

**Appendix II:**

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

**Promulgating Institution:** National People's Congress  
**Document Number:** Order No. 55 of the President of the People's Republic of China  
**Promulgating Date:** 03/14/2012  
**Effective Date:** 01/01/2013  
**Validity Status:** Valid

**Order No. 55 of the President of the People's Republic of China**

The Decision of the National People's Congress on Amending the Criminal Procedure Law of the People's Republic of China, adopted at the Fifth Session of the 11th National People's Congress of the People's Republic of China on March 14, 2012, is hereby promulgated and shall come into effect on January 1, 2013.

President of the People's Republic of China Hu Jintao  
March 14, 2012

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

(Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, and amended for the first time in according with the Decision on Amending the Criminal Procedure Law of the People's Republic of China adopted at the Fourth Session of the Eighth National People's Congress on March 17, 1996, and amended for the second time in according with the Decision on Amending the Criminal Procedure Law of the People's Republic of China adopted at the Fifth Session of the 11th National People's Congress of the People's Republic of China on March 14, 2012)

Contents

Part One: General Provisions

Chapter I: Aim and Basic Principles

Chapter II: Jurisdiction  
Chapter III: Withdrawal  
Chapter IV: Defence and Representation  
Chapter V: Evidence  
Chapter VI: Compulsory Measures  
Chapter VII: Incidental Civil Actions  
Chapter VIII: Time Periods and Service  
Chapter IX: Other Provisions  
Part Two: Filing a Case, Investigation, and Initiation of Public Prosecution  
Chapter I: Filing a Case  
Chapter II: Investigation  
Section 1: General Provisions  
Section 2: Interrogation of the Criminal Suspect  
Section 3: Questioning of the Witnesses  
Section 4: Inquest and Examination  
Section 5: Search  
Section 6: Seal-up and Seizure of Material Evidence and Documentary Evidence  
Section 7: Expert Evaluation  
Section 8: Technical Investigation Measures  
Section 9: Wanted Orders  
Section 10: Conclusion of Investigation  
Section 11: Investigation of Cases Directly Accepted by the People's Procuratorates  
Chapter III: Initiation of Public Prosecution  
Part Three: Trial  
Chapter I: Trial Organizations  
Chapter II: Procedure of First Instance  
Section 1: Cases of Public Prosecution  
Section 2: Cases of Private Prosecution  
Section 3: Summary Procedure  
Chapter III: Procedure of Second Instance  
Chapter IV: Procedure for Review of Death Sentences  
Chapter V: Procedure for Trial Supervision  
Part Four: Execution  
Part Five: Special Procedures  
Chapter 1 Procedures for Criminal Cases Committed by Minors  
Chapter 2 Procedures for Reconciliation Between Parties Concerned in Cases of Public Prosecution  
Chapter 3 Procedures for Confiscating Illegal Gains in Cases Where the

Criminal Suspect or Defendant Has Absconded or Died  
Chapter 4 Procedures for Compulsory Medical Treatment for Mentally Ill  
Persons who Are not Held Criminal Responsible  
Supplementary Provisions

**Part One: General Provisions**

**Chapter I: Aim and Basic Principles**

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

**Article 2** The purposes of the Criminal Procedure Law of the People's Republic of China are as follows: to ensure that the facts of crimes are ascertained in an accurate and timely manner, that the law is correctly applied, that criminals are punished and innocent people are protected from criminal prosecution, and that citizens are educated to abide by the law and vigorously fight against criminal acts, so as to maintain the socialist legal system, respect and protect human rights, safeguard citizens' personal rights, property rights, democratic rights and other rights, and ensure the smooth progress of the socialist cause.

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

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

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

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

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

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

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

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

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

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

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

**Article 12** No person shall be found guilty without being judged as such by

a People's Court according to law.

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

**Article 14** People's courts, people's procuratorates and public security organs shall safeguard the right of defense and other litigation rights to which criminal suspects, defendants and other participants in litigation proceedings are entitled.

