	65.30
35.35	75.00
35.40	75.05
35.45	see, 50.10(2), 100.20(2), 105.35, 110.15
55.00	see, 15.00(1)
55.05(1)	15.05(2)
55.05(2)	15.10(2)
55.10(1)	15.05(3)
55.10(2)	15.10(3)
55.10(3)	15.15(2)
60.00	20.00
65.00	25.00
65.05	25.05
65.10	25.10
65.15	25.15
65.20	25.20
70.00	30.00
70.05	30.05
70.10	30.10
70.15	30.15
70.20	30.20
70.25	30.25
70.30	30.30
70.35	30.35
70.40	30.40
75.00	35.00
75.05	35.05
75.10	35.10
75.15	35.15
80.00	40.00
80.05	40.05
80.10	40.10
80.15	new
100.00	100.00, 100.05, 100.10(4)

COMMISSION STAFF COMMENTS

Penal Law Sec. (1965 Revision)	Penal Law Sec. (1964 Study Bill)
100.05	100.00, 100.05, 100.10(2), (3)
100.10	100.00, 100.05, 100.10(1)
100.15	100.15
100.20	100.20(1)
105.00	105.05
105.05	105.10
105.10	105.15
105.15	105.20
105.20	105.25
105.25	105.30
105.30	new
110.00	110.00
110.05	110.05
110.10	110.10
115.00	115.00(2), 115.10
115.05	115.00(2), 115.15
115.10	115.20
115.15	115.30
120.00	125.00
120.05(1)	125.05(1)
120.05(2)	125.05(2)
120.05(3)	new
120.05(4)	120.05(5)
120.05(5)	120.05(3)
120.10(1)	new
120.10(2)	125.10(2)
120.10(3)	125.10(3)
120.10(4)	125.10(4)
120.15	125.15
120.20	125.20
120.25	125.25
120.30	125.30
120.35	125.35
125.00	130.00
125.05	130.05
125.10	130.10
125.15	130.15
125.20	130.20
125.25	130.25
125.30	130.30
125.35	130.35
125.40	130.40
125.45	130.45
125.50	130.50
125.55	130.55
125.60	130.60
130.00	135.00
130.05	135.05
130.10	135.10(1)
130.15	135.15
130.20(1)	135.20(1)
130.20(2)	135.20(2)
130.20(3)	135.55
130.25	135.25
130.30	135.30
130.35	135.35
130.40	135.40
130.45	135.45
130.50	135.50
130.55	new
130.60	130.60
130.65	130.65
135.00	140.00
135.05	140.05
135.10	140.10
135.15	140.30
135.20	new
135.25	140.15
135.30	140.30
135.35	140.20
135.40	140.25
135.45	140.35
135.50	140.40
135.55	140.45
135.60	140.50
135.65	140.55
135.70	new
135.75	140.60
140.00	145.00
140.05	145.05
140.10	145.10
140.15	145.15
140.20	145.20
140.25	145.25, 145.30
140.30	145.35
140.35	145.40
145.00	150.00
145.05	150.05(1)
145.10(1)	150.10(1)
145.10(2)	new
145.15(1)	new
145.15(2)	150.05(2)
145.20	150.10(2)
145.25	new; but see, 155.20
150.00	155.00
150.05	155.05
150.10	155.10
150.15	155.15
155.00	160.00
155.05	160.05
155.10	160.10
155.15	160.15
155.20	160.25
155.25	160.30
155.30	160.35
155.35	160.40
155.40	160.45
155.45	160.20
160.00	165.05
160.05	165.10
160.10	165.15
160.15(1)	165.20(1)
160.15(2)	165.20(2)
160.15(3)	new
165.00	170.00
165.05	170.10
165.10	170.15
165.15	170.20

APPENDIX A

Penal Law Sec. (1965 Revision)	Penal Law Sec. (1964 Study Bill)
165.20	170.25
165.25	250.10(6)
165.30	250.10(7)
165.35	170.30
165.40	170.40
165.45	170.45
165.50	170.50
165.55	170.55
165.60(1)	170.60(1)
165.60(2)	170.60(2)
165.60(3)	see, 170.40, 170.45, 170.50
165.65(1)	170.60(3)
165.65(2)	170.60(4)
170.00	175.00
170.05	175.05
170.10	175.10
170.15	175.15
170.20	175.20
170.25	175.25
170.30	175.30
170.35	175.35
170.40	175.40
170.45	175.45
170.50	175.50
170.55	175.55
170.60	175.60
175.00	180.00
175.05	180.05
175.10	180.10
175.15	180.15
175.20	180.20
175.25	180.25
175.30	180.30
175.35	180.35
175.40	180.40
175.45	180.50
175.50	180.55
180.00	185.00
180.05	185.05
180.10	185.10
180.15	185.15
180.20	new
180.25	185.20
180.30	new
180.35	185.25
180.40	185.30
180.45	185.35
180.50	185.40
180.55	185.45
185.00	190.00
185.05	190.05
185.10	190.10
185.15	190.15
190.00	195.00
190.05	195.05
190.10	195.10
190.15	195.15
190.20	195.20
190.25	195.25
190.30	195.30
190.35	195.35
195.00	200.00

Penal Law Sec. (1965 Revision)	Penal Law Sec. (1964 Study Bill)
195.05	200.05
195.10	200.10
195.15	200.15
200.00	205.00
200.05	new
200.10	205.05
200.15	new
200.20	205.15
200.25	205.20
200.30	205.25
200.35	205.30
200.40	205.35
200.45	205.40
200.50	205.45
205.00	210.00
205.05	210.05(1)
205.10(1)	new
205.10(2)	210.10(1)
205.15	210.15(1)
205.20	210.30
205.25	210.35
205.30	210.40
205.35	210.50
205.40	210.55
205.45	210.50, 210.55
205.50	120.00
205.55	120.10
205.60	120.15
205.65	120.20
210.00	215.00
210.05	215.05
210.10	215.10
210.15	215.15
210.20	215.20
210.25	215.25
210.30	215.30
210.35	215.35
210.40	215.40
210.45	215.45
210.50	215.50
215.00	220.00
215.05	220.05
215.10	220.10
215.15	220.15
215.20	220.20
215.25	220.25
215.30	220.30
215.35	220.35
215.40	220.40
215.45	220.45
215.50	220.50
215.55	220.55
215.60	220.60
215.65	220.65
215.70	220.70
215.75	220.75
220.00(1)	225.00(1)
220.00(2)	new
220.00(3)	new
220.00(4)	new
220.00(5)	225.00(2)
220.00(6)	225.00(3)

COMMISSION STAFF COMMENTS

Penal Law Sec. (1965 Revision)	Penal Law Sec. (1964 Study Bill)
220.00(7)	225.00(4)
220.05	225.05
220.10	225.10(1)
220.15(1)	225.10(1)
220.15(2)	225.10(2)
220.20	225.15
220.25	225.20
220.30	225.25
220.35	225.25
220.40	225.30
220.45	new
225.00	230.00
225.05	230.05
225.10	230.10
225.15	230.15
225.20	230.15
225.25	new
225.30	230.20
225.35	230.30
225.40	230.25
230.00	235.00
230.05	new
230.10(1)	235.00
230.10(2)	new
230.15	235.05
230.20	235.10
230.25(1)	235.15
230.25(2)	new
230.30	235.20
230.35	new
230.40	235.25
235.00	240.00
235.05	240.05
235.10	240.10
235.15	240.15(1)
235.20	240.20
235.25	240.25
235.30	240.30
240.00(1)	250.00(2)
240.00(2)	250.00(3)
240.05	245.00
240.10	245.05
240.15	245.10
240.20(1)	250.05(1)
240.20(2)	250.05(2)
240.20(3)	250.05(3)
240.20(4)	250.05(5)
240.20(5)	new
240.20(6)	250.05(6)
240.20(7)	250.05(8)
240.25(1)	250.10(2)
240.25(2)	250.10(3)
240.25(3)	250.10(5)
240.25(4)	250.10(11)
240.25(5)	new
240.30(1)	250.10(8)
240.30(2)	250.10(9)
240.35(1)	250.15(1)
240.35(2)	250.15(2)
240.35(3)	250.15(3)
240.35(4)	250.15(4)
240.35(5)	250.15(5)
240.35(6)	250.15(6)
240.35(7)	250.15(7)
240.35(8)	250.15(8)
240.35(9)	new
240.40	250.20
240.45	250.25
240.50	250.05(7), 250.10(10)
245.00	250.05(4), 250.10(4)
245.05	250.30
250.00	255.00
250.05	255.05
250.10	255.10
250.15	255.15
250.20	255.20
250.25	255.25
250.30	new
250.35	255.35
255.00	260.00
255.05	260.05
255.10	260.10
255.15	260.15
255.17	new
255.20	260.20
255.25	260.25
255.30	260.30
260.00	265.00
260.05	265.05
260.10	265.10
260.15	new
260.20	265.15
260.25	265.20
265.00	270.00
265.05	270.05
265.10	270.10
265.15	270.15
265.20	270.20
265.25	270.25
265.30	270.30
265.35	270.35
270.00	275.00
270.05	275.05
270.10	275.10
270.15	275.15
400.00	420.00
400.05	410.00
405.00	425.00
405.05	415.00
410.00	405.05
500.00	new
500.05	500.00
500.10	500.05

APPENDIX B

TABLE II

1964 STUDY BILL

to

1965 PENAL LAW

The left hand column of this table lists each section of the 1964 study bill; the right hand column shows the appropriate section of the 1965 revision covering the same subject matter. The word "omitted" indicates that the particular section has not been included in the 1965 revision; and the word "transferred" indicates that the particular section has been relocated in the designated body of law.

Penal Law Sec. (1964 Study Bill)	Penal Law Sec. (1965 Revision)
1.00	1.00
1.05	1.05
5.00	5.00
5.05	5.05
5.10	5.10
10.00(1)	10.00(6)
10.00(2)	10.00(7)
10.00(3)	10.00(8)
10.00(4)	10.00(9)
10.00(5)	10.00(10)
10.00(6)	10.00(11)
10.00(7)	10.00(12)
10.00(8)	10.00(14)
10.00(9)	10.00(15)
15.00(1)	10.00(1), 55.00
15.00(2)	10.00(5)
15.00(3)	10.00(2)
15.05(1)	10.00(4)
15.05(2)	55.05(1)
15.05(3)	55.10(1)
15.10(1)	10.00(3)
15.10(2)	55.05(2)
15.10(3)	55.10(2)
15.15(1)	10.00(2)
15.15(2)	55.10(3)
20.00	60.00
25.00	65.00
25.05	65.05
25.10	65.10
25.15	65.15
25.20	65.20
30.00	70.00
30.05	70.05
30.10	70.10
30.15	70.15
30.20	70.20
30.25	70.25
30.30	70.30
30.35	70.35
30.40	70.40
35.00	75.00
35.05	75.05
35.10	75.10
35.15	75.15
40.00	80.00
40.05	80.05
40.10	80.10
45.00(1)	15.00
45.00(2)	15.00
45.00(3)	15.00
45.00(4)	15.05
45.00(5)	15.05
45.00(6)	15.05
45.00(7)	15.05
45.05(1), (2)	15.10
45.05(3), (4)	15.15
45.10	15.25
45.15(1)	15.20(1)
45.15(2)	15.20(2)
50.00	20.00
50.05	20.05
50.10(1)	20.10
50.10(2)	35.45(1)
50.15	20.15
50.20	20.20
50.25	20.25
55.00	see, 25.00
60.00	30.00
60.05	30.05
65.00	35.05
65.05	35.10
65.10	35.15
65.15	35.20
65.20	35.25
65.25	omitted
65.30	35.30

COMMISSION STAFF COMMENTS

Penal Law Sec. (1964 Study Bill)	Penal Law Sec. (1965 Revision)
70.00	omitted; to be treated in Code Crim. Proc.
70.05	omitted; to be treated in Code Crim. Proc.
70.10	omitted; to be treated in Code Crim. Proc.
70.15	omitted; to be treated in Code Crim. Proc.
70.20	omitted; to be treated in Code Crim. Proc.
75.00	35.35
75.05	35.40
75.10	omitted; to be treated in Code Crim. Proc.
75.15	omitted; to be treated in Code Crim. Proc.
100.00	100.00
	100.05
	100.10
100.05	100.00
	100.05
	100.10
100.10(1)	100.10
100.10(2)	100.05
100.10(3)	100.05
100.10(4)	100.00
100.15	100.15
100.20(1)	100.20
100.20(2)	35.45
105.00	omitted
105.05	105.00
105.10	105.05
105.15	105.10
105.20	105.15
105.25	105.20
105.30	105.25
105.35	35.45
110.00	110.00
110.05	110.05
110.10	110.10
110.15	35.45
115.00(1)	omitted
115.00(2)	115.00
115.05	115.05
115.10	omitted
115.15	115.00
115.20	115.05
115.25	115.10
115.30	omitted; see, 35.35
120.00	115.15
120.05	205.50
120.10	omitted
120.15	205.55
120.20	205.60
125.00	205.65

Penal Law Sec. (1964 Study Bill)	Penal Law Sec. (1965 Revision)
125.05(1)	120.00
125.05(2)	120.05(1)
125.05(3)	120.05(2)
125.05(4)	120.05(5)
125.05(5)	omitted
125.10(1)	120.05(4)
125.10(2)	omitted
125.10(3)	120.10(2)
125.10(4)	120.10(3)
125.15	120.10(4)
125.20	120.15
125.25	120.20
125.30	120.25
125.35	120.30
130.00	120.35
130.05	125.00
130.10	125.05
130.15	125.10
130.20	125.15
130.25	125.20
130.30	125.25
130 35	125.30
130.40	125.35
	125.40
130.45	125.45
130.50	125.50
130.55	125.55
130.60	125.60
135.00(1)	130.00(1)
135.00(2)	130.00(2)
135.00(3)	130.00(3)
135.00(4)	130.00(4)
135.00(5)	130.00(5)
135.00(6)	130.00(6)
135.00(7)	130.00(7)
135.00(8)	omitted
135.00(9)	130.00(9)
135.05	130.05
135.10(1)	130.10
135.10(2)	see, 15.20(3)
135.15	130.15
135.20	130.20
135.25	130.25
135.30	130.30
135.35	130.35
135.40	130.40
135.45	130.45
135.50	130.50
135.55	130.20(3)
135.60	130.60
135.65	130.65
140.00	135.00
140.05	135.05
140.10	135.10
140.15	135.25
140.20	135.35
140.25	135.40
140.30	135.15, 135.30
140.35	135.45
140.40	135.50
140.45	135.55
140.50	135.60
140.55	135.65

APPENDIX B

Penal Law Sec. (1964 Study Bill)	Penal Law Sec. (1965 Revision)
140.60	135.75
145.00	140.00
145.05	140.05
145.10	140.10
145.15	140.15
145.20	140.20
145.25	140.25
145.30	140.25
145.35	140.30
145.40	140.35
150.00	145.00
150.05(1)	145.05
150.05(2)	145.15(2)
150.10(1)	145.10(1)
150.10(2)	145.20
155.00	150.00
155.05	150.05
155.10	150.10
155.15	150.15
155.20	145.25
160.00	155.00
160.05	155.05
160.10	155.10
160.15	155.15
160.20	155.45
160.25	155.20
160.30	155.25
160.35	155.30
160.40	155.35
160.45	155.40
165.00	see, 155.00
165.05	160.05
165.10	160.05
165.15	160.10
165.20	160.15(1), (2)
170.00	165.00
170.05	see, 10.00(13)
170.10	165.05
170.15	165.10
170.20	165.15
170.25	165.20
170.30	165.35
170.35	omitted; see 165.45(2)
170.40	165.40, 165.60(3)
170.45	165.45, 165.60(3)
170.50	165.50, 165.60(3)
170.55	165.55
170.60(1)	165.60(1)
170.60(2)	165.60(2)
170.60(3)	165.65(1)
170.60(4)	165.65(2)
170.65	omitted
170.70	omitted
170.75	omitted
175.00	170.00
175.05	170.05
175.10	170.10
175.15	170.15
175.20	170.20
175.25	170.25
175.30	170.30
175.35	170.35
175.40	170.40
175.45	170.45
175.50	170.50
175.55	170.55
175.60	170.60
180.00	175.00
180.05	175.05
180.10	175.10
180.15	175.15
180.20	175.20
180.25	175.25
180.30	175.30
180.35	175.35
180.40	175.40
180.45	omitted; see 175.45
180.50	175.45
180.55	175.50
185.00	180.00
185.05	180.05
185.10	180.10
185.15	180.15
185.20	180.25
185.25	180.35
185.30	180.40
185.35	180.45
185.40	180.50
185.45	180.55
190.00	185.00
190.05	185.05
190.10	185.10
190.15	185.15
195.00	190.00
195.05	190.05
195.10	190.10
195.15	190.15
195.20	190.20
195.25	190.25
195.30	190.30
195.35	190.35
195.40	omitted
200.00	195.00
200.05	195.05
200.10	195.10
200.15	195.15
205.00	200.00
205.05	200.10
205.10	omitted
205.15	200.20
205.20	200.25
205.25	200.30
205.30	200.35
205.35	200.40
205.40	200.45
205.45	200.50
210.00	205.00
210.05(1)	205.05
210.05(2)	omitted; see 20.00

Penal Law Sec. (1964 Study Bill)	Penal Law Sec. (1965 Revision)
210.05(3)	omitted; see 20.00
210.05(4)	omitted; see 20.00
210.10(1)	205.10(2)
210.10(2)	omitted; see 20.00
210.10(3)	omitted; see 20.00
210.10(4)	omitted; see 20.00
210.15(1)	205.15
210.15(2)	omitted; see 20.00
210.15(3)	omitted; see 20.00
210.15(4)	omitted; see 20.00
210.20	omitted; see 205.50
210.25	omitted; see 205.50
210.30	205.20
210.35	205.25
210.40	205.30
210.45	omitted
210.50	205.35, 205.45
210.55	205.40, 205.45
215.00	210.00
215.05	210.05
215.10	210.10
215.15	210.15
215.20	210.20
215.25	210.25
215.30	210.30
215.35	210.35
215.40	210.40
215.45	210.45
215.50	210.50
215.55	omitted; see 20.00, Art. 100
215.60	omitted; see 20.00, Art. 100
215.65	omitted; see 20.00, Art. 100
220.00	215.00
220.05	215.05
220.10	215.10
220.15	215.15
220.20	215.20
220.25	215.25
220.30	215.30
220.35	215.35
220.40	215.40
220.45	215.45
220.50	215.50
220.55	215.55
220.60	215.60
220.65	215.65
220.70	215.70
220.75	220.70

Penal Law Sec. (1964 Study Bill)	Penal Law Sec. (1965 Revision)
225.00(1)	220.00(1)
225.00(2)	220.00(5)
225.00(3)	220.00(6)
225.00(4)	220.00(7)
225.05	220.05
225.10(1)	220.10, 220.15(1)
225.10(2)	220.15(2)
225.15	220.20
225.20	220.25
225.25	220.30, 220.35
225.30	220.40
230.00	225.00
230.05	225.05
230.10	225.10
230.15	225.15, 225.20
230.20	225.30
230.25	225.40
230.30	225.35
235.00	230.00, 230.10(1)
235.05	230.15
235.10	230.20
235.15	230.25(1)
235.20	230.30
235.25	230.40
240.00	235.00
240.05	235.05
240.10	235.10
240.15(1)	235.15
240.15(2)	omitted
240.20	235.20
240.25	235.25
240.30	235.30
245.00	240.05
245.05	240.10
245.10	240.15
250.00(1)	omitted
250.00(2)	240.00(1)
250.00(3)	240.00(2)
250.05(1)	240.20(1)
250.05(2)	240.20(2)
250.05(3)	240.20(3)
250.05(4)	245.00
250.05(5)	240.20(4)
250.05(6)	240.20(6)
250.05(7)	240.50
250.05(8)	240.20(7)
250.10(1)	omitted
250.10(2)	240.25(1)
250.10(3)	240.25(2)
250.10(4)	245.00
250.10(5)	240.25(3)
250.10(6)	165.25
250.10(7)	165.30
250.10(8)	240.30(1)
250.10(9)	240.30(2)
250.10(10)	240.50
250.10(11)	240.25(4)
250.15	240.35(1)–(8)
250.20	240.40

APPENDIX B

Penal Law Sec. (1964 Study Bill)	Penal Law Sec. (1965 Revision)
250.25	240.45
250.30	245.05
250.35	omitted
255.00	250.00
255.05	250.05
255.10	250.10
255.15	250.15
255.20	250.20
255.25	250.25
255.30	omitted
255.35	250.35
260.00	255.00
260.05	255.05
260.10	255.10
260.15	255.15
260.20	255.20
260.25	255.25
260.30	255.30
265.00	260.00
265.05	260.05
265.10	260.10
265.15	260.20
265.20	260.25
270.00	265.00
270.05	265.05
270.10	265.10
270.15	265.15
270.20	265.20
270.25	265.25
270.30	265.30
270.35	265.35
275.00	270.00
275.05	270.05
275.10	270.10
275.15	270.15
400.00	omitted; to be treated in Code Crim. Proc.
400.05	omitted; to be treated in Code Crim. Proc.
400.10	omitted; to be treated in Code Crim. Proc.
400.15	omitted; to be treated in Code Crim. Proc.
400.20	omitted; to be treated in Code Crim. Proc.
400.25	omitted; to be treated in Code Crim. Proc.
400.30	omitted; to be treated in Code Crim. Proc.
405.00	omitted
405.05	410.00
410.00	400.05
415.00	405.05
420.00	400.00
425.00	405.00
430.00	transferred—General Obligations Law
430.05	transferred—General Obligations Law
430.10	transferred—General Obligations Law
430.15	transferred—General Obligations Law
430.20	transferred—General Obligations Law
430.25	transferred—General Obligations Law
430.30	transferred—General Obligations Law
430.35	transferred—General Obligations Law
430.40	omitted; to be treated in Code Crim. Proc.
430.45	omitted
435.00	omitted
500.00	500.05
500.05	500.10

*

CONFORMING AND HARMONIZING PROVISIONS OF OTHER LAWS TO THE REVISED PENAL LAW

The Temporary State Commission on Revision of the Penal Law and Criminal Code prepared two bills [L.1965, cc. 1030 and 1031] to revise the Penal Law. By statute, the Commission was directed inter alia, to "make such changes and revisions as will rearrange and regroup, topically, substantive provisions of law so as to make for orderly and logical grouping of related subject matter." Laws 1961, c. 346, § 2(c). Accordingly, this bill [Chapter 1031], which supplements the main bill [Chapter 1030], relocates 373 sections, or parts thereof, of the present Penal Law in other, more appropriate chapters of the Consolidated and Unconsolidated Laws. See New York Legislative Documents No. 41 (1962); No. 8 (1963); and No. 14 (1964).

CHAPTER 1031 AS AMENDED BY L.1965, c. 1048

Approved July 20, 1965, effective Sept. 1, 1967.

An Act to amend the agriculture and markets law, alcoholic beverage control law, banking law, civil rights law, civil service law, correction law, education law, election law, executive law, general business law, general city law, general municipal law, general obligations law, insurance law, judiciary law, labor law, lien law, mental hygiene law, military law, navigation law, public health law, public officers law, railroad law, real property law, tax law, transportation corporations law, vehicle and traffic law, and chapter four hundred forty of the laws of nineteen hundred twenty-six, entitled "An act in relation to the formation of corporations for racing and breeding and improving the breed of horses, and continuing the state racing commission," in relation to adding thereto certain provisions substantially similar to certain laws repealed by the revised penal law, and to conforming and harmonizing certain provisions thereof to provisions of the said revised penal law.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[AGRICULTURE AND MARKETS LAW]

Section one. The agriculture and markets law is hereby amended by inserting therein a new section, to be section forty-five-b, to read as follows:

§ 45-b. Unauthorized possession, sale, or exchange of food order stamps issued under food stamp plan

Any person, other than a person authorized by the regulations and conditions prescribed by the secretary of agriculture of the United

States governing the food stamp plan, who shall have in his possession, or who shall purchase sell or exchange any food stamps, books, book covers or any other instruments or documents relating to food stamps, for money or for any article or articles other than those foods authorized by the regulations and conditions prescribed by the secretary of agriculture of the United States governing the food stamp plan, or for food the value of which is less than the face amount of such food stamps, or in any other manner in violation of the regulations and conditions prescribed by the secretary of agriculture of the United States governing the food stamp plan, shall be guilty of a **misdemeanor.** As used herein, the word "person" shall mean any individual, partnership, corporation, or association, whether or not such individual, partnership, corporation or association is eligible to participate or is participating in the food stamp plan.

§ 2. Such law is hereby amended by inserting therein a new section, to be section forty-five-c, to read as follows:

§ 45–c. Misuse of food commodities donated by the United States

Any person who shall wilfully sell or make any other unauthorized disposition of any food commodity donated under any program of the United States government or whoever, not being an authorized recipient thereof, willfully converts to his own use or benefit any such food commodity shall be guilty of a **misdemeanor.**

§ 3. Such law is hereby amended by inserting therein a new section, to be section sixty-four-a, to read as follows:

§ 64–a. Skimmed milk

A person who sells or offers for sale, milk from which the whole or a part of the cream has been skimmed or removed, without disclosing the fact, or having a mark or label, plainly and legibly stating the fact, conspicuously affixed to every can or vessel containing the same, under circumstances not constituting an offense, for the punishment of which provision is otherwise specially made by statute, is guilty of a **misdemeanor.**

§ 4. Such law is hereby amended by inserting therein a new section, to be section seventy-three-a, to read as follows:

§ 73–a. Unlawful sale of tuberculous cattle

A person who knowingly sells, except under the supervision of the commissioner of agriculture and markets, any bovine animal in which tuberculosis shall have been indicated as a result of the tuberculin test, is guilty of a **misdemeanor.**

§ 5. [This section added a new section 90–i to the Agriculture and Markets Law, relating to selling or offering to sell or exposing diseased animal. Said section 90–i, however, was repealed by L.1965, c. 1048, § 1, eff. July 20, 1965, and the subject matter was incorporated as section 357 of the Agriculture and Markets Law by L.1965, c. 1047, § 2, eff. Sept. 1, 1967.]

§ 6. [This section added a new section 90–j to the Agriculture and Markets Law, relating to transportation of cattle. Said section 90–j, however, was repealed by L.1965, c. 1048, § 1, eff. July 20, 1965, and the subject matter was incorporated as subd. 2 of section 359 of the Agriculture and Markets Law by L.1965, c. 1047, § 2, eff. Sept. 1, 1967.]

§ 7. Such law is hereby amended by inserting therein a new section, to be section ninety-five-a, to read as follows:

§ 95–a. Animal ear tags

A person who without authorization by the commissioner of the New York state department of agriculture and markets, (a) cuts out, removes,

obliterates or destroys a New York state department of agriculture and markets official ear tag in the ear of any living bovine animal in the state of New York, or (b) inserts or attaches to the ear of any living bovine animal in the state of New York a New York state department of agriculture and markets official ear tag that has not been duly issued for said bovine animal by the department of agriculture and markets of the state of New York is guilty of a **misdemeanor.**

§ 8. Such law is hereby amended by inserting therein a new section, to be section ninety-five-b, to read as follows:

§ 95–b. False pedigree of animals

Every person who by any false pretense shall obtain from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals the registration of any animal in the herd register or other register of any such club, association, society or company or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a **misdemeanor.**

§ 9. [This section added a new section 105–bb to the Agriculture and Markets Law, relating to operating upon tails of horses. Said section 105–bb, however, was repealed by L.1965, c. 1048, § 1, eff. July 20, 1965, and the subject matter was incorporated as section 368 of the Agriculture and Markets Law by L.1965, c. 1047, § 2, eff. Sept. 1, 1967.]

§ 10. [This section added a new section 109–b to the Agriculture and Markets Law, relating to clipping or cutting ears of dogs. Said section 109–b, however, was repealed by L.1965, c. 1048, § 1, eff. July 20, 1965, and the subject matter was incorporated as section 365 of the Agriculture and Markets Law by L.1965, c. 1047, § 2, eff. Sept. 1, 1967.]

§ 11. Such law is hereby amended by inserting therein a new section, to be section one hundred sixty-nine-a, to read as follows:

§ 169–a. Spraying fruit trees or crops with poison

Any person who sprays with or applies in any way poison or any poisonous substance to fruit trees or any alfalfa and clovers grown as field crops while in blossom, is guilty of a misdemeanor punishable by a fine of not less than ten dollars nor more than fifty dollars for each offense except as hereinafter provided.

The commissioner of agriculture and markets may, after public hearing, permit the use of specific materials for fruit blossom thinning sprays during the current year. The provisions of this section shall not prevent the New York State College of Agriculture and the agricultural Experiment Station at Geneva from conducting experiments in the application of poisons and spraying mixtures to fruit trees while in blossom.

§ 12. [This section added a new section 175–s to the Agriculture and Markets Law, relating to sale of baby chicks. Said section 175–s, however, was repealed by L.1965, c. 1048, § 1, eff. July 20, 1965, and the subject matter was incorporated as section 354 of the Agriculture and Markets Law by L.1965, c. 1047, § 2, eff. Sept. 1, 1967.]

§ 13. Such law is hereby amended by inserting therein a new section, to be section one hundred ninety-four-e, to read as follows:

§ 194–e. Concealing foreign matter in merchandise

A person who, with intent to defraud, while putting up in a barrel, bag, bale, box, or other package, cotton, hops, hay, or any other article of merchandise whatever, usually sold by weight in such packages, places or conceals therein any other substance or thing whatever, in a case where special provision for the punishment thereof is not otherwise made by statute, is guilty of a **misdemeanor.**

§ 14. Such law is hereby amended by inserting therein a new section, to be section one hundred ninety-nine-c, to read as follows:

§ 199–c. Disposing of tainted food

A person who with intent that the same be used as food, drink, or medicine, sells, or offers or exposes for sale, any article whatever which, to his knowledge, is tainted or spoiled, or for any cause unfit to be used as such food, drink or medicine, is guilty of a **misdemeanor.**

§ 15. Such law is hereby amended by inserting therein a new section, to be section two hundred four-d, to read as follows:

§ 204–d. Adulteration of natural fruit juices

Any person who shall knowingly sell, offer or expose for sale, or give away, any compound or preparation composed, in whole or in part, of any unwholesome, deleterious or poisonous acid, or other unwholesome deleterious or poisonous substance, as a substitute for the pure unadulterated and unfermented juice of lemons, limes, oranges, currants, grapes, apples, peaches, plums, pears, berries, quinces, or other natural fruits, representing such compound or preparation to be pure, unadulterated and unfermented juice of such fruits; or who, in the mixing, decoction, or preparation of food or drink, shall knowingly use any such compound or preparation in the place of, or as a substitute for, the pure unadulterated and unfermented juice of one or more of such fruits, shall be guilty of a **misdemeanor.**

[ALCOHOLIC BEVERAGE CONTROL LAW]

§ 16. The alcoholic beverage control law is hereby amended by inserting therein a new section, to be section sixty-five-a, to read as follows:

§ 65–a. Procuring alcoholic beverages for persons under the age of eighteen years

Any person who misrepresents the age of a minor person under the age of eighteen years for the purpose of inducing the sale of any alcoholic beverage, as defined in the alcoholic beverage control law, to such minor, is guilty of an **offense** and upon conviction thereof shall be punished by a fine of not more than fifty dollars, or by imprisonment for not more than five days, or by both such fine and imprisonment.

§ 17. Such law is hereby amended by inserting therein a new section, to be section sixty-five–b, to read as follows:

§ 65–b. Offense for one under age of eighteen years to purchase or attempt to purchase an alcoholic beverage through fraudulent means

1. Any person under the age of eighteen years who presents or offers to any licensee under the alcoholic beverage control law, or to the agent or employee of such licensee, any written evidence of age which is false, fraudulent or not actually his own, for the purpose of purchasing or attempting to purchase any alcoholic beverage, may be arrested or summoned and be examined by a magistrate having jurisdiction on a charge of illegally purchasing or attempting to illegally purchase an alcoholic beverage. If a determination is made sustaining such charge the court or magistrate shall release such person on probation for a period of not exceeding one year, and may in addition impose a fine not exceeding ten dollars.

2. No such determination shall operate as a disqualification of any such person subsequently to hold public office, public employment, or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no such person shall be denominated a criminal by reason of such determination, nor shall such determination be deemed a conviction.

CONFORMING AMENDMENTS

[BANKING LAW]

§ 18. The banking law is hereby amended by inserting therein a new article, to be article thirteen-B, to read as follows:

ARTICLE XIII-B—MISCONDUCT RELATING TO BANKING ORGANIZATIONS

Sec.

660. Misconduct of officers, directors, trustees or employees of banking corporations and of private bankers.
661. Officer or agent of banking corporation or a private banker making guaranty or endorsement beyond the legal limit.
662. Bank officer or employee overdrawing his account or asking for or receiving commissions or gratuities from persons procuring loans or making overdrafts of their accounts.
663. Receiving deposits in insolvent bank.
664. Unlawful investments by officers of savings banks.
665. Misconduct by directors of banking corporations.
666. Misconduct by banks and bankers.
667. Unlawful discount of bills of foreign banks.
668. Use of checks with certain photographs or drawings reproduced thereon prohibited.
669. Unauthorized use of the term "bank" or "trust company."
670. Acting for foreign banking corporations not authorized to do business in this state.
671. False statements or rumors as to banking institutions.
672. Falsification of books, reports or statements of private bankers or corporations subject to the banking law.
673. Abstraction or misappropriation of money, funds or property, or misapplication of credit of private bankers or corporations to which the banking law is applicable, by an officer, director, trustee, employee or agent thereof.
674. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.

§ 660. Misconduct of officers, directors, trustees, or employees of banking corporations and of private bankers

A director of a corporation, organized under the laws of this state, having banking powers, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended to make a loan or discount to any director of such corporation, or upon paper upon which any such director is liable or responsible to an amount exceeding the amount allowed by statute; or, any director, trustee, officer or employee of any corporation to which the banking law is applicable who makes or maintains, or attempts to make or maintain, a deposit of such corporation's funds with any other corporation on condition, or with the understanding, express or implied, that the corporation receiving such deposit make a loan or advance, directly or indirectly, to any director, trustee, officer or employee of the corporation so making or maintaining or attempting to make or maintain such deposit; or, any officer or employee of any corporation to which the banking law is applicable who intentionally conceals from the directors or trustees of such corporation any discounts or loans made by it between the regular meetings of its board of directors or trustees, or the purchase of any securities or the sale of any of its securities during the same period, or knowingly fails to report to its board of directors or trustees when required to do so by law, all discounts or loans made by it and all securities purchased or sold by it between the regular meetings of its board of directors or

trustees; or any director, officer or employee of a bank or trust company, or a private banker or his employee, who makes any agreement express or implied, before or at the time of issuing a certificate of deposit, by which its holder may demand or receive payment thereof in advance of its maturity, is guilty of a **misdemeanor.** Nothing in this section shall render any loan made by the directors of any such corporation, in violation thereof, invalid.

§ 661. Officer or agent of banking corporation or a private banker making guaranty or endorsement beyond the legal limit

An officer or agent of any banking corporation, or a private banker or his agent, who makes or delivers any guaranty or indorsement on behalf of such corporation or private banker, whereby such corporation or private banker may become liable on any of its or his discounted notes, bills or obligations, in a sum beyond the amount of loans and discounts which such corporation or private banker may legally make, is guilty of a **misdemeanor.**

§ 662. Bank officer or employee overdrawing his account or asking for or receiving commissions or gratuities from persons procuring loans or making overdrafts of their accounts

Any officer, director, agent, teller, clerk or employee of any bank, banking association, savings bank, trust company or private banker, who:

1. Knowingly overdraws his account with such bank, banking association, savings bank, trust company or private banker, and thereby obtains the money, notes or funds of any such bank, banking association, savings bank, trust company or private banker; or

2. Asks or receives, or consents or agrees to receive, any commission, emolument, gratuity or reward, or any promise of any commission, emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, for procuring or endeavoring to procure for any person, firm or corporation, any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange, by any such bank, banking association, savings bank, trust company or private banker, or for permitting any person, firm or corporation to overdraw any account with such bank, banking association, savings bank, trust company or private banker,

Is guilty of a **misdemeanor.**

§ 663. Receiving deposits in insolvent bank

An officer, agent, teller or clerk of any bank, banking association or savings bank, and every private banker or his agent and any teller or clerk of a private banker or any officer, agent or clerk of any corporation transacting any part of the business which a banking corporation is authorized by law to transact who receives any deposit, knowing that such bank or association or banker or corporation is insolvent, is guilty of a **misdemeanor,** if the amount or value of such deposit be less than twenty-five dollars; if the amount or value of such deposit be twenty-five dollars or over, such person shall be guilty of a **felony.**

§ 664. Unlawful investments by officers of savings banks

Any officer or trustee of a savings bank authorizing or making any investment of the funds of the bank in securities not authorized by law, is guilty of a **misdemeanor.**

§ 665. Misconduct by directors of banking corporations

Every director of a banking corporation who:

1. In case of the fraudulent insolvency of such corporation, shall have participated in such fraud; or

2. Wilfully does any act as such director which is expressly forbidden by statute, or wilfully omits to perform any duty imposed upon him as such director by statute,

Is guilty of a **misdemeanor**, if no other punishment is prescribed therefor by law.

The insolvency of a banking corporation is deemed fraudulent unless its affairs appear upon investigation to have been administered fairly, legally and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.

§ 666. Misconduct by banks and bankers

Any banking corporation or private banker authorized to carry on the business of banking under the laws of this state who:

1. Receives, pays out, gives or offers in payment as money to circulate, or who attempts to circulate as money, any bill, note or other evidence of debt issued or purporting to have been issued by any corporation or individual, situated or residing without this state, and which bill, note or other evidence of debt shall, upon any part thereof, purport to be payable or redeemable at any place or by any corporation or individual within this state; or,

2. Issues, utters or circulates, as money, or in any way, directly or indirectly, aids or assists in the issuing, uttering or circulating as money within this state, of any bank bill, note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual situated or residing without this state; or procures or receives, in any manner whatever, any such bank bill, note or other evidence of debt with intent to issue, utter or circulate, or with intent to aid in issuing, uttering or circulating the same as money within this state; or,

3. Directly or indirectly lends or pays out for paper discounted or purchased any bank bill, note or other evidence of debt, which is not received at par by such corporation or banker for debts due such corporation or banker; or,

4. Issues or puts in circulation any bank bill or note of any such corporation or banker, unless the same shall be made payable on demand and without interest, except bills of exchange on foreign countries or places beyond the limits or jurisdiction of the United States, and except certificates of deposit payable on presentation, with or without interest, to bearer or to the order of a person named therein, or certificates of deposit payable, with or without interest, to bearer or to the order of a person named therein showing the amount of the deposit, the date of issue and the date when due; but such certificates shall not be issued except as representing money actually on deposit,

Is guilty of a **misdemeanor.**

Nothing in this section contained shall be construed to prohibit any such corporation or banker from receiving and paying out such foreign bank bills as they shall receive at par in the ordinary course of their business, or to prohibit such corporation or banker from receiving foreign notes from their dealers and customers in the regular and usual course of their business, at a rate of discount not exceeding that which is or shall be at the time fixed by law, for the redemption of the bills of the banks of this state at their agencies, or from obtaining from the corporations, associations or individuals by which such foreign notes are made, the payment of redemption thereof.

§ 667. Unlawful discount of bills of foreign banks

Any person, association or corporation within the state who, directly or indirectly, on any pretense whatever, procures or receives or offers to receive from any corporation or person any bank bill or note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual, situated or residing without this state, at a greater rate of discount than is or shall

be at the time fixed by law for the redemption of the bills of the banks of this state at their agencies, is guilty of a **misdemeanor.**

§ 668. Use of checks with certain photographs or drawings reproduced thereon prohibited

It shall be unlawful for any person, firm or corporation to use any bank check in this state that has printed or embossed thereon a photograph, drawing or other reproduction of any public building of the United States or of this or any other state or of any municipality, or the shield, coat of arms, flag or other insignia of the United States or of this or any other state or municipality. Violation of the provisions of this section shall constitute a **misdemeanor.**

§ 669. Unauthorized use of the term "bank" or "trust company"

Any person not authorized by the superintendent of banks, who:

1. Uses an office sign at the place where his business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company; or,

2. Uses or circulates any letter-heads, bill-heads, blank notes, blank receipts, certificates, circulars or any written or printed paper whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank or trust company,

Is guilty of a **misdemeanor.**

§ 670. Acting for foreign banking corporations not authorized to do business in this state

Any person or corporation, who acts as agent or representative of any mortgage, loan or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association organized outside of this state, while such mortgage, loan or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association shall not be authorized under a license of the superintendent of banks to do business in this state, is guilty of a **misdemeanor.**

§ 671. False statements or rumors as to banking institutions

Any person who wilfully and knowingly makes, circulates or transmits to another or others any statement or rumor, written, printed or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or effects the solvency or financial standing of any bank, private banker, savings bank, banking association, building and loan association or trust company doing business in this state, or who knowingly counsels, aids, procures or induces another to start, transmit or circulate any such statement or rumor, is guilty of a **misdemeanor.**

§ 672. Falsification of books, reports or statements of private bankers or corporations subject to the banking law

1. Any officer, director, trustee, employee or agent of any corporation to which the banking law is applicable who makes a false entry in any book, report or statement of such corporation with intent to deceive any officer, director or trustee thereof, or any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public officer, office or board to which such corporation is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or who, with like intent, wilfully omits to make a true entry of any material particular pertaining to the busi-

ness of such corporation in any book, report or statement of such corporation made, written or kept by him under his direction, is guilty of a **felony.**

2. Any employee or agent of a private banker who makes a false entry in any book, report or statement of such private banker with intent to deceive such private banker, or any agent or examiner lawfully appointed to examine into the condition or affairs of such private banker, or any public officer, office or board to which such private banker is required by law to report, or which has authority by law to examine into the condition of such private banker or into any of its affairs, or who, with like intent, wilfully omits to make a true entry of any material particular pertaining to the business of such private banker in any book, report or statement made, written or kept by such private banker or under his direction is guilty of a **felony.**

3. Any private banker who commits any act made punishable by subdivision two, or who wilfully omits to make the true entry required thereby, with intent to deceive his co-partner or any such agent, examiner, public officer, office or board is guilty of a **felony.**

§ 673. Abstraction or misappropriation of money, funds or property, or misapplication of credit of private bankers or corporations to which the banking law is applicable, by an officer, director, trustee, employee or agent thereof

Any officer, director, trustee, employee or agent of any corporation to which the banking law is applicable, or any employee or agent of any private banker, who abstracts or wilfully misapplies any of the money, funds or property of such corporation or private banker, or wilfully misapplies its or his credit, is guilty of a **felony.** Nothing in this section shall be deemed or construed to repeal, amend or impair any existing provision of law prescribing a punishment for any such offense.

§ 674. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions

It is no defense to a prosecution for a violation of the provisions of this article, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state.

The term "director" as used in this article includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a **violation** of this article. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this article occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record or minutes.

[CIVIL RIGHTS LAW]

§ 19. The civil rights law is hereby amended by inserting therein a new section, to be section forty–c, to read as follows:

§ 40–c. Discrimination

All persons within the jurisdiction of this state shall be entitled to the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, creed, color or national origin, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

§ 20. Such law is hereby amended by inserting therein a new section, to be section forty–d, to read as follows:

§ 40–d. Penalty for violation

Any person who shall violate any of the provisions of the foregoing section, or who shall aid or incite the violation of any of said provisions shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby in any court of competent jurisdiction in the county in which the defendant shall reside; and shall, also, for every such offense be deemed guilty of a **misdemeanor**, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. At or before the commencement of any action under this section, notice thereof shall be served upon the attorney general.

§ 21. Such law is hereby amended by inserting therein a new section, to be section forty–e, to read as follows:

§ 40–e. Innkeepers and carriers refusing to receive guests and passengers

A person, who, either on his own account or as agent or officer of a corporation, carries on business as innkeeper, or as common carrier of passengers, and refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a **misdemeanor.**

§ 22. Such law is hereby amended by inserting therein a new section, to be section forty–f, to read as follows:

§ 40–f. Discrimination against person or class in price for admission

If a person who owns, occupies, manages or controls a building, park, inclosure or other place, opens the same to the public generally at stated periods or otherwise, he shall not discriminate against any person or class of persons in the price charged for admission thereto. A person violating the provisions of this section is guilty of a **misdemeanor.**

§ 23. Such law is hereby amended by inserting therein a new section, to be section forty–g, to read as follows:

§ 40–g. Discrimination against United States uniform

A person who excludes from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers or common carriers, amusement or resort, any person lawfully wearing the uniform of the army, navy, marine corps or revenue cutter service of the United States, because of that uniform, is guilty of a **misdemeanor.**

CONFORMING AMENDMENTS

§ 24. Such law is hereby amended by inserting therein a new section, to be section forty-h, to read as follows:

§ 40-h. Discrimination against sightless persons accompanied by seeing-eye dogs

A person, who, either on his own account or on behalf of any partnership, association or corporation, excludes from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers or common carriers, or by owners, managers or lessees of theaters, restaurants, hotels or other public places of amusement or resort, except motion picture theaters, any sightless person accompanied by a seeing-eye dog, because of that fact, unless the admission of such person and dog would tend to create a dangerous situation, is guilty of a **misdemeanor.**

§ 25. Such law is hereby amended by inserting therein a new section, to be section forty-four-a, to read as follows:

§ 44-a. Protecting civil and public rights

A person who: 1. Excludes a citizen of this state, by reason of race, color, creed, national origin or previous condition of servitude, from any public employment or employment in any capacity in industries engaged in defense contracts or from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers or common carriers, or by owners, managers or lessees of theatres or other places of amusement, or by teachers and officers of common schools and public institutions of learning; **or,**

2. Excludes a citizen of this state by reason of race, color, national origin or previous condition of servitude from the equal enjoyment of any accommodation, facility or privilege furnished by a cemetery association or associations; or,

3. Denies or aids or incites another to deny to any other person because of race, creed, color or national origin public employment or employment in any capacity in industries engaged in war contracts or the full enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, public conveyance on land or water, theatre or other place of public resort or amusement;

Is guilty of a **misdemeanor,** punishable by fine of not less than fifty dollars nor more than five hundred dollars.

§ 26. Such law is hereby amended by inserting therein a new section, to be section seventy-nine, to read as follows:

§ 79. Forfeiture of office and suspension of civil rights

A sentence of imprisonment in a state prison for any term less than for life or a sentence of imprisonment in a state prison for an indeterminate term, having a minimum of one day and a maximum of natural life, forfeits all the public offices, and suspends, during the term of the sentence, all the civil rights, and all private trusts, authority, or powers of, or held by, the person sentenced; but nothing herein contained shall be deemed to suspend the right or capacity of any of the following persons to institute an action or proceeding in a court or before a body or officer exercising judicial, quasi-judicial or administrative functions, with respect to matters other than those arising out of his arrest or detention:

a. A person sentenced to state prison for any term less than for life or a person sentenced to imprisonment in a state prison for an indeterminate term, having a minimum of one day and a maximum of his natural life, on whom sentence was imposed and the execution of the judgment suspended, while the execution of the judgment remains suspended;

b. A person sentenced to state prison for any term less than for life or a person sentenced to imprisonment in a state prison for an indeter-

minate term, having a minimum of one day and a maximum of his natural life, while he is released on parole, or after he has been discharged from parole.

§ 27. Such law is hereby amended by inserting therein a new section, to be section seventy-nine–a, to read as follows:

§ 79–a. Consequence of sentence to imprisonment for life

1. A person sentenced to imprisonment for life is thereafter deemed civilly dead; provided, that such a person may marry while on parole, or after he has been discharged from parole, if otherwise capable of contracting a valid marriage. Such capability shall be deemed to exist where the marriage of a person sentenced to imprisonment for life has been terminated by divorce, annulment, or subsequent remarriage of a former spouse. A marriage contracted pursuant to this section by a person while he is on parole, without prior written approval of the board of parole, shall be ground for revocation of the parole.

2. This section shall not apply to a person sentenced to imprisonment for an indeterminate term, having a minimum of one day and a maximum of his natural life.

3. Nothing in this section shall be deemed to suspend the right or capacity of a person sentenced to imprisonment for life, while he is released on parole, or after he has been discharged from parole, to institute an action or proceeding in a court or before a body or officer exercising judicial, quasi-judicial or administrative functions, with respect to matters other than those arising out of his arrest and detention.

4. Nothing in this section shall be deemed to preclude the issuance of a certificate of good conduct by the board of parole pursuant to the executive law to a person who previously has been sentenced to imprisonment for life.

§ 28. Such law is hereby amended by inserting therein a new section, to be section seventy-nine–b, to read as follows:

§ 79–b. Forfeiture of property on conviction abolished

A conviction of a person for any crime, does not work a forfeiture of any property, real or personal, or any right or interest therein. All forfeitures to the people of the state, in the nature of deodands, or in a case of suicide, or where a person flees from justice, are abolished.

§ 29. Such law is hereby amended by inserting therein a new section, to be section seventy-nine–c, to read as follows:

§ 79–c. Convict protected by law

A convict sentenced to imprisonment is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he were not sentenced or convicted.

§ 30. Such law is hereby amended by inserting therein a new section, to be section seventy-nine–d, to read as follows:

§ 79–d. Creditor of convict

A person injured by the commission of a felony, for which the offender is sentenced to imprisonment in a state prison, is deemed the creditor of the offender, and of his estate after his death, within the provisions of the statutes relating thereto.

The damages sustained by the person injured by the felonious act, may be ascertained in an action brought for that purpose by him against the trustees of the estate of the offender, appointed under the provisions of the statutes, or the executor or administrator of the offender's estate.

§ 31. Such law is hereby amended by inserting therein a new section, to be section seventy-nine–e, to read as follows:

§ 79-e. Return of finger prints and photographs

Upon the determination of a criminal action or proceeding against a person, in favor of such person, unless another criminal action or proceeding is pending against him or unless such person has previously been convicted in this state of a crime or of the offense of disorderly conduct or of being a vagrant or disorderly person or has previously been convicted elsewhere of any crime or offense which would be deemed a crime or the offense of disorderly conduct, vagrancy or being a disorderly person if committed within the state, every photograph of such person and photographic plate or proof and finger prints taken or made of such person while such action or proceeding is pending by direction or authority of any police officer, peace officer, or any member of any police department, and all duplicates and copies thereof shall be returned on demand to such person by the police officer, peace officer or member of any police department having any such photograph, photographic plate or proof, copy of duplicate in his possession or under his control; and such police officer, peace officer or member of any police department failing to comply with the requirements hereof, shall be guilty of a **misdemeanor.**

[CIVIL SERVICE LAW]

§ 32. The civil service law is hereby amended by inserting therein a new section, to be section one hundred fifty-five, to read as follows:

§ 155. Unauthorized soliciting in behalf of civil service employees

Any person, not at the time a salaried officer or employee of a department, bureau or office of the state, or of any of the counties or cities thereof, or of any of the courts of the state, or any of the counties or cities thereof, who shall distribute, circulate or display any ticket, credentials, letter, letterhead, contract, agreement, application or other written or printed matter which bears, either in full or in part, the name, seal or insignia of any state, county or city department, bureau, office or court, or any person not an active member of the uniformed force, who shall wear or display the uniform or part of the uniform thereof, or any badge, shield, medal, button, decoration, or other insignia relating to or identified with any state, county or city department, bureau, office or court, for the purpose of selling or attempting to sell any ticket, book or privilege in connection with a dinner, reception, dance, entertainment, concert, athletic exhibition, contest or lecture, proposed to be conducted by and under the auspices of any group or association of active or retired employees of any department, bureau, office or court of the state or any of the counties or cities thereof, or for the purpose of soliciting paid advertisements or greetings for any book, pamphlet or program to be published by any such groups or associations, shall be deemed guilty of a **misdemeanor**, and upon conviction shall be punished by imprisonment for six months or by a fine of five hundred dollars or both.

[CORRECTION LAW]

§ 33. The correction law is hereby amended by inserting therein a new section, to be section twenty-two, to read as follows:

§ 22. Prison officers not to be interested in prison contracts

A commissioner of correction, warden or other officer or guard, employed at any of the prisons who:

1. Shall be directly or indirectly interested in any contract, purchase or sale, for, by, or on account of such prison; or,

2. Accepts a present from a contractor or contractor's agent, directly or indirectly, or employs the labor of a convict or another person employed in such prison on any work for the private benefit of such com-

missioner, officer or guard, is guilty of a **misdemeanor**, except that the warden shall be entitled to employ prisoners for necessary household service.

§ 34. Such law is hereby amended by inserting therein a new section, to be section six hundred one–b, to read as follows:

§ 601–b. Coram nobis prisoners; reimbursement for costs

Whenever a prisoner is transferred from a state penal institution to a county jail or penitentiary, or a city prison operated by a city having a population of one million or more inhabitants, to await judicial review of his trial, the state shall pay to the city or county operating such facility the actual per day per capita cost, certified to the state commissioner of correction by the appropriate local official, for the care of such prisoner but, in any case, the reimbursement rate shall not exceed five dollars per day per capita.

[EDUCATION LAW]

§ 35. The education law is hereby amended by inserting therein a new section, to be section four hundred ten, to read as follows:

§ 410. Officials not to be interested in sales, leases or contracts

A public officer or school officer, who is authorized to sell or lease any property, or to make any contract in his official capacity, or to take part in making any such sale, lease or contract, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, except in cases where such sale, lease or contract, or payment under the same, is subject to audit or approval by the commissioner of education, is guilty of a **misdemeanor**. The provisions of this section shall not apply to municipal officers and employees subject to article eighteen of the general municipal law.

§ 36. Such law is hereby amended by inserting therein a new section, to be section twenty one hundred nineteen, to read as follows:

§ 2119. School district trustee not to draw draft on county treasurer in certain cases

A school district trustee who issues an order or draws a draft on a county treasurer, district treasurer or collector or other disbursing officer of such district for any money, unless there is at the time sufficient money in the hands of such county treasurer, district treasurer or collector or other disbursing officer belonging to the district to meet such order or draft, is guilty of a **misdemeanor**.

§ 37. Such law is hereby amended by inserting therein a new section, to be section thirty two hundred sixteen–c, to read as follows:

§ 3216–c. Certain types of employment of children prohibited; others authorized upon consent of local authorities

In cities having a population of more than a million,

A. It shall be unlawful, except as otherwise provided in this section, to employ, or to exhibit or cause to be exhibited, or to use, or have custody of, for the purpose of exhibition, use or employment, any child under the age of sixteen years, or for one who has the care, custody or control of such child as a parent, relative, guardian, employer or otherwise, to exhibit, use or to procure or consent to the use or exhibition of such child or to neglect or to refuse to restrain such child from engaging or acting in a public or private place, except as hereinafter provided, whether or not an admission fee is charged and whether or not such child or any other person is to be compensated for the use of such child therein,

1. In singing; or dancing; or playing upon a musical instrument; or acting or performing in a theatrical performance or appearing in a pageant; or as a subject for use, in or for, or in connection with, the making of a motion picture film; or,

2. In rehearsing for or performing in a radio or television broadcast or program; or,

3. As a rope or wire walker, gymnast, wrestler, boxer, contortionist, rider upon a horse or other animal (except in a non-professional horse show), or as an acrobat; or upon any bicycle or other mechanical vehicle or contrivance; or,

4. In begging or receiving or soliciting alms in any manner or under any pretense, or in any mendicant occupation; or in gathering or picking rags, or collecting cigar stumps; or collecting bones or refuse from markets or street; or in peddling; or,

5. In any illegal, indecent, or immoral exhibition or practice; or in the exhibition of any such child when insane, idiotic, or when presenting the appearance of any deformity or unnatural physical formation or development; or,

6. In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of such child is guilty of a misdemeanor.

B. The provisions of paragraphs one and two of subdivision A of this section shall not apply to the participation or employment, use or exhibition of any child in a church, academy or school, including a dancing or dramatic school, as a part of the regular services or activities thereof respectively; or in the annual graduation exercises of any such academy or school; or in a private home; or in any place where such performance is under the direction, control or supervision of a board of education; or in the performance of radio or television programs in cases where the child or children broadcasting do so from a school, church, academy, museum, library or other religious, civic, or educational institution; or for not more than two hours a week from the studios of a regularly licensed broadcasting company, where the performance of a child or children is of non-professional character and occurs during hours when attending for instruction is not required in accordance with the education law.

C. Notwithstanding the foregoing provisions of subdivision A hereof, such a child may be employed, used or exhibited in any of the exhibitions, rehearsals or performances set forth in paragraphs one and two of subdivision A hereof to perform with written consent of a parent or guardian of such child and with the written consent of the mayor of the city where such performance or entertainment takes place and upon notice to the Society for the Prevention of Cruelty to Children, if there be one within the city as hereinafter prescribed. Such consent shall not be given unless forty-eight hours' previous notice of the application shall have been served by the applicant for such consent upon the Society for the Prevention of Cruelty to Children, if there be one within the city and a hearing had thereon if requested by such Society within the forty-eight hours' period, and shall be revocable at the will of the authority giving it. Such notice of application shall specify the name of the child, its age, the names and residences of its parents or guardians, the nature, time, duration and number of performances permitted, together with the place and character of the exhibition; and where any child is to be employed in the making of a motion picture film it shall provide that the child is to be employed only in the manner described and set forth in the statement in writing submitted with the application, as hereinafter provided. Any person applying for such consent for the use or employment of any such child or children in posing or acting for or as a subject to use in or in connection with the making of a motion picture film shall submit with such application a true and accurate statement in writing

setting forth and describing in details the entire part to be taken and each and every act and thing to be done and performed, by such child in the making of such film to the mayor of such city and to any such society having jurisdiction in such place.

D. Any violation of this section will be a **misdemeanor.**

§ 38. Such law is hereby amended by inserting therein a new section, to be section sixty-eight hundred four–a, to read as follows:

§ 6804–a. Careless distribution of medicines, drugs and chemicals

Any person, firm, or corporation, who distributes, or causes to be distributed, any free or trial samples of any medicine, drug or chemical compound, by leaving the same exposed upon the ground, sidewalk, porch, doorway, letter-boxes, or in any other manner, that children may become possessed of the same, shall be guilty of a **misdemeanor** punishable by a fine not exceeding twenty-five dollars for each offense, but this section shall not apply to the direct delivery of any such article to an adult.

§ 39. Such law is hereby amended by inserting therein a new section, to be section sixty-eight hundred four–b, to read as follows:

§ 6804–b. Sale of certain appliances, drugs or medicinal preparations

No appliances, drugs or medicinal preparations intended or having special utility for the prevention of venereal diseases and/or used in gynecological hygiene or treatments, shall be displayed, sold or otherwise disposed of in the state of New York, except in places duly registered by the state board of pharmacy. Any person or persons, firm or corporation, or member of a firm or officer, director or employee of a corporation, who violates any of the provisions of this section is guilty of a **misdemeanor.**

§ 40. Such law is hereby amended by inserting therein a new section, to be section sixty-eight hundred eight–a, to read as follows:

§ 6808–a. Omitting to label drugs, or labeling them wrongly

Any person, who, in putting up any drug, medicine, or food or preparation used in medical practice, or making up any prescription, or filling any order for drugs, medicines, food or preparation puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing a drug, medicine, food or preparation used in medical practice, or substitutes or dispenses a different article for or in lieu of any article prescribed, ordered, or demanded, or puts up a greater or less quantity of any ingredient specified in any such prescription, order or demand than that prescribed, ordered or demanded, or otherwise deviates from the terms of the prescription, order or demand by substituting one drug for another, is guilty of a **misdemeanor**; provided, however, that except in the case of physicians' prescriptions, nothing herein contained shall be deemed or construed to prevent or impair or in any manner affect the right of an apothecary, druggist, pharmacist or other person to recommend the purchase of an article other than that ordered, required or demanded, but of a similar nature, or to sell such other article in place or in lieu of an article ordered, required or demanded, with the knowledge and consent of the purchaser. Upon a second conviction for a violation of this section the offender must be sentenced to imprisonment, for a term of not less than ten days nor more than one year, and to the payment of a fine of not less than ten dollars nor more than five hundred dollars. The third conviction of a violation of any of the provisions of this section, in addition to rendering the offender liable to the

penalty prescribed by law for a misdemeanor, shall forfeit any right which he may possess under the law of this state at the time of such conviction, to engage as proprietor, agent, employee or otherwise, in the business of an apothecary, pharmacist, or druggist, or to compound, prepare or dispense prescriptions or orders for drugs, medicines or foods or preparations used in medical practice; and the offender shall be by reason of such conviction disqualified from engaging in any such business as proprietor, agent, employee or otherwise or compounding, preparing or dispensing medical prescriptions or orders for drugs, medicines, or foods or preparations used in medical practice.

The provisions of this section shall not apply to the practice of a practitioner of medicine who is not the proprietor of a store for the dispensing or retailing of drugs, medicines and poisons, or who is not in the employ of such a proprietor, and shall not prevent practitioners of medicine from supplying their patients with such articles as they may deem proper, and except as to the labeling of poisons shall not apply to the sale of medicines or poisons at wholesale when not for the use or consumption of the purchaser; provided, however, that the sale of medicines or poisons at wholesale shall continue to be subject to such regulations as from time to time may be lawfully made by the board of pharmacy or by any competent board of health.

The provisions of this section shall not apply to a hospital pharmacy which prepares a formulary containing the brand names and the generic names of drugs and of manufacturers which it stocks, provided that it furnishes a copy of such formulary to each physician on its staff and the physician signs a statement authorizing the hospital to supply the drug under any generic or non-proprietary name listed therein and in conformity with the regulations of the commissioner of education.

§ 41. Such law is hereby amended by inserting therein a new section, to be section sixty-eight hundred thirteen-a, to read as follows:

§ 6813–a. Sale and manufacture of bichloride of mercury and compounds thereof

1. It shall be unlawful for any person, firm or corporation to sell at retail or give away in tablet form bichloride of mercury, mercuric chloride or corrosive sublimate, unless such bichloride of mercury, mercuric chloride or corrosive sublimate, when so sold, or given away, shall conform to the provisions of the United States Pharmacopoeia and shall be put up in bottles of a distinctive shape which shall be conspicuously labeled with the word "poison" in red letters.

2. Nothing herein contained shall be construed to prohibit the sale and dispensing of bichloride of mercury in any form, shape or color, when combined or compounded with one or more other drugs or excipients, for purposes of internal medication only, or when sold in bulk in powder form, or to any preparation containing one-tenth of a grain or less of bichloride of mercury.

3. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor.

[ELECTION LAW]

§ 42. Article sixteen of the election law is hereby renumbered article seventeen, and sections four hundred twenty, four hundred twenty-one and four hundred twenty-two are hereby renumbered, respectively, sections five hundred, five hundred one and five hundred two.

§ 43. Such law is hereby amended by adding thereto a new article, to be article sixteen, to read as follows:

ARTICLE 16—VIOLATIONS OF THE ELECTIVE FRANCHISE

Sec.
420. Definitions.
421. Misdemeanors at, or in connection with, political caucuses, primary elections, enrollment in political parties, committees, and conventions.
422. False registration.
423. Misconduct of registry or election officers.
424. False affidavits; mutilation, destruction or loss of registry list or affidavits.
425. Solicitation of money for newspaper support.
426. Misdemeanors concerning police commissioners or officers or members of any police force.
427. Failure to furnish information; false information.
428. Removal, mutilation or destruction of election booths, supplies, poll-lists or cards of instruction.
429. Refusal to permit employees to attend election.
430. Misconduct in relation to certificates of nomination and official ballots.
431. Misconduct in relation to petitions.
432. Failure to deliver official ballots.
433. Misconduct of election officers and watchers.
434. Violation of election law by public officer or employee.
435. Misdemeanor in relation to elections.
436. Illegal voting.
437. Unlawful use of pasters.
438. False returns; unlawful acts respecting returns.
439. Furnishing money or entertainment to induce attendance at polls.
440. Giving consideration for franchise.
441. Receiving consideration for franchise.
442. Offender a competent witness; witnesses' immunity.
443. Bribery or intimidation of elector in military service of the United States.
444. Duress and intimidation of voters.
445. Pernicious political activities.
446. Conspiracy to promote or prevent election.
447. Political assessments.
448. Corrupt use of position or authority.
449. Failure to file statement of receipts, expenditures and contributions.
450. Procuring fraudulent certificates in order to vote.
451. Issuing fraudulent certificate of literacy.
452. Presenting fraudulent certificates to registry boards to procure registration.
453. Soliciting from candidates.
454. Judicial candidates not to contribute.
455. Limitation of amounts to be expended by or for candidates.
456. Political contributions by owners of polling places prohibited.
457. Printing or other reproduction of certain political literature.
458. Penalty.
459. Crimes against the elective franchise not otherwise provided for.
460. Political contributions prohibited; penalty; witnesses' privilege.
461. Destroying or delaying election returns.
462. Restrictions on voting: persons convicted of crime.

§ 420. **Definitions**

The words "election" or "town meeting," as used in any of the sections of this article excepting section four hundred twenty-one, shall be deemed to apply to and include all general and special elections, municipal elections and town meetings and primary elections and conventions, and proceedings for the nomination of candidates by petition under the election law. The word "candidate," as used in said sections, shall be deemed to apply to candidates for nomination at a primary election or convention, and candidates for any office to be voted for under the election law, as well as candidates for nomination by petition under the election law.

§ 421. **Misdemeanors at, or in connection with, political caucuses, primary elections, enrollment in political parties, committees, and conventions**

Any person who:

1. At a political caucus, or at a primary election of a party, wilfully votes, or attempts to vote, without being entitled to do so, or votes, or attempts to vote on any other name than his own or on the same day more than once on his own name; or,

2. Votes, or offers to vote, at a political caucus, or primary election of a party having voted at the political caucus or primary election of any other political party on the same day, or being at the time enrolled in a party other than the party at whose primary he votes or offers to vote; or, who causes his name to be placed upon the rolls of a party organization of one party while his name is by his consent or procurement upon the rolls of a party organization of another party; or,

3. At a political caucus, or at a primary election, for the purpose of affecting the result thereof, votes or attempts to vote two or more ballots, or adds, or attempts to add, any ballot to those lawfully cast, by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or who adds to or mixes with, or attempts to add to or mix with, the ballots lawfully cast, another ballot or other ballots before the votes have been counted or canvassed, or while the votes are being counted or canvassed; or at any time abstracts any ballots lawfully cast, with intent to change the result of such election or to change the count thereat in favor of or against any person voted for at such election, or to prevent the ballots being recounted or used as evidence; or carries away, destroys, loses, conceals, detains, secrets, mutilates, or attempts to carry away, destroy, conceal, detain, secrete, or mutilate, any tally lists, ballots, ballot boxes, enrollment books, certificates of return, or any official documents provided for by the election law or otherwise by law, for the purpose of affecting or invalidating the result of such election, or of destroying evidence; or in any manner interferes with the officers holding any primary election or conducting the canvass of the votes cast thereat, or with voters lawfully exercising, or seeking to exercise, their right of voting at such primary election; or,

4. For the purpose of securing enrollment as a member of a political party, or for the purpose of being allowed to vote at a primary election as a member of a political party, makes and deposits or files, or makes or deposits or files with a board of primary inspectors, or with any public officer or board, a false declaration of party affiliation or wilfully makes a false declaration of residence, either by an enrollment blank or otherwise, or falsely answers any pertinent question asked him by the board of primary inspectors, or the board of election inspectors, or by a member thereof; or knowingly, on any day of registration or in the interval between any such day and the next ensuing day of general election, reveals or discloses the names or number of the enrolled electors of any party, or makes, publishes, or circulates a list of

such names, or of any thereof, or does or permits any act by which the name of the party with which an elector has enrolled, or of the number of electors enrolled with a party, may be disclosed; or,

5. Fraudulently or wrongfully does any act tending to affect the result of any election at a political caucus or of any primary election or convention; or,

6. Induces or attempts to induce any officer, teller, canvasser, poll clerk, primary election inspector, election inspector, custodian of primary records, or clerk or employee of or in the office of a custodian of primary records at a political caucus, or primary election, or convention, or while discharging any duty or performing any act required or made necessary by the election law, to do any act in violation of his duty, or in violation of the election law; or,

7. Directly or indirectly, by himself or through any other person, pays, or offers to pay, money or other valuable thing, or promises a place or position, or offers any other consideration or makes any other promise, to any person, to induce any voter to vote, or refrain from voting, at a political caucus, primary election, or convention, for or against any particular person; or does or offers to do, anything to hinder or delay any elector from taking part in or voting at, a political caucus, or at a primary election; or,

8. By menace or other unlawful or corrupt means, directly or indirectly, influences or attempts to influence, the vote of any person entitled to vote at a political caucus, primary election, or convention, or obstructs such person in voting, or prevents him from voting thereat; or,

9. Directly or indirectly, by himself or through another person, receives money or other valuable thing, or a promise of a place or position, before, at, or after any political caucus, primary election, or convention, for voting or refraining from voting for or against any person, or for voting or refraining from voting at a political caucus, primary election, or convention; or,

10. Being an officer, teller, canvasser, primary inspector, at a political caucus, or at a primary election, knowingly permits any fraudulent vote to be cast, or knowingly receives and deposits in the ballot box any ballots offered by any person not qualified to vote; or permits the removal of ballots from the polling place before the close of the polls, or refuses to receive ballots intended for the electors of the district, or refuses to deliver to any elector ballots intended for the electors of the district which have been delivered to the board of inspectors, or permits electioneering within the polling place or within one hundred feet therefrom, or fails to keep order within the polling place, or permits any person other than the inspectors to accompany an elector into a voting booth, or enters the voting booth with any elector, except one entitled to receive assistance in the preparation of his ballot, or permits any person other than a voter, who has not voted, or watcher to come within the guard rail or removes or permits another to remove any mark placed upon a ballot for its identification; or,

11. Being an officer, custodian of primary records, clerk or employee of or in the office of a custodian of primary records, election inspector, primary inspector, or poll clerk, knowingly puts opposite the name of an elector in an enrollment book any enrollment number other than the number opposite such name on the registration books of such district, or knowingly delivers to or receives from any elector on any day of registration an enrollment blank or envelope on which is any other enrollment number than that so opposite his name on such books of registration, or knowingly transcribes from an enrollment blank to the enrollment books any refusal to enroll or enrollment not indicated on the enrollment blank of the elector of such district whose enrollment number

appears on the same, or refuses or wilfully neglects to transcribe from any enrollment blank to the proper enrollment books any refusal to enroll or enrollment indicated on the enrollment blank of such an elector, enrolls or attempts to enroll as a member of a political party, upon any of the enrollment books, any person not qualified to enroll as such, or fraudulently enters thereupon the name of any person who has not enrolled as a member of any political party, or refuses or wilfully neglects to enroll upon any of the enrollment books the name of any qualified person who has demanded to be enrolled as a member of a political party, or at any time strikes from any of the enrollment books the name of any person duly enrolled, or at any time adds to any of the enrollment books the name of any person not qualified to be enrolled as a member of a political party, or the name of any person who in fact has not enrolled as such; or makes marks upon, mutilates, carries away, conceals, alters, or destroys any enrollment blank or enrollment envelope used or deposited by an elector on a day of registration for the purpose of enrolling or refusing to enroll himself as a member of a political party; or mutilates, carries away, conceals, alters or destroys, any statement or declaration made by a qualified voter for the purpose of enrolling as a member of the party; or, prior to the close of the last meeting for registration in any year, mutilates, carries away, conceals, alters, or destroys any enrollment blanks or enrollment envelopes not then delivered to electors; or,

12. Being an officer, teller, canvasser, election inspector, primary inspector, custodian of primary records, clerk or employee of or in the office of a custodian of primary records, or any officer of a political committee or a convention, wilfully omits, refuses or neglects to do any act required by the election law or otherwise by law, or violates any of the provisions of the election law, or makes or attempts to make any false canvass of the ballots cast at a political caucus, primary election, or convention, or a false statement of the result of a canvass of the ballots cast thereat; or,

13. Being a custodian of primary records, or an officer of a political committee, or of a convention, who is charged with, or assumes, the duty of making up the primary roll of any convention, wilfully includes in such roll the name of any person not certified to be elected thereto in accordance with the provisions of law, or who wilfully omits from such role the name of any person who is so certified to be a delegate to such convention,

Is guilty of a **misdemeanor.**

§ 422. **False registration**

Any person who:

1. Registers or attempts to register as an elector in more than one election district for the same election, or more than once in the same election district; or,

2. Registers or attempts to register as an elector, knowing that he will not be a qualified voter in the district at the election for which such registration is made; or

3. Registers or attempts to register as an elector under any name but his own; or

4. Knowingly gives a false residence within the election district when registering as an elector; or

5. Knowingly permits, aids, assists, abets, procures, commands or advises another to commit any such act,

Is guilty of a **felony.**

§ 423. **Misconduct of registry or election officers**

Any member or clerk of a registry board or other election officer who wilfully refuses to accord to any duly accredited watcher or chal-

lenger or to any voter or candidate any right given him by the election law, or who wilfully violates any provision of the election law relative to the registration of electors or to the taking, recording, counting, canvassing, tallying or certifying of votes, or wilfully neglects or refuses to perform any duty imposed on him by law, or is guilty of any fraud in the execution of the duties of his office, or connives in any electoral fraud, or knowingly permits any such fraud to be practiced, is guilty of a **felony.**

§ 424. False affidavits; mutilation, destruction or loss of registry list or affidavits

1. Any person who wilfully loses, alters, destroys or mutilates the list or register of voters in any election district, or a certified copy thereof, or removes from the place of registration the public copy of such registration, after the making of the same and before the closing of the polls of the election of which the same is made, is guilty of a **misdemeanor.**

2. An applicant for registration who shall make, incorporate or cause to be incorporated a material false statement in an application for absentee registration, or in any challenge or other affidavit required for or made or filed in connection with registration or voting, and any person who knowingly takes a false oath before a board of inspectors of election, and any person who makes a material false statement in a medical certificate or an affidavit filed in connection with an application for absentee registration, shall be deemed guilty of **perjury.**

3. A person who shall wilfully suppress, multilate or alter, or, except as authorized by the election law, shall destroy, any signed challenge or other affidavit required for or made or filed in connection with registration or voting, and any person who, except as authorized by the election law, shall remove such an affidavit from the place of registration or polling place, is guilty of a **felony.**

§ 425. Solicitation of money for newspaper support

Any person who solicits from a candidate for an elective office money or other property as a consideration for a newspaper or other publication supporting any candidate for an elective office, is guilty of a **misdemeanor.**

§ 426. Misdemeanors concerning police commissioners or officers or members of any police force

Any person who, being a police commissioner or an officer or member of any police force in this state:

1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or

2. Appoints, promotes, transfers, retires or punishes an officer or member of a police force, or asks for or aids in the promotion, transfer, retirement or punishment of an officer or member of a police force because of the party adherence or affiliation of such officer or member, or for or on the request, direct or indirect, of any political party, organization, association or society, or of any officer, member of committee or representative official or otherwise of any political party, organization, association or society; or,

3. Contributes any money, directly or indirectly, to, or solicits, collects or receives any money for, any political fund, or joins or becomes a member of any political club, association, society or committee,

Is guilty of a **misdemeanor.**

§ 427. Failure to furnish information; false information

1. Any person dwelling in a building in a city who wilfully refuses to truly answer any question or who shall give false answers to any questions asked by any elector of such city, between the first meeting of the boards of registry therein for any election and the closing of the polls at such election, relating to the residence and qualifications as a voter of any person dwelling in such building, or of any person who appears upon the list or registry of voters made by a board of registry as residing at such building, or who knowingly harbors or conceals any person who has falsely registered as a voter, or who shall rent any room or bed to any person to be used by such person for himself or any other person for the purpose of unlawfully registering or voting therefrom is guilty of a **misdemeanor.**

2. A keeper of a hotel, lodging-house, boarding-house or rooming-house in a city who neglects to make the sworn report required by the election law to be made twenty-nine days before the election, or a keeper of a hotel, lodging-house, boarding-house or rooming-house or the owner or lessee of a dwelling or apartment, in a city or town, who neglects to make to a board or officer authorized to require the same a sworn list of the persons residing in such hotel, lodging-house, boarding-house, rooming-house, dwelling or apartment, together with the other particulars or information in relation to such persons required to be given by or pursuant to the election law, shall be guilty of a **misdemeanor.**

3. A keeper of a hotel, lodging-house, boarding-house or rooming-house or the owner or lessee of a dwelling or apartment who makes a report or furnishes a list required by the election law which states that a person has resided on the premises to which the report or list relates for a longer period than he has actually resided therein, or puts upon such a list or in such a report a name under which no person has resided by length of time in said premises is guilty of a **felony.**

4. Any officer or person who refuses to furnish to the secretary of state such information as he may possess concerning voters absent from their election districts in time of war, in the actual military service of this state or of the United States in the army or navy thereof, or who wilfully furnishes false information concerning such absent voters, is guilty of a **felony.**

§ 428. Removal, mutilation or destruction of election booths, supplies, poll-lists or cards of instruction

Any person who:

1. During an election or town meeting, wilfully defaces or injures a voting booth or compartment, or wilfully removes or destroys any of the supplies or other conveniences placed in the voting booths or compartments in pursuance of law; or,

2. Before the closing of the polls, wilfully defaces or destroys any list of candidates to be voted for at such election or town meeting, posted in accordance with the election law; or,

3. During an election or town meeting, wilfully removes or defaces the cards for the instruction of voters, posted in accordance with the election law,

Is guilty of a **misdemeanor.**

§ 429. Refusal to permit employees to attend election

A person or corporation who refuses to an employee entitled to vote at an election or town meeting, the privilege of attending thereat, as provided by the election law, or subjects such employee to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a **misdemeanor.**

§ 430. Misconduct in relation to certificate of nomination and official ballots

A person who:

1. Falsely makes or makes oath to, or fraudulently defaces or destroys, a certificate of nomination or any part thereof; or

2. Files or receives for filing a certificate of nomination, knowing that any part thereof was falsely made; or,

3. Suppresses a certificate of nomination which has been duly filed, or any part thereof; or,

4. Forges or falsely makes the official indorsement of any ballot; or,

5. Having charge of official ballots, destroys, conceals or suppresses them, except as provided by law,

Is guilty of a **felony.**

§ 431. Misconduct in relation to petitions

Any person who:

1. Pays, lends, contributes or promises to pay, lend or contribute any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter to sign a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election or to induce such voter to sign an independent nominating petition for public office; or

2. Gives, offers or promises any office, place or employment, or promises to procure or endeavor to procure any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter to sign a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election or to induce such voter to sign an independent nominating petition for public office; or

3. Receives, agrees or contracts for any money, gift, loan or other valuable consideration, office, place or employment for himself or any other person, for signing a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election or for signing an independent nominating petition for public office; or

4. Pays or agrees to pay money or other valuable consideration, to any person for his services in canvassing for or otherwise procuring the signatures of voters to a petition for the designation of a candidate or candidates for party nomination or for election to a party position to be voted for at a primary election, or to an independent nominating petition for public office, upon the basis of the number of names to such petition procured by such person, or at a fixed amount per name; or

5. Represents to any person as an inducement for signing a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election, or for signing an independent nomination petition for public office, that the person soliciting such signature is to be compensated upon the basis of the number of names procured by such person, or at a fixed amount per name; or

6. Being a signer of a petition, provided for in the election law, for the designation or nomination of a candidate, thereby makes a false statement or makes a false affidavit thereon or a false statement to the witness who authenticates the petition; or

7. Being a subscribing witness to a petition, provided for in the election law, for the designation or nomination of a candidate, thereby makes a false statement or makes a false affidavit thereon; or

8. Alters a petition, provided for in the election law, for the designation or nomination of a candidate, by inserting, adding or changing

therein the name of a candidate, by any means whatsoever, after such petition has been signed by one or more persons,

Is guilty of a misdemeanor.