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

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

(1)if an act is obviously minor, causing no serious harm, and is therefore not deemed a crime;

(2)if the limitation period for criminal prosecution has expired;

(3)if an exemption of criminal punishment has been granted in a special amnesty decree;

(4)if the crime is to be handled only upon complaint according to the Criminal Law, but there has been no complaint or the complaint has been withdrawn;

(5)if the criminal suspect or defendant is deceased; or

(6)if other laws provide an exemption from investigation of criminal responsibility.

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

If foreigners with diplomatic privileges and immunities commit crimes for which criminal responsibility should be investigated, those cases shall be

resolved through diplomatic channels.

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

## **Chapter II: Jurisdiction**

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

Crimes of embezzlement and bribery, crimes of dereliction of duty committed by State functionaries, and crimes involving violations of a citizen's personal rights such as illegal detention, extortion of confessions by torture, retaliation, frame-up and illegal search and crimes involving infringement of a citizen's democratic rights -- committed by State functionaries by taking advantage of their functions and powers -- shall be placed on file for investigation by the People's Procuratorates. If cases involving other grave crimes committed by State functionaries by taking advantage of their functions and powers need be handled directly by the People's Procuratorates, they may be placed on file for investigation by the People's Procuratorates upon decision by the People's Procuratorates at or above the provincial level.

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

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

**Article 20** Intermediate people's courts shall have the jurisdiction as courts of first instance over the following criminal cases:

- (1) Cases endangering State security or involving terrorist activities; and
- (2) Cases of crimes punishable by life imprisonment or capital punishment.

**Article 21** The Higher People's Courts shall have jurisdiction as courts of first instance over major criminal cases that pertain to an entire province(or

autonomous region, or municipality directly under the Central Government).

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

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

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

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

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

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

### **Chapter III: Withdrawal**

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

(1) if he is a party or a close relative of a party to the case;

(2)if he or a close relative of his has an interest in the case;

(3)if he has served as a witness, expert witness, defender or agent ad litem in the current case ; or

(4)if he has any other relations with a party to the case that could affect the impartial handling of the case.

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

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

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

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

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

**Article 31** Provisions on withdrawal set forth in this Chapter shall apply equally to court clerks, interpreters and expert witnesses.

The defender or the agent ad litem of a case may request for withdrawal or apply for reconsideration pursuant to provisions of this Chapter.

## **Chapter IV: Defence and Representation**

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

(1)lawyers;

(2)persons recommended by a public organization or the unit to which the criminal suspect or the defendant belongs; and

(3)guardians or relatives and friends of the criminal suspect or the defendant.

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

**Article 33** A criminal suspect shall be entitled to entrust a defender after he/she is interrogated for the first time by an investigating organ or as of the date on which compulsive measures are taken, provided that during investigation, the criminal suspect may only entrust a lawyer as his/her defender. Defendants of cases shall be entitled to entrust defenders at any time.

An investigating organ shall, during the first interrogation of a criminal suspect or the imposition of compulsory measures thereon, inform the criminal suspect of his/her right to entrust a defender. A people's procuratorate shall, within three days upon the receipt of the materials of a case transferred for examination before prosecution, inform the criminal suspect of his/her right to entrust a defender. A people's court shall, within three days upon the acceptance of a case, inform the defendant of his/her right to entrust a defender. Where a criminal suspect or defendant requests for the entrustment of a defender during his/her detention, the people's court, the people's procuratorate and the public security organ concerned shall communicate the request in a timely manner.

A criminal suspect or defendant under detention may have his/her guardian or close relative to entrust a defender on his/her behalf.

A defender, after accepting the entrustment by a criminal suspect or defendant, shall inform the case handling organ of the entrustment in a timely manner

**Article 34** A criminal suspect or defendant who has not entrusted a

defender due to financial difficulties or other reasons, the criminal suspect or defendant himself/herself or his/her close relatives may file an application with a legal aid agency which may designate a lawyer as his/her defender where the application satisfies the conditions for legal aid services.

With respect to a criminal suspect or defendant who is vision, hearing or speech impaired, or who is a mentally challenged person but has not lost entirely the ability of recognition or the ability to control his/her conducts, if such person has not entrusted anyone to be his/her defender, the people's court, the people's procuratorate and the public security organ concerned shall inform a legal aid agency to designate a lawyer as his/her defender.