§ 432. Failure to deliver official ballots

Any person who has undertaken to deliver official ballots to any city, town or village clerk, or inspector as authorized by the election law, and neglects or refuses to do so, is guilty of a misdemeanor.

§ 433. Misconduct of election officers and watchers

Any election officer or watcher who:

1. Reveals to another person the name of any candidate for whom a voter has voted; or,

2. Communicates to another person his opinion, belief or impression as to how or for whom a voter has voted; or,

3. Places a mark upon a ballot, or does any other act by which one ballot can be distinguished from another or can be identified; or,

4. Before the closing of the polls, unfolds a ballot which a voter has prepared for voting,

Is guilty of a misdemeanor.

§ 434. Violation of election law by public officer or employee

A public officer who omits, refuses or neglects to perform any act required of him by the election law, or a public officer or public employee who refuses to permit the doing of any act authorized by such law or wilfully hinders or delays or attempts to hinder or delay the performance of such an act is, if not otherwise provided by law, guilty of a felony.

§ 435. Misdemeanor in relation to elections

Any person who:

1. Acts as an inspector of election or as a clerk at an election, without being able to read and write the English language, or without being otherwise qualified to hold such office; or

2. Being an inspector of election, knowingly and wilfully permits or suffers any person to vote who is not entitled to vote thereat; or,

3. Wilfully and unlawfully obstructs, hinders or delays, or aids or assists in obstructing or delaying any elector on his way to a registration or polling place, or while he is attempting to register or vote; or,

4. Electioneers on election day or on days of registration within a polling place, or in any public street or in a building or room, unless such building or room has been maintained for such purpose for at least six months previous to said election day, or in any public manner within one hundred feet of a polling place; or displays any political poster or placard, except those lawfully provided, in or upon or within one hundred feet of any building used for registration or election purposes during any day for registration or election; or,

5. Removes any official ballot from a polling place before the closing of the polls; or,

6. Unlawfully goes within the guard-rail of any polling place or unlawfully remains within such guard-rail after having been commanded to remove therefrom by any inspector of election; or

7. Enters a voting booth with any voter or remains in a voting booth while it is occupied by any voter, or opens the door of a voting booth when the same is occupied by a voter, with the intent to watch such voter while engaged in the preparation of his ballot, except as authorized by the election law; or,

8. Being or claiming to be a voter, permits any other person to be in a voting booth with him while engaged in the preparation of his ballot, except as authorized by the election law, without openly protesting against and asking that such person be ejected; or,

9. Having lawfully entered a voting booth with a voter, requests, persuades or induces such voter to vote any particular ballot or for any particular candidate, or makes or keeps any memorandum of anything occurring within the booth, or directly or indirectly, reveals to another the name of any candidate voted for by such voter, or anything occurring within such booth; or,

10. Shows his ballot after it is prepared for voting, to any person so as to reveal the contents, or solicits a voter to show the same; or,

11. Places any mark upon his ballot, or does any other act in connection with his ballot with the intent that it may be identified as the one voted by him; or,

12. Places any mark upon, or does any other act in connection with, a ballot or paster ballot, with the intent that it may afterwards be identified as having been voted by any particular person; or,

13. Receives an official ballot from any person other than one of the clerks or inspectors having charge of the ballots; or,

14. Not being an inspector of election or clerk, delivers an official ballot to a voter; or,

15. Not being an inspector of election, receives from any voter a ballot prepared for voting; or,

16. Fails to return to the inspectors of election, before leaving the polling place or going outside the guard-rail, each ballot not voted by him; or,

17. Wilflly[1] defaces, injures, mutilates, destroys or secretes any voting machine which belongs to any municipality for use at elections, and any person who commits or attempts to commit a fraud in the use of any such voting machine during an election; or

18. Not being lawfully authorized, makes or has in his possession a key to a voting machine which has been adopted and will be used in elections; or,

19. Not being an inspector or clerk of election, handles a voted or unvoted ballot or stub thereof, during the canvass of votes at an election; or,

20. Intentionally opens an absentee voter's envelope or examines the contents thereof after the receipt of the envelope by the board of elections and before the close of the polls at the election; or

21. Wilfully disobeys any lawful command of the board of inspectors, or any member thereof,

Is guilty of a **misdemeanor.**

This section shall apply to general and special elections, municipal elections and town meetings, but nothing therein shall prevent any person from receiving or delivering an unofficial sample ballot, or from receiving, delivering and voting an unofficial ballot as authorized by the election law.

[1] So in original. Probably should read "wilfully".

§ 436. **Illegal voting**

Any person who:

1. Knowingly votes or offers or attempts to vote at any election, or town meeting, when not qualified; or,

2. Procures, aids, assists, counsels or advises any person to go or come into any town, ward or election district, for the purpose of voting at any election, or town meeting, knowing that such person is not qualified; or,

3. Votes or offers or attempts to vote at an election, or town meeting more than once; or votes or offers or attempts to vote at an election, or town meeting under any other name than his own; or votes or offers or attempts to vote at an election, or town meeting in an election district or from a place where he does not reside; or,

4. Procures, aids, assists, commands or advises another to vote or offer or attempt to vote at an election, or town meeting, knowing that such person is not qualified to vote thereat; or

5. Being an inhabitant of another state or county, votes or offers or attempts to vote at an election, or town meeting in this state or permits, aids, assists, abets, procures, commands or advises another to commit or attempts any act named in this section; or,

6. Prompts a person, applying to vote, in answering questions put to him by the inspectors concerning his identity or qualifications for voting; or,

7. Being an applicant for an absentee voter's ballot, makes a material false statement in his application, or a person who makes a material false statement in a medical certificate or an affidavit filed in connection with an application for an absentee voter's ballot; or,

8. Not being a qualified absentee voter, and having knowledge or being chargeable with knowledge of that fact, votes or attempts to vote as an absentee voter; or

9. Fraudulently signs the name of another upon an absentee voter's envelope or aids in doing or attempting to do a fraudulent act in connection with an absentee vote cast or attempted to be cast; or,

10. Falsely pretends or represents to the inspectors of election or any of them that he is incapacitated to mark his ballot, for the purpose of obtaining assistance in voting under the provisions of the election law,

Is guilty of a **felony.**

An offer or attempt under this section shall be deemed to be the doing of any act made necessary by the election law preliminary to the delivery of a ballot to an elector or the deposit of the ballot in the ballot box or his admission to the booth or voting machine inclosure.

§ 437. **Unlawful use of pasters**

An election officer or other person who uses a paster upon an official ballot, at any election, except as authorized and in the manner provided by the election law is guilty of a **felony.**

§ 438. **False returns; unlawful acts respecting returns**

1. An inspector or clerk of an election or town meeting, who intentionally makes, or attempts to make, a false canvass of the ballots cast thereat, or any false statement of the result of a canvass, though not signed by a majority of the inspectors, or any person who induces or attempts to induce any such inspector or clerk so to do, is guilty of a **felony.**

2. Any election officer who shall sign any statement of the canvass of the votes cast at an election or town meeting at any other place than the polling place, or at any time other than immediately after the canvass is completed, except by direction of a court or judge of competent jurisdiction, and any election officer or person who shall take from the polling place any such statement before it shall have been signed as provided by the election law, is guilty of a **felony.**

§ 439. **Furnishing money or entertainment to induce attendance at polls**

Any person who directly or indirectly by himself or through any other person in connection with or in respect of any election:

1. Gives or provides, or causes to be given or provided, or shall pay for wholly or in part, any meat, drink, tobacco, refreshment or provision, to or for any person, other than as part of the traveling expenses of candidates, political agents, committees and public speakers; or,

2. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration, for any other pur-

pose than the following matters and services at their reasonable, bona fide and customary value is guilty of a **misdemeanor:** The cost of preparation and presentation of radio, television, motion pictures or any other means of mass communication, speeches, advertisements or personal appearances, rent of halls and compensation of speakers, music and fireworks, for public meetings, and expenses of advertising the same, together with the usual and minor expenses incident thereto; the preparation, printing and publication of posters, lithographs, banners, notices and literary material; the compensation of agents to supervise and prepare articles and advertisements in the newspapers, to examine questions of public interest bearing on the election, and report on the same; the pay of newspapers for advertisements, pictures, reading matter and additional circulation, the preparation and circulation of circular letters, pamphlets and literature bearing on the election; rent of offices and club rooms, compensation of such clerks and agents as shall be required to manage the necessary and reasonable business of the election and of attorneys at law for actual legal services rendered in connection with the election; the preparation of lists of voters, payment of necessary personal expenses by a candidate; the reasonable traveling expenses of the committeemen, agents, clerks and speakers, postage, express, telegrams and telephones; the expenses of preparing, circulating and filing a petition for nomination; compensation of poll workers or watchers, and food for the same, and election officers, hiring of vehicles for conveying electors to the polls not exceeding three vehicles for each election district in a city and not exceeding six vehicles in any other election district; and the actual necessary railroad traveling expenses for transportation of voters to and from their places of residence for the purposing of voting.

§ 440. **Giving consideration for franchise**

Any person who directly or indirectly, by himself or through any other person:

1. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election for any particular person or persons, or for or against any particular proposition submitted to voters, or to induce such voter to come to the polls or remain away from the polls at such election, or to induce such voter or other person to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such voter or other person having voted or refrained from voting or having voted or refrained from voting for or against any particular person or for or against any proposition submitted to voters, or having come to the polls or remained away from the polls at such election, or having placed or caused to be placed or refrained from placing or causing to be placed his or any other name upon the registry of voters; or,

2. Gives, offers or promises any office, place or employment, or promises to procure or endeavor to procure any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election, for or against any particular person or for or against any proposition submitted to voters, or to induce any voter or other person to place or cause to be placed or refrain from placing or causing to be placed his or any other name upon a registry of voters; or,

3. Gives, offers or promises any office, place, employment or valuable thing as an inducement for any voter or other person to procure or aid in procuring either a large or a small vote, plurality or majority at any election district or other political division of the state, for a

candidate or candidates to be voted for at an election; or to cause a larger or smaller vote, plurality or majority to be cast or given for any candidate or candidates in one such district or political division than in another; or,

4. Makes any gift, loan, promise, offer, procurement or agreement as aforesaid to, for or with any person to induce such person to procure or endeavor to procure the election of any person or the vote of any voter at any election; or,

5. Procures or engages or promises or endeavors to procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement the election of any person, or the vote of any voter, at such election; or,

6. Advances or pays or causes to be paid, any money or other valuable thing, to or for the use or any other person with the intent that the same, or any part thereof, shall be used in bribery at any election, or knowingly pays or causes to be paid any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part expended in bribery at any election,

Is guilty of a **felony.**

§ 441. Receiving consideration for franchise

Any person who, directly or indirectly, by himself or through any other person:

1. Receives, agrees or contracts for, before or during an election, any money, gift, loan or other valuable consideration, office, place or employment for himself or any other person, for voting or agreeing to vote, or for coming or agreeing to come to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from registering as a voter, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or for refraining or agreeing to refrain from voting for or against any particular person or persons at any election, or for or against any proposition submitted to voters at such election; or,

2. Receives any money or other valuable thing during or after an election on account of himself or any other person having voted or refrained from voting at such an election, or having registered or refrained from registering as a voter, or on account of himself or any other person having voted or refrained from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election, or on account of himself or any other person having come to the polls or remained away from the polls at such election, or having registered or refrained from registering as a voter, or on account of having induced any other person to vote or refrain from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election,

Is guilty of a **felony.**

§ 442. Offender a competent witness; witnesses' immunity

1. A person offending against any section of this article is a competent witness against another person so offending and may be compelled to attend and testify on any trial, hearing or proceeding or investigation in the same manner as any other person.

2. In any criminal proceeding before a court, magistrate or grand jury for a violation of any of the provisions of this article, the court, magistrate or grand jury may confer immunity in accordance with the provisions of the penal law.

§ 443. Bribery or intimidation of elector in military service of United States

Any person who, directly or indirectly, by bribery, menace or other corrupt means, controls, or attempts to control an elector of this state

enlisted in the military service of the United States, in the exercise of his rights under the election law, or annoys, injures or punishes him for the manner in which he exercises such right, is guilty of a **misdemeanor.**

§ 444. Duress and intimidation of voters

Any person or corporation who directly or indirectly:

1. Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting at any election or to vote or refrain from voting for or against any particular person or for or against any proposition submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or,

2. By abduction, duress or any forcible or fraudulent device or contrivance whatever impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election; or,

3. Being an employer pays his employees the salary or wages due in "pay envelopes," in which there is enclosed or upon which there is any written or printed political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees, or within ninety days of a general election puts or otherwise exhibits in the establishment or place where his employees are engaged in labor, any handbill or placard containing any threat, notice or information, that if any particular ticket or candidate is elected or defeated, work in his place or establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employees reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees,

Is guilty of a **misdemeanor**, and if a corporation shall in addition forfeit its charter.

§ 445. Pernicious political activities

It shall be unlawful for any person to: 1. Intimidate, threaten or coerce, or to attempt to intimidate, threaten or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or for the purpose of causing such other person to vote for, or not to vote for, any candidate for the office of governor, lieutenant-governor, attorney-general, comptroller, judge of any court, member of the senate, or member of the assembly at any election held solely or in part for the purpose of selecting a governor, lieutenant-governor, attorney-general, comptroller, any judge or any member of the senate or any member of the assembly; or,

2. Directly or indirectly, promise any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any act of congress or of the legislature appropriating funds for work relief or relief purposes, to any person as consideration, favor or reward for any political activity or for the support of or opposition to any candidate or any political party in any nominating convention or in any election; or

3. Deprive, attempt to deprive or threaten to deprive, by any means, any person of any employment, position, work, compensation or other

benefit provided for or made possible in whole or in part by any act of congress or of the legislature appropriating funds for the work relief or relief purposes, on account of race, creed, color, national origin, or any political activity or on account of support for or opposition to any candidate or any political party in any nominating convention or election; or

4. Solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation, employment or other benefit provided for or made possible by any act of congress or of the legislature appropriating, or authorizing the appropriation of, funds for work relief or relief purposes; or

5. Furnish or to disclose, or to aid or assist in furnishing or disclosing, any list or names of persons receiving compensation, employment or benefits provided for or made possible by any act of congress or of the legislature appropriating or authorizing the appropriation of, funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.

No part of any appropriation made by any act of congress or of the legislature, heretofore or hereafter enacted, making appropriations for work relief, relief, or otherwise to increase employment by providing loans and grants for public works projects, shall be used, and no authority conferred by any such act upon any person shall be exercised or administered, for the purpose of interfering with, restraining or coercing any individual in the exercise of his right to vote and to vote as he may choose at any election.

Any person who violates any of the foregoing provisions of this section shall be guilty of a misdemeanor.

All provisions of this act shall be in addition to, not in substitution for, any other sections of existing law or of this act. If any provision of this act, or the application of such provision to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 446. Conspiracy to promote or prevent election

Any two or more persons who conspire to promote or prevent the election of any person to a public office by the use of any means which are prohibited by law, shall be punishable by imprisonment for not more than one year; provided any act besides such agreement be done to effect the object thereof by one or more of the parties to such conspiracy.

§ 447. Political assessments

Any person who:

1. Being an officer or employee of the state, or of a political subdivision thereof, directly or indirectly uses his authority or official influence to compel or induce any other officer or employee of the state or a political subdivision thereof, to pay or promise to pay any political assessment; or,

2. Being an officer or employee of the state, or of a political subdivision thereof, directly or indirectly, gives, pays or hands over to any other such officer or employee any money or other valuable thing on account of or to be applied to the promotion of his election, appointment or retention in office, or makes any promise, or gives any subscription to such officer or employee to pay or contribute any money or other valuable thing for any such purpose or object; or,

3. Being such an officer or employee and having charge or control of any building, office or room occupied for any purpose of the state or of a political subdivision thereof, consents that any person enter the same for the purpose of making, collecting, receiving or giving notice of any political assessment; or,

4. Enters or remains in any such office, building or room, or sends or directs any letter or other writing thereto, for the purpose of giving notice of demanding or collecting, or being therein, gives notice of, demands, collects or receives, any political assessment; or

5. Prepares or makes out, or takes any part in preparing or making out, any political assessment, subscription or contribution, with the intent that the same shall be sent or presented to or collected of any such officer or employee; or,

6. Sends or presents any political assessment, subscription, or contribution to, or requests its payment of, any such officer or employee,

Is guilty of a **misdemeanor.**

§ 448. Corrupt use of position or authority

Any person who:

1. While holding public office, or being nominated or seeking a nomination or appointment therefor, corruptly uses or promises to use, directly or indirectly, any official authority or influence possessed or anticipated, in the way of conferring upon any person, or in order to secure, or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration; or,

2. Being a public officer or employee of the state or a political subdivision having, or claiming to have, any authority or influence affecting the nomination, public employment, confirmation, promotion, removal, or increase or decrease of salary of any public officer or employee, or promises or threatens to use, any such authority or influence, directly or indirectly to affect the vote or political action of any such public officer or employee, or on account of the vote or political action of such officer or employee; or,

3. Makes, tenders or offers to procure, or cause any nomination or appointment for any public office or place, or accepts or requests any such nomination or appointment, upon the payment or contribution of any valuable consideration, or upon an understanding or promise thereof; or,

4. Makes any gift, promise or contribution to any person, upon the condition or consideration of receiving an appointment or election to a public office or a position of public employment, or for receiving or retaining any such office or position, or promotion, privilege, increase of salary or compensation therein, or exemption from removal or discharge therefrom,

Is guilty of a **felony.**

§ 449. Failure to file statement of receipts, expenditures and contributions

Any candidate for election to public office, or any candidate for nomination to public office at a primary election, or any treasurer of a political committee as defined by the election law, who neglects to file, as required by the election law, a statement of receipts, expenditures and contributions shall be guilty of a **misdemeanor.**

§ 450. Procuring fraudulent certificates in order to vote

1. Any person who knowingly and wilfully procures from any court, judge, clerk or other officer, a certificate of naturalization, which has

been allowed, issued signed or sealed in violation of the laws of the United States or of this state, with intent to enable himself or any other person to vote at any election when he or such person is not entitled by the laws of the United States to become a citizen or to exercise the elective franchise; or

2. Any person who knowingly and wilfully procures from the board of regents of the state of New York, a certificate of literacy, or from the officials of any school or institution of learning a certificate or diploma showing that he or another has completed the work of an approved eighth grade elementary school or of a higher school in which English is the language of instruction, which has been allowed, issued, signed or sealed in violation of the laws of the United States or of this state, or which is for any other reason fraudulent, with intent to enable himself or any other person to vote at any election when he or such person is not entitled by the laws of the United States or of this state to exercise the elective franchise, is guilty of a **misdemeanor.**

§ 451. Issuing fraudulent certificate of literacy

Any person who:

1. Knowingly or wilfully issues a certificate of literacy to another in order to vote, other than on forms provided by the board of regents of the state of New York for that purpose; or

2. Knowingly and wilfully issues a certificate of literacy to another in order to vote, other than from a place designated by the board of education or superintendent of schools for that purpose,

Is guilty of a **misdemeanor.**

§ 452. Presenting fraudulent certificates to registry boards to procure registration

A person who knowingly and wilfully presents to any board of officers, for the purpose of having himself or any other person placed upon any list or registry of voters, or to any board of officers for the purpose of enabling himself or any other person to vote at any election, any certificate of naturalization which has been allowed or issued by or procured from any judicial officer, clerk of a court, or other ministerial officer of a court, or any certificate of literacy which has been procured from the board of regents of the state of New York, or a certificate or diploma which has been procured from the officials of any school or institution of learning showing that he or another has completed the work of an approved eighth grade elementary school or of a higher school in which English is the language of instruction, by any false statement, oath or representation, or in violation of the laws of the United States or of this state, with intent to enable any person to vote at any election, when such person is not entitled by the laws of the United States to become a citizen, or by the laws of this state to exercise the elective franchise, is guilty of a **felony.**

§ 453. Soliciting from candidates

Any person who solicits from a candidate for an elective office money or other property, or who seeks to induce such candidate who has been placed in nomination to purchase any ticket, card or evidence of admission to any ball, picnic, fair or entertainment of any kind, is guilty of a **misdemeanor;** but this section shall not apply to a request for a contribution of money by an authorized representative of the political party, organization or association to which such candidate belongs.

§ 454. Judicial candidates not to contribute

No candidate for a judicial office shall, directly or indirectly, make any contribution of money or other thing of value, nor shall any contribution be solicited of him; but a candidate for a judicial office may make such legal expenditures other than contributions, as are authorized by section four hundred thirty-nine of this article.

§ 455. Limitation of amounts to be expended by or for candidates

1. The total amount expended by a candidate for a public office, voted for at an election, by the qualified electors of the state or any political subdivision thereof, for any of the purposes specified in section four hundred thirty-nine of this chapter, for contributions to political committees, as that term is defined in section three hundred twenty of the election law, or for any purpose tending in any way, directly or indirectly, to promote, or aid in securing, his nomination and election shall not exceed the amount specified herein. By a candidate for governor, the sum of twenty thousand dollars; by a candidate for any other elective state office, other than a judicial office, the sum of twelve thousand dollars; by a candidate for the office of representative in congress or presidential elector, the sum of eight thousand dollars; by a candidate for the office of state senator, the sum of four thousand dollars; by a candidate for the office of member of assembly, two thousand dollars; by a candidate for any other public office to be voted for by the qualified electors of a county, city, town or village, or any part thereof, if the total number of votes cast therein for all candidates for the office of governor at the last preceding state election, shall be five thousand or less, the sum of one thousand dollars; if the total number of votes cast therein at such last preceding state election be in excess of five thousand, the sum of six dollars for each one hundred votes in excess of such number may be added to the amounts above specified. Any candidate for a public office who shall expend for the purposes above mentioned an amount in excess of the sum herein specified shall be guilty of a **misdemeanor.**

2. The amount expended in the election of an individual candidate by all committees taking part solely in his election and by all persons other than the candidate shall not exceed in all the amount authorized by the preceding subdivision to be expended by such candidate. Any person who knowingly shall aid or participate in the expenditure for the purposes mentioned in this subdivision of an amount in excess of the amount specified in this subdivision shall be guilty of a **misdemeanor.**

§ 456. Political contributions by owners of polling places prohibited

A person, who being the owner of premises contracted for or used as a place of registration or as a polling place for any election or official primary, who makes, offers or promises to make a political contribution to any party committee, candidate or person, or any person who makes, promises or offers to make any such political contribution as an inducement for the hiring of premises owned by him for use as a place of registration or polling place for any election or official primary, shall be guilty of a **misdemeanor.**

§ 457. Printing or other reproduction of certain political literature

No person shall print, publish, reproduce or distribute in quantity, nor order to be printed, published, reproduced or distributed by any method any handbill, pamphlet, circular, post card, placard or letter for another, which contains any statement, notice, information, allegation or other material concerning any political party, candidate, committee, person, proposition or amendment to the state constitution, whether in favor of or against a political party, candidate, committee, person, proposition or amendment to the state constitution, in connection with any election of public officers, party officials, candidates for nomination for public office, party position, proposition or amendment to the state constitution without also printing or reproducing thereon legibly and in the English language the name and post-office address of the printer thereof and of the person or committee at whose instance or request such handbill, pamphlet, circular, post card, placard or letter is so printed, published, reproduced or distributed, and of the person who ordered such printing,

publishing, reproduction or distribution, and no person nor committee shall so print, publish, reproduce or distribute or order to be printed, published, reproduced or distributed any such handbill, pamphlet, circular, post card, placard or letter without also printing, publishing, or reproducing his or its name and post-office address thereon. A violation of the provisions of this section shall constitute a **misdemeanor.**

The term "printer" as used in this section means the principal who or which by independent contractual relationship is responsible directly to the person or committee at whose instance or request a handbill, pamphlet, circular, post card, placard or letter is printed, published, reproduced or distributed by such principal, and does not include a person working for or employed by such a principal.

§ 458. **Penalty**

Any person convicted of a misdemeanor under this article shall for a first offense be punished by imprisonment for not more than one year, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. Any person convicted of a misdemeanor under this article for a second or subsequent offense shall be guilty of a **felony.**

§ 459. **Crimes against the elective franchise not otherwise provided for**

Any person who knowingly and wilfully violates any provision of this chapter, which violation is not specifically covered by any of the previous sections of this article, is guilty of a **misdemeanor.**

§ 460. **Political contributions prohibited; penalty; witnesses' privilege**

No corporation or joint-stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, joint-stock or other association organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stock-holder, attorney or agent of any corporation or joint-stock association which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a **misdemeanor.**

§ 461. **Destroying or delaying election returns**

A messenger appointed by authority of law to receive and carry a report, certificate or certified copy of any statement relating to the result of any election, who wilfully mutilates, tears, defaces, obliterates or destroys the same, or does any other act which prevents the delivery of it as required by law; and a person who takes away from such messenger any such report, certificate or certified copy, with intent to prevent its delivery, or who wilfully does any injury or other act in this section specified, is guilty of a **felony.**

§ 462. **Restrictions on voting; persons convicted of crime**

No person who has been convicted of a felony shall have the right to register for or vote at any election, except as provided in section one hundred fifty-two of the election law.

The prohibition to vote at an election, contained in any statute of the state, shall not apply to a person heretofore or hereafter convicted of

any crime, who has been sentenced or committed therefor to one of the houses of refuge, or other reformatories organized under the statutes of the state; nor shall the prohibition to vote in any election extend to any person who shall have received a certificate of good conduct granted by the board of parole pursuant to the provisions of the executive law to remove the disability under this section because of such conviction.

[EXECUTIVE LAW]

§ 44. The executive law is hereby amended by inserting therein a new section, to be section one hundred thirty-five-a, to read as follows:

§ 135-a. Notary public or commissioner of deeds; acting without appointment; fraud in office

1. Any person who holds himself out to the public as being entitled to act as a notary public or commissioner of deeds, or who assumes, uses or advertises the title of notary public or commissioner of deeds, or equivalent terms in any language, in such a manner as to convey the impression that he is a notary public or commissioner of deeds without having first been appointed as notary public or commissioner of deeds, or

2. A notary public or commissioner of deeds, who in the exercise of the powers, or in the performance of the duties of such office shall practice any fraud or deceit, the punishment for which is not otherwise provided for by this act, shall be guilty of a misdemeanor.

[GENERAL BUSINESS LAW]

§ 45. The general business law is hereby amended by inserting therein a new article, to be article two, to read as follows:

ARTICLE 2—SABBATH

Sec.

2. The Sabbath.
3. Sabbath breaking.
4. Punishment for Sabbath breaking.
5. Labor prohibited on Sunday.
6. Persons observing another day as a Sabbath.
7. Public sports and exercises on Sunday.
8. Trades, manufacturers,[1] and mechanical employments prohibited on Sunday.
9. Public traffic on Sunday.
10. Local option in certain cities.
11. Serving process on Sunday.
12. Forfeiture of commodities exposed for sale on Sunday.
13. Maliciously serving process on Saturday on persons who keep Saturday as holy time.
14. Processions and parades on Sunday.
15. Public entertainment on Sunday.
16. Barbering on Sunday.

[1] So in original. Does not conform to section heading in text.

§ 2. The Sabbath

The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

§ 3. Sabbath breaking

A violation of the foregoing prohibition is Sabbath breaking.

§ 4. Punishment for Sabbath breaking

Sabbath breaking is a misdemeanor, punishable by a fine of not less than five dollars and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both, but for a second or other offense, where the party shall have been previously convicted, it shall be punishable by a fine not less than ten dollars and not more than twenty dollars or by imprisonment in a county jail not less than five nor more than twenty days, or both.

§ 5. Labor prohibited on Sunday

All labor on Sunday is prohibited, excepting the works of necessity and charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community.

§ 6. Persons observing another day as a Sabbath

It is a sufficient defense to a prosecution for work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and does not labor on that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons observing the first day of the week as holy time.

§ 7. Public sports and exercises on Sunday

All public sports, exercises or shows, upon the first day of the week, and all noise unreasonably disturbing the peace of the day are prohibited, except as hereinafter provided.

Notwithstanding the provisions of this section, it shall be lawful to conduct, witness, participate or engage in any form of public sports, exercises or shows which are conducted or engaged in primarily for the entertainment of spectators, not specifically prohibited by any provision of the law, on the first day of the week after five minutes past one o'clock in the afternoon, to witness which the public is invited or an admission fee is charged, either directly or indirectly, in a city, town or village as shall be permitted by local law or ordinance heretofore or hereafter adopted by the common council or other legislative body of the city, town or village permitting such public sports, exercises or shows on such day and after such hour.

Nothing herein contained shall be deemed to prohibit private sports, games or recreational activities which are engaged in primarily for the personal enjoyment, recreation and health of the participants, on the first day of the week, conducted in a manner which does not constitute a serious interruption of the repose or religious liberty of the community.

§ 8. Trades, manufactures, and mechanical employments prohibited on Sunday

All trades, manufacturers,[1] agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community.

[1] So in original. Probably should read "manufactures".

§ 9. Public traffic on Sunday

All manner of public selling or offering for sale of any property upon Sunday is prohibited, except as follows: 1. Articles of food may be sold, served, supplied and delivered at any time before ten o'clock in the morning:

2. Meals may be sold to be eaten on the premises where sold at any time of the day;

3. Caterers may serve meals to their patrons at any time of the day;

4. Prepared tobacco, bread, milk, eggs, ice, soda-water, fruit, flowers, confectionery, souvenirs, newspapers, magazines, gasoline, oil, tires, cemetery monuments, drugs, medicine and surgical instruments may be sold and delivered at any time of the day.

5. Grocers, delicatessen dealers and bakeries may sell, supply, serve and deliver cooked and prepared foods, between the hours of four o'clock in the afternoon and half-past seven o'clock in the evening, in addition to the time provided for in subdivision one hereof, and, elsewhere than in cities and villages having a population of forty thousand or more, delicatessen dealers, bakeries and farmers' markets or roadside stands selling fresh vegetables and other farm produce, and fishing tackle and bait stores may sell, supply, serve and deliver merchandise usually sold by them, at any time of the day.

6. Persons, firms or corporations holding licenses and/or permits issued under the provisions of the alcoholic beverage control law permitting the sale of beer at retail, may sell such beverages at retail on Sunday before three antemeridian and after one post-meridian for off-premises consumption to persons making purchases at the licensed premises to be taken by them from the licensed premises.

The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods or meats, fresh or salt, at any hour or time of the day. Delicatessen dealers shall not be considered as caterers within subdivision three hereof.

§ 10. Local option in certain cities

Notwithstanding any other provision of law, the local legislative body of any city of one million or more shall have power by local law or ordinance adopted prior to December thirty-first, nineteen hundred sixty-three to permit the conduct of a trade or public selling or offering for sale of any property on Sunday, provided that the person who conducts such trade or public selling or offering for sale (1) is a person who as the proprietor of the business uniformly keeps another day of the week as holy time, (2) does not himself labor, employ others to labor in, by or with another conduct a trade or publicly sell or offer for sale any property on the day he keeps as holy time and closes the business on Saturday, (3) that such labor, trade or business will be conducted in its normal course by the proprietor and members of his immediate family, as the sole means of occupation of the proprietor, and, (4) if permitted to conduct a trade or to sell or to offer to sell any property on Sunday, the proprietor will do so in such a manner as not to interrupt or disturb the repose of religious liberty of the community. The local legislative body of such city may impose other reasonable restrictions on the conduct of any such trade or public selling or offering for sale of property, including the hours during which the same may be permitted.

For the purpose of this section, the term "another day of the week" shall mean the period from sundown on such day of the week to sundown of the next day or any twenty-four hour period other than Sunday.

§ 11. Serving process on Sunday

All service of legal process, of any kind whatever, on the first day of the week is prohibited, except in cases of breach of the peace or apprehended breach of the peace or when sued out for the apprehension of a person charged with crime, or except where service is specially authorized by statute. Service of any process upon said day except as herein permitted is absolutely void for any and every purpose whatsoever.

§ 12. Forfeiture of commodities exposed for sale on Sunday

In addition to the penalty imposed by section four, all property and commodities exposed for sale on the first day of the week in violation

of the provisions of this article shall be forfeited. Upon conviction of the offender by a justice of the peace of a county, or by any police justice or magistrate, such officer shall issue a warrant for the seizure of the forfeited articles, which, when seized, shall be sold on one day's notice, and the proceeds paid to the overseers of the poor, for the use of the poor of the town or city.

§ 13. Maliciously serving process on Saturday on person who keeps Saturday as holy time

Whoever maliciously procures any process in a civil action to be served on Saturday, upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

§ 14. Processions and parades on Sunday

All processions and parades on Sunday in any city, excepting only funeral processions for the actual burial of the dead, and processions to and from a place of worship in connection with a religious service there celebrated, are forbidden; and in such excepted cases there shall be no music, fireworks, discharge of cannon or firearms, or other disturbing noise. At a military funeral, or at the funeral of a United States soldier, sailor or marine, or of a national guardsman, or of a deceased member of an association of veteran soldiers, sailors or marines, or of a disbanded militia regiment, or of a secret fraternal society, or of an association of employees of the national, state, or municipal governments, music may be played while escorting the body; also in patriotic military processions on Sunday previous to Decoration day, known as memorial Sunday, to cemeteries or other places where memorial services are held, and also by organizations of the national guard or naval militia or of an association of employees of the national, state, or municipal governments, attending religious service on Sunday; but in no case within one block of a place of worship where service is then being celebrated. Music may also be played in any procession conducted by a religious organization or society in connection with a religious service or religious rally after one o'clock noon on Sunday.

Notwithstanding the provisions of this section, it shall be lawful to conduct, witness, participate or engage in processions or parades and to play music in any such procession or parade on Sunday after two o'clock in the afternoon, in a city, town or village, as shall be permitted by a local law or ordinance heretofore or hereafter adopted by the common council or other legislative body of a city, town or village permitting such processions and parades on such day and after such hour. A person wilfully violating any provision of this section is punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days, or by both.

§ 15. Public entertainment on Sunday

All legitimate theatrical performances, concert and recital dances, motion picture exhibitions, or other public exhibitions, exhibits, shows or entertainment on the first day of the week are prohibited, except as hereinafter provided.

Notwithstanding the provisions of this section, or of any general or local act, it shall be lawful to conduct or participate in any public entertainment on the first day of the week after five minutes past one o'clock in the afternoon, to witness which the public is invited or an admission fee is charged, either directly or indirectly, in a city, town or village as shall be permitted, by a local law or ordinance heretofore or hereafter

adopted by the common council or other legislative body of the city, town or village, permitting the same on such day and after such hour. If in any city, town or village concert or recital dances, motion pictures or legitimate theatrical productions are now exhibited on the first day of the week, they may continue to be so exhibited during such times as the exhibition of such dances, pictures, productions and performances shall not have been prohibited by a local law or ordinance heretofore or hereafter adopted by the common council or other legislative body of such city, town or village.

§ 16. Barbering on Sunday

Any person who carries on or engages in the business of shaving, hair cutting or other work of a barber on the first day of the week, shall be deemed guilty of a **misdemeanor**, and upon conviction thereof shall be fined not more than five dollars; and upon a second conviction for a like offense shall be fined not less than ten dollars and not more than twenty-five dollars, or be imprisoned in the county jail for a period of not less than ten days, nor more than twenty-five days, or be punishable by both such fine and such imprisonment at the discretion of the court of [1] magistrate.

[1] So in original. Probably should read "or".

§ 46. [This section added a new section 23 to the General Business Law relating to selling of disabled horses. Said section 23, however, was repealed by L.1965, c. 1048, § 1, eff. July 20, 1965, and the subject matter was incorporated as section 358 of the Agriculture and Markets Law by L.1965, c. 1047, § 2, eff. Sept. 1, 1967.]

§ 47. Such law is hereby amended by inserting therein a new section, to be section twenty-four, to read as follows:

§ 24. Mock auction

A person who buys or sells, or pretends to buy or sell, any goods, wares, or merchandise, or any species of property except ships, vessels, or real or leasehold estate, exposed for sale by auction, if an actual sale, purchase, and change of ownership therein does not thereupon take place, is guilty of a **misdemeanor**, punishable by imprisonment for thirty days, or by fine not exceeding one hundred dollars or both.

A person who obtains money or property from another, or obtains the signature of another to any writing, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is guilty of a **misdemeanor**; and in addition thereto he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as an auctioneer in this state.

§ 48. Such law is hereby amended by inserting therein a new section, to be section forty-seven-a, to read as follows:

§ 47–a. Pawnbroker dealing with a child

No pawnbroker or person in the employ of a pawnbroker shall receive or purchase any goods, chattels, wares or merchandise, or make any loan or advance or permit to be loaned or advanced to any child actually or apparently under the age of sixteen years any money, or in any manner directly or indirectly receive any goods, chattels, wares or merchandise from any such child in pledge for loans made or to be made to it or to any other person or otherwise howsoever. It shall be no defense to a prosecution for a violation of this section, that in the transaction upon which the prosecution is based the child acted as the agent or representative of another, or that the defendant dealt with such child as the agent or representative of another.

CONFORMING AMENDMENTS

§ 49. Such law is hereby amended by inserting therein a new section, to be section sixty-three-a, to read as follows:

§ 63-a. Purchasing property from a child

No owner, keeper or proprietor of a junk shop, junk cart or other vehicle or boat or vessel used for the collection of junk, or any person in the employ of such owner, keeper, or proprietor, or any collector of junk, shall receive or purchase any goods, chattels, wares or merchandise from any child under the age of sixteen years. It shall be no defense to a prosecution for a violation of this section, that in the transaction upon which the prosecution is based the child acted as the agent or representative of another, or that the defendant dealt with such child as the agent or representative of another.

§ 50. Such law is hereby amended by inserting therein a new article, to be article nine, to read as follows:

ARTICLE 9—BILLS OF LADING, WAREHOUSE RECEIPTS, OTHER RECEIPTS AND VOUCHERS

Sec.

90. Fictious [1] bills of lading, receipts and vouchers.
91. Offenses by pipe-line corporations.
92. Erroneous bills of lading or receipts, issued in good faith, excepted.
93. Duplicate receipts must be marked "duplicate."
94. Selling, hypothecating or pledging property received for transportation or storage.
95. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.
96. Property demanded by process of law.
97. Penalty for failure to issue bill of lading.
98. Issue of bill of lading for goods not received.
99. Issue of bill of lading containing false statement.
100. Issue of duplicate bill of lading not so marked.
101. Negotiation of bill of lading for goods subject to security interest or lien.
102. Negotiation of bill of lading when goods are not in common carrier's possession.
103. Inducing common carrier to issue bill of lading when goods have not been received.
104. Issue of a non-negotiable bill of lading not so marked.
105. Issue of warehouse receipts for goods not received.
106. Issue of warehouse receipt containing false statement.
107. Issue of duplicate warehouse receipt not so marked.
108. Issue for warehouseman's goods of warehouse receipts which do not state that fact.
109. Delivery of goods without obtaining negotiable warehouse receipt.
110. Negotiation of warehouse receipt for goods subject to security interest or lien.
111. Issue of non-negotiable warehouse receipt not so marked.

[1] So in original. Does not conform to section heading in text.

§ 90. Fictitious bills of lading, receipts and vouchers

A person who: Being the master, owner or agent of any vessel, or officer or agent of any railway, express or transportation company, or otherwise being or representing any carrier, delivers any bill of lading, receipt or other voucher, by which it appears that merchandise of any kind has been shipped on board a vessel, or delivered to a railway, express or transportation company, or other carrier, unless the same has been so shipped or delivered and is at the time actually under the con-

trol of such carrier, or the master, owner or agent of such vessel or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher, is guilty of a misdemeanor.

§ 91. Offenses by pipe-line corporations

A pipe-line corporation, or a person being the officer, agent, manager or representative thereof, who:

1. Accepts, makes or issues any receipt, certificate or order of any kind for any commodity, unless the commodity represented is actually at the time in the possession of the corporation; or,

2. Delivers to any person any petroleum or other commodity received for transportation by such corporation without the presentation and surrender of all vouchers, receipts, orders or certificates that have been issued or accepted for the same; or,

3. Having parted with the possession of any commodity and having received therefor an order, voucher, receipt or certificate, shall reissue the same, or shall not cause it to be cancelled by the word "cancelled" stamped or printed legibly across the face thereof, and to be filed and recorded by such corporation, as provided by law,

Is guilty of a misdemeanor.