Where a criminal suspect or defendant committing a crime punishable by life imprisonment or capital punishment has not entrusted a defender, the people's court, the people's procuratorate and the public security organ concerned shall inform a legal aid agency to designate a lawyer as his/her defender.

**Article 35** The responsibilities of a defender shall be to present, in accordance with facts and the law, materials and opinions proving that the criminal suspect or defendant is innocent or the crime involved is a petty offense, or the criminal suspect or defendant is eligible need for a mitigated punishment or exemption from the criminal liability, so as to safeguard the litigation rights and other legitimate rights and interests of the criminal suspect or defendant.

**Article 36** During the investigation period, a defense lawyer may provide a criminal suspect with legal aid, file petitions and complaints on the suspect's behalf, apply for alteration of the compulsory measures, find out from the investigating organ the offense of which the criminal suspect is convicted and the information pertaining to the case, and offer his/her opinions.

**Article 37** Defense lawyers may have meeting and correspondence with criminal suspects or defendants who are under detention. Other defenders, subject to the permission of people's courts and people's procuratorates, may also meet and correspond with criminal suspects or defendants who are under detention.

Where a defense lawyer requests for a meeting with a criminal suspect or defendant under detention on the strength of the lawyer's practicing certificate, and the certification documents and letter of authorization issued

by his/her law firm, or an official legal aid document, the detention house concerned shall arrange the meeting in a timely manner, no later than 48 hours after receiving the request.

During the investigation period for crimes endangering State security, involving terrorist activities or involving significant amount of bribes, defense lawyers shall obtain the approval of investigating organs before they meet with the criminal suspects. The investigating organs shall inform the detention houses of information relating to the aforesaid cases in advance.

A defense lawyer shall be entitled to inquire about the case and provide legal advice during the meeting with a criminal suspect or defendant under detention and may, from the date on which the case is transferred for examination before prosecution, verify relevant evidence with the criminal suspect or defendant. The meeting between the defense lawyer and the criminal suspect or defendant shall not be monitored.

With respect to circumstances where defense lawyers meet and correspond with criminal suspects or defendants who are under residential surveillance, provisions of Paragraphs 1, 3 and 4 of this Article shall apply.

**Article 38** A defense lawyer may, from the date on which the relevant people's procuratorate begins to examine the case for prosecution, consult, excerpt and reproduce the case file materials. Other defenders, with permission of the people's procuratorate or people's court, may also consult, excerpt and reproduce the above-mentioned materials.

**Article 39** Where a defender is of the opinion that the relevant public security organ or people's procuratorate fails to submit certain evidence gathered during the investigation period or period for examination before prosecution while such evidence can prove that the criminal suspect or defendant is innocent or the crime involved is a petty offense, the defender shall be entitled to apply with the people's procuratorate or the people's court concerned to obtain such evidence.

**Article 40** Where a defender has gathered evidence showing that the criminal suspect concerned was not at the scene of the crime, has not reached the age for assuming the criminal liability, or is a mentally challenged person who is not required by law to assume the criminal liability, the defender shall inform the relevant public organ and people's procuratorate of such evidence

in a timely manner.

**Article 41** Defence lawyers may, with the consent of the witnesses or other units and individuals concerned, collect information pertaining to the current case from them and they may also apply to the People's Procuratorate or the People's Court for the collection and obtaining of evidence, or request the People's Court to inform the witnesses to appear in court and give testimony.

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

**Article 42** No defense lawyer or any other person may help a criminal suspect or defendant conceal, destroy or fabricate evidence or collude with a criminal suspect or defendant to make confessions tally, or intimidate or induce witnesses to give false testimony or conduct other acts interfering with the proceedings of judicial organs.

Any violation of the preceding paragraph shall be subject to the legal liability in accordance with the law. Any alleged crime committed by a defender in this regard shall be handled by an investigating organ other than the investigating organ handling the case undertaken by the defender. Where the defender is a lawyer, the law firm for which the defender is working or the lawyer's association of which the defender is a member shall be notified of relevant information in a timely manner.

**Article 43** During a trial, the defendant may refuse to have his defender continue to defend him and may entrust his defence to another defender.

**Article 44** A victim in a case of public prosecution, his legal representatives or close relatives, and a party in an incidental civil action and his legal representatives shall, from the date on which the case is transferred for examination before prosecution, have the right to entrust agents ad litem. A private prosecutor in a case of private prosecution and his legal representatives, and a party in an incidental civil action and his legal representatives shall have the right to entrust agents ad litem at any time.

The People's Procuratorate shall, within three days from the date of receiving the file record of a case transferred for examination before prosecution, notify

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

**Article 45** With regard to entrusting of agents ad litem, the provisions of Article 32 of this Law shall be applied mutatis mutandis.

**Article 46** Defense lawyers shall be entitled to keep confidential the information about their clients that comes into their knowledge during their practices, provided that they shall promptly inform judicial organs of the information that comes to their knowledge during their practices, indicating that their clients or other persons are to commit or are committing crimes endangering State security or public security or crimes seriously threatening others' personal safety.

**Article 47** A defender or agent ad litem shall be entitled to file a petition or bring a complaint to the people's procuratorate at the same or the next higher level if he/she is of the opinion that the relevant public security organ, people's procuratorate, people's court or its staff members have hindered his/her lawful exercise of the litigation rights. The said people's procuratorate shall review the petition or complaint in a timely manner, and notify relevant organs to make correction if the authenticity of petition or complaint is confirmed.

## **Chapter V: Evidence**

**Article 48** All materials that prove the facts of a case shall be evidence.

Evidence shall include:

- (1) Physical evidence;
- (2) Documentary evidence;
- (3) Testimony of witnesses;
- (4) Statements of victims;

- (5) Statements and exculpations of criminal suspects or defendants;
- (6) Expert opinions;
- (7) Records of crime scene investigation, examination, identification and investigative experiments; and
- (8) Audio-visual materials, and electronic data.

The authenticity of evidence shall be confirmed before it can be admitted as the basis for making a decision on a verdict.

**Article 49** For cases of public prosecution, people's procuratorates shall bear the burden of proof to prove that the defendants are guilty, while for cases of private prosecution, private prosecutors shall bear the burden of proof to prove that the defendants are guilty.

**Article 50** Judges, procuratorial personnel and investigators shall adhere to statutory procedures when gathering and obtaining evidence that may prove whether criminal suspects or defendants are guilty or innocent, or whether cases involve serious criminal offenses or not. They are strictly prohibited from extorting confessions by torture, collecting evidence through threats, enticement, deception or other unlawful means, or forcing anyone to provide evidence proving his/her own guilt. They shall ensure that all citizens who are involved in a case or who have information about the circumstances of a case can furnish all available evidence in an objective manner and, except under special circumstances, may ask such citizens to provide assistance in investigation.

**Article 51** The public security organ's requests for approval of arrest, the People's Procuratorate's bills of prosecution and the People's Court's written judgments must be faithful to the facts. The responsibility of anyone who intentionally conceals the facts shall be investigated.

**Article 52** The People's Courts, the People's Procuratorates and the public security organs shall have the authority to collect or obtain evidence from the units and individuals concerned. The units and individuals concerned shall provide truthful evidence.

The physical evidence, documentary evidence, audio-visual materials, electronic data and other evidence gathered by administrative organs during administrative law enforcement and case investigation and handling may be used as evidence in criminal cases.

Evidence involving State secrets, trade secrets or personal privacy shall be kept confidential.

Anyone that falsifies, conceals or destroys evidence, regardless of which side of a case he belongs to, must be investigated under law.

**Article 53** All cases shall be judged according to the principles that emphasis shall be laid on evidence, investigation and research, while credence shall not be readily given to oral statements. A defendant cannot be found guilty and sentenced to criminal punishments if there is no evidence other than his/her own statement. On the other hand, a defendant may be found guilty and sentenced to criminal punishments even without his/her own statements, as long as there is sufficient and concrete evidence.