§ 92. Erroneous bills of lading or receipts, issued in good faith, excepted

No person can be convicted of an offense under the last two sections, for the reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher did not correspond with the description given in such instrument of merchandise received, if such description corresponds substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels or brands were untrue.

§ 93. Duplicate receipts must be marked "duplicate"

A person mentioned in sections ninety and ninety-one, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while a former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is guilty of a misdemeanor.

§ 94. Selling, hypothecating or pledging property received for transportation or storage

A person mentioned in sections ninety and ninety-one, who sells or pledges any merchandise for which a bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is guilty of a misdemeanor.

§ 95. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property

A person mentioned in section ninety, who delivers to another any merchandise for which a bill of lading, receipt or voucher has been issued, unless such bill of lading, receipt or voucher bears upon its face the words, "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery or a bond, undertaking, letter of guarantee or indemnity is given in lieu thereof at the time of such delivery, or unless, in case of a partial delivery, a memorandum thereof is endorsed upon such bill of lading, receipt or voucher, is guilty of a misdemeanor.

§ 96. Property demanded by process of law

The last two sections do not apply to any case where property is demanded by virtue of legal process.

§ 97. Penalty for failure to issue bill of lading

Any person who, being the owner, master or agent of any vessel transporting merchandise or property between ports of this state, departs with such vessel or causes such vessel to depart from the port where such merchandise or property is taken on board, without giving or tendering to the shipper of such merchandise or property, if a bill of lading be demanded by such shipper, a bill of lading or shipping document as provided by section three hundred ninety-eight of this chapter, is guilty of a **misdemeanor.**

§ 98. Issue of bill of lading for goods not received

Any officer, agent or servant of a common carrier, who with intent to defraud issues or aids in issuing a bill of lading knowing that all or any part of the goods for which such bill of lading is issued have not been received by such common carrier, or by an agent of such common carrier, or by a connecting common carrier, or are not under the common carrier's control at the time of issuing such bill, shall be guilty of a **misdemeanor.**

§ 99. Issue of bill of lading containing false statement

Any officer, agent, or servant of a common carrier, who with intent to defraud issues or aids in issuing a bill of lading for goods knowing that it contains any false statement, shall be guilty of a **misdemeanor.**

§ 100. Issue of duplicate bill of lading not so marked

Any officer, agent or servant of a common carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill of lading for goods, other than goods to be transported to any place in the United States except Alaska and Hawaii, without plainly placing upon the face thereof the word "duplicate", knowing that a former negotiable bill of lading for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a **misdemeanor.**

§ 101. Negotiation of bill of lading for goods subject to security interest or lien

Any person who ships goods to which he has not title, or which are subject to a security interest, or upon which there is a lien, and who takes for such goods a negotiable bill of lading which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the security interest or lien, shall be guilty of a **misdemeanor.**

§ 102. Negotiation of bill of lading when goods are not in common carrier's possession

Any person who with intent to deceive negotiates or transfers for value a bill of lading knowing that any or all of the goods which by the terms of such bill of lading appear to have been received for transportation by the common carrier which issued the bill of lading, are not in possession or control of such common carrier, or of a connecting common carrier, without disclosing this fact, shall be guilty of a **misdemeanor.**

§ 103. Inducing common carrier to issue bill of lading when goods have not been received

Any person who with intent to defraud secures the issue by a common carrier of a bill of lading knowing that at the time of such issue, any or all of the goods described in such bill of lading as received for transportation have not been received by such common carrier, or an agent of such common carrier or a connecting common carrier, or are not under the common carrier's control, by inducing an officer, agent or servant of such common carrier falsely to believe that such goods have been received by such common carrier, or are under its control, shall be guilty of a **misdemeanor.**

§ 104. Issue of a non-negotiable bill of lading not so marked

Any person who with intent to defraud issues or aids in issuing a non-negotiable bill of lading without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a **misdemeanor.**

§ 105. Issue of warehouse receipt for goods not received

A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a warehouse receipt knowing that the goods for which such warehouse receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such warehouse receipt, shall be guilty of a **misdemeanor.**

§ 106. Issue of warehouse receipt containing false statement

A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a warehouse receipts [1] for goods knowing that it contains any false statement, shall be guilty of a **misdemeanor.**

[1] So in original. Probably should read "receipt".

§ 107. Issue of duplicate warehouse receipt not so marked

A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable warehouse receipt for goods knowing that a former negotiable warehouse receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," shall be guilty of a **misdemeanor.**

§ 108. Issue for warehouseman's goods of warehouse receipts which do not state the fact

Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents or servants who, knowing this ownership, issues or aids in issuing a negotiable warehouse receipt for such goods which does not state such ownership, shall be guilty of a **misdemeanor.**

§ 109. Delivery of goods without obtaining negotiable warehouse receipt

A warehouseman, or any officer, agent or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable warehouse receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such negotiable warehouse receipt at or before the time of such delivery, shall, except in the cases provided for in sections 7—210 and 7—601 of the uniform commercial code or if the goods have been lawfully sold or disposed of because of their perishable or hazardous nature, be guilty of a **misdemeanor.**

§ 110. Negotiation of warehouse receipt for goods subject to security interest or lien

Any person who deposits with a warehouseman goods to which he has no title, or which are subject to a security interest, or upon which there is a lien, and who takes for such goods a negotiable warehouse receipt which he afterward negotiates for value with intent to deceive and without disclosing his want of title or the existence of the security interest or lien, shall be guilty of a **misdemeanor.**

§ 111. Issue of non-negotiable warehouse receipt not so marked

Any person who with intent to defraud issues or aids in issuing a non-negotiable warehouse receipt without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a **misdemeanor.**

CONFORMING AMENDMENTS

§ 51. Such law is hereby amended by inserting therein a new article, to be article nine-A, to read as follows:

ARTICLE 9-A—PASSAGE TICKETS

Sec.
115. Company defined.
116. Redemption of unused passage tickets.
117. Advertising as agent, without written authorization; false or misleading information.
118. Issuance of order or other instrument securing passage by vessel from foreign port to this state; what to contain.
119. Punishment for violation of two preceding sections.
120. Street railroad or omnibus transfer tickets not to be given away or sold.
121. Owners, pursers and clerks allowed to sell tickets.
122. Station masters, conductors and agents allowed to sell tickets.
123. What must be stated in passage ticket.
124. Sale of tickets not filled out, a misdemeanor.
125. Soliciting the surrender of tickets a misdemeanor.
126. Purchase or selling partially used non-transferable railroad tickets, a misdemeanor.
127. Unlawful acts relating to passage tickets, reservations or passenger accommodations.

§ 115. Company defined

The term "company," as used in this article, includes all corporations, whether created under the laws of this state, or of the United States, or of those of any other state or nation.

§ 116. Redemption of unused passage tickets

Every person who shall have purchased a passage ticket from an authorized agent of a railroad company, which shall not have been used, or shall have been used only in part, may, within thirty days after the date of the sale of said ticket, present the same, unused or partly used, for redemption, at the general office of the railroad company which issued said ticket, or at the ticket office where said ticket was sold, or at the ticket office at the point to which the ticket has been used. If said ticket wholly unused, shall be presented for redemption at the ticket office where sold, the same shall be then and there redeemed by the agent in charge of said ticket office at the price paid for said ticket. If said ticket, partly used, shall be presented for redemption at the ticket office where sold, or at the ticket office at the point to which used, the ticket agent at either of said offices, upon delivery of said ticket, shall issue to the holder thereof a receipt, properly describing said ticket and setting forth the date of the receipt of said ticket, and the name of the person from whom received, and shall thereupon forthwith transmit said ticket for redemption to the general office. It shall be the duty of every railroad company to redeem tickets presented for redemption, as in this section provided for promptly and within not to exceed thirty days from the date of presentation at the general office or from the date of the aforesaid receipt. A wholly unused ticket shall be redeemed at the price paid therefor. A partly used ticket shall be redeemed at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket of the same class between the points for which said ticket was actually used. Mileage books shall be redeemed within thirty days after the date of the expiration thereof in the same manner. Provided, however, that nothing herein contained shall be deemed to prohibit the requirement by tariff of advance notice of cancellation as a condition to the redemption or use of passage tickets in connection with which

reserve accommodations have been obtained; provided, further, that nothing herein contained shall be deemed to prohibit the establishment by tariff of a service charge for the redemption of wholly unused or partly used tickets. Every railroad company which shall wrongfully refuse redemption, as in this section provided for, shall forfeit to the aggrieved party fifty dollars, which sum may be recovered, together with the amount of redemption money to which the party is entitled, in an action in any court of competent jurisdiction, together with costs; but no such action can be maintained unless commenced within one year after the cause of action accrued.

§ 117. Advertising as agent, without written authorization; false or misleading information

No person issuing, selling or offering to sell any passage ticket or any instrument giving or purporting to give any right, either absolutely or upon any condition or contingency, to a passage or conveyance upon any vessel, or a berth or stateroom in any vessel, shall hold himself out to be or advertise himself in any way as the agent of the owners or consignees of such vessel or line, unless he has received authority in writing therefor, specifying the name of the company, line or vessel for which he is authorized to act as agent and the city, town or village, together with the street, and the street number in which his office is kept for the sale of tickets, and unless such written authorization is conspicuously displayed in such office. Provided that this section shall not apply to the sale of passage tickets on board any such vessel or to the offices of the actual owners or consignees of such vessel. No person issuing, selling or offering to sell or holding himself out as being authorized to sell any such passage ticket or instrument giving or purporting to give any such right to passage or conveyance shall give or cause to be given any false or misleading information or shall print, publish, distribute or circulate or cause to be printed, published, distributed or circulated any false or misleading advertisement, circular, circular letter, pamphlet, card, handbill or other printed paper or notice in regard to said passage ticket or instrument or the passage or voyage to which it entitles or purports to entitle its owner, purchaser or holder or line over which, or the vessel for which such passage is sold or offered or as to his agency for such line or vessel.

§ 118. Issuance of order or other instrument securing passage by vessel from foreign port to this state; what to contain

No person agreeing to furnish or secure for any other person, for a consideration, passage by vessel from any foreign port to any port in this state shall issue any advice, order, certificate or other instrument purporting to entitle one or more persons to a passage ticket or other evidence of a right of passage, unless every such advise,[1] order, certificate or instrument shall be signed or countersigned by a duly appointed agent as provided in section one hundred seventeen, of the vessel or line over which said advice, order, certificate or other instrument is held out to be good to secure such passage ticket or other evidence of a right of passage. Every such order, advice, certificate or other instrument and every receipt for money paid for or on account of any such advice, order, certificate or other instrument, shall contain a statement of the amount paid or to be paid for such passage; the name, address and age of the person for whom intended; the name of the company or line, if any, to which the vessel on which passage is to be made belongs; the place from which such passage is to commence; the place where such passage is to terminate; the name of the person purchasing such advice, order, certificate or other instrument, and such advice, order, certificate or other instrument must be signed by the person who issues it.

[1] So in original. Probably should read "advice".

§ 119. Punishment for violation of two preceding sections

Any person violating any of the provisions of the two preceding sections shall be guilty of a misdemeanor.

§ 120. Street railroad or omnibus transfer tickets not to be given away or sold

No transfer ticket or written or printed instrument giving, or purporting to give, the right of transfer to any person from a public conveyance operated upon one line or route of a street surface, elevated, underground railroad or omnibus line to a public conveyance upon another line or route of a street surface, elevated, underground railroad or omnibus line, or from one car or omnibus to another car or omnibus upon the same line or route of street surface, elevated, underground railroad or omnibus line shall be issued, sold or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell or give away such a transfer ticket or instrument as aforesaid to a person not lawfully entitled thereto, and any person not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument, or shall sell or give away such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage after the time limited for its use shall have expired, shall be guilty of a misdemeanor.

§ 121. Owners, pursers and clerks allowed to sell tickets

The provisions of this article do not prevent the actual owners or consignees of any vessel, from selling passage tickets thereon; nor do they prevent the purser or clerk of any vessel from selling in his office on board of such vessel, any passage ticket upon such vessel.

§ 122. Station masters, conductors and agents allowed to sell tickets

The provisions of this article do not prevent the station master or other ticket agent upon any railway, from selling in his office at any station on such railway, any passage tickets upon such railway; nor do they prevent any conductor upon a railway from selling such tickets upon the trains of such railway.

§ 123. What must be stated in passage ticket

A ticket or instrument issued as evidence of a right of passage upon the high seas, from any port in this state, to any port of any other state or nation, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for such ticket or instrument must state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company, or line, if any, to which such vessel belongs, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the voyage is to commence, the name of the person purchasing such ticket or instrument, or receiving such order, certificate or receipt, and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent.

§ 124. Sale of tickets not filled out, a misdemeanor

A person who issues, sells or delivers to another, any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor.

§ 125. Soliciting the surrender of tickets a misdemeanor

Any hotel, boarding-house, lodging-house or restaurant owner, proprietor, manager, clerk or other employee or any runner, guide, porter or solicitor who solicits in any manner any immigrant or steerage pas-

senger inward or outward bound, having a railroad or steamship ticket, order or other instrument entitling or purporting to entitle such passenger to transportation or conveyance on any railroad or steamship, to surrender such ticket, order or other instrument to such hotel, boarding-house, lodging-house or restaurant owner, proprietor, manager or other employee or to any runner, guide, porter or solicitor or any other person for the purpose of detaining any such immigrant or steerage passenger in any such hotel, boarding-house, lodging-house, or restaurant, shall be guilty of a misdemeanor.

§ 126. Purchase or selling partially used non-transferable railroad tickets, a misdemeanor

It shall be unlawful for any person, association of persons, firm or corporation to buy or sell the unused portions of non-transferable railroad tickets, the use of which is restricted to the original purchasers thereof by the railroad company issuing the same, or to act as vendor or broker of partially used non-transferable railroad tickets or to solicit personally or by sign or advertisement or in any other manner to aid in the sale or purchase of partially used non-transferable railroad tickets. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

§ 127. Unlawful acts relating to passage tickets, reservations or passenger accommodations

1. Definitions. Whenever used in this section

a. The term "established tariff charge" is the charge set forth in the tariff as published and filed by the railroad, parlor or sleeping car owner or operator, steamship company, air line or bus line involved.

b. The term "passage ticket" includes each passage ticket or combination of tickets issued by any railroad, parlor or sleeping car owner or operator, steamship company, air line or bus line, required by any one passenger for transportation from his original point of departure to final destination.

c. The term "reservation or passenger accommodation" includes each reservation or passenger accommodation issued by any railroad, parlor or sleeping car owner or operator, steamship company, air line or bus line, for the use of a passenger between his original point of departure and final destination.

d. The term "charge" shall include any service charge, fee, payment or consideration required, charged, made or received for rendering the service of procuring or transferring a ticket, reservation or passenger accommodation.

e. The terms "procure" and "procurement" shall include procuring by purchase or otherwise.

2. Any person, whether acting on behalf of himself or another person, who

a. Sells, resells, or causes to be resold, or offers to sell or resell, any ticket, reservation or passenger accommodation, at a price in excess of one dollar above the established tariff charge or charges therefor; or

b. Procures or possesses or offers to procure any ticket, reservation or passenger accommodation, with the intent to sell or resell the same, or to cause the same to be sold or resold, at a price in excess of one dollar above the established tariff charge or charges; or

c. Requires, makes or receives a charge in excess of one dollar for the procurement or transfer of a ticket, reservation or passenger accommodation; or

d. Procures or possesses or offers to procure a ticket, reservation or passenger accommodation, with the intent to require, make or receive a charge therefor in excess of one dollar, shall be guilty of a misdemeanor.

3. Proof of the sale or resale of or offer to sell or resell a ticket, reservation or passenger accommodation at a price in excess of the amount or amounts herein specified, shall be presumptive evidence of the intent specified in subdivision (b) of paragraph two hereof.

4. Proof of the making or receiving of any charge in excess of one dollar shall be presumptive evidence of the intent specified in subdivision (d) in paragraph two hereof.

5. The person responsible for the management of each travel agency and hotel operating within the state of New York shall, within thirty days after its enactment, cause a copy of this section to be posted in a conspicuous place upon the premises of the agency or hotel for the information of patrons, guests and members of the public at large.

6. This section shall not apply to tickets, reservations or passenger accommodations (a) to or from places outside the continental United States and Canada, excluding Alaska nor (b) to existing written contracts between any travel agency and any corporation, firm or government agency covering tourist or travel services.

§ 52. Such law is hereby amended by adding thereto a new article, to be article nine-B, to read as follows:

ARTICLE 9-B—USE OF NAMES AND SYMBOLS

Sec.

130. Filing of certificates by persons conducting business under assumed name or as partners.
131. Ownership of merchandise establishments to be publicly revealed and displayed.
132. Fictitious copartnership names.
133. Use of name or address with intent to deceive.
134. Fraudulent use of the name or title of secret fraternity.
135. Unlawful use of name of benevolent, humane or charitable corporation.
136. Exhibition or display of the flag.
137. Unauthorized wearing or use of badge, name or insignia of certain orders and societies.
138. Use of certain governmental, military or naval names.
139. Unlawful use of certain titles in connection with corporate name.
140. Wearing industry badges, or other insignia of identification by unauthorized persons.
141. Unlawful use of the name United Nations.
142. Unlawful possession or use of an identification card issued by United Nations.

§ 130. Filing of certificates by persons conducting business under assumed name or as partners

1. No person shall hereafter (a) carry on or conduct or transact business in this state under any name or designation other than his real name, or (b) carry on or conduct or transact business in this state as a member of a partnership, unless such person shall file in the office of the clerk of each county in which such business is conducted or transacted a certificate setting forth the name or designation under which and the address within the county at which such business is conducted or transacted, the full name or names of the person or persons conducting or transacting the same, including the names of all partners, with the residence address of each such person, and the age of any who is an infant. Each certificate shall be executed and duly acknowledged by the person or, if there be more than one, by all of the persons conducting the business.

2. No person or persons shall hereafter use or file a certificate for the use of any name or designation to carry on or conduct or transact

business in this state which consists of or includes words, or initials and a word or words, which are or appear to be the full name or names, or the initial or initials and family name of a person or persons, or a colorable simulation thereof, unless:

(a) the words or initials and word or words appearing to be the full name or initials and family name of a person included, are the true full name or the initials and family name of the person or one of the persons conducting the business; or

(b) the words or initials and words so included, which are or appear to be the full name, or the initials and family name, of any person, have a secondary, historic or geographic meaning or connotation apart from that of a name of a person, and the name or designation so used contains a word or words clearly signifying such secondary, historic or geographic meaning or connotation, or is followed by the abbreviation "a.n.", and said secondary, historic or geographic meaning or connotation is stated in the certificate; or

(c) the person or persons conducting the business are successors in interest to the person or persons theretofore using such name or names to carry on or conduct or transact business, in which case the certificate filed shall so state.

3. Whenever a certificate which has been filed under this section does not accurately set forth the facts required by this section, or within thirty days after there has been a change in such facts, an amended certificate shall be filed which shall identify the original certificate and incorporate the corrections or changes. If such amended certificate is filed for the purpose of adding or withdrawing the name of any person to the original certificate as a person conducting a business or as a partner, such amended certificate must be executed and acknowledged by such person and by any one or more of the other persons named in the original or last amended certificate, unless otherwise provided by an order of the supreme court. Any other amended certificate may be executed and acknowledged by any one or more of the persons named therein as a person conducting the business or as a partner.

4. A certified copy of the original certificate, or if an amended certificate has been filed, then of the most recent amended certificate filed shall be conspicuously displayed on the premises at each place in which the business for which the same was filed is conducted.

5. The several county clerks of this state shall keep an alphabetical index of all certificates, provided for herein, together with appropriate notations of the nature of amended certificates and certificates of discontinuance, and for the indexing and filing of such certificates, they shall receive a fee of fifty cents, except in the counties comprising the city of New York.

6. A copy of a certificate filed under the provisions of this section, duly certified to by the county clerk in whose office the certificate is filed, shall be presumptive evidence in all courts of this state of the facts therein contained.

7. Subdivision one and two of this section shall not apply to any corporation duly organized under the laws of this state, or to any corporation organized under the laws of any other state and lawfully doing business in this state. Subdivision one of this section shall not apply to a limited partnership, or to a person who, or a partnership which, has duly filed a certificate of continued use of firm name under article seven of the partnership law, or to a private banker duly authorized by the superintendent of banks to engage in business pursuant to the provisions of the banking law or to a partnership of attorneys and counsellors-at-law engaged in the practice of their profession, and subdivision three of this section shall not apply to such a person or partnership who has filed a certificate of discontinuance under subdivision ten of this section.

8. The failure to comply with the provisions of this section shall in no way affect the rights of third persons, nor shall this section be deemed or construed to limit the liability of partners under the provisions of the partnership law.

9. Any person or persons carrying on, conducting or transacting business as aforesaid, who fails to comply with the provisions of this section or who wilfully makes a false statement in a certificate filed thereunder shall be guilty of a misdemeanor.

10. If the business for which a certificate is filed under this section is discontinued, or the conditions under which it is conducted are such that the filing of a certificate in such county is no longer required, a certificate of discontinuance may be filed with the county clerk with whom the original certificate was filed, identifying such certificate and also identifying the amended certificate, if any, last previously filed and certifying the facts by reason of which the filing of a certificate in such county is no longer required. The certificate of discontinuance shall be executed and acknowledged in the same manner as an original certificate and shall specify the date on which the discontinuance occurred or the conditions under which the business is conducted changed so that the filing of a certificate in such county is no longer required. The county clerk shall note the discontinuance in the index. A certificate of discontinuance shall be executed by a majority of the persons named in the original certificate or the amended certificate last previously filed as persons conducting or transacting the business or as partners, provided that if any of them shall be deceased the certificate shall so state and may be executed and acknowledged by a majority of the survivors, or by the executor or administrator of a deceased person named in the original certificate or last previously filed amended certificate as the only person conducting or transacting the business, and provided further that any such signatures may be dispensed with by order of the supreme court.

§ 131. Ownership of merchandise establishments to be publicly revealed and displayed

Every person, partnership, association or corporation owning or conducting any shop, store or other establishment wherein the sale of merchandise at retail or wholesale is carried on or transacted as a business shall cause the true, full name, including the full first name or legally registered trade name or names of the proprietor or owner or proprietors or owners of such shop, store or other establishment to be publicly revealed and prominently and legibly displayed in the English language either upon a window of such shop, store or other establishment or upon a sign conspicuously placed upon the exterior of the building containing the same. The foregoing provisions shall not apply to a person, partnership, association or corporation operating under a lease a department in a shop, store or other establishment as aforesaid where the lessor of such shop, store or other establishment is liable to customers for merchandise sold by and the operations of such leased department. Failure to comply with the provisions of this section shall constitute a misdemeanor.

§ 132. Fictitious copartnership names

A person who transacts business, using the name, as a partner, of one not interested with him as a partner, or using the designation "and company," or "& Co." when no actual partner is represented thereby is guilty of a misdemeanor. But this section does not apply to any case, where it is specially prescribed by statute that a partnership name may be continued in use by a successor, survivor, or other person.

§ 133. Use of name or address with intent to deceive

No person, firm or corporation shall, with intent to deceive or mislead the public, assume, adopt or use as, or as part of, a corporate, assumed

or trade name, for advertising purposes or for the purposes of trade, or for any other purpose, any name, designation or style, or any symbol or simulation thereof, or a part of any name, designation or style, or any symbol or simulation thereof, which may deceive or mislead the public as to the identity of such person, firm or corporation or as to the connection of such person, firm or corporation with any other person, firm or corporation; nor shall any person, firm or corporation, with like intent, adopt or use as, or as part of, a corporate, assumed or trade name, for advertising purposes, or for the purposes of trade, or for any other purpose, any address or designation of location in the community which may deceive or mislead the public as to the true address or location of such person, firm or corporation. A violation of this section shall be a misdemeanor. Whenever there shall be an actual or threatened violation of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, to enjoin and restrain such actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact assuming, adopting or using such name, or is about to assume, adopt or use such name, and that the assumption, adoption or use of such name may deceive or mislead the public, an injunction may be issued by said court or justice, enjoining and restraining such actual or threatened violation without requiring proof that any person has in fact been deceived or misled thereby.

§ 134. Fraudulent use of the name or title of secret fraternity

Any person, firm, association, society, order or organization, or any officer, agent, representative or employee thereof, or person acting or pretending to act on behalf thereof who in a newspaper or other publication published in this state, or in any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device without authority of the grand lodge hereinafter mentioned fraudulently uses, or in any manner directly or indirectly aids in the use of the name or title of any secret fraternal association, society, order or organization which has had a grand lodge in this state for ten years, or any imitation of such name or title or any name or title so nearly resembling it as to be calculated to deceive, or who without authority publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device directly or indirectly advertising for or soliciting members or applications for membership in such secret fraternal association, society, order or organization, or in any alleged or pretended association, society, order or organization, using or designated or claimed to be known by such title or imitation or resemblance thereof or who therein or thereby offers to sell, or to confer or to communicate or to give information directly or indirectly where, how, of whom, or by what means any alleged or pretended degree or any alleged or pretended secret work or any alleged or pretended secrets of such secret fraternal association, society, order or organization or any alleged or pretended association, society, order or organization designated or claimed to be known by such title or imitation or resemblance thereof can or may be obtained, conferred or communicated, is guilty of a misdemeanor.

§ 135. Unlawful use of name of benevolent, humane or charitable corporation

No person, society or corporation shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use the name of a benevolent, humane or charitable organization incorporated under the laws of this state, or a name so nearly resembling it as to be calculated to deceive the public with respect to any

such corporation. A violation of this section shall be a **misdemeanor.** Whenever there shall be an actual or threatened violation of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain said actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact using the name of a benevolent, humane or charitable organization, incorporated as aforesaid, or a name so nearly resembling it as to be circulated to deceive the public, an injunction may be issued by said court or justice, enjoining and restraining such actual or threatened violation, without requiring proof that any person has in fact been misled or deceived thereby.

§ 136. **Exhibition or display of the flag**

Any person who: a. In any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement, of any nature upon any flag, standard, color, shield or ensign of the United States of America, or the state of New York, or shall expose or cause to be exposed to public view any such flag, standard, color, shield or ensign, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or

b. Shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after the first day of September, nineteen hundred five, shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color, shield or ensign, to advertise, call attention to, decorate, mark, or distinguish, the article or substance on which so placed, or

c. Shall print, engrave, or otherwise place or cause to be printed, engraved or otherwise placed on any blank check, bill head, letter head, envelope or other business stationery, a representation of any such flag, standard, color, shield or ensign, or shall use any such blank check, bill head, letter head, envelope or other stationery for business purposes or correspondence, or

d. Shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt upon either by words or act, or

e. Shall raffle or place in pawn any such flag, standard, color, shield or ensign, or

f. Shall publicly carry or display any emblem, placard or flag which casts contempt, either by word or act, upon the flag of the United States of America, or

g. Shall publicly use or cause any such flag, standard, color, shield or ensign, to be publicly used as a receptacle for the placing, depositing or collecting of money or any other article or thing,

Shall be guilty of a **misdemeanor.**

The words flag, standard, color, shield or ensign, as used in this section, shall include any flag, standard, color, shield or ensign, or any picture or representation, of either thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color, shield or ensign, of the United States of America, or of the state of New York, or a picture or a representation, of either thereof, upon which shall be shown the colors, the stars, and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the

flag, colors, standard, shield or ensign of the United States of America or of the state of New York.

This section shall not apply to any act expressly permitted by the statutes of the United States of America, or by the United States army and navy regulations, nor shall it be construed to apply to a certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article of jewelry, stationery for use in private correspondence, or newspaper or periodical, on any of which shall be printed, painted or placed, said flag, standard, color, shield or ensign disconnected and apart from any advertisement.

The possession by any person, other than a public officer, as such, of any such flag, standard, color, shield or ensign, on which shall be anything made unlawful at any time by this section, or of any article or substance or thing on which shall be anything made unlawful at any time by this section shall be presumptive evidence that the same is in violation of this section, and was made, done or created after the first day of September, nineteen hundred five, and that such flag, standard, color, shield or ensign, or article, substance, or thing, did not exist on the first day of September, nineteen hundred and five.

§ 137. Unauthorized wearing or use of badge, name or insignia of certain orders and societies

1. Any person who wilfully wears, or attaches to any motor vehicle, the badge, insignia, rosette or the button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States or Military Order of Foreign Wars of the United States, or the badge or button of the United Spanish War Veterans, the Veterans of Foreign Wars of the United States, the American Legion, the Disabled American Veterans, the Military Order of the World War, the Army and Navy Union, U. S. A., or the Order of Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or the Steuben Society of America, or the Jewish War Veterans of the United States, Inc., or the Catholic War Veterans, Inc., or the insignia or emblem of the Italian American War Veterans of the United States, incorporated, the insignia or emblem of the Polish Legion of American Veterans, Inc., or the insignia or emblem of the Military Order of the Purple Heart, Inc., or the insignia or emblem of any lodge, society or organization subordinate to or recognized as Masonic by the Grand Lodge of Free and Accepted Masons of the State of New York, or the insignia or emblem of the Masonic War Veterans of the State of New York, Inc., or the insignia or emblem of the Order of the Eastern Star of the State of New York, or the badge, banner, insignia, button or emblem of any lodge, society or organization subordinate to or recognized as Pythian by the Grand Lodge, Knights of Pythias of the State of New York, or the badge, insignia, button, tab, or chapeaux of La Societe des Forty Hommes et Eight Chevaux or the Marine Corps League, or AMVETS, American Veterans of World War II, Air Force Association, or the insignia or emblem of the Knights of Columbus, or the badge, shield, emblem or name of the Police Conference of New York, Inc., or the badge, shield, emblem or name of the New York State Association of Chiefs of Police, or the badge, shield, emblem or name of the New York State Fire Fighters Association, or the insignia, emblem, badge, banner, button of Grand Lodge of the State of New York, Order Sons of Italy in America, incorporated, or any subordinate Lodge or Grand Lodge of the State of New York, Order Sons of Italy in America, Incorporated, or insignia, emblem, badge, banner, button of Ladies' Lodges, Grand Lodge of the State of New York, Order Sons of Italy in America, Incorporated, or the badge, insignia, rosette or button of any society, order or organization, of ten years standing in the state or New York, or uses the same, or the name of any such society, order

or organization by falsely representing himself to be a member thereof in good standing, to obtain, or in attempting to obtain, aid or assistance within the state, or wilfully uses the names of any such society, order or organization, or the titles of its officers, or uses its insignia or emblems, or the forms or designs thereof, or its ritual or ceremonies unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order or of such society, order or organization, is guilty of a **misdemeanor.**

2. Nothing herein contained shall be construed as superseding any provision of law prohibiting certain use and display on private vehicles of state and other seals and insignia and of specified signs, lettering or devices.

§ 138. Use of certain governmental, military or naval names

1. It shall be unlawful and is prohibited for any person, firm, corporation or association, not an agency or instrumentality of the United States government, selling or offering for sale goods, wares or merchandise, to use or cause or permit to be used in the corporate or trade name or description of the seller or of the place where the goods, wares or merchandise are offered for sale, any of the following words or expressions, viz., "army," "navy," "marine corps," "marines," "coast guard," "government," "post exchange," "P. X.," or "G. I.," unless there is displayed in conjunction therewith, in letters of at least the same size as such words or expressions, the words, "we sell articles acquired from the United States government only," or "we sell both articles acquired from the United States government and non-government articles," as the case may be.

2. No person, firm, corporation or association selling or offering for sale any article of merchandise, shall in any manner represent, contrary to fact, that the article was made for, or acquired directly or indirectly from, the United States government or its military or naval forces or any agency of the United States government, or that the article conforms to government specifications or requirements, or that it has been disposed of by the United States government.

§ 139. Unlawful use of certain titles in connection with corporate name

Any person, association or corporation, other than a moneyed corporation, who shall within this state directly or indirectly, or through agents or representatives transact business under, or in anywise use a corporate name or a corporate title with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," as a part of such name or title, is guilty of a **misdemeanor**; provided, however, that any domestic corporation, other than a moneyed corporation, heretofore duly organized and heretofore duly authorized by law to use and on April twenty-ninth, nineteen hundred four, lawfully using either or any of such words as part of its lawful corporate title, may lawfully continue to use such corporate title, provided and if it, being a corporation other than a moneyed corporation, shall wherever the name shall be printed, written, engraved or displayed, add, in legible English characters, of substantially the same size and style as the name, directly under the said name or immediately in connection therewith, wherever so used, the words "not a moneyed corporation."

§ 140. Wearing industry badges, or other insignia of identification by unauthorized persons

An employer of labor may adopt a badge, or other insignia of identification, to be worn or displayed by the employees for the purpose of identification while upon the premises of the employer and post a notice of the adoption of such badge, or insignia, near the main entrance of

such premises. Such employer shall deposit with the industrial commission a replica of such badge or insignia, and such commission shall, if such badge or insignia be distinctive, issue to such employer a certificate authorizing the use thereof for the purposes of this section. Any person who, after the approval and adoption of such badge, or insignia, and the posting of such notice, without authority or permission of the employer adopting the same, wilfully wears such badge or displays such insignia, or any facsimile or any imitation thereof, or uses the same to obtain admittance to or remain upon the premises of the employer, is guilty of a **misdemeanor.**

§ 141. Unlawful use of the name United Nations

No person, firm or corporation shall, without express authority from the secretary general of the United Nations, assume, adopt or use as, or as a part of a corporate, assumed or trade name, for advertising purposes, or for the purposes of trade, or for any other purpose, the name United Nations, or abbreviation thereof; or any official emblem or other official insignia thereof; nor shall any person, firm or corporation, with intent to deceive or mislead the public, for any of such purposes, assume, adopt or use any name, designation or style, or simulation thereof, or designation or style, or simulation thereof, which may deceive or mislead the public as to the true identity of such person, firm or corporation or as to the official connection of such person, firm or corporation with the United Nations. A violation of this section shall be a **misdemeanor.** Whenever there shall be an actual or threatened violation of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, to enjoin and restrain such actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact, assuming, adopting or using such name, or is about to assume, adopt or use such name, and that the assumption, adoption or use of such name was not expressly authorized by the secretary general of the United Nations, and may deceive or mislead the public, an injunction may be issued by such court or justice, enjoining and restraining such actual or threatened violation without requiring proof that any person has in fact been deceived or mislead thereby. This section shall not prevent the continued use of a corporate name or trade name heretofore lawfully used.

§ 142. Unlawful possession or use of an identification card issued by United Nations

It shall be unlawful for any person to possess or use an identification card issued to another person by the United Nations. Any person finding or otherwise coming into possession of the identification card of another person shall forthwith surrender the same to the official in command at the headquarters of the United Nations or to any peace officer of the state. Any person who wilfully violates any provisions of this section shall be guilty of a misdemeanor punishable upon conviction by a fine of not more than fifty dollars or by imprisonment of not more than ten days, or both.

§ 53. Such law is hereby amended by inserting therein a new section, to be section one hundred sixty-eight–a, to read as follows:

§ 168–a. Ticket speculators

Any person who:

1. Conducts on or in any street in a city the business of selling or offering for sale any ticket of admission or any other evidence of the right of entry to any performance or exhibition in or about the premises of any theater or concert hall, place of public amusement, circus or common show; or

2. Solicits on or in any street in a city by words, signs, circulars or other means any person to purchase any such ticket or other evidence of the right of entry; or

3. In or from any building, store, shop, booth, yard, garden or in or from any opening, window, door, hallway, corridor or in or from any place of ingress or egress to or from any building, place of business, store, shop, booth, yard or garden in a city indicates, holds out or offers for sale to any person or persons on or in the street by word of mouth, crying, calling, shouting or other means that such ticket or other evidence of the right of entry may be purchased in such building, store, shop, booth, yard, garden or any other place; or

4. In or from any such place or places in a city solicits by word of mouth, crying, calling, shouting, or other means any person on or in the street to purchase any such ticket or other evidence of the right of entry,

Is guilty of a **misdemeanor.**

§ 54. Such law is hereby amended by inserting therein a new section, to be section one hundred sixty-nine-k, to read as follows:

§ 169-k. Unlawful charges in connection with theatre tickets

1. Any owner, operating theatre leases, operator, manager, treasurer or assistant treasurer of any theatre wherein public performances are held, or his agent, representative, employee or licensee who, if a price be charged for admission thereto, exacts, demands, accepts or receives, directly or indirectly, any premium or price in excess of the regular or established price or charge, plus lawful taxes, as printed upon the face of each ticket or other evidence of the right of entry thereto, whether designated as price, gratuity or otherwise, shall be guilty of a **misdemeanor.** A conviction for each violation hereof shall be punishable by a fine not to exceed five hundred dollars or by imprisonment for a period not to exceed one year, or both.

2. The provisions of this section shall also apply to the sale of theatre tickets to persons licensed to resell theatre tickets, pursuant to the provisions of article ten-b of this chapter.

3. In any prosecution under this section the attorney general shall have concurrent jurisdiction with any district attorney and in any such prosecution he or his deputy shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or perform therein.

§ 55. Such law is hereby amended by inserting therein a new section, to be section two hundred six-c, to read as follows:

§ 206-c. Frauds on guests of hotels, boarding houses, rooming-houses and lodging houses

A person who for purposes of gain and by means of any false statement or representation regarding a hotel, boarding house, rooming-house or lodging house, shall divert or attempt to divert any traveler or any other person to another hotel, boarding house, rooming-house or lodging house, shall be guilty of a **misdemeanor.**

The making of a false statement regarding a hotel, boarding house, rooming-house or lodging house, coupled with a suggestion or recommendation to patronize another hotel, boarding house, rooming-house or lodging house shall be presumptive evidence that the act of the defendant was committed for the purpose of gain.

Any person who shall pay, or offer to pay any money or other reward to another for diverting patrons from one hotel, boarding house, rooming-house or lodging house to another, knowing that such diversion was effected in the manner herein prohibited, shall be guilty of a **misdemeanor.**

In any prosecution of a person for payment or offer of payment of money or other reward in violation of this section, proof of prior notice

to the defendant that the person to whom payment was made or offered has at any time diverted patronage from one hotel, boarding house, rooming-house or lodging house to another by means of false representation, shall be presumptive evidence that such defendant knew that the diversion complained of was effected by false statements or representations in violation of this section.

§ 56. Such law is hereby amended by inserting therein a new article, to be article thirteen, to read as follows:

ARTICLE 13—SILVER, GOLD AND DIAMONDS

Sec.
220. Marking certain articles, silver, sterling silver or solid silver.
221. Selling silverware marked coin or coin silver.
222. Marking soldered metal sterling or sterling silver.
223. Marking soldered metal coin or coin silver.
224. Marking metal placed on leather or other substances sterling or sterling silver.
225. Marking metal placed on leather or other substances, coin or coin silver.
226. Marking watch cases sterling or sterling silver.
227. Marking watch cases coin or coin silver.
228. Marking articles made of gold.
229. Sale of artificially colored diamonds.