Evidence shall be deemed to be sufficient and concrete if the following conditions are satisfied:

- (1) There is evidence for each fact that serves as the basis for conviction and sentencing;
- (2) The authenticity of evidence used for deciding the case has all been confirmed in accordance with statutory procedures; and
- (3) Based on the comprehensive assessment of all evidence for the case, the ascertained facts have been proved beyond reasonable doubt.

**Article 54** Confessions extorted from a criminal suspect or defendant by illegal means such as torture, testimony of witnesses and statements of victims collected by violent means, threat or other unlawful means shall be excluded. Physical evidence or documentary evidence that is not collected according to statutory procedures and is therefore likely to materially damage judicial justice shall be subject to correction or reasonable explanations, and shall be excluded if correction or reasonable explanations are not made.

Evidence that shall be excluded as found during investigation, examination

before prosecution and trial shall be excluded in accordance with the law, and shall not serve as the basis for making prosecution opinions, prosecution decisions and judgments.

**Article 55** Where a people's procuratorate receives any reports, accusations or tip-offs on any circumstances involving unlawful gathering of evidence by investigators, or discovers that any investigator involves such conduct, the people's Procuratorate shall carry out investigation and verification thereof. If said conduct constitutes a crime, the persons concerned shall be subject to the criminal liability in accordance with the law.

**Article 56** During a court hearing, where a judge is of the opinion that evidence may have been gathered by unlawful means as stipulated in Article 54 herein, a court investigation shall be launched as to the legality of the evidence gathering means.

The party concerned, his/her defender and the agent ad litem shall be entitled to apply with the relevant people's court for exclusion of the evidence gathered by unlawful means in accordance with the law. Those who apply for exclusion of the evidence gathered by unlawful means shall provide relevant clues or materials.

**Article 57** A people's procuratorate shall bear the burden of proof as to the legality of the evidence gathering means during the court investigation thereof.

Where there exists no evidentiary support for the legality of the evidence gathering means, the people's procuratorate may request the people's court concerned to notify relevant investigators or other personnel to appear before the courtroom to make explanations. The people's court may, at its own discretion, notify relevant investigators or other personnel to appear before the courtroom to give explanations. Relevant investigators or other personnel may also take the initiative to request an appearance before the courtroom for an explanation. Relevant personnel shall also appear before courtroom if so notified by the people's court.

**Article 58** Evidence shall be excluded if court investigation has confirmed or is unable to rule out that there have been circumstances of gathering evidence by illegal means as set forth in Article 54 herein.

**Article 59** The testimony of a witness shall be admitted as the basis for making a decision on a verdict only after the witness has been questioned and cross-examined in the courtroom by both sides, that is, the public prosecutor and the victim, as well as the defendant and the defender. If a court finds through investigation that a witness has intentionally given false testimony or concealed criminal evidence, it shall handle the matter in accordance with the law.

**Article 60** All those who have information about a case shall have the duty to testify.

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

**Article 61** The People's Courts, the People's Procuratorates and the public security organs shall insure the safety of witnesses and their close relatives.

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

**Article 62** With regard to crimes endangering State security, those involving terrorist activities, organized crimes committed by groups in the nature of criminal syndicates, drug-related crimes and the like, if the personal safety of the witnesses, experts or victims or their close relatives is threatened due to their testimony in lawsuits, the people's courts, people's procuratorates and public security organs shall adopt one or more of the following protective measures:

- (1) Keeping confidential the real names, addresses, employers and other personal information of the aforesaid persons;
- (2) Adopting measures to avoid the actual appearance or true voice of those who appear in courtrooms for testimony;
- (3) Prohibiting certain persons from having contact with the witnesses, experts, victims and their close relatives;

(4) Adopting special measures to protect the personal and residential security of the aforesaid persons; and/or

(5) Other necessary protective measures.

A witness, expert or victim who is of the opinion that his/her personal security or the personal security of his/her close relatives is in danger due to his/her testimony in lawsuits may apply for protection with a people's court, people's procuratorate or public security organ.

Relevant entities and individuals shall provide cooperation when people's courts, people's procuratorates or public security organs take protective measures pursuant to the law.

**Article 63** A witness shall be entitled to allowance for his/her performance of the obligation of giving testimony in terms of transportation, accommodation and catering expenses incurred thereby. The allowance granted to witnesses for giving testimony shall be included into the business expenses of judicial organs and be guaranteed by the public finance of people's governments at the same level.

Where the witness is an employee of an entity, the entity shall not deduct his/her salary, bonus and other benefits directly or in a disguised form.

## **Chapter VI: Compulsory Measures**

**Article 64** The People's Courts, the People's Procuratorates and the public security organs may, according to the circumstances of a case, issue a warrant to compel the appearance of the criminal suspect or defendant, order him to be released on bail pending trial or subject him to residential surveillance.

**Article 65** A people's court, people's procuratorate and public security organ may allow a criminal suspect or defendant under any of the following conditions to be released on bail pending trial:

(1) The criminal suspect or defendant commits a crime punishable by public surveillance, criminal detention or supplementary punishments separately meted out;

(2) The criminal suspect or defendant commits a crime punishable by fixed-term imprisonment or severer punishments, but would not pose a threat to the society if he/she is released on bail pending trial;

(3) Where the criminal suspect or defendant is suffering from a serious illness and cannot take care of him/herself, or is during pregnancy and breastfeeding period, thus would not pose a threat to the society if he/she is released on bail pending trial; or

(4) His/her case has not been concluded upon expiry of the detention period, and therefore he/she needs to be released on bail pending trial.

Release on bail pending trial shall be executed by public security organs.

**Article 66** If the People's Courts, the People's Procuratorates or the public security organs decide to allow a criminal suspect or defendant to be released on bail pending trial, they shall order the criminal suspect or defendant to provide a guarantor or pay guaranty money.

**Article 67** A guarantor must be a person who meets the following conditions:

(1) to be not involved in the current case;

(2) to be able to perform a guarantor's duties;

(3) to be entitled to political rights and not subjected to restriction of personal freedom; and

(4) to have a fixed domicile and steady income.

**Article 68** A guarantor shall perform the following obligations:

(1) To ensure that the person under his/her guarantee observes provisions of Article 69 herein; and

(2) To promptly report to the executing organ in case of discovering that the person under his/her guarantee might commit or has already committed acts in violation of Article 69 herein.

Where the guarantor fails to perform the aforesaid obligations when the person under his/her guarantee has committed an act that violates of Article 69 herein, he/she shall be fined; and the guarantor shall be subject to the criminal liability in accordance with the law if his/her act constitutes a criminal offense.

**Article 69** A criminal suspect or defendant who is released on bail pending trial shall abide by the following provisions:

- (1) Not to leave the city or county where he/she resides without the permission of the executing organ;
- (2) To report any change of the address, employer and contact information to the executing organ within 24 hours of the change;
- (3) To appear before a court on time when summoned;
- (4) Not to interfere, in any form, with the witnesses who give testimony; and
- (5) Not to destroy or falsify evidence or collude with others to make confessions tally.

A people's court, people's procuratorate and public security organ may, depending on the circumstances of a case, order the criminal suspect or defendant who has been released on bail pending trial to abide by one or more of the following provisions:

- (1) Not to enter certain d places;
- (2) Not to meet or correspond with certain persons;
- (3) Not to engage in certain activities; and/or
- (4) To surrender his/her passport and other travel documents, and driver's license to the executing organ.

Where a criminal suspect or defendant who has been released on bail pending trial violates provisions of the preceding two paragraphs, part or all of the bail bond paid shall be forfeited, and depending on the specific circumstances, the criminal suspect or defendant shall be ordered to write a recognizance of

repentance, pay bail bond again or provide a guarantor, or be placed under residential surveillance and be arrested.

In case that a criminal suspect or defendant violates provisions in respect of release on bail pending trial, he/she may be held in custody before being arrested according to relevant provisions.

**Article 70** When the organ rendering the release on bail pending trial determines the amount of the bail bond to be paid, the requirements for ensuring the normal proceedings of litigation activities, whether the person released on bail is a serious danger to the society, the circumstances and nature of the case, the severity of the possible punishments and the economic conditions of the person on bail, shall be taken into account.