§ 220. Marking certain articles, silver, sterling silver or solid silver

Any person, firm, corporation or association who makes or sells or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "sterling" or "sterling silver," or incased or inclosed in any box, package, cover or wrapper, or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, or engraving or printing that such article is silver, sterling silver or solid silver, unless nine hundred and twenty-five one-thousandths of the component parts of the metal of which the said article is manufactured is pure silver, is guilty of a **misdemeanor.**

§ 221. Selling silverware marked coin or coin silver

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the word "coin" or "coin silver," or incased or inclosed in any box, package, cover or wrapper, or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing that such article is coin or coin silver, unless nine hundred one thousandths parts of the component parts of the metal of which the said article is manufactured is pure silver, is guilty of a **misdemeanor.**

§ 222. Marking soldered metal sterling or sterling silver

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, whose component parts are made of the same metal soldered together, which article is marked, stamped, or branded with the words "sterling" or "sterling silver," unless all of said component parts shall contain not less than nine hundred

and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 223. Marking soldered metal coin or coin silver

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, whose component parts are made of the same metal soldered together, which article is marked, stamped, or branded with the words "coin" or "coin silver," unless all of said component parts shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 224. Marking metal placed on leather or other substances sterling or sterling silver

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel, or wood to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling" or "sterling silver," unless said applied or attached metal mounting shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 225. Marking metal placed on leather or other substances, coin or coin silver

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel, or wood to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless said applied or attached metal mounting shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 226. Marking watch cases sterling or sterling silver

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of works or movements and a case or covering applied or attached thereto, wholly or partially concealing said works or movements marked, stamped or branded with the words "sterling" or "sterling silver," unless said case or covering shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 227. Marking watch cases coin or coin silver

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of works or movements partially concealing said works or movements marked, stamped or branded with the words "coin" or "coin silver," unless said case or covering shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 228. Marking articles made of gold

(1) Any person, firm, corporation or association who or which makes or sells or offers to sell or dispose of, has in his or its possession with intent to sell or dispose of, any article of merchandise, except watch cases and flatware, made in whole or in part of gold or of any alloy of gold and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is encased or enclosed, any mark

indicating or designed or intended to indicate that the gold or alloy of gold in such article (a) is of a greater degree or karat of fineness by more than one-half of one karat than the actual quality or fineness of such gold or alloy, which actual quality or fineness shall be determined by test, analysis or assay from which there shall be excluded all solder or alloy of inferior fineness used for brazing or uniting the parts of said article, or (b) is of a greater degree or karat of fineness by more than one karat than the actual quality or fineness of such gold or alloy which actual quality or fineness shall be determined by test, analysis or assay in which there shall be included all solder or alloy of inferior fineness used for brazing or uniting the parts of said article, is guilty of a misdemeanor.

(2) Any person, firm, corporation or association who or which makes or sells or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of any watch case or article of flatware made in whole or in part of gold or any alloy of gold and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is encased or enclosed, any mark indicating or designed or intended to indicate that the gold or the alloy of gold in such article (a) is of a greater degree or karat of fineness by more than three one-thousandths parts than the actual quality of fineness of such watch case or article of flatware, which actual quality or fineness shall be determined by test, analysis or assay from which there shall be excluded all solder or alloy of inferior fineness used for brazing or uniting the parts of said article, or (b) is of a greater degree or karat of fineness by more than one karat than the actual quality or fineness of such gold or alloy which actual quality or fineness shall be determined by test, analysis or assay in which there shall be included all solder or alloy of inferior fineness used for brazing or uniting the parts of said article, is guilty of a misdemeanor.

§ 229. Sale of artificially colored diamonds

Any person, firm, corporation or association, and any agent or employee thereof, who or which shall knowingly sell or offer for sale any diamond which shall have been artificially colored or tinted by coating, irradiating, heating, nuclear bombardment or by any other means, without disclosing in writing to the purchaser, or prospective purchaser, that such diamond has been artificially colored or tinted, or without disclosing in writing that the artificial coloring or tinting of such diamond is not permanent, if that be the fact, shall be guilty of a misdemeanor.

§ 57. Such law is hereby amended by inserting therein a new article, to be article thirteen-A, to read as follows:

ARTICLE 13-A—PLATINUM STAMPING

Sec.
230. Definitions.
231. Application of quality mark.
232. Trade mark.
233. Quality marks; description.
234. Quality; contents.
235. Abbreviations.
236. Prima facie proof.
237. Penalties.
238. Effect of invalidity of any part of this article.

§ 230. Definitions

In this article unless the context otherwise requires: "Article" means any article of merchandise and includes any portion of such article,

whether a distinct part thereof, or not (including every part thereof whether or not separable and also including material for manufacture).

Platinum, iridium, palladium, ruthenium, rhodium and/or osmium, include any alloy or alloys of any one or more of said metals.

"Mark" means any mark, sign, device, imprint, stamp, brand applied to any article, or to any tag, card, paper, label, box, carton, container, holder, package cover or wrapping attached to, used in conjunction with or enclosing such article or any bill, bill of sale, invoice, statement, letter, circular, advertisement, notice, memorandum, or other writing or printing.

"Apply" and "applied" include any method or means of application or attachment to, or of use on, or in connection with, or in relation to, an article, whether such application, attachment or use is to, on, by, in or with

1. The article itself, or
2. Anything attached to the article, or
3. Anything to which the article is attached, or
4. Anything in or on which the article is, or
5. Anything so used or placed as to lead to a reasonable belief that the mark on that thing is meant to be taken as a mark on the article itself.

"Quality mark" is any mark as herein defined indicating, describing, identifying or referring to or appearing or seeming or purporting to indicate, describe, identify or refer to the partial or total presence or existence of or the quality of or the percentage of or the purity of or the number of parts of platinum, iridium, palladium, ruthenium, rhodium and/or osmium in any article.

§ 231. **Application of quality mark**

1. When an article is composed of mechanism, works or movements and of a case or cover containing the mechanism, works or movements, a quality mark applied to the article shall be deemed not to be, nor to be intended to be, applied to the mechanism, works or movements.

2. The quality mark applied to the article shall be deemed not to apply to springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dustbands, detachable movement rims, hat pin stems, bracelet and necklace snap tongues. In addition, in the event that an article is marked under the last paragraph of the preceding section, the quality mark applied to the article shall be deemed not to apply to pin tongues, joints, catches, lapel button backs and the posts to which they are attached, scarf pin stems, hat pin sockets, shirtstud backs, vest button backs and ear screw backs, provided such parts are made of the same quality of gold as is used in the balance of this article.

§ 232. **Trade mark**

If there is any quality mark printed, stamped or branded on the article itself there must also be printed, stamped or branded on the said article itself the following mark, to wit: a trade mark duly applied for or registered under the laws of the United States of the manufacturer of such article; except that if such manufacturer has sold or contracted to sell such article to a jobber, wholesaler or retail dealer regularly engaged in the business of buying and selling similar articles, this provision shall be deemed to be complied with if there is so marked on the said article the trade mark duly registered under the laws of the United States of such jobber, wholesaler or retail dealer respectively; and in such event there may also be marked on the said article itself numerals intended to identify the article, design or pattern provided, however, that such numerals do not appear or purport to be a part of the quality mark and provided that they are not calculated to mislead or deceive anyone into believing that they are partly of the quality mark.

§ 233. Quality marks; description

All quality marks applied to any article shall be equal in size and equally visible, legible, clear and distinct and no quality mark which is false, deceptive or misleading shall be applied to any article or to any descriptive device therefor. No more than one quality mark shall be applied to any article and such quality mark shall be applied to such article in only one place thereon except as elsewhere in this article specifically permitted.

Wherever in this article provision is made for marking the number of parts or percentage of metals, such number or percentage shall refer to weight and not to volume, thickness or any other basis.

§ 234. Quality; contents

There shall not be applied to any article any quality mark nor any colorable imitation thereof, nor any contraction thereof, nor any addition thereto, nor any words or letters, nor any mark purporting to be or resembling a quality mark except as follows:

(a) An article consisting of at least 985/1000ths parts of platinum, iridium, palladium, ruthenium, rhodium and/or osmium, where solder is not used and at least 950/1000ths parts of said metal or metals where solder is used, may be marked "platinum," provided that the total of the aforementioned metals other than pure platinum shall amount to no more than 50/1000ths parts of the contents of the entire article.

(b) An article consisting of at least 985/1000ths parts of platinum, iridium, palladium, ruthenium, rhodium and/or osmium, where solder is not used and at least 950/1000ths parts of the said metal or metals where solder is used, and provided further that at least 750/1000ths parts of said article are pure platinum, may be marked "platinum," provided immediately preceding the mark "platinum" there is the name or abbreviation as hereinafter provided, of either iridium, palladium, ruthenium, rhodium and/or osmium, which ever of said metals predominates, and provided further that such predominating other metal must be more than 50/1000ths parts of the entire article.

(c) An article consisting of at least 985/1000ths parts of platinum, iridium, palladium, ruthenium, rhodium and/or osmium, where solder is not used and at least 950/1000ths parts of said metals where solder is used, provided more than 500/1000ths parts of said article consist of pure platinum, may be marked with the word "platinum," provided that said word is immediately preceded by a decimal fraction in one-thousandths showing the platinum content in proportion to the content of the entire article, and further provided that said mark "platinum" be followed by the name or abbreviation as herein allowed, of such one or more of the following metals, to wit: iridium, palladium, ruthenium, rhodium and/or osmium, that may be present in the article in quantity of more than 50/1000ths parts of the entire article. The name of such other metal or metals other than platinum, however, shall each be immediately preceded by a decimal fraction in one-thousandths showing the content of such other metal or metals in proportion to the entire article, as for example, 600 plat., 350 pall., or 500 plat., 200 pall., 150 ruth., 100 rhod.

(d) An article consisting of 950/1000ths parts of the following metals: platinum, iridium, palladium, ruthenium, rhodium, and/or osmium with less than 500/1000ths parts of the entire article consisting of pure platinum, may be marked with the name iridium, palladium, ruthenium, rhodium and/or osmium, which ever predominates in the said article but in no event with the mark "platinum," provided, however, that the quantity of such metal other than platinum so marked, must be marked in decimal thousandths, and provided further that the name of such metal other than platinum so used must be spelled out in full irrespective of any other provisions of this article to the contrary.

(e) An article composed of platinum and gold which resembles, appears or purports to be platinum, may be marked with a karat mark and the platinum mark, provided:

1. The platinum in such article shall be at least 985/1000ths parts pure platinum; and

2. The fineness of the gold in such article shall be correctly described by the karat mark of said gold; and

3. The percentage of platinum in such article shall be no less than five per centum in weight of the total weight of the article; and

4. The mark shall be so applied that the karat mark shall immediately precede the platinum mark, as for example, "14 K & Plat.", "18 K & Plat.", as the case may be, it being expressly provided that in case the percentage of platinum exceeds the five per centum provided herein, the quality mark may also include a declaration of the percentage of platinum, as for example, "18 K & 1/10th Plat.", or "14 K & 1/8 Plat." or as the case may be.

(f) An article composed of platinum and any other material or metal not resembling, appearing or purporting to be platinum, may be marked with the quality mark platinum provided all parts or portions of such article resembling or appearing or purporting to be platinum, or reasonably purporting to be described as platinum by said quality mark, shall be at least 985/1000ths parts pure platinum.

§ 235. Abbreviations

Whenever provided for in this article, except as specifically excepted in paragraph d of the preceding section, the word "platinum" may be applied by spelling it out in full or by the abbreviation "plat." the word "iriduim [1]" may be applied by spelling it out in full or by the abbreviation "irid.", the word "palladium" may be applied by spelling it out in full or by the abbreviation "Pall.", the word "ruthenium" may be applied by spelling it out in full or by the abbreviation "Ruth.", the word "rhodium" may be applied by spelling it out in full or by the abbreviation "Rhod.", and the word "osmium" may be applied by spelling it out in full or by the abbreviation "Osmi.".

[1] So in original. Probably should read "iridium".

§ 236. Prima facie proof

1. In any action relating to the enforcement of any provision of this article, a certificate duly issued by an assay office of the treasury department of the United States, certifying the weight of any article, or any part thereof, or of the kind, weight, quality, fineness or quantity of any ingredient thereof, shall be receivable in evidence as constituting prima facie proof of the matter or matters so certified.

2. In any action relating to the enforcement of any provision of this article, proof that an article has been marked in violation of the provisions of this article shall be deemed to be prima facie proof that such article was manufactured after this article became effective.

§ 237. Penalties

Any person or persons, firm, partnership, corporation or association or any officer, director, employee or agent thereof who makes, or sells, or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any article as herein defined to which is applied any quality mark which does not conform to all the provisions of this article, or from which is omitted any mark required by the provisions of this article, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment in the discretion of the court provided however, that it shall be a defense to any prosecution under this article for the defend-

ant to prove that the said article was manufactured and marked with the intention of and for purposes of exportation from the United States and that the said article was either actually exported from the United States to a foreign country within six months after date of manufacture thereof with the bona fide intention of being sold in the said country and of not being re-imported, or that it was delivered within six months after date of manufacture thereof to a person, firm or corporation whose exclusive customary business is the exportation of such articles from the United States.

§ 238. Effect of invalidity of any part of this article

If any part of this article, or the application thereof to any particular situation, is held by any court of competent jurisdiction to be invalid on account of unconstitutionality, such adjudication shall not affect the remainder of this article, or the application of such first-mentioned part of this article to any other situation.

§ 58. Such law is hereby amended by inserting therein a new section, to be section two hundred sixty-five, to read as follows:

§ 265. Ice cutting and ice bridges

A person or corporation cutting ice in or upon any waters within the boundaries of this state for the purpose of removing the ice for sale or use, must surround the cuttings and openings made with fences or guards of boards or other material sufficient to form an obstruction to the free passage of persons through such fences or guards into the place where such ice is being cut. Such fences or guards must be erected at or before the time of commencing the cuttings or openings, and must be maintained until ice has again formed therein to the thickness of at least three inches, or until the ice about such openings has melted or broken up. Whoever omits to comply with this section is guilty of a misdemeanor.

§ 59. Such law is hereby amended by inserting therein a new article, to be article seventeen–B, to read as follows:

ARTICLE 17–B—OFFENSES AGAINST TRADE-MARKS

Sec.
279–j. Trade-mark defined.
279–k. Affixing defined.
279–*l*. Article of merchandise defined.
279–m. Imitation of a trade-mark defined.
279–n. Offenses against trade-marks.
279–*o*. Refilling or selling trade-mark bottles and vessels.
279–p. Keeping trade-mark bottles and vessels with intent to refill or sell them.
279–q. Search for trade-mark bottles and vessels kept in violation of law authorized.

§ 279–j. Trade-mark defined

A "trade-mark" is a mark used to indicate the maker, owner or seller of an article of merchandise, and includes, among other things, any name of a person, or corporation, or any letter, word, device, emblem, figure, seal, stamp, diagram, brand, wrapper, ticket, stopper, label, or other mark, law, fully adopted by him, and usually affixed to an article of merchandise to denote that the same was imported, manufactured, produced, sold, compounded, bottled, packed or otherwise prepared by him; and also a signature or mark, used or commonly placed by a painter, sculptor or other artist, upon a painting, drawing, engraving, statue or other work of art, to indicate that the same was designed or executed by him.

§ 279–k. Affixing defined

A trade-mark is deemed to be affixed to an article of merchandise, when it is placed in any manner in or upon:

1. The article itself; or,
2. A box, bale, barrel, bottle, case, cask, platter, or other vessel or package, or a cover, wrapper, stopper, brand, label, or other thing in, by or with which the goods are packed, inclosed or otherwise prepared for sale or disposition.

§ 279–*l*. Article of merchandise defined

The expression "article of merchandise," as used in the preceding two sections, signifies any goods, wares, work of art, commodity, compound, mixture or other preparation or thing, which may be lawfully kept or offered for sale.

§ 279–m. Imitation of a trade-mark defined

An "imitation of a trade-mark" is that which so far resembles a genuine trade-mark as to be likely to induce the belief that it is genuine, whether by the use of words or letters, similar in appearance or in sound, or by any sign, device or other means whatsoever.

§ 279–n. Offenses against trade-marks

A person who:

1. Falsely makes or counterfeits a trade-mark; or,
2. Affixes to any article of merchandise, a false or counterfeit trade-mark, knowing the same to be false or counterfeit, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or,
3. Knowingly sells, or keeps or offers for sale, an article of merchandise to which is affixed a false or counterfeit trade-mark, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or,
4. Has in his possession a counterfeit trade-mark, knowing it to be counterfeit, or a die, plate, brand or other thing for the purpose of falsely making or counterfeiting a trade-mark; or,
5. Makes or sells, or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, an article of merchandise with such a trade-mark or label as to appear to indicate the quantity, quality, character, place of manufacture or production, or persons manufacturing, packing, bottling, boxing or producing the article, but not indicating it truly; or,
6. Knowingly sells, offers or exposes for sale, any goods which are represented in any manner, by word or deed, to be the manufacture, packing, bottling, boxing or product of any person, firm or corporation, other than himself, unless such goods are contained in the original package, box or bottle and under the labels, marks or names placed thereon by the manufacturer who is entitled to use such marks, names, brands or trade-marks; or,
7. Shall sell or shall expose for sale any goods in bulk, to which no label or trade-mark shall be attached, and shall be [1] representation, name or mark written or printed thereon, represent that such goods are the production or manufacture of a person who is not the manufacturer; or,
8. Shall knowingly sell, offer or expose for sale any article of merchandise, and shall orally or by representation, name or mark written or printed thereon or attached thereto used in connection therewith, or by advertisement, or otherwise, in any manner whatsoever make any false representation as to the person by whom such article of merchandise or the material thereof was made, or was in whole or in part produced, manufactured, finished, processed, treated, marketed, packed, bottled or boxed, or falsely represent that such article of merchandise or the ma-

terial or any part thereof has or may properly have any trade-mark attached to it or used in connection with it, or is or may properly be indicated or identified by any trade-mark, is guilty of a **misdemeanor.**

[1] So in original. Probably should read "by".

§ 279-*o*. Refilling or selling trade-mark bottles or vessels

Any person engaged in making, bottling, packing, selling or disposing of milk, ale, beer, cider, mineral water or other beverage, or in making, selling or disposing of articles of pastry, may register his title as owner of a trade-mark by filing with the secretary of state and the clerk of the county where the principal place of business of such person is situated, a description of the marks and devices used by him in his business, and in case the same has not been heretofore published according to the laws existing at the time of publication, causing the same to be published in a newspaper of the county, three weeks daily, if in the city of New York or Brooklyn, and weekly if in any other part of the state; but no trade-mark shall be filed which is not and can not become a lawful trade-mark, or which is merely the name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by another person. After such registration, the use without the consent of the owner of the trade-mark so described, or the filling of any bottle, siphon, barrel, platter, vessel, or thing for the purpose of sale, or for the sale, therein, of any article of the same general nature and quality which said bottle, siphon, barrel, platter, vessel or other thing before contained, without the obliteration or defacement of the trade-mark upon it, when such trade-mark can be obliterated or defaced without substantial injury to the bottle, siphon, barrel, platter, vessel or other thing so as to prevent its wrongful use, shall be deemed a **misdemeanor.**

§ 279-p. Keeping trade-mark bottles and vessels with intent to refill or sell them

Any person engaged in the business of buying and selling bottles, siphons, barrels, platters, or other vessels or things, who shall with intent to defraud the registered owner of the trade-mark, knowingly sell or offer for sale any bottle, siphon, barrel, platter, vessel, or other things, to any person, who he has reason to believe wrongfully intends to use the trade-mark upon it, or to fill such bottle, siphon, barrel, platter, vessel or other thing in violation of the preceding section, shall be deemed guilty of a **misdemeanor.**

§ 279-q. Search for trade-mark bottles and vessels kept in violation of law authorized

Whenever a registered owner of a trade-mark, or his agent, makes oath before a magistrate that he has a reason to believe and does believe, stating the grounds of his belief, that a bottle, siphon, barrel, platter, vessel or other thing to which is affixed a trade-mark belonging to him is being used or filled, or has been sold or offered for sale, by any person whomsoever in violation of the preceding section, then the magistrate may issue a search warrant to discover the thing and cause the person having it in possession to be brought before him and may thereupon inquire into the circumstances, and if on examination, he finds that such person has been guilty of the offense charged, he may hold the offender to bail to await the action of the grand jury, and the offender shall also be liable to an action on the case for damages, for such wrongful use of such trade-mark at the suit of the owner thereof, and the party aggrieved, shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark, and to recover compensation therefore [1] in any court having jurisdiction over the person guilty of such wrongful use.

[1] So in original. Probably should read "therefor".

§ 60. Such law is hereby amended by inserting therein a new section, to be section three hundred four-a, to read as follows:

§ 304–a. Unauthorized manufacture, sale or use of illuminating oils

A person who violates any provision of this article relating to the standard, manufacture, sale, or use or storage of any oil or burning fluid, wholly or partly composed of naphtha, coal oil, petroleum or products manufactured therefrom, or of other substance or materials which will flash at a temperature below one hundred degrees Fahrenheit, or relating to the burning or carriage of any such oil or fluid which will ignite at a temperature below three hundred degrees Fahrenheit, is guilty of a misdemeanor.

§ 61. Such law is hereby amended by inserting therein a new section, to be section three hundred six-a, to read as follows:

§ 306–a. Violating law to prevent conflagrations

A person who violates any of the provisions of section three hundred and six of this chapter is guilty of a misdemeanor.

§ 62. Such law is hereby amended by inserting therein a new section, to be section three hundred eight, to read as follows:

§ 308. Retail sale and delivery of certain flammable liquids

1. Definition. As used in this section:

"Flammable liquid" shall mean any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a Tagliabue or equivalent closed cup test device.

2. No person engaged in the retail sale of flammable liquids shall deliver any such liquids from bulk storage into portable containers of five gallons capacity or less unless the container is of sound metal or other unbreakable material construction, has a tight closure with screwed or spring cover and is fitted with a spout or so designed that the contents can be poured without spilling.

3. The provisions of this section shall not apply to the sale, purchase or delivery of bona fide commercial packs of household products sold in the original sealed container as put up for package, sale or distribution by the manufacturer or packager, including but not limited to packs of medicinals, beverages or food.

4. The provisions of this section shall not apply in cities having a population of one million or more.

5. Any person who shall violate the provisions of this section shall, upon conviction thereof, be guilty of an offense and punishable by a fine of not less than ten dollars, nor more than twenty-five dollars.

§ 63. Such law is hereby amended by inserting therein a new section, to be section three hundred twenty-two-a, to read as follows:

§ 322–a. Construction or blasting near pipes conveying combustible gas

No person shall discharge explosives in the ground, nor shall any person other than a state, county, city, town or village employee regularly engaged in the maintenance and repair thereof excavate in any then existing street, highway or public place, unless notice thereof in writing shall have been given at least seventy-two hours in advance to the person, corporation or municipality engaged in the distribution of gas in such territory. The person having direction or control of such works shall give such notice and further he shall ascertain whether there is within one hundred feet in such street, highway or public place, or in the case of a proposed discharge or explosives within a radius of two hundred feet of such discharge, any pipe of any other person, corporation or municipality conveying combustible gas, and if there be any such pipe he shall also give such notice to any such other person, corporation or mu-

nicipality. Provided, however, that in any emergency involving danger to life, health or property it shall be lawful to excavate without using explosives if the notices prescribed herein are given as soon as reasonably possible, and to discharge explosives to protect a person or persons from an immediate and substantial danger of death or serious personal injury if such notices are given before any such discharge is undertaken. Any such work shall be performed in such manner as to avoid damage to any pipe conveying combustible gas.

§ 64. Such law is hereby amended by inserting therein a new section, to be section three hundred twenty-two-b, to read as follows:

§ 322–b. Explosives and combustibles

1. A person who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material, within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law or by ordinance of the city or village, is guilty of a **misdemeanor.**

2. A person who manufactures gunpowder, dynamite, nitro-glycerine, liquid or compressed air or gases, except acetylene gas and other gases used for illuminating purposes, naphtha, gasoline, benzine or any explosive articles or compounds, or manufactures ammunition, fireworks or other articles of which such substances are component parts in a cellar, room, or apartment of a tenement or dwelling-house or any building occupied in whole or in part by persons or families for living purposes, is guilty of a **misdemeanor.**

3. And a person who, by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substances, injures or occasions the injury of the person or property of another, is guilty of a **misdemeanor.**

4. Any person or persons who shall knowingly present, attempt to present, or cause to be presented or offered for shipment to any railroad, steamboat, steamship, express or other company engaged as common carrier of passengers or freight, dynamite, nitro-glycerine, powder or other explosives dangerous to life or limb, without revealing the true nature of said explosives or substance so offered or attempted to be offered to the company or carrier to which it shall be presented, shall be guilty of a **misdemeanor.**

5. Any person who, while engaged in the unauthorized distillation of any liquid containing methyl or ethyl alcohol, causes injuries or occasions the injury of the person or property of another by reason of such distillation is guilty of a **misdemeanor.**

Nothing in this section contained shall be construed to prohibit or forbid the manufacture and sale of sodawater, seltzer-water, ginger ale, carbonic or mineral water or the charging with liquid carbonic acid gas of such waters or ordinary waters, or of beer, wines, ales or other malt and vinous beverages in such cellar, room or apartment of a tenement or dwelling-house, or any building occupied in whole or in part by persons or families for living purposes.

§ 65. Such law is hereby amended by inserting therein a new section, to be section three hundred thirty-four, to read as follows:

§ 334. Misrepresentation of circulation of newspapers or periodicals

Every proprietor or publisher of any newspaper or periodicals who shall wilfully or knowingly misrepresent the circulation of such newspaper or periodical for the purpose of securing advertising or other patronage shall be deemed guilty of a **misdemeanor.**

§ 66. Such law is hereby amended by inserting therein a new section, to be section three hundred thirty-five, to read as follows:

§ 335. Inserting unauthorized advertisement in newspapers and magazines

Any person who, with intent to profit, directly or indirectly thereby, places or causes or produces an advertisement to be placed in or affixes or causes the same to be affixed to a newspaper without the consent of the publisher of said newspaper; or who directly or indirectly places or causes or procures an advertisement to be placed in or affixes or causes the same to be affixed to a magazine or periodical without the consent of the publisher of such magazine or periodical, and in a way calculated to lead the readers thereof to believe that such advertisement was circulated by such publisher, is guilty of a **misdemeanor.**

The placing of an advertisement, notice, circular, pamphlet, card, hand bill, printed notice of any kind in or the affixing thereof to a newspaper, magazine, or periodical is presumptive evidence that the person or persons or corporation or corporations whose name or names appear thereon as proprietor, advertiser, vendor, or exhibitor, or whose goods, wares, and merchandise are advertised therein, caused or procured the same to be so placed or affixed with intent to profit thereby.

§ 67. Such law is hereby amended by inserting therein a new section, to be section three hundred thirty-six, to read as follows:

§ 336. Telephone directory to contain certain notice

Every telephone directory hereafter distributed to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones of any telephone exchange located in this state shall contain a notice which explains the offense of "unlawfully refusing to yield a party line" provided for in the penal law, such notice to be printed in type which is not smaller than any 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: provided, that the provisions of this section 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 state copies of a telephone directory which is subject to the provisions of this section and which do not contain the notice herein provided for shall be guilty of a **misdemeanor.**

§ 68. Such law is hereby amended by inserting therein a new section, to be section three hundred thirty-seven, to read as follows:

§ 337. Advertising to procure divorces

Whoever prints, publishes, distributes or circulates, or causes to be printed, published, distributed or circulated any circular, pamphlet, card, hand bill, advertisement, printed paper, book, newspaper or notice of any kind offering to advise on laws of any foreign state, nation or jurisdiction for the express purpose of procuring or aiding in procuring any divorce, severance, dissolution, or annulment or [1] any marriage, or offering to procure or to aid in procuring any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage, appear or act as attorney or counsel in any suit for alimony or divorce or the severance, dissolution or annulment of any marriage, either in this state or elsewhere, is guilty of a **misdemeanor.** This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state.

[1] So in original. Probably should read "of".

§ 69. Such law is hereby amended by inserting therein a new section, to be section three hundred thirty-eight, to read as follows:

§ 338. Producing unpublished, undedicated or copyrighted opera or dramatic composition, without consent of owner

Any person who causes to be publicly performed or represented for profit any unpublished, undedicated or copyrighted dramatic composition, or musical composition known as an opera, without the consent of its owner or proprietor, or who, knowing that such dramatic or musical composition is unpublished, undedicated or copyrighted and without the consent of its owner or proprietor, permits, aids or takes part in such a performance or representation, shall be guilty of a **misdemeanor.**

§ 70. Such law is hereby amended by inserting therein a new section, to be section three hundred thirty-eight-a, to read as follows:

§ 338–a. Printing, publishing or selling copyrighted musical composition without consent of owner

Whoever prints, publishes, sells, distributes or circulates, or causes to be printed, published, sold, distributed or circulated for profit any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper or other document containing the words or musical score of any musical composition which or any part of which is copyrighted under the laws of the United States, without first having obtained the consent of the owner or proprietor of such copyrighted musical composition, is guilty of a **misdemeanor.**

§ 71. Such law is hereby amended by inserting therein a new article, to be article twenty-one-A, to read as follows:

ARTICLE 21-A—FRAUDULENT TRANSACTIONS IN SECURITIES

Sec.
339. Reporting or publishing fictitious transactions in securities.
339–a. False statement or advertisement as to securities.
339–b. Manipulation of prices of securities.
339–c. Trading by brokers against customers' orders.
339–d. Transactions by brokers and dealers after insolvency.
339–e. Hypothecation of customer's securities.
339–f. Delivery to customers of memoranda of transactions by brokers.

§ 339. Reporting or publishing fictitious transactions in securities

A person who, with intent to deceive, reports or publishes, or causes to be reported or published as a purchase or sale of the stocks, bonds or other evidences of debt of a corporation, company or association, any transaction therein, whereby no actual change of ownership or interest is effected, is guilty of a **misdemeanor.**

§ 339–a. False statement or advertisement as to securities

Any person, who, with intent to deceive, makes, issues or publishes, or causes to be made, issued or published, any statement or advertisement as to the value or as to facts affecting the value of the stocks, bonds or other evidences of debt of a corporation, company or association, or as to the financial condition or facts affecting the financial condition of any corporation, company or association which has issued, is issuing or is about to issue stocks, bonds or other evidences of debt, and who knows, or has reasonable ground to believe that any material representation, prediction or promise made in such statement or advertisement is false, is guilty of a **misdemeanor.**

§ 339–b. Manipulation of prices of securities

Any person, who inflates, depresses, or causes fluctuations in, or attempts to inflate, depress or cause fluctuations in, or combines or con-

spires with any other person or persons to inflate, depress or cause fluctuations in, the market prices of the stocks, bonds or other evidences of debt of a corporation, company or association, or of an issue or any part of an issue of the stock, bonds or evidences of debt of a corporation, company or association, by means of pretended purchases and sales thereof, or by any other fictitious transactions or devices, for or on account of such person or of any other person, or for or on account of the persons so combining or conspiring, whereby either in whole or in part a simultaneous change of ownership or of interest in such stocks, bonds or evidences of debt, or of such issue or part of an issue thereof, is not effected, is guilty of a **misdemeanor.** A pretended purchase or sale of any such stocks, bonds or other evidences of debt whereby, in whole or in part, no simultaneous change of ownership or interest therein is effected, shall be prima facie evidence of the violation of this section by the person or persons taking part in the transaction of such pretended purchase or sale.

§ 339–c. Trading by brokers against customers' orders

A broker, who, being employed by a customer to buy and carry upon margin the stocks, bonds or other evidences of debt of a corporation, company or association, while acting as broker for such customer in respect of such stocks, bonds or other evidences of debt, sells for his own account the same kind or issue of stocks, bonds or other evidences of debt of such corporation, company or association, with intent to trade against the customer's order, or, who, being employed by a customer to sell the stocks, bonds or other evidences of debt of a corporation, company or association, while acting as broker for such customer in respect to the sale of such stocks, bonds or other evidences of debt, purchases for his own account the same kind or issue of stock, bonds or other evidences of debt of such corporation, company or association, with intent to trade against the customer's order, is guilty of a **misdemeanor.**

§ 339–d. Transactions by brokers and dealers after insolvency

Any person, firm, association or corporation engaged in the business of purchasing and selling as broker or dealer, stocks, bonds or other evidences of debt of corporations, companies or associations who, knowing that he or it is insolvent, accepts or receives from a customer ignorant of such broker's or dealer's insolvency, money, stocks, bonds or other evidences of debt belonging to the customer otherwise than in liquidation of, or as security for, an existing indebtedness, is guilty of a **misdemeanor.** Any person, firm, association or corporation shall be deemed insolvent within the meaning of this section whenever the aggregate of his or its property shall not, at a fair valuation, be sufficient in amount to pay his or its debts.

§ 339–e. Hypothecation of customer's securities

Any person, firm, association or corporation engaged in the business of purchasing and selling as a broker or dealer stocks, bonds or other evidences of debt of corporations, companies or associations, who

1. Having in his or its possession, for safe keeping or otherwise, stocks, bonds or other evidences of debt of a corporation, company or association belonging to a customer, without having any lien thereon or any special property therein, pledges or disposes thereof without such customer's consent; or

2. Having in his or its possession stocks, bonds or other evidences of debt of a corporation, company or association belonging to a customer on which he or it has a lien for indebtedness due to him or it by the customer, pledges the same for more than the amount due to him or it thereon, or otherwise disposes thereof for his or its own benefit, without the customer's consent, and without having in his or its possession or sub-

ject to his or its control, stocks, bonds or other evidences of debt of the kind and amount to which the customer is then entitled, for delivery to him upon his demand therefor and tender of the amount due thereon, is guilty of a misdemeanor.

§ 339-f. Delivery to customers of memoranda of transactions by brokers

A person engaged in the business of purchasing or selling as broker stocks, bonds and other evidences of debt of corporations, companies or associations shall deliver to each customer on whose behalf a purchase or sale of such securities is made by him a statement or memorandum of such purchase or sale, a description of the securities purchased or sold, the name of the person, firm or corporation from whom such securities were purchased, or to which the same were sold, and the day, and the hours between which the transaction took place. A broker who refuses to deliver such statement or memorandum to a customer within twenty-four hours after a written demand therefor, or who delivers a statement or memorandum which is false in any material respect, is guilty of a misdemeanor.

§ 72. Such law is hereby amended by inserting therein a new article, to be article twenty-three, to read as follows:

ARTICLE 23—BUCKET SHOPS

Sec.
351. Acts prohibited; penalty for violation.
351-a. Exhibiting quotations; penalty for violation.
351-b. Written statement to be furnished; presumption.
351-c. Corporations; additional penalty for second offense.
351-d. Definitions.
351-e. Witnesses' immunity.

§ 351. Acts prohibited; penalty for violation

Any person, copartnership, firm, association or corporation, whether acting in his, their or its own right or as the officer, agent, servant, correspondent or representative of another, who shall: 1. Make or offer to make, or assist in making or offering to make any contract respecting the purchase or sale, either upon credit or margin, of any securities or commodities, including all evidences of debt or property and options for the purchase thereof, shares in any corporation or association, bonds, coupons, scrip, rights, choses in action and other evidences of debt or property and options for the purchase thereof or anything movable that is bought and sold, intending that such contract shall be terminated, closed or settled according to, or upon the basis of the public market quotations of or prices made on any board of trade or exchange or market upon which such commodities or securities are dealt in, and without intending a bona fide purchase or sale of the same; or,

2. Makes or offers to make or assists in making or offering to make any contract respecting the purchase or sale, either upon credit or margin, of any such securities or commodities intending that such contract shall be deemed terminated, closed and settled when such market quotations of or such prices for such securities or commodities named in such contract shall reach a certain figure, without intending a bona fide purchase or sale of the same; or,

3. Makes or offers to make, or assists in making or offering to make any contract respecting the purchase or sale, either upon credit or margin of any such securities or commodities, not intending the actual bona fide receipt or delivery of any such securities or commodities, but intending a settlement of such contract based upon the difference in such public

market quotations of or such prices at which said securities or commodities are, or are asserted to be, bought or sold; or,

4. Shall, as owner, keeper, proprietor or person in charge of, or as officer, director, stockholder, agent, servant, correspondent or representative of such owner, keeper, proprietor or person in charge of, or as officer, director, stockholder, agent, servant, correspondent, or representative of such owner, keeper, proprietor or person in charge, or of any other person, keep, conduct or operate any bucket shop, as hereinafter defined; or knowingly permit or allow or induce any person, copartnership, firm, association or corporation whether acting in his, their or its own right, or as the officer, agent, servant, correspondent or representative of another to make or offer to make therein, or to assist in making therein, or in offering to make therein, any of the contracts specified in any of the three preceding subdivisions of this section.

Shall be guilty of a felony and on conviction thereof shall, if a corporation, be punished by a fine of not more than five thousand dollars for each offense and all other persons so convicted shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than five years, or by both such fine and imprisonment. The prosecution, conviction and punishment of a corporation hereunder shall not be deemed to be a prosecution, conviction or punishment of any of its officers, directors or stockholders.

§ 351–a. Exhibiting quotations; penalty for violation

Any person, firm, copartnership, association or corporation receiving, communicating, exhibiting or displaying in any manner any statement of quotations of prices of any such securities or commodities with an intent to make or offer to make or to assist in making or offering to make any contract prohibited in this article shall be guilty of a felony and on conviction thereof shall be punished as provided in the preceding section.

§ 351–b. Written statement to be furnished; presumption

Every person, firm, association, copartnership or corporation shall furnish upon written demand to any customer, or principal for whom such person has executed an order for the actual purchase or sale of any such securities or commodities, either for immediate or future delivery, a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the case may be, the time when, place where, the amount of and the price at which the same was either bought or sold; and if such person, firm, association, copartnership or corporation shall refuse or neglect to furnish such statement within forty-eight hours after such demand, such refusal shall be prima facie evidence that such purchase or sale was made in violation of this article.

§ 351–c. Corporations; additional penalty for second offense

If a domestic corporation shall be convicted of a second offense hereunder the supreme court shall have jurisdiction upon an action brought by the attorney-general, in the name of the people, for that purpose, to dissolve such corporation; and if a foreign corporation shall be convicted of a second offense, such court shall have jurisdiction in an action brought in like manner to restrain such corporation from doing business in this state.

§ 351–d. Definitions

"Bucket shop" shall mean any building, or any room, apartment, booth, office or store therein or any other place where any contract prohibited by this article is made or offered to be made.

§ 351-e. Witnesses' immunity

In any criminal proceeding before any court, magistrate or grand jury for a violation of any of the provisions of this article, the court, magistrate or grand jury may confer immunity in accordance with the provisions of the penal law.

§ 73. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-one-a, to read as follows:

§ 391-a. Unlawful acts relating to liquid fuels, lubricating oils and similar products

Inasmuch as it is customary for manufacturers and distributors of liquid fuels, lubricating oils, and similar products, to market the same under designated and generally known trade names, and, by means of containers, tanks, pumps, and other distributing facilities, bearing the name, trade name, symbol, sign, or other distinguishing marks, of identification, of such manufacturer or distributor; and inasmuch as it is customary for such manufacturers and distributors to furnish or loan, on nominal lease, to the dealers and others, tanks, pumps, and other distributing equipment, for the safe and convenient storage and sale of such products, and for the identification of the products sold therefrom; and inasmuch as this method of marking liquid fuels, lubricating oils, and like products, affords protection to the purchaser against sale of adulterated or inferior products; therefore, any person who:

1. Shall store, sell, expose for sale, or offer for sale, any liquid fuels, lubricating oils, or other similar products, in any manner whatsoever, so as to deceive or tend to deceive the purchaser as to the nature, quality, and identity, of the product so sold or offered for sale; or

2. Shall store, keep, expose for sale, offer for sale, or sell, from any tank or container, or from any pump, or other distributing device or equipment, any other liquid fuels, lubricating oils, or other similar products, than those indicated by the name, trade name, symbol, sign, or other distinguishing mark, or device, of the manufacturer or distributor, appearing upon the tank, container pump, or other distributing equipment, from which the same are sold, offered for sale, or distributed; or

3. Shall disguise or camouflage his or their own equipment, by imitating the design, symbol, trade name, of the equipment, under which recognized brands of liquid fuels, lubricating oils, and similar products, are generally marketed; or

4. Shall expose for sale, offer for sale, or sell, under any name in general use, any liquid fuels, lubricating oils, or other like products, except those manufactured or distributed by the manufacturer or distributor marketing liquid fuels, lubricating oils, or other like products, under such trade name, or shall substitute, mix, or adulterate, the liquid fuels, lubricating oils, or other similar products, sold, offered for sale, or distributed, under such trade names; or

5. Shall expose for sale, offer for sale, sell or store, in any manner so as to deceive or tend to deceive the purchaser as to the nature, origin, quality, grade or identity of the product so sold or offered for sale or shall sell, expose for sale, offer for sale, sell or store, in any manner so as to deceive or tend to deceive the purchaser of any lubricating oil, lubricants, mixtures of lubricants, any part of which had been once used for lubrication purposes and subsequently reclaimed, refined, re-refined or reconditioned without clearly indicating or setting forth such fact by means of the words "reclaimed oil" on the container pump or other distributing device used; or

6. Shall aid or assist any other person, association, or corporation, in the violation of the provisions of this section, by depositing or delivering into any tank, receptacle, or other container, any other liquid fuels, lubricating oils, or like products, than those intended to be stored there-

in and distributed therefrom, as indicated by the name of the manufacturer or distributor or the trade name of the product displayed on the container itself, or on the pump, or other distributing device used in connection therewith, is guilty of a **misdemeanor.**

§ 74. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-two, to read as follows:

§ 392. Second-hand watches

1. Definitions. As used in this section:

A. "Person" shall be deemed to mean a person, firm, partnership, association or corporation.

B. "Consumer" shall be deemed to mean an individual, firm, partnership, association or corporation who buys for own use, or for the use of another but not for resale.