The person who provides the bail bond shall pay the money to a special account in a bank designated by the execution organ.

**Article 71** Where a criminal suspect or defendant does not violate any provisions of Article 69 herein during the period when he/she is released on bail, he/she shall collect the returned bond from the relevant bank upon expiry of the bail period by presenting the notice on the termination of release on bail pending trial or other relevant legal instruments.

**Article 72** A people's court, people's procuratorate and public security organ may place under residential surveillance a criminal suspect or defendant who satisfies the conditions for arrest and is under any of the following circumstances:

- (1) He/she is seriously ill and cannot take care of him/herself;
- (2) She is in pregnancy or breastfeeding period;
- (3) He/she is the only person supporting someone who cannot take care of his/her;
- (4) Residential surveillance is more appropriate considering the special circumstances of the case or the need for case handling; or
- (5) His/her case has not been concluded upon expiry of the detention period, and therefore residential surveillance is necessary.

Where a criminal suspect or defendant satisfies the conditions for release on bail pending trial, but is unable to provide a guarantor or pay the bail bond, he/she may be placed under residential surveillance.

Residential surveillance shall be executed by public security organs.

**Article 73** Residential surveillance shall be enforced at the domicile of a criminal suspect or defendant or at a designated place of residence if he/she has no fixed domicile. Where, for a crime suspected to endanger State security, crime involving terrorist activities and a crime involving significant amount of bribes, residential surveillance at the domicile of the criminal suspect or defendant may impede the investigation, it may, upon approval by the people's procuratorate or the public security organ at the next higher level, be enforced at a designated place of residence, provided that residential surveillance is not enforced in a detention house or a special venue for case investigation.

Where a criminal suspect or defendant is placed under residential surveillance at a designated place of residence, his/her family shall be informed of the information related thereto within 24 hours upon enforcement of residential surveillance, unless notification cannot be processed.

Where criminal suspects and defendants under residential surveillance entrust defenders, Article 33 of this Law shall apply.

People's procuratorates shall exercise supervision over the legality of the decision and enforcement of residential surveillance at designated places of residence.

**Article 74** The period of residential surveillance at designated places of residence shall be deducted from the term of penalty. For criminals sentenced to public surveillance, each day of residential surveillance shall be counted as one day of the term of penalty; for criminals sentenced to criminal detention or fixed-term imprisonment, two days of residential surveillance shall be counted as one day of the term of penalty.

**Article 75** A criminal suspect or defendant under residential surveillance shall abide by the following provisions:

- (1) Not to leave the domicile or place of residence under residential surveillance without the permission of the executing organ;
- (2) Not to meet or correspond with any one without the permission of the executing organ;
- (3) To appear before a court in time when summoned;
- (4) Not to interfere, in any form, with the witnesses who give testimony;
- (5) Not to destroy or falsify evidence or collude with others to make confessions tally; and
- (6) To surrender his/her passport and other travel documents, identity certificate and driver's license to the executing organ for safekeeping.

A criminal suspect or defendant placed under residential surveillance may be arrested if he/she commits grave violations of the preceding paragraph, and may be held in custody prior to arrest if an arrest is necessary.

**Article 76** An executing organ may monitor a criminal suspect or defendant placed under surveillance with respect to his/her compliance with residential surveillance provisions by means of electronic monitoring, ad hoc inspection, etc. During the investigation period, the correspondence of the criminal suspect under residential surveillance may be monitored.

**Article 77** The period granted by a People's Court, People's Procuratorate or public security organ to a criminal suspect or defendant for awaiting trial after obtaining a guarantor shall not exceed twelve months; the period for residential surveillance shall not exceed six months.

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

**Article 78** Arrests of criminal suspects or defendants shall be subject to approval by a People's Procuratorate or decision by a People's Court and shall be executed by a public security organ.