C. A "second-hand" watch shall be deemed to mean: A watch which, as a whole, the case thereof, or the movement thereof has been sold to a consumer; provided, however, that a watch which has been so sold and is thereafter returned, either through an exchange or for credit, to the same person who sold such watch to the consumer, shall not be deemed to be a second-hand watch for the purpose of this act if such person keeps a written or printed record setting forth the name and address of the consumer, the date of the sale to the consumer, the name of the watch or its maker, and the serial numbers, if any, on the case and the movement of the watch, or other distinguishing numbers or identification marks, the aforesaid record to be kept for at least three years from the date of the sale of the watch and to be open for inspection during all business hours by the district attorney, or his representative, of the county in which such person is engaged in business; or

Any watch whose case or movement, serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered; or

Any watch, the movement of which is more than five years old and has been repaired, or any part or parts of the watch, including the movement, have been replaced, whether in the vendor's hands or while in the possession of another; and this provision shall apply whether or not the watch has been returned, either through an exchange or for credit to the same person who sold or disposed of said watch to the consumer in any manner.

2. Any person, or agent or employee thereof, who sells a second-hand watch, shall affix and keep affixed to the same a tag with the words "second-hand" legibly written or printed thereon in the English language. For the purposes of this subdivision, "sell" shall be deemed to include offer to sell or exchange, expose for sale or exchange, possess with intent to sell or exchange, and sell or exchange.

3. Any person, or agent or employee thereof, who sells a second-hand watch shall deliver to the vendee a written invoice setting forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the name of the watch or its maker, and the serial numbers, if any or other distinguishing numbers or identification marks on its case and movement. In the event the serial numbers, or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered, this shall be set forth in the invoice. A duplicate of the aforesaid invoice shall be kept on file by the vendor of such second-hand watch for at least three years from the date of the sale thereof and shall be open to inspection during all business hours by the district attorney or his representative of the county in which the vendor is engaged in business.

4. Any person advertising in any manner second-hand watches for sale shall state clearly in such advertising that the watches so advertised are second-hand watches.

5. Any violation of this act shall constitute a **misdemeanor** and shall be punishable by a fine of not more than five hundred dollars, or not more than one hundred days in jail or both.

§ 75. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-two-a, to read as follows:

§ 392–a. Manufacture and sale of used or second-hand hats

1. Any person who shall manufacture, sell, trade or offer for sale any used or second-hand hat shall affix or cause to be affixed conspicuously and securely in such a manner that it can not be easily detached by any person, a label upon which shall be printed in the English language the name and address of the manufacturer and the words "used hat" or "second-hand hat."

2. Any manufacturer, retail dealer or other person who shall make, offer for sale, trade or sell any such hat shall cause a sign of such size that it may be legible from a distance of at least thirty feet reading "used hats" or "second-hand hats" to be placed in a conspicuous place at the location where such hats are manufactured, sold, traded or offered for sale.

3. Any person, firm, corporation or association, or its officers or agents who or which shall violate any of the provisions of this section shall be guilty of a **misdemeanor.**

§ 76. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-two-b, to read as follows:

§ 392–b. False labels and misrepresentations

A person, who with intent to defraud:

1. Puts upon an article of merchandise, or upon a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, any false description or other indication of or respecting the kind, number, quantity, weight or measure of such article, or any part thereof, or the place or country where it was manufactured or produced or the quality or grade of any such article, if the quality or grade thereof is required by law to be marked, branded or otherwise indicated on or with such article; or

2. Sells or offers for sale an article, which to his knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified; or

3. Sells or exposes for sale any goods in bulk to which no name or trademark shall be attached, and orally or otherwise represents that such goods are the manufacture or production of some other than the actual manufacturer or producer, in a case where the punishment for such offense is not specially provided for otherwise by statute, is guilty of a **misdemeanor.**

§ 77. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-two-c, to read as follows:

§ 392–c. Obliteration of marks of origin

1. Definitions. As used in this section:

(a) "Person" shall be deemed to include a firm, partnership, association or corporation.

(b) "Sell" shall be deemed to include offer to sell, expose for sale, and possess with intent to dispose of or to sell.

(c) "Article of merchandise" shall be deemed to include a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label

or other thing containing or covering an article of merchandise, or with which an article of merchandise is intended to be sold, or is sold.

(d) "Mark of origin" shall be deemed to mean and include any name, mark or indication of the place or country from which an article of merchandise was imported into the United States of America or its insular possessions, or the name, mark or indication of the place or country in which an article of merchandise was manufactured, packed, assembled, grown or produced.

(e) "Remove" shall be deemed to include deface, alter and obliterate.

(f) "Conceal" shall be deemed to include the original placing of a mark of origin upon an article of merchandise in any manner whatsoever, or the arranging or combining of two or more articles of merchandise into a single unit whereby the mark of origin is removed from open view, or is rendered illegible or inconspicuous.

(g) The terms "remove" and "conceal" are not to be deemed mutually exclusive.

2. Any person who wholly or in part removes or conceals or who shall cause to be, wholly or in part, removed or concealed from or upon an article of merchandise the mark of origin; or who sells or causes to be sold an article of merchandise from or upon which to his or its knowledge, or to the knowledge of his or its agents, servants or employees there has been in whole or in part, removed or concealed the mark of origin, or who sells or causes to be sold an article of merchandise from the inspection of which such knowledge could have been obtained, shall be guilty of a **misdemeanor**, provided that it shall not be deemed a violation of this section if at the time of sale said article of merchandise and the immediate and outer container or containers thereof shall be marked, stamped, tagged, branded or labeled in legible and conspicuous English words with said mark of origin or the concealment thereof shall have completely ceased.

3. The sale of an article of merchandise from which there has been in whole or in part removed or concealed a mark of origin shall be presumptive evidence of the violation of this section.

§ 78. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-two-d, to read as follows:

§ 392-d. Using false marks as to manufacture

A person who, with intent to defraud or to enable another to defraud any person, manufactures or knowingly sells or causes to be manufactured or sold, any article, marked, stamped or branded or incased or inclosed in any box, bottle or wrapper, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark which article is not the manufacture, workmanship or production of the person named, indicated or denoted by such marking, stamping or branding, or by or upon such engraving, printed label, stamp, imprint, mark or trade-mark, is guilty of a **misdemeanor.**

§ 79. Such law is hereby amended by inserting therein a new section to be section three hundred ninety-six-b, to read as follows:

§ 396-b. Advertisements

Any person, firm, corporation or association, or agent or employee thereof, hereinafter called person, who, being engaged in the business of dealing in any property, makes, publishes, disseminates, circulates or places before the public or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in this state, any advertisement respecting any such property, in any newspaper, magazine, or other publication, or over any radio station or television station, unless it is stated in any such advertisement that the advertiser is a dealer in such property or from the context of any such

advertisement, it plainly appears that such person is a dealer in such property so offered for sale in any such advertisement; or when placing or causing any such advertisement to appear in any newspaper, magazine or other publication or radio or television station as described in this section, if requested by the publisher of any such newspaper, magazine or other publication or owner or operator of such radio or television station or any agent or representative thereof to file with such owner or operator, publisher, agent or representative thereof his true name, or where he is transacting business under a name other than the true name pursuant to law, then the name under which such business is transacted, and each business address wherein any business is transacted by him, in the class of property advertised or to be advertised for sale in such advertisement, shall make any false statement in relation to any of such items; or if requested by the publisher of any such newspaper, magazine or other publication or owner or operator of such radio or television station or any agent or representative thereof to file with such owner, operator, publisher, agent or representative thereof a statement showing whether he is causing such advertisement to appear or is offering to make such sale or disposition or transaction, as herein set forth, as principal or agent, and if as agent, to set forth such information as is specified in this section, in relation to his principal as well as in relation to himself, shall make any false statement in relation to any of such items; is guilty of a **misdemeanor.**

§ 80. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-six-c, to read as follows:

§ 396-c. Advertisements by persons engaged in dental business relating to dentures and bridges

Any person engaged in the business of supplying, constructing, reproducing, relining, repairing, adding or directing the application of any substance of a permanent nature to dentures, bridges, appliances or other structures to be worn as substitutes for natural teeth:

(a) who shall advertise his services, technique or materials to the general public by means of advertisements in public newspapers, magazines or by radio or television display advertisements, excepting advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and in the public telephone directories other than displaying advertising in the latter, or

(b) who shall in any way directly solicit the patronage of the general public for any dental services, dental materials or dental appliances;

shall be guilty of a **misdemeanor.**

§ 81. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-six-d, to read as follows:

§ 396-d. Advertisement and description of real property

Whenever any person or persons, firm or corporation, shall use in connection with the designation, description, advertisement, lease or sale of any real property, any name which shall include the name of any political or territorial subdivision situated in the county or in any county immediately adjoining the county in which such property is situated, other than the name of the political and territorial subdivision in which the particular property referred to is located, such person or persons, firm or corporation shall, as part of every such designation, description, advertisement, lease or sale, and with the same prominence given to any such name or part of such name, state and display the name of the town, village, city or other political subdivision in which such property is actually located.

CONFORMING AMENDMENTS

§ 82. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-six-e, to read as follows:

§ 396–e. Marking articles made of linen

Any person, firm, corporation or association who makes or sells or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any collars or cuffs marked, stamped or branded with the words, "linen," "pure linen" or "all linen" or incased or inclosed in any box, package, cover or wrapper or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark, or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing, that such article is "linen," "pure linen," or "all linen," unless the material of which the said collars or cuffs are manufactured contains at least one fold or ply which has a flax thread in both its warp and filling, is guilty of a misdemeanor.

§ 83. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-six-f, to read as follows:

§ 396–f. Products made by blind workers

Any misrepresentation that goods offered for sale are the product of blind workers is hereby declared to be a special matter of state concern.

1. Definitions. As used in this section, (a) "Blind" shall be construed to mean a person having central visual acuity not to exceed 20/200 in the better eye, with correcting lenses, or visual acuity greater than 20/200, but with a limitation in the field of vision, such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(b) "Goods or articles made by blind workers" shall be construed to mean goods or articles in the manufacture of which not less than seventy-five per centum of the total hours of direct labor is performed by blind workers.

(c) "Direct labor" shall be construed to mean all work required for the preparation, processing, assembling and packing, but not including supervision, administration, inspection and shipping.

2. (a) No goods or articles, which are intended by label, symbol, trade name, or name of the manufacturer to indicate that they were made by blind workers, shall be displayed or offered by any person, firm or corporation for sale in this state unless at least seventy-five per centum of the total hours of direct labor of producing such goods or articles purported to be made by the blind shall have been performed by the blind and no goods or articles which do not have a label, symbol or other printed matter indicating that such goods or articles were made by the blind as herein defined, shall be offered for sale directly or indirectly as being made by the blind, unless such goods or articles were in fact made by the blind as herein defined.

(b) Any blind workman, being a citizen or a resident within this state, or any institution, public or private corporation, partnership or association, engaged within this state in the manufacture, sale or distribution of articles of merchandise, made, manufactured or fabricated by a blind workman or blind workmen, is hereby authorized to imprint or stamp upon such articles of merchandise or affix thereto labels containing the words, "made by a blind workman or made by the blind, or blind made" provided not less than seventy-five per centum of the total hours of direct labor of production has been performed by the blind workman or blind workmen, to which shall be added the place of manufacture and, if desired, the name

of the particular workman or workmen who made, manufactured or fabricated the same.

(c) Any person, partnership, firm, corporation, institution or association, who shall use or employ such imprint, stamp, symbol or label, or any other descriptive imprint, stamp or label or who by word of mouth or through another, whether or not such imprint, symbol, stamp or label is used, shall indicate or tend to indicate or misrepresent that the article [1] were made, manufactured or fabricated by a blind worker or by the blind when in fact such articles were not so made, manufactured or fabricated, is guilty of a **misdemeanor.**

[1] So in original. Probably should read "articles".

§ 84. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-six-g, to read as follows:

§ 396–g. Fraudulent sale of poppies, forget-me-nots, daisies, flags and other articles sold for patriotic purposes

Any person, whether a veteran soldier, sailor, marine or army nurse, or otherwise, who in the promotion of his own interests, or to derive personal pecuniary benefit, gain or profit, for himself or for any person, firm or corporation other than an organization expressly designated and authorized to administer veteran relief by the provisions of section one hundred sixty-eight of the social welfare law, sells or offers to sell poppies, forget-me-nots, daisies, flags or other articles sold for patriotic purposes, while claiming that such sale or offer to sell is made as agent of, or for the benefit of such organization authorized to administrate veteran relief, is guilty of a **misdemeanor**, punishable by a fine of not more than fifty dollars or by imprisonment for not more than six months, or by both such fine and imprisonment.

§ 85. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-eight-a, to read as follows:

§ 398–a. Bulk transfers of personal property; duties of parties; penalties for violation

1. A person who is a transferor of personal property constituting a bulk transfer subject to article six of the uniform commercial code, who knowingly and wilfully:

(a) refuses or neglects to furnish the transferee or the auctioneer of such property, as the case may be, with a list of the transferor's existing creditors prepared as stated in section 6—104 of such code, or

(b) prepares or assists in the preparation, pursuant to section 6—104 of such code, of a schedule of the property transferred containing a material omission or false statement,

is guilty of a **misdemeanor.**

2. A person, except a purchaser at auction, who is a transferee of personal property constituting a bulk transfer subject to article six of the uniform commercial code, who knowingly and wilfully:

(a) refuses or neglects to require the transferor property to furnish him with a list of the transferor's existing creditors prepared as stated in section 6—104 of such code, or

(b) prepares or assists in the preparation, pursuant to section 6—104 of such code, of a schedule of the property transferred containing a material omission or false statement, or

(c) neglects or refuses to preserve the aforesaid list of creditors and the aforesaid schedule of the property transferred for six months next following the transfer and to permit inspection of either or both and copying therefrom at all reasonable hours by any creditor

of the transferor unless the aforesaid list and schedule has been previously filed in the department of state,

is guilty of a **misdemeanor.**

3. A person who is an auctioneer of personal property constituting a bulk transfer subject to article six of the uniform commercial code, who knowingly and wilfully:

(a) refuses or neglects to receive a list of the transferor's existing creditors prepared as stated in section 6—104 of such code, or

(b) refuses or neglects to prepare, pursuant to section 6—104 of such code, a schedule of the property transferred, or

(c) prepares, pursuant to section 6—104 of such code, a schedule of the property transferred containing a material omission or false statement, or

(d) refuses or neglects to retain the aforesaid list of creditors and the aforesaid schedule of the property for six months next following the transfer,

is guilty of a **misdemeanor.**

4. (a) A person, except a purchaser at auction, who is a transferee of personal property constituting a bulk transfer subject to article six of the uniform commercial code must, at least ten days before he takes possession of the property or pays for it, whichever happens first, give notice of the transfer to creditors stating:

(1) that a bulk transfer is about to be made;

(2) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(3) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(b) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(1) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(2) the address where the schedule of property to be transferred, prepared pursuant to, and list of creditors prepared as stated in section 6—104 of such code may be inspected;

(3) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing; and

(4) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(c) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor pursuant to section 6—104 of such code, and to all other persons who are known to the transferee to hold or assert claims against the transferor.

(d) A person who knowingly and wilfully fails to comply with the provisions of this subdivision is guilty of a **misdemeanor.**

5. (a) An auctioneer of personal property constituting a bulk transfer subject to article six of the uniform commercial code must give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors furnished to him by the transferor pursuant to section 6—108 of such code and to all other persons known to him to hold or assert claims against the transferor.

(b) A person who knowingly and wilfully fails to comply with the provisions of this subdivision is guilty of a **misdemeanor.**

§ 86. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-nine-b, to read as follows:

§ 399-b. Contracts for the use of the streets for hack stands

The owner, lessee or other occupant of any real property, or any other person, copartnership or corporation, who shall make or enter into any agreement, contract or arrangement whatsoever whereby the right is attempted to be granted or is granted to any person, copartnership, association or corporation to use any portion of any public highway, street, avenue, boulevard, park or other public property owned by the state of New York or any municipality therein for the purpose of permitting any vehicle to stand while awaiting passengers for hire or as a private hack stand, and any owner, lessee or other person, copartnership or corporation who shall make or enter into any contract or arrangement for the payment of or receives thereby any sum of money, percentage or profits or other thing of value under any such contract, agreement, consent or arrangement for such use of such public property as such private hack stand, shall be guilty of a misdemeanor.

§ 87. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-eight-c, to read as follows:

§ 398-c. Children attending skating rinks under certain conditions

Notwithstanding any other provision of law, the owner, lessee, proprietor, operator, attendant or employee of any skating rink may admit or allow to remain in any such skating rink any child under the age of fourteen years, unaccompanied by the parent, guardian or other adult person authorized by the parent or guardian of such child, at any time other than while school classes of such child are in session, but not after six o'clock in the afternoon, provided that on the premises of such skating rink a qualified matron shall be in attendance at all times. This section shall not apply to any skating rink within which, or connected with any premises within which, the sale of any wine, spiritous or malt beverages or liquor is allowed, pool or billiard tables are used or bowling alleys are maintained. Children of the age of fourteen years and less than sixteen years of age, however, may remain in such skating rink until ten o'clock in the evening, in pursuance of the provisions of this section, of any day preceding a day on which school classes will not be in session, and not later than nine o'clock in the evening on other days.

§ 88. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-nine-d, to read as follows:

§ 399-d. Children attending public bowling alleys under certain conditions

Notwithstanding any other provision of law, it shall be lawful for the owner, lessee, proprietor, operator, attendant or employee of any public bowling alley to admit or allow to remain in any such public bowling alley, and to bowl therein, any child between the ages of nine and sixteen, daily, except Sunday, between the hours of nine in the morning and seven o'clock in the afternoon when school is not in session, and on Sunday between the hours of one in the afternoon and six o'clock in the afternoon, and when accompanied to, from and at such public bowling alley by a parent or by a responsible adult, or when a member of an organized group under the supervision of a responsible adult, provided, that no alcoholic beverages of any kind are dispensed on such premises during the time that such child is on the premises as a member of such organized group, as shall be permitted by a local law or ordinance heretofore or hereafter adopted by the common council or other legislative body of a city, town or village permitting any such child to be admitted, or allowed to remain or to bowl in any such public bowling alley as herein provided.

§ 89. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-nine-e, to read as follows:

§ 399–e. Sale of cigarettes, cigars or other tobacco products

1. Any person, firm, partnership, company or corporation operating a place of business wherein cigarettes, cigars or tobacco products are sold or offered for sale shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS OR OTHER TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height.

2. Any person, firm [1] partnership, company or corporation operating a vending machine which dispenses cigarettes, cigars or tobacco products must affix thereto in a prominent place a legible notice in accordance with the terms of subdivision one of this section.

A violation of any of the provisions of this section shall constitute an offense and shall be punishable by a fine of not more than fifty dollars.

[1] So in original. A comma probably should follow "firm".

§ 90. Such law is hereby amended by inserting therein a new article, to be article twenty-eight-A, to read as follows:

ARTICLE 28-A—CEMETERY PROPERTY AND FUNERAL SERVICES

Sec.
450. Unlawful acts relating to sales of cemetery property.
451. Cemetery to state true location.
452. Unauthorized charges in connection with permits for burials or erection of monuments.
453. Moneys paid in connection with agreements for funeral goods or services in advance of need to be kept on deposit pending use or repayment.

§ 450. Unlawful acts relating to sales of cemetery property

The sale or procuring any agreement for sale of cemetery lots or plots, or of crypts or niches in a community mausoleum, or niches in a columbarium or crematorium, upon the promise, representation or inducement of re-sale at a financial profit is hereby prohibited. Any person or individual who shall make, or attempt to make, either on his own behalf or on behalf of another a sale conveyance or agreement contrary to the provisions of this act shall be guilty of a misdemeanor.

§ 451. Cemetery to state true location

Any cemetery corporation or employee or agent thereof that shall advertise in a newspaper, magazine or other publication or in the form of a book, notice, circular, pamphlet, letter, poster, card, or over any radio station, or in any other way for the purpose of selling lots, plots or parts thereof in its cemetery shall in such advertisement state the location of the cemetery grounds, including the city, town or village, and the county and state. A violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars or not more than six months imprisonment or both.

§ 452. Unauthorized charges in connection with permits for burials or erection of monuments

It shall be unlawful for a society or fraternal organization or a representative thereof to obtain, receive or exact or attempt to obtain, receive or exact, a fee or thing of value in addition to the regular dues or charg-

es required to be paid pursuant to the by-laws, constitution, or rules of such society or fraternal organization as a condition to granting a permit for or consent to burial in or the erection of a monument or memorial upon a lot or plot in a cemetery. A violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars or not more than six months imprisonment or both.

§ 453. Moneys paid in connection with agreements for funeral goods or services in advance of need to be kept on deposit pending use or repayment

Any and all moneys paid to a funeral director, undertaker, cemetery, or any other person, firm or corporation, under or in connection with an agreement for the sale of personal property to be used in connection with a funeral or burial, or for the furnishing of personal services of a funeral director or undertaker, wherein the personal property is not to be delivered or the personal services are not to be rendered until the occurrence of the death of the person for whose funeral or burial such property or services are to be furnished shall be trust funds in the possession of such funeral director, undertaker, cemetery, or other person, firm or corporation, and shall be deposited by him or it within thirty days after receipt thereof, in a special account maintained exclusively for the deposit of such moneys in a bank or trust company in which funds may be deposited by a fiduciary under section twenty-one of the personal property law, and shall be so held on deposit, together with any interest thereon, until said personal property has been delivered and said personal services have been rendered, unless sooner repaid, in whole or in part.

The amount of any and all moneys paid under or in connection with such an agreement, together with interest, if any, accrued thereon while on deposit as so required shall be repaid on demand at any time prior to the delivery of the personal property or the rendering of the personal services.

Any provision of any such agreement whereby a person who pays money under or in connection therewith waives any provision of this section shall be void.

Any person, firm or corporation who or which, having received any moneys under or in connection with such an agreement, shall fail to deposit or keep on deposit or to repay any and all such moneys as provided in this section, shall be guilty of a misdemeanor.

This section shall not apply to the sale of lots or graves by a cemetery.

§ 91. Such law is hereby amended by inserting therein a new article, to be article twenty-eight-B, to read as follows:

ARTICLE 28-B—BUDGET PLANNING

Sec.
455. Definitions.
456. Budget planning prohibited.
457. Penalty.

§ 455. Definitions

1. Budget planning, as used in this article, means the making of a contract with a particular debtor whereby the debtor agrees to pay a sum or sums of money periodically to the person engaged in the budget planning who shall distribute the same among certain specified creditors in accordance with a plan agreed upon and the debtor further agrees to pay to such person any valuable consideration for such services or for any other services rendered in connection therewith.

2. Person, as used in this article, shall not include a person admitted to practice law in this state.

3. Firm, as used in this article, shall not include a copartnership, all of the members of which are admitted to practice law in this state.

§ 456. Budget planning prohibited

No person, firm, association or corporation, shall, after the effective date of this act, engage in the business of budget planning as defined in the preceding section, but nothing herein contained shall affect any contract theretofore made.

§ 457. Penalty

Whoever either individually or as officer, director or employee of any person, firm, association or corporation, violates any of the provisions of the preceding section shall be guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars and to imprisonment for not more than six months or to both for each such violation.

§ 92. Such law is hereby amended by inserting therein a new article, to be article twenty-eight-C, to read as follows:

ARTICLE 28-C—BILLIARD AND POCKET BILLIARD ROOMS

Sec.

460. Billiard and pocket billiard rooms to be licensed; application of article.
461. License; how to be issued.
462. Refund of fees.
463. Disposition of fees and fines.
464. License certificate, posting, lost certificates.
465. Gambling, disorderliness, admission of minors and hours of operating, sale of liquor and habit forming drugs.
466. Obstructions to view prohibited.
467. Certain persons not to be employed.
468. Penalties for violation of this article.
469. Restrictions as to signs and similar descriptive matter.
470. Duties of public officers in relation to complaints and prosecutions under this article.
471. Directory of billiard and pocket billiard rooms.
472. Saving clause.

§ 460. Billiard and pocket billiard rooms to be licensed; application of article

After September first, nineteen hundred twenty-two, no public billiard or pocket billiard room or public place of any description in which billiards or pocket billiards are played or which includes any apparatus or paraphernalia for the playing of billiards or pocket billiards and which is conducted as a public place of business for profit shall be permitted in any town, village or city of the state unless a license therefor is granted annually to the proprietor as provided in this article. Notwithstanding anything herein contained to the contrary, a license shall not be required for a public place of business where billiards or pocket billiards are played, or may be played, on a table which measures not more than three feet by six feet provided that not more than one such table is in the public place at any one time and further provided that the cue sticks used, and available for use, are made of light plexiglass or some similar light material. This article shall not apply to any city having a population of four hundred thousand or more.

§ 461. License; how to be issued

A person, firm, association or corporation desiring to conduct as a public place of business for profit a public billiard or pocket billiard room or public place described in the preceding section shall apply to the department of state for a license so to do. The application shall be accompanied by a deposit with the department of state of the amount of fees for the license, which fees shall be ten dollars for each billiard or pocket billiard table, for the license period of one year or fraction thereof. The license, if issued, shall be for one year from the first of September, or if issued after September first, for the period expiring on the ensuing thirty-first day of August. The department of state, for cause, in any case may refuse the license applied for. The department of state shall not issue a license to any person who has been convicted of a felony and who has not subsequent to such conviction received executive pardon therefor or a certificate of good conduct from the parole board, to remove the disability under this section because of such conviction, nor to any person who is not a citizen or who has not filed his declaration of intention to become a citizen; provided, however, that an Indian who is a freeholder in the state of New York, may be granted a license to conduct a public billiard or pocket billiard room without filing a declaration of intention to become a citizen of the United States. Application for any such license shall be upon forms to be prescribed by the department of state and setting forth such facts as may be necessary for the information of said department. The secretary of state may for cause, after notice and hearing, suspend or revoke any license granted under the provisions of this article.

§ 462. Refund of fees

Moneys heretofore or hereafter received by the department pursuant to this article may, within three years from receipt thereof, be refunded to the person entitled thereto, on satisfactory proof that:

(1) Such moneys were in excess of the amount required by this article, to the extent of such excess. (2) The license for which application was made has been denied. (3) The applicant for the license has predeceased its issuance. (4) The licensee has enlisted in or been otherwise inducted into active service in the armed forces of the United States, in which event the refund shall be such proportion of the license fee paid as the number of full months remaining unexpired of the license period bears to the total number of months in such period.

Such refunds shall, upon approval by the secretary of state and after audit by the comptroller, be paid from any moneys received from the operation of this article and in the custody of the department.

§ 463. Disposition of fees and fines

All license fees collected by the department of state under the provisions of this article shall be paid into the state treasury as provided by section one hundred twenty-one of the state finance law to the credit of the general fund. Fines imposed for violations of this article shall be the property of the state.

§ 464. License certificate, posting, lost certificates

Any license certificate granted by the department of state under the provisions of this article shall specify the name of the licensee, the place where the licensed business is to be carried on and the days on which the license shall begin and expire. The certificate shall be inclosed in a suitable wood and metal frame, having a clear glass face and a substantial wood or metal back, so that the whole of such certificate may be seen therein and shall be posted up and at all times displayed in a conspicuous place in the room or place where the licensed business is carried on so that all persons visiting such room or place may readily see

the same. It shall be unlawful for any person to post such certificate or be permitted to post it upon premises other than those for which the certificate was issued or to knowingly deface or destroy any such certificate. Whenever a license certificate shall be lost or destroyed, without fault on the part of the holder or his agents or employees, a duplicate certificate in lieu thereof under the original application and bond may be issued by the department of state in its discretion and in accordance with such rules and regulations as the secretary of state may prescribe.

§ 465. Gambling, disorderliness, admission of minors and hours of operating, sale of liquor and habit forming drugs

It shall be unlawful for a person, firm, association or corporation holding such license to:

1. Suffer or permit any dice to be thrown upon a wager of money or property or a prize or any raffle to be made or any game to be played with cards upon a wager of money or property or for a prize or any game of chance to be played or gambling in any manner, in the place designated by the license certificate in which the licensed business is to be carried on or in any yard, booth, garden or other place appertaining thereto or connected therewith; or to

2. Suffer or permit the licensed premises to become disorderly; or to

3. Suffer or permit any minor under the age of eighteen years to enter or remain in such billiard room or place unless accompanied by his or her parent or legally appointed guardian; or to

4. Keep such billiard room or place open or to operate the same after the hour of midnight and before seven o'clock in the morning; or to

5. Sell [1] barter, furnish or possess in such billiard room or place any intoxicating liquor, which phrase intoxicating liquor shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter and wine, and in addition thereto any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of one per centum or more of alcohol by volume, which are fit for veregae purposes, provided that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, porter, or wine is produced, if it contains less than one-half of one per centum of alcohol by volume; or to

6. Sell, barter, furnish or possess in such billiard room or place, any habit forming drugs or any appliances for administering the same.

[1] So in original. A comma probably should follow "Sell".

§ 466. Obstructions to view prohibited

Where there is a window or windows in such billiard or pocket billiard room, at least the lower one-third part of such window or windows shall be of clear glass and shall not be screened or curtained at any time of the day or of the night, nor shall there be any article or thing in the rear of such window or windows so as to prevent a full, clear and unobstructed view of such billiard or pocket billiard room. There shall be no inclosed box or stall or private room, and no partitions forming such boxes or stalls or private rooms shall be permitted. There shall be no interior billiard room not having a principal door or entrance and such door and all other doors entering such room shall have therein a section of clear glass sufficient to afford a clear view of such billiard room from the outside. None of these provisions, however, shall be construed to prevent the maintenance of washrooms or toilet rooms for proper purposes or the maintenance of closets for storing purposes exclusively.

§ 467. Certain persons not to be employed

It shall be unlawful for the proprietor of such billiard or pocket billiard room to knowingly employ in carrying on the business of such public billiard room any person who has been convicted of a felony or, until after one year after the date of the revocation of the license of any person whose license has been revoked under the provisions of this article.

§ 468. Penalties for violation of this article

Any person who violates any provision of this article shall be guilty of a misdemeanor. Where an act in violation of a provision of this article is also a crime punishable by provisions of the penal law, this section shall not prevent a prosecution for violation of such provisions, and nothing contained in this article shall authorize an act or omission which is a violation of any provision of the penal law. It shall not be a defense to a prosecution for a violation of any of the provisions of this article that the premises where the violation is alleged to have occurred were conducted during prohibited hours as a private club if at other times such premises were conducted as a public place of business for profit.

§ 469. Restrictions as to signs and similar descriptive matter

The word "pool" shall be discontinued as a descriptive word referring to a pocket billiard room or place. Wherever the word "pool" appears on any window, sign, building or stationery, used for or in connection with a billiard or pocket billiard room or place, it must be changed to read "billiards" or "pocket billiards."

§ 470. Duties of public officers in relation to complaints and prosecutions under this article

It shall be the duty of every sheriff, deputy sheriff, police officer, constable, state trooper or other peace officer, having notice or knowledge of any violation of the provisions of this article to immediately notify the district attorney of the county in which the violation occurs, by a statement under oath of the fact of such violation, and it shall be the duty of such district attorney when complaint on oath is made of such violation forthwith to cause the arrest and attend the examination personally or by an assistant of each person so complained of. A court or magistrate convicting any person of a violation of this article shall, within ten days after such conviction, make a written report thereof to the secretary of state setting forth the place and date of such conviction, the name of the person and the nature of the violation of which he was convicted. Nothing contained in this section shall prevent any citizen of the state from making a complaint to the department of state in a proceeding to revoke a license, nor from making a complaint to a court or magistrate of competent jurisdiction charging a violation of the provisions of this article.

§ 471. Directory of billiard and pocket billiard rooms

It shall be the duty of the department of state to compile and keep in a place accessible to the public a directory of all billiard and pocket billiard rooms licensed under the provisions of this article, giving the full names and addresses of the proprietors and the location of the respective premises.

§ 472. Saving clause

If any section or provision of this article shall at any time be declared to be unconstitutional, it is the expressed legislative intent that no other section or provision hereof be thereby affected.

§ 93. Such law is hereby amended by inserting therein a new section, to be section five hundred fifty-two, to read as follows:

§ 552. Notes given for patent-rights

A person who takes, sells or transfers a negotiable promissory note within article three of the uniform commercial code, knowing the consideration of such note to consist in whole or in part, of the right to make, use or sell, any patent invention or inventions, or any invention claimed or represented to be patented, without having the words "given for a patent-right" written or printed legibly and prominently on the face of such note above the signature thereto, is guilty of a **misdemeanor.**

§ 94. Such law is hereby amended by inserting therein a new section, to be section five hundred fifty-three, to read as follows:

§ 553. Notes given for a speculative consideration

A person who takes, sells or transfers a negotiable promissory note within article three of the uniform commercial code, knowing the consideration of such note to consist in whole or in part of the purchase price of any farm product at a price greater by four or more times than the fair market value of the same product at the time in the locality, or in which the consideration shall be in whole or in part, membership of and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at such rate, without having the words "given for a speculative consideration" or other words clearly showing the nature of the consideration prominently and legibly written or printed on the face of such note above the signature thereof, is guilty of a **misdemeanor.**

§ 95. Such law is hereby amended by inserting therein a new section, to be section five hundred fifty-four, to read as follows:

§ 554. Retention of forged, counterfeit or spurious documents or negotiable instruments permitted

Any bank, banker, transfer agent, railroad, warehouseman or any other person charged with the issue, reissue, transfer or payment of any of the documents hereinafter described, in any spurious, counterfeit, forged, altered note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, money order, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise; or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, or, in general, any instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, is presented for payment or transfer or for the purpose of obtaining possession of goods or any property under or pursuant to the terms of such instrument, whether the same is presented through any clearing house or otherwise, and whether or not the owner, or purported owner or presentor of such instrument is within or without the state of New York, may without civil or other liability, retain such counterfeit, forged or spurious instrument or document for the purpose of preserving the same, and return in lieu thereof a photostatic copy with an affidavit setting forth the infirmity in the original, and the name and address of the person in whose custody such original remains; provided, however, that such act of retention shall not in any way vary the effect

or alter the property or civil rights of any person in, to or by reason of such instrument or document or anything done with or pursuant to the same; and provided further, that such instrument shall be delivered within fourteen days to the district attorney within whose jurisdiction the same is retained and upon such surrender a receipt therefor shall be given to the custodian thereof; and provided further, that such instrument shall be produced for use in any court or by any public officer when required to do so under proper notice, demand or subpoena. The right to require the production of such document is hereby extended to all officers or courts whether within the state of New York or elsewhere.

[GENERAL CITY LAW]

§ 96. The general city law is hereby amended by inserting therein a new section, to be section three-c, to read as follows:

§ 3-c. Unlawful offers or agreements by municipal officials or omnibus lines with respect to omnibus line operations

1. No officer, employee or agent of any city or any person acting on his behalf shall, directly or indirectly, make an offer to or agree with any private owner or operator of an omnibus line within such city or any person acting on behalf of such owner or operator, to approve or recommend the approval of an increase in fare or any other benefit for such owner or operator at some future time, in consideration of the promise or agreement of such owner or operator to delay making any application for a fare increase until some future time, or to enter into a contract with a labor organization.

2. No private owner or operator of an omnibus line within any city or any person acting on behalf of such owner or operator shall, directly or indirectly, make an offer to or agree with any officer, employee or agent of such city, or any person acting on his behalf, to delay making an application for a fare increase until some future time, or to enter into a contract with a labor organization, in consideration of the promise or agreement of such officer, employee or agent of such city to approve or recommend the approval of an increase in fares or any other benefit for such owner or operator at some future time.

3. The violation of any provision of this section shall constitute a misdemeanor. Any public officer or employee who is convicted of a violation of this section shall forfeit his office or employment and shall forever be disqualified from holding any public office or employment under the state or any political subdivision thereof.

[GENERAL MUNICIPAL LAW]

§ 97. The general municipal law is hereby amended by inserting therein a new section, to be section seventy-one-a, to read as follows:

§ 71-a. Injury or death of person aiding a peace officer

A person who, after having been lawfully commanded to aid a peace officer in effectuating or securing an arrest or in preventing the commission by another of any offense, is killed or injured or his property or that of his employer is damaged and such death, injury or damage arises out of and in the course of aiding such officer, the person or employer so injured or whose property is so damaged or the personal representatives of the person so killed shall have a cause of action to recover the amount of such damage or injury against the municipal corporation by which such officer is employed at the time such command is obeyed. In the event of the death of the person so commanded to aid an officer, the action shall be governed by the provisions of sections one hundred thirty,

one hundred thirty-two, one hundred thirty-three and one hundred thirty-four of the decedent estate law.

§ 98. Such law is hereby amended by inserting therein a new section, to be section one hundred three-e, to read as follows:

§ 103-e. Conspiracies to prevent competitive bidding on public contracts

1. A person or corporation who shall wilfully, knowingly and with intent to defraud, make or enter into, or attempt to make or enter into, with any other person or corporation, a contract, agreement, arrangement or combination to submit a fraudulent or collusive bid, or to refrain from submitting a bona fide competitive bid, to any board, officer, agency, department, commission or other agency of the state or of a public corporation on a contract for public work or purchase which has been advertised for bidding, shall be guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand dollars or by imprisonment for not longer than one year, or by both such fine and imprisonment, and if a corporation by a fine not exceeding twenty thousand dollars. An indictment or information based upon a violation of any provision of this section must be found within three years after its commission.

2. For the purpose of this section a public corporation shall mean a county, city, town, village, school district, a territorial division of the state established by law and possessing the power to contract indebtedness and levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments, whether or not such territorial division is expressly declared to be a body corporate and politic by the statute creating or authorizing the creation of such territorial division, and a corporation organized to construct or operate a public improvement wholly or partly within the state, the profits from which enure to the benefit of this or other states or to the people thereof.

[GENERAL OBLIGATIONS LAW]

§ 99. The general obligations law is hereby amended by inserting in article five thereof a new title, to be title four, to read as follows:

Title 4—Contracts Relating to Wagering; Forfeiture and Recovery of Certain Property

Sec.

5-401. Illegal wagers, bets and stakes.
5-411. Contracts on account of money or property wagered, bet or staked are void.
5-413. Securities for money lost at gaming, void.
5-415. Certain transfers of property in pursuance of lottery, void.
5-417. Contracts, agreements and securities on account of lottery, void.
5-419. Property staked may be recovered.
5-421. Losers of certain sums may recover them.
5-523.[1] Money paid for lottery tickets may be recovered by action.

[1] So in original. Does not conform to section heading in text.

§ 5-401. Illegal wagers, bets and stakes

All wagers, bets or stakes, made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event whatever, shall be unlawful.

§ 5–411. Contracts on account of money or property wagered, bet or staked are void

All contracts for or on account of any money or property, or thing in action wagered, bet or staked, as provided in section 5–401, shall be void.

§ 5–413. Securities for money lost at gaming, void

All things in action, judgments, mortgages, conveyances, and every other security whatsoever, given or executed, by any person, where the whole or any part of the consideration of the same shall be for any money or other valuable thing won by playing at any game whatsoever, or won by betting on the hands or sides of such as do play at any game, or where the same shall be made for the repaying any money knowingly lent or advanced for the purpose of such gaming or betting aforesaid, or lent or advanced at the time and place of such play, to any person so gaming or betting aforesaid, or to any person who during such play, shall play or bet, shall be utterly void, except where such securities, conveyances or mortgages shall affect any real estate, when the same shall be void as to the grantee therein, so far only as hereinafter declared.

When any securities, mortgages or other conveyances, executed for the whole or part of any consideration specified in the preceding paragraph shall affect any real estate, they shall inure for the sole benefit of such person as would be entitled to the said real estate, if the grantor or person incumbering the same, had died, immediately upon the execution of such instrument, and shall be deemed to be taken and held to and for the use of the person who would be so entitled. All grants, covenants and conveyances, for preventing such real estate from coming to, or devolving upon, the person hereby intended to enjoy the same as aforesaid, or in any way incumbering or charging the same, so as to prevent such person from enjoying the same fully and entirely, shall be deemed fraudulent and void.

§ 5–415. Certain transfers of property in pursuance of lottery, void

Every grant, bargain, sale, conveyance, or transfer of any real estate, or of any goods, chattels, things in action, or any personal property, which shall hereafter be made in pursuance of any lottery, or for the purpose of aiding and assisting in such lottery, game or other device, to be determined by lot or chance is hereby declared void and of no effect.

§ 5–417. Contracts, agreements and securities on account of raffling, void

All contracts, agreements and securities given, made or executed, for or on account of any raffle, or distribution of money, goods or things in action, for the payment of any money, or other valuable thing, in consideration of a chance in such raffle or distribution, or for the delivery of any money, goods or things in action, so raffled for, or agreed to be distributed as aforesaid, shall be utterly void.

§ 5–419. Property staked may be recovered

Any person who shall pay, deliver or deposit any money, property or thing in action, upon the event of any wager or bet prohibited, may sue for and recover the same of the winner or person to whom the same shall be paid or delivered, and of the stakeholder or other person in whose hands shall be deposited any such wager, bet or stake, or any part thereof, whether the same shall have been paid over by such stakeholder or not, and whether any such wager be lost or not.

§ 5–421. Losers of certain sums may recover them

Every person who shall, by playing at any game, or by betting on the sides or hands of such as do play, lose at any time or sitting, the sum or value of twenty-five dollars or upwards, and shall pay or deliver the same or any part thereof, may, within three calendar months after such payment or delivery, sue for and recover the money or value of the things so lost and paid or delivered, from the winner thereof.

§ 5–423. Money paid for lottery tickets may be recovered by action

Any person who shall purchase any share, interest, ticket, certificate of any share or interest, or part of a ticket, or any paper or instrument purporting to be a ticket or share or interest in any ticket, or purporting to be a certificate of any share or interest in any ticket, or in any portion of any lottery, may sue for and recover double the sum of money, and double the value of goods or things in action, which he may have paid or delivered in consideration of such purchase, with double costs of suit.

Any person who shall have paid any money, or valuable thing, for a chance or interest in any lottery or distribution, prohibited by the penal law, may sue for and recover the same of the person to whom such payment or delivery was made.

§ 100. Such law is hereby amended by inserting therein a new section, to be section 5–524, to read as follows:

§ 5–524. Taking security upon certain property for usurious loans

A person who takes security, upon any household furniture, sewing machines, plate or silverware in actual use, tools or implements of trade, wearing apparel or jewelry, for a loan or forbearance of money, or for the use or sale of his personal credit, conditioned upon the payment of a greater rate than six percentum per annum, or who as security for such loan, use or sale of personal credit as aforesaid, makes a pretended purchase of such property from any person, upon the like condition, and permits the pledgor to retain the possession thereof is guilty of a misdemeanor.

§ 101. Subdivision one of section 7–103 of such law is hereby amended to read as follows:

1. Whenever money shall be deposited or advanced on a contract or license agreement for the use or rental of real property as security for performance of the contract or agreement or to be applied to payments upon such contract or agreement when due, such money, with interest accruing thereon, if any, until repaid or so applied, shall continue to be the money of the person making such deposit or advance and shall be held in trust by the person with whom such deposit or advance shall be made and shall not be mingled with the personal moneys or become an asset of the person receiving the same, but may be disposed of as provided in section ~~thirteen hundred two-a of the penal law.~~ 7–105 of this chapter.

§ 102. Such law is hereby amended by inserting therein a new section, to be section 7–105, to read as follows:

§ 7–105. Landlord failing to turn over deposits made by tenants or licensees and to notify tenants or licensees thereof in certain cases

1. Any person, firm or corporation and the employers, officers or agents thereof, whether the owner or lessee of the property leased, who or which has or hereafter shall have received from a tenant or licensee a sum of money or any other thing of value as a deposit or advance of rental as security for the full performance by such tenant or licensee of the terms of his lease or license agreement, or who or which has or

shall have received the same from a former owner or lessee, shall, upon conveying such property or assigning his or its lease to another, or upon the conveyance of such property to another person, firm or corporation by a referee in an action to foreclose a mortgage thereon, at the time of the delivery of the deed or instrument or assignment or within five days thereafter, or within five days after the making and entry of an order of the court discharging the receiver, deal with the security deposit in one of the three following ways:

A. Turn over to his or its grantee or assignee, or to the purchaser at the foreclosure sale the sum so deposited, and notify the tenant or licensee by registered or certified mail of such turning over and the name and address of such grantee, assignee or purchaser.

B. Return the sum so deposited to such tenant or licensee, or to his appointee or designee duly authorized in writing by such tenant to receive the same.

C. Retain the sum so deposited and notify the tenant or licensee by registered or certified mail of such conveyance or assignment and the name and address of the grantee, assignee, or purchaser at the foreclosure sale, as the case may be, and of the fact that he or it, as such former landlord, has retained the sum so deposited.

2. Any owner or lessee turning over to his or its grantee, assignee, or to a purchaser of the leased premises at a foreclosure sale the amount of such security deposit is hereby relieved of and from liability to the tenant or licensee for the repayment thereof; and the transferee of such security deposit is hereby made responsible for the return thereof to the tenant or licensee, unless he or it shall thereafter and before the expiration of the term of the tenant's lease or licensee's agreement, transfer such security deposit to another, pursuant to subdivision one hereof and give the requisite notice in connection therewith as provided thereby. The provisions of this section shall not apply if the agreement between the landlord and tenant or licensee is inconsistent herewith.

3. Any failure to comply with this section is a **misdemeanor.**

[INSURANCE LAW]

§ 103. The insurance law is hereby amended by inserting therein a new section, to be section seven–a, to read as follows:

§ 7–a. Loaning money on the security of real or personal property; designation of particular insurance agent or broker prohibited

No person, firm or corporation 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 or of servicing a mortgage on real or personal property and no trustee, director, officer, agent or other employee of any such person, firm, or corporation shall require, as a condition precedent to financing the purchase of such property or to loaning 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, firm or corporation 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 negotiate any policy of insurance or renewal thereof covering such property through a particular insurance company or through a particular agent or broker. This section shall not prevent the exercise by any such person, firm, corporation, trustee, director, officer, agent or employee of its right to approve or disapprove of the insurance company selected to underwrite the insurance, except that in exercising such right of disapproval, whether pur-

suant to this section or any other law, such person, firm, corporation, trustee, director, officer, agent or employee shall not discriminate against an insurance company which issues a policy of insurance that is non-assessable as to any designated mortgagee or any secured creditor designated as a loss payee because of its type of organization or shall refuse to accept an insurance policy because it was not negotiated through a particular insurance company or through a particular insurance agent or broker.

A violation of this section shall constitute a **misdemeanor.**

§ 104. Such law is hereby amended by inserting therein a new section, to be section eight, to read as follows:

§ 8. Designation of a particular insurance company, agent, broker or fund

No person or persons, firm or corporation, acting on his or its own behalf, or as a representative of any person, firm or corporation, or of any organization or association of persons, firms or corporations, who or which shall be the primary beneficiary of insurance provided in discharge of any statutory requirement of this state, shall require the person, firm or corporation obligated to comply with such statutory requirement to obtain such insurance from a particular insurance company, insurance fund of this state, agent, or broker. A violation of this section shall constitute a **misdemeanor.**

§ 105. Such law is hereby amended by inserting therein a new section, to be section nine, to read as follows:

§ 9. Designation of particular insurance company, agent or broker for surety bonds in public building or construction contracts

No officer or employee of this state, or of any public corporation as defined in section three of the general corporation law, and no person acting or purporting to act on behalf of such officer, employee, or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or furnish financial data to, or to obtain, or procure, any of the surety bonds specified in connection with such contract, or specified by any law, general, special or local, from a particular insurance or surety company, agent or broker. This section shall not, however, prevent the exercise by such officer or employee on behalf of the state or such public corporation of its right to approve the form, sufficiency or manner of execution of the surety bonds furnished by the insurance or surety company selected by the bidder to underwrite said bonds. Any provisions in any invitation for bids, or in any of the contract documents, in conflict herewith are hereby declared to be contrary to the public policy of this state. A violation of this section shall constitute a **misdemeanor.**

§ 106. Such law is hereby amended by inserting therein a new section, to be section forty–a, to read as follows:

§ 40–a. Receiving rebates on life insurance; witnesses' immunity

Any person knowingly receiving any rebate or allowance or deduction from any premium, or any valuable thing, special favor or advantage whatever, as an inducement to take any policy of life insurance, not specified in the policy is guilty of a **misdemeanor.**

In any criminal proceeding before any court, magistrate or grand jury for a violation of any of the provisions of this section, the court, magistrate or grand jury may confer immunity in accordance with the provisions of the penal law.

§ 107. Such law is hereby amended by inserting herein a new section, to be section forty–b, to read as follows:

§ 40–b. Issue or circulation of false literature

Any insurance corporation, or any officer, director or agent thereof who shall issue or circulate or cause or permit to be issued or circulated in this state any illustration, circular or statement indicating that such corporation can transact in this state any business of a character other than that which it is authorized to transact under the certificate of authority issued to it by the superintendent of insurance, shall be guilty of a **misdemeanor**, and the superintendent of insurance shall revoke the certificate of authority of the corporation or agent on a conviction for so offending.

§ 108. Such law is hereby amended by inserting therein a new section, to be section forty–c, to read as follows:

§ 40–c. False statements or rumors as to insurance institutions

Any person who wilfully and knowingly makes, circulates or transmits to another or others any statement, or rumor, written, printed or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any insurance corporation or other insurer doing business in this state, or who knowingly counsels, aids, procures, or induces another to start, transmit or circulate any such statement or rumor, is guilty of a **misdemeanor.**

§ 109. Such law is hereby amended by inserting therein a new section, to be section fifty-nine–b, to read as follows:

§ 59–b. Acting for foreign corporation which has not designated superintendent of insurance as attorney

Any person acting for himself or for others, who solicits or procures, or aids in the solicitation or procurement of policies or certificates of insurance from, or adjusts losses or in any manner aids the transaction of any business for, any foreign insurance corporation, which has not executed and filed in the office of the superintendent of insurance, a written appointment of the superintendent to be the true and lawful attorney of such corporation in and for this state, upon whom all lawful processes in any action or proceeding against the corporation may be served, is guilty of a **misdemeanor.**

§ 110. Such law is hereby amended by inserting therein a new section, to be section sixty-eight, to read as follows:

§ 68. Misconduct by directors of insurance corporations

Every director of an insurance corporation who: 1. In case of the fraudulent insolvency of such corporation, shall have participated in such fraud; or,

2. Wilfully does any act as such director which is expressly forbidden by statute, or wilfully omits to perform any duty imposed upon him as such director by statute,

Is guilty of a **misdemeanor**, if no other punishment is prescribed therefor by law.

The insolvency of an insurance corporation is deemed fraudulent unless its affairs appear upon investigation to have been administered fairly, legally and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.

CONFORMING AMENDMENTS

§ 111. Such law is hereby amended by inserting therein a new section, to be section seventy-seven–a, to read as follows:

§ 77–a. Transfers to and reinsurance of risks in unauthorized foreign corporations prohibited to co-operative associations

Any officer, manager, director or agent of a casualty insurance corporation upon the co-operative or assessment plan, organized under the laws of this state, who transfers its risks or assets or any part thereof to or reinsures its risks or any part thereof, in any insurance corporation or association of another state or country which is not, at the time of such transfer or reinsurance authorized by law to do insurance business in this state, is guilty of a misdemeanor.

§ 112. Such law is hereby amended by inserting therein a new section, to be section seventy-eight–a, to read as follows:

§ 78–a. Misconduct by officers and directors of life or casualty insurance corporations upon the co-operative or assessment plan or of fraternal beneficiary societies, orders or associations

Any officer or director of a life or casualty insurance corporation upon the cooperative or assessment plan or of a fraternal beneficiary society, order or association, who shall sell his position as such officer or director for any money or valuable consideration, or who shall accept or receive, directly or indirectly, any money or valuable consideration for his resignation as such officer or director, shall be guilty of a felony if the money or valuable consideration accepted or received for the sale or resignation of such position as officer or director shall be more than five hundred dollars, and, if a less amount, shall be guilty of a misdemeanor.

§ 113. Such law is hereby amended by inserting therein a new section, to be section one hundred forty-nine–a, to read as follows:

§ 149–a. False statements in applications for membership in fraternal benefit associations

Any applicant, officer, solicitor, examining physician, surgeon or other person, who knowingly or wilfully makes any false or fraudulent statements or representations in or with reference to any application for membership or reinstatement or any other documentary or other proof for the purpose of obtaining or reinstating membership in or benefit from any fraternal beneficiary society, order or association, any corporation, association or society transacting the business of life or casualty insurance or both, upon the co-operative or assessment plan, or a corporation for the insurance of domestic animals, is guilty of a misdemeanor.

[JUDICIARY LAW]

§ 114. The judiciary law is hereby amended by inserting therein a new section, to be section four hundred seventy-eight, to read as follows:

§ 478. Practicing or appearing as attorney-at-law without being admitted and registered

It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself in a court of record in this state or in any court in the city of New York, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and

counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath and without having subscribed and taken the oath or affirmation required by section four hundred sixty-eight of the judiciary law and filed the same in the office of the clerk of the court of appeals as required by said section. Provided, however, that nothing in this section shall be held to apply to officers of societies for the prevention of cruelty, duly appointed, when exercising the special powers conferred upon such corporations under section one hundred twenty-one of the membership corporations law.

§ 115. Such law is hereby amended by inserting therein a new section, to be section four hundred seventy-nine, to read as follows:

§ 479. Soliciting business on behalf of an attorney

It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services, or to make it a business so to solicit or procure such business, retainers or agreements.

§ 116. Such law is hereby amended by inserting therein a new section, to be section four hundred eighty, to read as follows:

§ 480. Entering hospital to negotiate settlement or obtain release or statement

It shall be unlawful for any person to enter a hospital for the purpose of negotiating a settlement or obtaining a general release or statement, written or oral, from any person confined in said hospital or sanitarium as a patient, with reference to any personal injuries for which said person is confined in said hospital or sanitarium within fifteen days after the injuries were sustained, unless at least five days prior to the obtaining or procuring of such general release or statement such injured party has signified in writing his willingness that such general release or statement be given. This section shall not apply to a person entering a hospital for the purpose of visiting a person therein confined, as his attorney or on behalf of his attorney.

§ 117. Such law is hereby amended by inserting therein a new section, to be section four hundred eighty-one, to read as follows:

§ 481. Aiding, assisting or abetting the solicitation of persons or the procurement of a retainer for or on behalf of an attorney

It shall be unlawful for any person in the employ of or in any capacity attached to any hospital, sanitarium, police department, prison or court, or for a person authorized to furnish bail bonds, to communicate directly or indirectly with any attorney or person acting on his behalf for the purpose of aiding, assisting or abetting such attorney in the solicitation of legal business or the procurement through solicitation of a retainer, written or oral, or any agreement authorizing the attorney to perform or render legal services.

§ 118. Such law is hereby amended by inserting therein a new section, to be section four hundred eighty-two, to read as follows:

§ 482. Employment by attorney of person to aid, assist or abet in the solicitation of business or the procurement through solicitation of a retainer to perform legal services

It shall be unlawful for an attorney to employ any person for the purpose of soliciting or aiding, assisting or abetting in the solicitation of legal business or the procurement through solicitation either directly or indirectly of a retainer, written or oral, or of any agreement authorizing the attorney to perform or render legal services.

§ 119. Such law is hereby amended by inserting therein a new section, to be section four hundred eighty-three, to read as follows:

§ 483. Signs advertising services as attorney at law

It shall be unlawful for any person to maintain on real property or to permit or allow any other person to maintain, on such property a sign, in any language, to the effect that an attorney-at-law or legal services are available therein unless the full name of the attorney-at-law or the firm rendering such services is set forth thereon. In any prosecution for violation of the provisions of this section the existence of such a sign on real property shall be presumptive evidence that it was placed or permitted to exist thereon with the knowledge and consent of the person or persons in possession of said premises.

§ 120. Such law is hereby amended by inserting therein a new section, to be section four hundred eighty-four, to read as follows:

§ 484. None but attorneys to practice in the state

No natural person shall ask or receive, directly or indirectly, compensation for appearing for a person other than himself as attorney in any court or before any magistrate, or for preparing deeds, mortgages, assignments, discharges, leases or any other instruments affecting real estate, wills, codicils, or any other instrument affecting the disposition of property after death, or decedents' estates, or pleadings of any kind in any action brought before any court of record in this state, or make it a business to practice for another as an attorney in any court or before any magistrate unless he has been regularly admitted to practice, as an attorney or counselor, in the courts of record in the state; but nothing in this section shall apply to officers of societies for the prevention of cruelty, duly appointed, when exercising the special powers conferred upon such corporations under section one hundred twenty-one of the membership corporations law.

§ 121. Such law is hereby amended by inserting therein a new section, to be section four hundred eighty-five, to read as follows:

§ 485. Violation of certain preceding sections a misdemeanor

Any person violating the provisions of sections four hundred seventy-eight, four hundred seventy-nine, four hundred eighty, four hundred eighty-one, four hundred eighty-two, four hundred eighty-three or four hundred eighty-four, shall be guilty of a misdemeanor.

§ 122. Such law is hereby amended by inserting therein a new section, to be section four hundred eighty-six, to read as follows:

§ 486. Practice of law by attorney who has been disbarred, suspended, or convicted of a felony

Any person whose admission to practice as an attorney and counselor-at-law has been revoked or who has been removed from office as attorney and counselor-at-law or, being an attorney and counselor-at-law, has been convicted of a felony or has been suspended from practice and has

not been duly and regularly reinstated, who does any act forbidden by the provisions of this article to be done by any person not regularly admitted to practice law in the courts of record of this state, unless the judgment, decree or order suspending him shall permit such act, shall be guilty of a **misdemeanor.**

§ 123. Such law is hereby amended by inserting therein a new section, to be section four hundred eighty-seven, to read as follows:

§ 487. Misconduct by attorneys

An attorney or counselor who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Wilfully delays his client's suit with a view to his own gain; or, wilfully receives any money or allowance for or on account of any money which he has not laid out, or becomes answerable for,

Is guilty of a **misdemeanor,** and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.

§ 124. Such law is hereby amended by inserting therein a new section, to be section four hundred eighty-eight, to read as follows:

§ 488. Buying demands on which to bring an action

An attorney or counselor shall not:

1. Directly or indirectly, buy, take an assignment of or be in any manner interested in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, or other thing in action, with the intent and for the purpose of bringing an action thereon.

2. By himself, or by or in the name of another person, either before or after action brought, promise or give, or procure to be promised or given, a valuable consideration to any person, as an inducement to placing, or in consideration of having placed, in his hands, or in the hands of another person, a demand of any kind, for the purpose of bringing an action thereon, or of representing the claimant in the pursuit of any civil remedy for the recovery thereof. But this subdivision does not apply to an agreement between attorneys and counselors, or either, to divide between themselves the compensation to be received.

3. An attorney or counselor who violates the provisions of this section is guilty of a **misdemeanor.**

§ 125. Such law is hereby amended by inserting therein a new section, to be section four hundred eighty-nine, to read as follows:

§ 489. Purchase of claims by corporations or collection agencies

No person or co-partnership, engaged directly or indirectly in the business of collection and adjustment of claims, and no corporation or association, directly or indirectly, itself or by or through its officers, agents or employees, shall solicit, buy or take an assignment of, or be in any manner interested in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, or other thing in action, or any claim or demand, with the intent and for the purpose of bringing an action or proceeding thereon; provided however, that bills receivable, notes receivable, bills of exchange, judgments or other things in action may be solicited, bought, or assignment thereof taken, from any executor, administrator, assignee for the benefit of creditors, trustee or receiver in bankruptcy, or any other person or persons in charge of the administration, settlement or compromise of any estate, through court actions, proceedings or otherwise. Nothing herein contained shall affect any assignment heretofore or hereafter taken by any moneyed corporation authorized to do business in the state of New York or its nominee pur-

suant to a subrogation agreement or a salvage operation, or by any corporation organized for religious, benevolent or charitable purposes.

Any corporation or association violating the provisions of this section shall be liable to a fine of not more than five thousand dollars; any person or co-partnership, violating the provisions of this section, and any officer, trustee, director, agent or employee of any person, co-partnership, corporation or association violating this section who, directly or indirectly, engages or assists in such violation, is guilty of a misdemeanor.

§ 126. Such law is hereby amended by inserting therein a new section, to be section four hundred ninety, to read as follows:

§ 490. Limitation

Sections four hundred eighty-eight and four hundred eighty-nine of this chapter do not prohibit the receipt of a bond, promissory note, bill of exchange, book debt, or other thing in action, in payment for property sold, or for services actually rendered, or for a debt antecedently contracted; or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance.

§ 127. Such law is hereby amended by inserting therein a new section, to be section four hundred ninety-one, to read as follows:

§ 491. Sharing of compensation by attorneys prohibited

1. It shall be unlawful for any person, partnership, corporation, or association to divide with or receive from, or to agree to divide with or receive from, any attorney-at-law or group of attorneys-at-law, whether practicing in this state or elsewhere, either before or after action brought, any portion of any fee or compensation, charged or received by such attorney-at-law or any valuable consideration or reward, as an inducement for placing, or in consideration of having placed, in the hands of such attorney-at-law, or in the hands of another person, a claim or demand of any kind for the purpose of collecting such claim, or bringing an action thereon, or of representing claimant in the pursuit of any civil remedy for the recovery thereof. But this section does not apply to an agreement between attorneys and counsellors-at-law to divide between themselves the compensation to be received.

2. Any person violating any of the provisions of this section is guilty of a misdemeanor.

§ 128. Such law is hereby amended by inserting therein a new section, to be section four hundred ninety-two, to read as follows:

§ 492. Use of attorney's name by another

If an attorney knowingly permits any person, not being his general law partner or a clerk in his office, to sue out any process or to prosecute or defend any action in his name, except as authorized by this section, such attorney, and every person who shall so use his name, is guilty of a misdemeanor.

Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers, or municipal corporation, on behalf of another party, the attorney-general, or district attorney, or attorney of such public officer or board or corporation may permit any proceeding therein, to be taken in his name by an attorney to be chosen by the party in interest.

§ 129. Such law is hereby amended by inserting therein a new section, to be section four hundred ninety-three, to read as follows:

§ 493. Attorneys forbidden to defend criminal prosecutions carried on by their partners, or formerly by themselves

An attorney, who directly or indirectly advises in relation to, or aids or promotes the defense of any action or proceeding in any court, the

prosecution of which is carried on, aided or promoted by a person as district attorney or other public prosecutor, with whom such attorney is directly or indirectly connected as a partner; or who, having himself prosecuted or in any manner aided or promoted any action of proceeding in any court, as district attorney or other public prosecutor, afterwards directly or indirectly advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise; or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor.

§ 130. Such law is hereby amended by inserting therein a new section, to be section four hundred ninety-four, to read as follows:

§ 494. Attorneys may defend themselves

The last section does not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

§ 131. Such law is hereby amended by inserting therein a new section, to be section four hundred ninety-five.

§ 495. Corporations and voluntary associations not to practice law

1. No corporation or voluntary association shall (a) practice or appear as an attorney-at-law for any person in any court in this state or before any judicial body, nor

(b) make it a business to practice as an attorney-at-law, for any person, in any of said courts, nor

(c) hold itself out to the public as being entitled to practice law, or to render legal services or advice, nor

(d) furnish attorneys or counsel, nor

(e) render legal services of any kind in actions or proceedings of any nature or in any other way or manner, nor

(f) assume in any other manner to be entitled to practice law, nor

(g) assume, use or advertise the title of lawyer or attorney, attorney-at-law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice law or to furnish legal advice, services or counsel, nor

(h) advertise that either alone or together with or by or through any person whether or not a duly and regularly admitted attorney-at-law, it has, owns, conducts or maintains a law office or an office for the practice of law, or for furnishing legal advice, services or counsel.

2. No corporation or voluntary association shall itself or by or through its officers, agents or employees, solicit any claim or demand, or take an assignment thereof, for the purpose of representing any person in the pursuit of any civil remedy, nor solicit any claim or demand for the purpose of representing as attorney-at-law, or of furnishing legal advice, services or counsel to, a person sued or about to be sued in any action or proceeding or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding which has been or may be instituted in any court or before any judicial body.

Nothing herein contained shall affect any assignment heretofore or hereafter taken by any moneyed corporation authorized to do business in the state of New York or its nominee pursuant to a subrogation agreement or a salvage operation. Any corporation or voluntary association violating the provisions of this subdivision or of subdivision one of this section shall be liable to a fine of not more than five thousand dollars and every officer, trustee, director, agent or employee of such corporation or voluntary association who directly or indirectly engages in any of the

acts prohibited in this subdivision or in subdivision one of this section or assists such corporation or voluntary association to do such prohibited acts is guilty of a misdemeanor. The fact that such officer, trustee, director, agent or employee shall be a duly and regularly admitted attorney-at-law, shall not be held to permit or allow any such corporation or voluntary association to do the acts so prohibited nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this subdivision or subdivision one of this section.

3. No voluntary association or corporation shall ask or receive directly or indirectly, compensation for preparing deeds, mortgages, assignments, discharges, leases, or any other instruments affecting real estate, wills, codicils, or any other instruments affecting disposition of property after death or decedents' estates, or pleadings of any kind in actions or proceedings of any nature. Any association or corporation violating the provisions of this subdivision is guilty of a misdemeanor.

4. Subdivisions one and two of this section shall not apply to any corporation or voluntary association lawfully engaged in a business authorized by the provisions of any existing statute.

5. This section shall not apply to a corporation or voluntary association lawfully engaged in the examination and insuring of titles to real property, in the preparation of any deeds, mortgages, assignments, discharges, leases or any other instruments affecting real property insofar as such instruments are necessary to the examination and insuring of titles, and necessary or incidental to loans made by any such corporation or association; nor shall it prohibit a corporation or voluntary association from employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may be a party; nor shall it apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy, whose existance,[1] organization or incorporation may be approved by the appellate division of the supreme court of the department in which the principal office of such corporation or voluntary association may be located. Nothing herein contained shall be construed to prevent a corporation or association from furnishing to any person, lawfully engaged in the practice of law, such information or such clerical services in and about his professional work as, except for the provisions of this section, may be lawful, provided that at all times the lawyer receiving such information or such services shall maintain full professional and direct responsibility to his clients for the information and services so received. But no corporation shall be permitted to render any services which cannot lawfully be rendered by a person not admitted to practice law in this state nor to solicit directly or indirectly professional employment for a lawyer.

[1] So in original. Probably should read "existence".

[LABOR LAW]

§ 132. The labor law is hereby amended by inserting therein a new section, to be section one hundred ninety-six-b, to read as follows:

§ 196-b. Failure of employers to provide certain benefits for employees

In addition to any other penalty or punishment otherwise prescribed by law, any employer who is party to an agreement to pay or provide benefits, or wage supplements as defined in section two hundred twenty of the labor law, and who fails, neglects or refuses to pay the amount or amounts necessary to provide such benefits or furnish such supplements within thirty days after such payments are required to be made, shall

be guilty of a misdemeanor, and upon conviction shall be punished for a first offense by a fine of five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. Where such employer is a corporation, the president, secretary, treasurer or officers exercising corresponding functions shall each be guilty of a misdemeanor.

§ 133. Such law is hereby amended by inserting therein a new section, to be section one hundred ninety-nine-c, to read as follows:

§ 199–c. "Kick-back" of wages prohibited

1. As used in this section, the term "person" shall include any firm, partnership, association, corporation or group of persons.

2. Whenever any workman who is engaged to perform labor shall be promised an agreed rate of wages for his services, be such promise in writing or oral, it shall be unlawful for any person, either for himself or any other person, to request, demand, or receive either before or after such workman is engaged, a return, donation or contribution of any part or all of said workman's wages, salary, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such workman from procuring or retaining employment. Further, any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this section shall be guilty of a violation of the provisions of this section.

3. Whenever an agreement between a bona fide labor organization and an employer or an association of employers requires that workmen shall be paid an agreed wage or rate of wages for their services, it shall be unlawful for any person, either for himself or any other person, to request, demand or receive, either before or after such workman is engaged, that such workman pay back, return, donate, contribute or give any part or all of said workman's wages, salary, or thing of value, to any person, upon the statement, representation or understanding that failure to comply with such requests or demand will prevent such workman from procuring or retaining employment, and any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this section shall be guilty of a violation of the provisions of this section.

4. The provisions of this section shall not apply to any agent or representative of a duly constituted labor organization acting in the collection of dues or assessments of such organization.

5. A violation of the provisions of this section shall constitute a misdemeanor.

§ 134. Such law is hereby amended by inserting therein a new section, to be section one hundred ninety-nine-d, to read as follows:

§ 199–d. Payment of wages

Each person, copartnership, corporation or joint-stock association carrying on a business by lease or otherwise, who does not pay the wages of all his or its employees in accordance with the provisions of the labor law is, and the officers of any such corporation who knowingly permit the corporation to violate the labor law by failing to pay the wages of any of its employees in accordance with the provisions thereof are, guilty of a misdemeanor, and upon conviction therefor, shall be fined not less than one hundred nor more than ten thousand dollars or imprisoned for not more than one year, or punished by both such fine and imprisonment, for each such offense. An indictment of a person or corporation operating a steam surface railroad for an offense specified in this section may be found and tried in any county within the state in which such railroad ran at the time of such offense.

CONFORMING AMENDMENTS

§ 135. Such law is hereby amended by inserting therein a new section, to be section two hundred nine-a, to read as follows:

§ 209–a. Fraudulent representation in labor organizations

Any person who represents himself or herself to be a member of, or who claims to represent a labor organization which does not exist within the state, at the time of such representation, or who has in his or her possession a credential, certificate or letter of introduction bearing a fraudulent seal, or bearing the seal of a labor organization which has ceased to exist, and does not exist at the time of such representation, and attempts to gain admission by the use of said credential, certificate, letter of introduction, as a member of any convention, or meeting of representatives of labor organizations of the state, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than twenty dollars nor more than fifty dollars, and imprisonment for not less than ten days nor more than thirty days in the jail of the county wherein such conviction is had, or by both such fine and imprisonment.

§ 136. Section two hundred thirteen of such law, such section having been added by chapter two hundred ninety-six of the laws of nineteen hundred forty, is hereby renumbered to be section two hundred fourteen.

§ 137. Such law is hereby amended by inserting therein a new section, to be section two hundred thirteen, to read as follows:

§ 213. Violations of provisions of labor law; the industrial code; the rules, regulations or orders of the industrial commissioner and the board of standards and appeals

Any person who violates or does not comply with any provision of the labor law, any provision of the industrial code, any rule, regulation or lawful order of the industrial commissioner or the board of standards and appeals, and any person who knowingly makes a false statement in or in relation to any application made for an employment certificate as to any matter required by the labor law to appear in any affidavit, record, transcript or certificate therein provided for, is guilty of a misdemeanor and upon conviction shall be punished, except as in this chapter or in the penal law otherwise provided, for a first offense by a fine of not more than one hundred dollars; for a second offense by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a subsequent offense by a fine of not less than three hundred dollars; or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

§ 138. Section two hundred twenty of such law, as last amended by chapter three hundred ten of the laws of nineteen hundred sixty-three, is hereby amended by inserting therein a new subdivision, to be subdivision two-a, to read as follows:

2–a. Any person or corporation contracting with the state or a public benefit corporation, or a municipal corporation, or a commission appointed pursuant to law that shall require more than eight hours work for a day's labor, unless otherwise permitted by law, is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars for each offense.

§ 139. Such law is hereby amended by inserting therein a new section, to be section six hundred thirty-six, to read as follows:

§ 636. No fees to be charged for services rendered by free public employment bureaus

A person connected with or employed in a free public employment bureau, who shall charge or receive directly or indirectly any fee or compensation from any person applying to such bureau for help or employment, is guilty of a **misdemeanor.**

[LIEN LAW]

§ 140. The lien law is hereby amended by inserting therein a new section, to be section seventy-nine-a, to read as follows:

§ 79–a. Misappropriation of funds of trust

1. Any trustee of a trust arising under this article, and any officer, director or agent of such trustee, who applies or consents to the application of trust funds received by the trustee as money or an instrument for the payment of money for any purpose other than the trust purposes of that trust, as defined in section seventy-one, is guilty of **larceny** and punishable as provided in the penal law if

(a) such funds were received by the trustee as owner, as the term "owner" is used in article three-a of this chapter, and they were so applied prior to the payment of all trust claims as defined in such article three-a, arising at any time; or

(b) such funds were received by the trustee as contractor or subcontractor, as such terms are used in article three-a of this chapter, and the trustee fails to pay, within thirty-one days of the time it is due, any trust claim arising at any time; provided, however, that if the trustee who received such funds as contractor or sub-contractor disputes in good faith the existence, validity or amount of a trust claim or disputes that it is due, the application of trust funds for a purpose other than a trust purpose, or the consent to such application, shall not be deemed larceny by reason of failure to pay the disputed claim within thirty-one days of the date when it is due if the trustee pays such claim within thirty-one days after the final determination of such dispute.

2. Notwithstanding subdivision one of this section, if the application of trust funds for a purpose other than the trust purposes of the trust is a repayment to another person of advances made by such other person to the trustee or on his behalf as trustee and the advances so repaid were actually applied for the purposes of the trust as stated in section seventy-one, or if the trustee has made advances of his personal funds for trust purposes and the amount of trust funds applied for a purpose other than the trust purposes of the trust does not exceed the amount of advances of personal funds of the trustee actually applied for the purposes of the trust, such application or consent thereto shall be deemed justifiable and the trustee, or officer, director or agent of the trustee, shall not be deemed guilty of larceny by reason of such application or by reason of his consent thereto.

3. Failure of the trustee to keep the books or records required by section seventy-five shall be presumptive evidence that the trustee has applied or consented to the application of trust funds received by him as money or an instrument for the payment of money for purposes other than a purpose of the trust as stated in section seventy-one.

4. Notwithstanding any other provision of law, no act of the trustee in relation to the assets of the trust shall, by reason of any express covenant as provided in section thirteen or section twenty-five of this chapter, be deemed larceny in a case in which it is not declared by subdivi-

sion one of this section to be larceny or in a case in which the act is deemed justifiable as provided in subdivision two of this section.

[MENTAL HYGIENE LAW]

§ 141. Section two hundred twenty-four of the mental hygiene law, as last amended by chapter twenty-nine of the laws of nineteen hundred sixty-three, is hereby amended by inserting therein a new subdivision, to be subdivision six, to read as follows:

6. Any person who violates any of the provisions of this section shall be guilty of a **misdemeanor.**

[MILITARY LAW]

§ 142. The military law is hereby amended by inserting therein a new section, to be section two hundred thirty-eight-a, to read as follows:

§ 238–a. Converting military property; unlawfully wearing uniform; unlawful use of name of military or naval organization, or unit thereof

1. Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the national guard, or in any manner pawn or pledge any arms, uniforms or equipments, issued under the provisions of the military law; or,

2. Any person not a member of the national guard, except members of organizations specially authorized to do so by the military law, who shall wear any uniform or designation of grade similar to those in use by the national guard, issued or authorized under the provisions of said law; or,

3. Any person, society or corporation who shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or in any manner use the name of a regiment, battalion, battery, squad, troop, division, company or other unit of any military or naval organization constituting a part of the national guard or naval militia of the state of New York, or of any society, association or other organization, or a part thereof, whether incorporated or unincorporated, that has been recognized by the commanding officer of such military or naval organization as a society or association of its veterans or ex-members, or who shall assume or adopt a name so nearly resembling it as to be calculated to deceive the public with respect to any such military or naval organization, or any such society, association or other organization, or a part thereof, of its veterans or ex-members, without first having obtained the written consent of the commanding officer of such military or naval organization,

Is guilty of a **misdemeanor.**

4. Any person who shall fraudulently wear any badge, insignia, clasp, rosette or button issued by the government of the United States or the state of New York or any foreign government to which the United States was allied in the world war is guilty of a **misdemeanor.**

Whenever there shall be an actual or threatened violation of any of the subdivisions of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain said actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact violating any of the subdivisions of this section, or is threatening to do so, an injunction may be issued by such court or justice enjoining and restraining such action or threatened violation without requiring proof that

any person has in fact been misled or deceived or otherwise injured thereby.

§ 143. Such law is hereby amended by inserting therein a new section, to be section two hundred thirty-eight-b, to read as follows:

§ 238-b. Damaging military or naval equipment, supplies or stores

A person who, wilfully or maliciously:

1. Injures or destroys any article of equipment or supplies or military or naval stores of or for the military or naval forces of the United States or of or for the state of New York or of or for any foreign government with which the United States maintains diplomatic relations, or any article used or intended for use in the production or manufacture of any such article; or

2. Injures or destroys any building, structure, or vessel used or occupied by the military or naval forces of the United States or of the state of New York or of any foreign government with which the United States maintains diplomatic relations, or any article used or intended for use in the construction or operation of any such building, structure or vessel; or

3. Injures or destroys any building, structure, or vessel used or occupied in the production of any article mentioned in subdivision one of this section or any article used or intended for use in the construction or operation of any such building, structure, or vessel; or

4. Injures or destroys any machine, tool, implement, plan, fuel, fuel line, power line, generator or transformer used or intended for use in the production of any article mentioned in subdivisions one, two or three of this section or used or intended to be used in the construction or operation of any building, structure, or vessel mentioned in subdivision two or three of this section; or tampers with any such machine, tool, implement, plan, fuel, fuel line, power line, generator or transformer with intent to lessen its efficiency in the production of any such article; or

5. Injures or destroys any railroad engine or car, or any vehicle, or any vessel used or intended for use in the transportation of any article or machine mentioned in subdivision one, two, three or four of this section, or tampers with any such engine, car, vehicle, or vessel with intent to lessen its efficiency in the transportation of any such article, or with intent to hinder, delay, or obstruct any military or naval operation or defense preparation of the United States or the state of New York or of any foreign government with which the United States maintains diplomatic relations; or

6. Injures, destroys, obstructs, or tampers with any railroad, highway, bridge, canal or river with intent to interfere with or delay the transportation of any article or machine mentioned in subdivisions one, two, three, four or five of this section, or with intent to hinder, obstruct, or delay any military or naval operation or defense preparation of the United States or the state of New York or of any foreign government with which the United States maintains diplomatic relations; or

7. Unlawfully seizes or carries away or injures or destroys or tampers with any property with intent to hinder, obstruct, or delay any military or naval operation or defense preparation of the United States or the state of New York or of any foreign government with which the United States maintains diplomatic relations; or

8. Injuries,[1] alters, defaces, mutilates or in any manner or by any means changes any plans, drawings, designs or specifications intended to be used or useful in constructing, manufacturing or assembling ordnance, instruments, equipment, implements, devices or any material needed for or intended to be used in the defense of the United States or this state by the military or naval forces of the United States or any

foreign government with which the United States maintains diplomatic relations, with intent to hinder, delay, obstruct, impair, destroy or interfere with the use of such ordnance, instruments, equipment, implements, devices or material or the efficiency or effectiveness thereof;

Is guilty of a **felony** and whoever attempts to commit any of the crimes defined by this section shall be guilty of a **felony** and shall be liable to one-half the maximum punishment prescribed for the completed crime.

9. In any criminal proceeding before any court, magistrate, or grand jury for a violation of this section, the court, magistrate or grand jury may confer immunity in accordance with the provisions of the penal law.

[1] So in original. Probably should read "Injures".

§ 144. Such law is hereby amended by inserting therein a new section, to be section two hundred thirty-eight-c, to read as follows:

§ 238–c. Seizing military stores belonging to the state

A person who enters any fort, magazine, arsenal, armory, arsenal yard or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the people of this state, is guilty of a **felony.**

§ 145. Such law is hereby amended by inserting therein a new section, to be section two hundred thirty-eight-d, to read as follows:

§ 238–d. Wearing of uniforms; prohibited

a. It shall be unlawful for any person to appear in any public place or in the public view attired in any uniform similar to that worn by the military, semi-military, naval, police, storm troop or other official or semi-official forces of any foreign state, nation or government, or attired in any distinctive part or parts of such a uniform, or to assemble with other persons similarly attired in any camp, drill ground or other place for the purpose of engaging in military drill or training or other military practices.

b. It shall be unlawful for any person to appear in any public place or in the public view attired in the uniform or wearing the distinctive garment of any association of persons of whatsoever nature or form which engages in, adopts, or imitates the drill formations, salutes or other methods or practices or the symbols of any foreign military, semi-military, naval, police, storm troop or similar foreign organization, or to assemble with other persons similarly attired in any camp, drill ground or other place for the purpose of engaging in military drill or training or other military practices.

c. It shall be unlawful for the proprietor, manager or keeper of a public hall, public garden, theatre or any other place of public meeting, resort or amusement to permit therein any assemblage of persons attired as prohibited in this section.

d. This section shall not apply to the officers or members of the military, semi-military, naval, police or other official or semi-official forces of any foreign state, nation or government lawfully within the state of New York, the Knights of Columbus, the Boy Scouts of America, any student of any school or academy recognized by the board of regents of the state of New York, nor to the members of the cast of any stage or motion picture production characterizing the officials of a foreign state, nation or government; provided, however, that in any prosecution hereunder it shall be presumed that a person wearing the uniform of a foreign state, nation or government or any of its official or semi-official forces or attired in any distinctive part or parts of such a uniform, was not at the time of the alleged violation of this section a member of any of the organizations excepted herein.

§ 146. Such law is hereby amended by inserting therein a new section, to be section two hundred fifty-one, to read as follows:

§ 251. Depriving members of national guard of employment

A person who, either by himself or with another, wilfully deprives a member of the national guard of his employment, or prevents his being employed by himself or another, or obstructs or annoys said member of said national guard, or his employer, in respect of his trade, business, or employment, because said member of said national guard is such member, or dissuades any person from enlistment in the said national guard by threat of injury to him in case he shall so enlist, in respect of his employment, trade, or business, is guilty of a **misdemeanor.**

§ 147. Such law is hereby amended by inserting therein a new section, to be section two hundred fifty-two, to read as follows:

§ 252. Discrimination against members of national guard

No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment, or business of the members thereof, shall by any constitution, rule, by-law, resolution, vote, or regulation, discriminate against any member of the national guard of the state of New York, because of such membership in respect of the eligibility of such member of the said national guard to membership in such association or corporation, or in respect of his right to retain said last mentioned membership; it being the purpose of this section and the section immediately preceding to protect a member of the said national guard from disadvantage in his means of livelihood and liberty therein but not to give him any preference or advantage on account of his membership of said national guard. A person who aids in enforcing any such provisions against a member of said national guard with the intent to discriminate against him because of such membership, is guilty of a **misdemeanor.**

[NAVIGATION LAW]

§ 148. The navigation law is hereby amended by inserting therein a new section, to be section thirty-two-a, to read as follows:

§ 32–a. Using net or weir unlawfully in Hudson river

A person, who uses any net or weir for setting or attaching nets, or a pole or other fixture in any part of the Hudson river, except as permitted by statute, is guilty of a **misdemeanor.**

§ 149. Such law is hereby amended by inserting therein a new section, to be section thirty-two-b, to read as follows:

§ 32–b. Lights upon swing bridges

A corporation, company, or individual, owning, maintaining or operating a swing bridge across the Hudson river, who during the navigation season between sundown and sunrise, neglects to keep and maintain upon every such bridge the lights required by law, is guilty of a **misdemeanor.**

§ 150. Such law is hereby amended by inserting therein a new section, to be section thirty-two-c, to read as follows:

§ 32–c. Interfering with navigation

A person who throws, or causes, or permits to be thrown, from any boat, scow, or other vessel, or in any other manner, into any of the navigable waters of this state, including bays, sounds and harbors, any earth, ashes, cinders, stone, or other material, or who builds any structure therein, which will in any manner lessen the depth of such waters, or interfere with the free and safe navigation thereof, is guilty of a **misdemeanor.**

§ 151. Such law is hereby amended by inserting therein a new section, to be section forty-four-a, to read as follows:

§ 44-a. Sound of exhaust on gasoline motor boat to be muffled

A person who operates a boat, barge, vessel or other floating structure, on any of the lakes, rivers, streams, canals or other waters of the state, excepting Lake Erie and the Saint Lawrence river, and the waters of Lake Ontario outside of Great Sodus and Fair Haven bays, propelled wholly or partly by an engine operated by the explosion of gas, gasoline, naptha or other substance, without having the exhaust from the engine run through a muffler so constructed and used as to muffle the noise of the exhaust in a reasonable manner, shall be guilty of a misdemeanor; but the provisions of this section shall not apply to any boat, barge, vessel or floating structure while actually competing in a definite race over a given course held under the auspices of any bona fide club or racing association, between the hours of nine o'clock in the morning and sunset, provided due written notice of the date of such race or regatta has been given to the superintendent of public works at least fifteen days prior to such race, pursuant to the provisions of section thirty-six, and all the provisions of such section having been complied with.

Hydroaeroplanes, except those on the waters of Lake George which are engaged in the business of carrying passengers for hire or sightseeing purposes to and fro over the waters of the lake, shall not be deemed boats or floating structures within the meaning of this section.

§ 152. Such law is hereby amended by inserting therein a new section, to be section forty-four-b, to read as follows:

§ 44-b. Special provision as to muffling sound of exhaust on motor boats in Salmon and Oneida rivers and Ontario bay

A person who operates a boat, barge, vessel or other floating structure, on Salmon river or on Ontario bay within Oswego county, or on Oneida river within Oswego and Onondaga counties, propelled wholly or partly by an engine operated by the explosion of gas, gasoline, naptha or other substance, without having the exhaust from the engine run through a muffler so constructed and used as to muffle the noise of the exhaust in a reasonable manner, shall be guilty of a misdemeanor. Hydroaeroplanes shall not be deemed boats or floating structures within the meaning of this section.

§ 153. Such law is hereby amended by inserting therein a new section, to be section forty-four-c, to read as follows:

§ 44-c. Motor boats to be provided with mufflers; exceptions

It shall be unlawful to use a boat propelled in whole or in part by gas, gasoline or naptha, or similar explosive medium, unless the same is provided with an under-water exhaust or muffler so constructed and used as to muffle the noise of the explosion. The provisions of this section shall apply only to tidal waters of the waters of this state wherein the tide ebbs and flows and shall not apply to boats competing in a race held under the direction of a duly incorporated yacht club or racing association. Any person who operates a boat in violation of the provisions of this section shall be guilty of a misdemeanor and punishable by a fine of not more than twenty-five dollars.

§ 154. Such law is hereby amended by inserting therein a new section, to be section forty-five-a, to read as follows:

§ 45-a. Beaching a disabled water craft

Except in an emergency, it shall not be lawful to intentionally beach or abandon any vessel, ship, boat or other water craft on underwater lands of navigable waters of the state surrounding Richmond county,

without the permission of the owners or lessees of the uplands abutting such underwater lands. Any violation of this section shall be a **misdemeanor.**

§ 155. Such law is hereby amended by inserting therein a new section, to be section fifty-eight-a, to read as follows:

§ 58–a. Unauthorized boarding of vessels

(1) It shall be unlawful for any person except a pilot or public officer to board or attempt to board, a vessel arriving in the port of New York before such vessel shall have been made fast to the wharf, without first obtaining leave from the master or person having charge of such vessel, or leave in writing from her owners or agents.

(2) It shall be unlawful for any person to board or attempt to board any vessel arriving in or lying or being in the port of New York, with intent to supply liquors by sale, gift or otherwise, directly or indirectly, to any member of the crew employed on board of such vessel.

(3) It shall be unlawful for any person having boarded any vessel in the port of New York, to neglect or refuse to leave such vessel after having been ordered to do so by the master or person in charge of such vessel.

(4) The word "vessel" as used in this section shall include vessels by whatever power propelled.

(5) Any person violating any of the provisions of this section shall be deemed guilty of a **misdemeanor.**

§ 156. Such law is hereby amended by inserting therein a new section, to be section eighty-seven-a, to read as follows:

§ 87–a. Acting as port-warden without authority

A person who not being a port-warden, assumes or undertakes to act as such, or undertakes the performance of any of the duties prescribed by law, as pertaining to the office of port-warden; and a person who knowingly employs any other than the wardens for the performance of such duties, and a person who issues any certificate of a survey on vessels, materials or goods damaged, with intent to avoid the provisions of any statute, is guilty of a **misdemeanor.**

§ 157. Such law is hereby amended by inserting therein a new section, to be section eighty-eight-a, to read as follows:

§ 88–a. Unlicensed piloting

A person other than a lawfully authorized branch Hell Gate pilot who pilots or offers to pilot or tows or offers to tow any boat or vessel (except barges, vessels under fifty-five tons burden, and canal boats actually used in navigating the canals) through that part of the East river, commonly called Hell Gate, is guilty of a **misdemeanor.** But no pilotage shall be charged to any vessel under a coasting license, on entering or departing from the port of New York by way of the East river called Hell Gate unless such vessel actually employs a pilot, and the making of such charge or demand without such employment shall be deemed a **misdemeanor.**

This section does not apply to vessels propelled wholly or partly by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade.

§ 158. Such law is hereby amended by inserting therein a new section, to be section one hundred fourteen, to read as follows:

§ 114. Ferries. A person who:

1. Maintains a ferry for profit or hire upon any of the waters of this state without authority of law; or

2. Having entered into a recognizance to keep or maintain a ferry, violates the condition of such recognizance,

Is guilty of a **misdemeanor.**

Where such ferry is upon waters dividing two counties, the offender may be prosecuted in either county.

§ 159. Such law is hereby amended by inserting therein a new section, to be section one hundred twenty-three-a, to read as follows:

§ 123–a. Defacing marks on logs or lumber

A person who (a) unlawfully cuts out, alters, or defaces any mark, made on any log or lumber floating in any of the waters of this state or lying upon land, whether or not such mark be recorded pursuant to the provisions of the navigation law, or (b) puts a false mark on any such log or lumber, is guilty of a **misdemeanor.**

§ 160. Such law is hereby amended by inserting therein a new section, to be section one hundred thirty-nine-a, to read as follows:

§ 139–a. Keeping wrecked goods a misdemeanor

A person who takes away goods or other property not his own from a stranded vessel, or any goods or other property cast by the sea upon the land or found in a bay or creek, or who knowingly becomes possessed of any such goods or other property, and does not deliver the same, within forty-eight hours thereafter, to the sheriff or one of the coroners or wreck masters of the county where the same was found, is guilty of a **misdemeanor.**

§ 161. Such law is hereby amended by inserting therein a new section, to be section one hundred thirty-nine-b, to read as follows:

§ 139–b. Defacing marks upon wrecked property

A person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership thereof, is guilty of a **misdemeanor.**

§ 162. Such law is hereby amended by inserting therein a new section, to be section one hundred thirty-nine-c, to read as follows:

§ 139–c. Officer unlawfully detaining wrecked property

An officer, whose duties pertain in any way to wrecked property, who, without authority of law, detains such property or proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud in the discharge of such duties, is guilty of a **misdemeanor.**

§ 163. Such law is hereby amended by inserting therein a new section, to be section one hundred forty-a, to read as follows:

§ 140–a. Offenses against the navigation law

Any person having the charge, command or control of a vessel who:

1. Carries or permits a vessel to carry a greater number of passengers than is stated in the certificate of inspection of such vessel issued under section sixty-three of this chapter; or
2. Neglects to carry on a vessel the equipment required by section sixty-seven of this chapter; or
3. Neglects to carry on a vessel the fire pump required by section fifty-six of this chapter; or
4. Violates any other provision of this chapter; or for which no other punishment is prescribed, is guilty of a **misdemeanor.**

[PUBLIC HEALTH LAW]

§ 164. The public health law is hereby amended by inserting therein a new section, to be section twelve-b, to read as follows:

§ 12-b. Wilful violation of health laws

1. A person who wilfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any local board of health or local health officer, is guilty of a **misdemeanor.**

2. A person who wilfully violates any provision of this chapter, or any regulation lawfully made or established by any public officer or board under authority of this chapter, the punishment for violating which is not otherwise prescribed by this chapter or any other law, is punished by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars or by both.

§ 165. Such law is hereby amended by inserting therein a new section to be section twelve-c, to read as follows:

§ 12-c. Obstructing health officer in performance of his duty

A person who wilfully opposes or obstructs a health officer or physician charged with enforcement of the health laws, in performing any legal duty, is guilty of a **misdemeanor.**

§ 166. Such law is hereby amended by inserting therein a new section, to be section twelve-d, to read as follows:

§ 12-d. Indecent articles

A person who sells, lends, gives away or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception or purporting to be for the prevention of conception, or advertises, or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a **misdemeanor.**

An article or instrument, used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this section. The supplying of such articles to such physicians or by their direction or prescription, is not an offense under this article.

§ 167. Such law is hereby amended by inserting therein a new section, to be section eleven hundred fifty-a, to read as follows:

§ 1150-a. Contamination of salt wells

A person who wilfully places, introduces or causes to flow or enter into any spring, brook or body of water, which is used in the manufacture of salt, or into any salt well, or salt mine, or into any cavity or reservoir beneath the surface of the earth from which salt or brine is taken or used in the manufacture of salt, any impure or deleterious substance or thing whatsoever, which is liable to pollute the waters thereof, or the brine or salt taken or manufactured therefrom, provided that this act shall not interfere with any existing system of drainage or sewerage, is guilty of a **misdemeanor.**

§ 168. Such law is hereby amended by inserting therein a new section, to be section thirteen hundred-a, to read as follows:

§ 1300–a. Putting noisome or unwholesome substances or maintaining noisome business on or near highway

A person, who deposits, leaves or keeps, on or near a highway or route of public travel, either on the land or on the water, any noisome or unwholesome substance, or establishes, maintains or carries on, upon or near a public highway or route of public travel, either on the land or on the water, any business, trade or manufacture which is noisome or detrimental to public health, is guilty of a **misdemeanor**, punishable by a fine of not less than one hundred dollars, or by imprisonment not less than three nor more than six months, or both.

§ 169. Such law is hereby amended by inserting therein a new section, to be section thirteen hundred-b, to read as follows:

§ 1300–b. Throwing gas tar or refuse into public waters

A person, who throws or deposits gas tar, or the refuse of a gas house or gas factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of a **misdemeanor.**

§ 170. Such law is hereby amended by inserting therein a new section, to be section twenty-three hundred ten, to read as follows:

§ 2310. Venereal disease; certain advertisements

Whoever publishes, delivers or distributes or causes to be published, delivered or distributed in any manner whatsoever an advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness, seminal emissions, varicocele, self-abuse or excessive sexual indulgence whether described by such names, words, terms or phrases, or by any other names, words, terms or phrases, calculated or intended to convey to the reader the idea that any of said diseases, infirmities, disabilities, conditions, or habits are meant or referred to, and calling attention to a medicine, article or preparation that may be used therefor or to a person or persons from whom or an office or place at which information, treatment or advice relating to such disease, infirmity, habit or condition may be obtained, is guilty of a **misdemeanor** and upon conviction thereof shall be punished by imprisonment for not more than six months, or by a fine of not less than fifty dollars nor more than five hundred dollars, or by both such fine and imprisonment. This section, however, shall not apply to didactic or scientific treatises which do not advertise or call attention to any person or persons from whom or any office or place at which information, treatment or advice may be obtained, nor shall it apply to advertisements or notices issued by an incorporated hospital, or by a licensed dispensary, duly certified by the local board of health as a venereal disease clinic, or by a municipal board or department of health or by the department of health of the state of New York.

§ 171. Such law is hereby amended by inserting therein a new section, to be section twenty-five hundred two, to read as follows:

§ 2502. Report of certain conditions

Any midwife, nurse or other person having the care of an infant within the age of two weeks who neglects or omits to report immediately to the health officer or to a legally qualified practitioner of medicine of the city, town or place where such child is being cared for, the fact that one or both eyes of such infant are inflamed or reddened whenever such shall be the case, or who applies any remedy therefor without the advice,

or except by the direction of such officer or physician is guilty of a misdemeanor.

§ 172. Such law is hereby amended by inserting therein a new section, to be section twenty-five hundred three, to read as follows:

§ 2503. Reports of certain injuries inflicted upon children under the age of sixteen years

1. Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child and having reason to believe that such child has had serious injury or injuries inflicted upon him or her as a result of abuse or neglect, or the superintendent, manager or person in charge of any hospital, sanitarium or other institution where such child is being treated, shall immediately report the matter to a society for the prevention of cruelty to children or other duly authorized child protective agency or to a public welfare official in the county where such physician, surgeon, hospital, sanitarium or other institution is located.

2. Any person or institution participating in good faith in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed because of the making of such a report.

§ 173. Such law is hereby amended by inserting therein a new section, to be section thirty-three hundred fifteen, to read as follows:

§ 3315. Growing of narcotic plant known as marihuana by unlicensed persons

A person who, without being licensed so to do under the public health law, grows the narcotic plant known as marihuana or knowingly allows it to grow on his land without destroying the same, shall be guilty of a misdemeanor.

§ 174. Such law is hereby amended by inserting therein a new article, to be article thirty-three-A, to read as follows:

ARTICLE 33-A—BARBITURATES, AMPHETAMINE AND HYPODERMIC INSTRUMENTS

Sec.
3370. Sale or possession of barbiturate drugs or preparations.
3371. Sale or possession of amphetamine or its derivatives.
3372. Sale and possession of hypodermic syringes and hypodermic needles; possession of certain other instruments.

§ 3370. Sale or possession of barbiturate drugs or preparations

The possession, sale, exchange or giving away of barbiturate drugs or preparations by other than registered manufacturers, manufacturer's depots, wholesalers, pharmacists, practitioners of medicine, dentistry, podiatry or veterinary medicine and the possession by any other persons who obtain barbiturates on the prescription of a duly licensed practitioner, provided such barbiturates are in the pharmacists' original or renewed prescription container or practitioner's dispensing container which containers shall bear a label meeting all the label requirements of the laws relating to the labeling of barbiturates, shall constitute a violation.

The provisions of this section restricting the distribution and possession of barbiturates shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of barbiturates; or to the

temporary incidental possession by employees or agents of persons lawfully entitled to possession, or to persons whose possession is for the purpose of aiding public officers in performing their official duties.

For the purpose of this section, the term "barbiturate" shall mean and include the sales of barbituric acid, also known as malonyl urea, or any derivatives or compounds of any preparations or mixtures thereof.

§ 3371. Sale or possession of amphetamine or its derivatives

The possession, sale, exchange or giving away of amphetamine or any of its derivatives by other than registered manufacturers, manufacturer's depots, wholesalers, pharmacists, practitioners of medicine, dentistry, podiatry or veterinary medicine and the possession by other than persons who obtain amphetamine or any of its derivatives on the prescription of a duly licensed practitioner, provided such amphetamine or any of its derivatives are in the pharmacists' original or renewed prescription container or practitioner's dispensing container which containers shall bear a label meeting all the label requirements of the laws relating to the labeling of amphetamine is forbidden.

The provisions of this section restricting the distribution and possession of amphetamine or any of its derivatives shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of amphetamine or any of its derivatives; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or to persons whose possession is for the purpose of aiding public officers in performing their official duties.

§ 3372. Sale and possession of hypodermic syringes and hypodermic needles; possession of certain other instruments

1. It shall be unlawful for any person to sell or furnish to any person or persons other than a duly licensed physician, dentist, veterinarian, undertaker, nurse, podiatrist, or a registered pharmacy or drug store, hospital, sanitarium, clinical laboratory or other medical institution, or a regular dealer in medical, dental or surgical supplies, or a resident physician or interne of a hospital, sanitarium or other medical institution, a hypodermic syringe or hypodermic needle except pursuant to a written prescription of a duly licensed physician or veterinarian.

2. Every person so selling or furnishing a hypodermic syringe or hypodermic needle, shall record upon the face of the prescription, over his signature, the date of the sale or furnishing of the hypodermic syringe or hypodermic needle. Such prescription shall be retained on file for a period of two years and be readily accessible for inspection by any public officer or employee engaged in the enforcement of this section. A prescription filed in accordance with this section shall be sufficient authority, without the necessity of a renewal or re-issuance, to permit subsequent sales or the furnishing of hypodermic syringes or hypodermic needles to the person to whom the prescription was issued for a period of one year from the date of its original issuance.

3. It shall be unlawful for any person or persons, except a duly licensed physician, dentist, veterinarian, nurse, podiatrist, hospital, sanitarium or other medical institution, or a resident physician or interne of a hospital, sanitarium or other medical institution, or those engaged in the regular business of dealing in medical, dental and surgical supplies, operating a clinical laboratory, maintaining a registered pharmacy or drug store, or maintaining an undertaking establishment, to have under control or possess, a hypodermic syringe or hypodermic needle, or any other instrument or implement adapted for the administering of narcotic drugs which other instrument or implement is possessed for

that purpose, unless such possession be obtained upon a valid written prescription form, and such use be authorized or directed by, a duly licensed physician or veterinarian. For the purposes of this subdivision no such prescription shall be valid, which has been outstanding for more than one year.

4. A violation of any provision of this section shall constitute a **misdemeanor.**

§ 175. Such law is hereby amended by inserting therein a new section, to be section forty-two hundred ten-a, to read as follows:

§ 4210-a. Unlawful dissection of the body of a human being

A person who makes, or causes or procures to be made, any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a **misdemeanor.**

§ 176. Such law is hereby amended by inserting therein a new section, to be section forty-two hundred sixteen, to read as follows:

§ 4216. Body stealing

A person who removes the dead body of a human being, or any part thereof from a grave, vault, or other place, where the same has been buried, or from a place where the same has been deposited while awaiting burial, without authority of law, with intent to sell the same, or for the purpose of dissection, or for the purpose of procuring a reward for the return of the same, or from malice or wantonness, is guilty of a **felony.**

§ 177. Such law is hereby amended by inserting therein a new section, to be section forty-two hundred seventeen, to read as follows:

§ 4217. Receiving stolen body of a human being

A person who purchases, or receives except for the purpose of burial, the dead body of a human being, or any part thereof, knowing that the same has been removed contrary to the last section, is guilty of a **misdemeanor.**

§ 178. Such law is hereby amended by inserting therein a new section, to be section forty-two hundred eighteen, to read as follows:

§ 4218. Opening graves

A person who opens a grave or other place of interment, temporary or otherwise, or a building wherein the dead body of a human being is deposited while awaiting burial, without authority of law, with intent to remove the body, or any part thereof, for the purpose of selling it or demanding money for the same, or for the purpose of dissection, or from malice or wantonness, or with intent to steal or remove the coffin or any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the dead body, is guilty of a **misdemeanor.**

§ 179. Such law is hereby amended by inserting therein a new section, to be section forty-two hundred nineteen, to read as follows:

§ 4219. Arresting or attaching a dead body of a human being

A person who arrests or attaches the dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a **misdemeanor.**

§ 180. Such law is hereby amended by inserting therein a new section, to be section forty-two hundred twenty, to read as follows:

§ 4220. Disturbing funerals

A person who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying the dead body of a human being to a place of burial, is guilty of a **misdemeanor.**

CONFORMING AMENDMENTS

[PUBLIC OFFICERS LAW]

§ 181. The public officers law is hereby amended by inserting therein a new section, to be section three-b, to read as follows:

§ 3-b. Special peace officers to be citizens

No sheriff of a county, mayor of a city, or official, or other persons authorized by law to appoint special deputy sheriffs, special constables, marshals, policemen, or other peace officers in this state, to preserve the public peace or quell public disturbance, shall hereafter, at the instance of any agent, society, association or corporation, or otherwise, appoint as such special deputy, special constable, marshal, policeman, or other peace officer, any person who shall not be a citizen of the United States and a resident of the state of New York, and entitled to vote therein at the time of his appointment, and a resident of the same county as the mayor or sheriff or other official making such appointment; and no person shall assume or exercise the functions, powers, duties or privileges incident and belonging to the office of special deputy sheriff, special constables, marshal or policeman, or other peace officer, without having first received his appointment in writing from the authority lawfully appointing him. A violation of the provisions of this section is a misdemeanor.

§ 182. Such law is hereby amended by inserting therein a new section, to be section seventy-three-a, to read as follows:

§ 73-a. Prohibited business or professional activity by public officers and employees

Any person who violates the provisions of subdivisions two through four of section seventy-three of the public officers law or subdivisions two and three of section eighty-four of the legislative law shall be guilty of a misdemeanor.

[RAILROAD LAW]

§ 183. The railroad law is hereby amended by inserting therein a new section, to be section fifty-three-b, to read as follows:

§ 53-b. Ringing bells and blowing whistles at crossings; obstructing highways

A person acting as engineer, driving a locomotive on any railway in this state, who fails to ring the bell, or sound the whistle, upon such locomotive, or cause the same to be rung or sounded, at least eighty rods from any place where such railway crosses a traveled road or street on the same level, except in cities, or to continue the ringing of such bell or sounding such whistle at intervals, until such locomotive and the train to which the locomotive is attached shall have completely crossed such road or street, or any officer or employee of a corporation in charge of a locomotive, train or car, who shall wilfully obstruct, or cause to be obstructed, any farm or highway crossing with any locomotive, train or car for a longer period than five consecutive minutes, is guilty of a misdemeanor.

[REAL PROPERTY LAW]

§ 184. The real property law is hereby amended by inserting therein a new section, to be section two hundred thirty-five, to read as follows:

§ 235. Wilful violation of the terms of a lease

Any lessor, agent, manager, superintendent or janitor of any building, or part thereof, the lease or rental agreement whereof by its terms, expressed or implied, requires the furnishing of hot or cold water, heat, light, power, elevator service, telephone service or any other service or facility to any occupant of said building, who wilfully or intentionally fails to furnish such water, heat, light, power, elevator service, telephone service or other service or facility at any time when the same are necessary to the proper or customary use of such building, or part thereof, or any lessor, agent, manager, superintendent or janitor who wilfully and intentionally interferes with the quiet enjoyment of the leased premises by such occupant, is guilty of an offense, punishable by imprisonment in a county jail or workhouse for a term not exceeding six months, or by a fine not exceeding fifty dollars, or by placing on probation for a term not to exceed two years, or by all or any of these punishments.

§ 185. Such law is hereby amended by inserting therein a new section, to be section two hundred thirty-six, to read as follows:

§ 236. Discrimination against children in dwelling houses

Any person, firm or corporation in any city owning or having in charge any apartment house, tenement house or other building used for dwelling purposes who shall refuse to rent any or part of any such building to any person or family solely on the ground that such person or family has or have a child or children shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than fifty nor more than one hundred dollars for each offense.

§ 186. Such law is hereby amended by inserting therein a new section, to be section two hundred thirty-seven, to read as follows:

§ 237. Discrimination in leases with respect to bearing of children

Any person, firm or corporation in any city owning or having in charge any apartment house, tenement house or other building used for dwelling purposes who shall, in any lease of any or part of any such building, have a clause therein providing that during the term thereof the tenants shall remain childless or shall not bear children, shall be guilty of a misdemeanor.

§ 187. Such law is hereby amended by inserting therein a new section, to be section two hundred thirty-eight, to read as follows:

§ 238. Agreements or contracts for privileges to deal with occupants of tenements, apartment houses or bungalow colonies

1. A contract, agreement or arrangement entered into or executed by and between the owner or prospective owner of an apartment house, tenement or what is commonly known as a bungalow colony connected with common or joint means of ingress and egress, whether such apartment house, tenement or bungalow colony is in existence or in process of construction or to be constructed in the future, or any person in possession or claiming possession of such apartment house, tenement or bungalow colony, or any part thereof, including the common or joint means of ingress or egress, or any of the agents, employees or servants of such an owner or possessors thereof and a dealer in or seller of fuel, ice or food, or his agents, employees or representatives for the purpose

of giving to such dealer or seller the privilege of selling or delivering fuel, ice or food, to the persons occupying or to occupy such apartment house, tenement or bungalow colony, or any part thereof, is against public policy and void.

2. Any person who shall, directly or indirectly, either as the owner or prospective owner of such apartment house, tenement or bungalow colony, or any part thereof, including the common or joint means of ingress or egress, or as an agent, employee or servant of such an owner, or any person in possession or claiming possession of such apartment house, tenement or bungalow colony, or any part thereof, including the common or joint means of ingress or egress, accept any money, property or thing of value for permitting or giving to any person, or his agents, employees or representatives, the privilege of selling or delivering fuel, ice or food, to the persons occupying or to occupy such apartment house, tenement or bungalow colony, or any part thereof, and any person who shall, directly or indirectly, either as a seller of, or dealer in, fuel, ice or food, as an agent, employee, or representative of such seller or dealer, pay or give any money, property or thing of value, for such privilege shall be guilty of a misdemeanor. If a corporation is convicted of a violation of this section, it shall be punished by a fine of not less than fifty nor more than one thousand dollars.

3. A person occupying an apartment house, tenement or bungalow colony, or any part thereof, to whom fuel, ice or food, shall be sold or delivered by a seller or dealer who has paid or given any money, property or thing of value for the privilege of selling or delivering fuel, ice or food, to the persons occupying or to occupy such apartment house, tenement or bungalow colony, or any part thereof, may recover of such seller or dealer for his benefit a penalty, in the sum of two hundred and fifty dollars, in a civil action brought in a court of competent jurisdiction.

§ 188. Such law is hereby amended by inserting therein a new article, to be article seven-a, to read as follows:

ARTICLE 7A—PORTABLE KEROSENE HEATERS

Sec.
239. Legislative findings.
239–a. Definitions.
239–b. Unapproved portable kerosene heaters prohibited in structures.
239–c. Penalties for violation.
239–d. Application of article.

§ 239. Legislative findings

It is hereby declared that the use of defective portable kerosene heaters in certain structures constitutes a fire hazard and a threat to the lives, health and safety of the occupants of such structures. Despite intensive efforts to overcome and eliminate such hazards and threats through educational campaigns and other means, such dangers to the public safety and welfare still exist. Experience demonstrates that the hazards and risks attendant upon the use of defective heaters above described cannot be effectually eliminated except through the requirement of approved portable kerosene heaters which inherently reduce the hazards due to defective design. Accordingly, it is hereby found as a matter of legislative determination that it is essential to minimize the fire hazards and dangers to life and health hereinbefore described, and for the protection of the health, safety and welfare of the inhabitants of the state, that the provisions of this article be enacted.

§ 239–a. Definitions

As used in this article the following terms shall mean and include:

1. "Structure." Any building or completed construction of any kind including but not limited to, private dwellings or to any structure used

for business, commercial or industrial purposes, but not including multiple dwellings, buildings under construction, or buildings used solely for agricultural purposes.

2. "Multiple dwelling." A multiple dwelling is a dwelling which is either rented, leased, let or hired out to be occupied or is occupied as the residence or home of three or more families living independently of each other and shall include, dwelling portions of hospitals, nursing homes, convents, monasteries, asylums and public institutions.

3. "Owner." The owner of the freehold of any real property (as defined in section two of the real property law), or of a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of real property.

4. "Person." The term person shall include the owner, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation, directly or indirectly in control of a structure or part thereof.

5. "Approved portable kerosene heater." Any non-flue connected, self-contained, self-supporting heater, or appliance equipped with an integral metallic reservoir of not more than one gallon, designed to be carried from one location to another by means of a bail or carrying handle and equipped with a sheet metal tray underneath the burner as an integral part of the heater designed to prevent the flow of oil in case of flame failure and to prevent the ignition of combustible materials in case of overturning of the heater.

§ 239–b. Unapproved portable kerosene heaters prohibited in structures

Portable kerosene heaters which do not meet the requirements of subdivision five of section two hundred thirty-nine-a of this chapter are prohibited in structures. It shall be unlawful for any person (1) to use an unapproved portable kerosene heater in any portion of a structure, or (2) being the owner of such structure, to provide or place or cause to be provided or placed in any portion of a structure, an unapproved portable kerosene heater for use by any occupant of such structure.

§ 239–c. Penalties for violation

Any person who shall violate any provision of this article shall be guilty of a misdemeanor, punishable for each offense by a fine not exceeding one hundred dollars or by imprisonment for a period of not more than ninety days.

§ 239–d. Application of article

This article shall not be applicable to any city having a population in excess of five hundred thousand.

[TAX LAW]

§ 189. The tax law is hereby amended by inserting therein a new section, to be section five, to read as follows:

§ 5. Use of tax or other notices to distribute advertising and propaganda material

Any person, firm, corporation, or association, or agent or employee thereof, who mails or delivers or causes to be mailed or delivered, any notice, circular, pamphlet, card, hand-bill, printed or written notice of any kind other than that which is authorized or required by law with a statement of moneys due the state of New York or any political subdivision thereof, or with a tax bill or notification of a tax to be assessed or levied by the state of New York or any political subdivision thereof, is guilty of a misdemeanor.

CONFORMING AMENDMENTS

§ 190. Such law is hereby amended by inserting therein a new section, to be section one hundred seventy-a, to read as follows:

§ 170–a. Comptroller or the commissioner of taxation and finance not to be interested in tax sales

The comptroller, or any person employed in his office, or the commissioner of taxation and finance, or any person employed in his office, who shall be directly or indirectly interested in any tax sale made by such comptroller or commissioner, or in the title acquired by such sale, or in any money paid or to be paid for the redemption of any lands sold for taxes or on the cancellation of any tax sale; or any person who shall pay or give to the state comptroller, or to any employee in his office, or the commissioner of taxation and finance, or to any employee of his office, any compensation, reward or promise thereof for any service or services performed or to be performed in regard to such sale, redemption, cancellation or such tax title, is guilty of a **misdemeanor.** A sale in violation of this section is void.

[TRANSPORTATION CORPORATIONS LAW]

§ 191. The transportation corporations law is hereby amended by inserting therein a new section, to be section eighty-one-a, to read as follows:

§ 81–a. Misconduct of officers and agents of pipe-line corporations

Any officer, agent or manager of a pipe-line corporation who:

1. Neglects or refuses to transport any product delivered for transportation, or to accept and allow a delivery thereof in the order of application, according to the general rules of the corporation, as provided by law; or,
2. Charges, accepts or agrees to accept for such receipt, transportation and delivery, a sum different from the amount fixed by such regulations; or,
3. Allows or pays, or agrees to allow or pay, or suffers to be allowed or paid or repaid, any draw-back, rebate or allowance, so that any person shall, by any advice, have or procure any transportation of products over such pipe-line at a less rate or charge than is fixed in such regulations,

Is guilty of a **misdemeanor**, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both.

[VEHICLE AND TRAFFIC LAW]

§ 192. The vehicle and traffic law is hereby amended by inserting therein a new section, to be section three hundred ninety-six, to read as follows:

§ 396. Use of state and other seals and insignia on private vehicles prohibited

1. A person who shall use any seal, device of arms, sign, lettering or insignia of the United States, or of this state or political subdivision thereof, on any vehicle not owned or used by the United States, this state or by such political subdivision thereof, which such seal, device of arms, sign, lettering or insignia represents, is guilty of a **misdemeanor.**
2. A person who shall use or display the words "Police Department," "Police" or any sign, lettering or device with the letters "P. D.," or any other matter indicating ownership, possession or use by a police department, on any motor vehicle or motor cycle not used by a duly organized police department within this state and not actually operated or used

by a member or an employee of a duly organized police department on any public highway, is guilty of a misdemeanor.

3. A person who shall use or display the words "Fire Department," "Fire" or any sign lettering or device with the letters "F. D. N. Y.," or any other matter indicating ownership, possession or use by a fire department, on any motor vehicle or motor cycle not used by a duly organized fire department within this state and not actually operated or used by a member or an employee of a duly organized fire department on any public highway, is guilty of a misdemeanor.

§ 193. Such law is hereby amended by inserting therein a new section, to be section three hundred ninety-seven, to read as follows:

§ 397. Equipping automobiles with radio receiving sets capable of receiving signals on the frequencies allocated for police use

A person, not a peace officer, who equips an automobile with a radio receiving set capable of receiving signals on the frequencies allocated for police use or knowingly uses an automobile so equipped or who in any way knowingly interferes with the transmission of radio messages by the police without having first secured a permit so to do from the person authorized to issue such a permit by the local governing body or board of the city, town or village in which such person resides, or where such person resides outside of a city or village in a county having a county police department by the board of supervisors of such county, is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or imprisonment not exceeding six months, or both. Nothing in this section contained shall be construed to apply to any person who holds a valid amateur radio operator's license issued by the federal communications commission and who operates a duly licensed portable mobile transmitter and in connection therewith a receiver or receiving set on frequencies exclusively allocated by the federal communications commission to duly licensed radio amateurs.

[McKINNEY'S UNCONSOLIDATED LAWS]

[Sections 7901–7923]

§ 194. Chapter four hundred forty of the laws of nineteen hundred twenty-six, entitled "An act in relation to the formation of corporations for racing and breeding and improving the breed of horses, and continuing the state racing commission," is hereby amended by inserting therein a new section, to be section twelve-a, to read as follows:

§ 12–a. Fraudulent entries and practices in contests of speed

Any person who:

1. Knowingly enters for competition, or furnishes to another person for entry or competition, or brings into this state for entry or competition for any purse, prize, premium, stake or sweepstakes offered or established by any person, association or corporation, any running, trotting or pacing horse, mare, gelding, colt or filly under an assumed name, or out of its proper class, or that has been painted or disguised or represented to be any other or different horse, mare, gelding, colt or filly from the one which is purported to be entered where such prize, purse, premium, stake or sweepstakes is to be decided by a contest of speed; or,

2. Being the owner, trainer, or other person having the control of the racing qualities of any running, trotting or pacing horse, mare, gelding, colt or filly, knowingly allows the same to compete for any such prize, purse, premium, stake or sweepstakes under an assumed name, or out of its proper class, or as any other or different horse, mare, gelding, colt or filly than the one it actually is; or

3. In any competition for any such purse, prize, premium, stake or sweepstakes, knowingly drives any trotting or pacing horse, mare, gelding, colt or filly which has been entered under an assumed name, or out of its proper class or which has been painted or disguised, or represented to be any other or different horse, mare, gelding, colt or filly than the one it actually is.[1]

Shall be guilty of a misdemeanor, punishable by a fine of not less than five hundred nor more than fifteen hundred dollars, or by imprisonment for not more than one year, or both.

The true name and age, and also the pedigree, unless such pedigree is unknown, of every such animal shall be registered with the jockey club before it shall be eligible to compete in any such race conducted under the license of the state racing commission; and such name shall continue to be its true name unless and until the same shall be changed according to the rules and regulations of such jockey club. Any person who shall knowingly cause or procure or aid in any false registration under this section shall be guilty of a misdemeanor, and upon conviction shall be punished as hereinabove provided. The class to which any such animal belongs for the purpose of the entry or competition in any other race shall be determined by the public performance thereof in former contests or trials of speed, as provided by the printed rules of the person, association or corporation under which the proposed contest is advertised to be conducted.

[1] So in original. Period following "is" probably should be a comma.

§ 195. This act shall take effect September first, nineteen hundred sixty-seven.