**Article 79** Where there is evidence to support the facts of a crime and the criminal suspect or defendant has committed the crime punishable by fixed-term imprisonment or severer punishments, and where it will not effectively prevent the following dangers to the society caused by the concerned criminal suspect or defendant if he/she is released on bail pending trial, the criminal suspect or defendant shall be arrested in accordance with the law:

- (1) The criminal suspect or defendant may commit a new crime;
- (2) There is a real risk that the criminal suspect or defendant may endanger State security, public security or public order;
- (3) The criminal suspect or defendant may destroy or falsify evidence, interfere with the witnesses who give testimony or collude with others to make confessions tally;
- (4) The criminal suspect or defendant may retaliate against the victims, informants or accusers; or
- (5) The criminal suspect or defendant tries to commit suicide or escape.

Where there is evidence to support the facts of a crime and the criminal suspect or defendant has committed a crime that is punishable by a fixed-term imprisonment of ten years or severer punishments, or where there is evidence to support the facts of a crime, and the criminal suspect or defendant has committed a crime that is punishable by fixed-term imprisonment or severer punishments, but has intentionally committed a prior crime or has an unknown identity, the criminal suspect or defendant shall be arrested in accordance with the law.

A criminal suspect or defendant who is released on bail pending trial or is placed under residential surveillance may be arrested if he/she commits grave violations of the provisions with respect to release on bail pending trial or residential surveillance.

**Article 80** Public security organs may initially detain an active criminal or a major suspect under any of the following conditions:

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

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

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

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

(5)if there is likelihood of his destroying or falsifying evidence or tallying confessions;

(6)if he does not tell his true name and address and his identity is unknown; and

(7)if he is strongly suspected of committing crimes from one place to another, repeatedly, or in a gang.

**Article 81** When a public security organ is to detain or arrest a person in another place, it shall inform the public security organ in the place where the person to be detained or arrested stays, and the public security organ there shall cooperate in the action.

**Article 82** The persons listed below may be seized outright by any citizen and delivered to a public security organ, a People's Procuratorate or a People's Court for handling:

(1)any person who is committing a crime or is discovered immediately after committing a crime;

(2)any person who is wanted for arrest;

(3)any person who has escaped from prison; and

(4)any person who is being pursued for arrest.

**Article 83** When detaining a person, a public security organ must produce a detention warrant.

After being taken into custody, a detainee shall be immediately transferred to a detention house for detention within 24 hours. The family of the detainee shall be notified of the detention within 24 hours after the detention, unless the notification cannot be processed or where the detainee is involved in crimes endangering State security or crimes of terrorist activities, and such notification may hinder the investigation. The family of the detainee shall be notified of relevant information immediately after the circumstances impeding investigation has been eliminated.

**Article 84** A public security organ shall interrogate a person held in custody within 24 hours after being taken into custody. Once it is discovered that custody shall not have been imposed, the public security organ shall immediately release the person, and issue a release certificate.

**Article 85** When a public security organ wishes to arrest a criminal suspect, it shall submit a written request for approval of arrest together with the case file and evidence to the People's Procuratorate at the same level for examination and approval. When necessary, the People's Procuratorate may send procurators to participate in the public security organ's discussion of a major case.

**Article 86** A people's procuratorate may interrogate a criminal suspect when examining and approving the arrest thereof, and it shall interrogate the criminal suspect under any of the following circumstances:

- (1) Where there are doubts over whether the criminal suspect satisfies the conditions for arrest;
- (2) Where the criminal suspect applies to make a statement in front of procuratorial personnel; or
- (3) Where investigation activities might have involved major violations of laws.

The people's procuratorate may question witnesses and other litigation

participants, and listen to opinions of defense lawyers during the course of examining and approving the arrest. It shall hear the opinions of the defense lawyers if they have so requested.

**Article 87** The chief procurator shall make the decision on a People's Procuratorate's examination and approval of the arrest of a criminal suspect. Major cases shall be submitted to the procuratorial committee for discussion and decision.

**Article 88** After a People's Procuratorate has examined a case with respect to which a public security organ has submitted a request for approval of arrest, it shall decide according to the circumstances of the case either to approve the arrest or disapprove the arrest. If it decides to approve the arrest, the public security organ shall execute it immediately and inform the People's Procuratorate of the result without delay. If the People's Procuratorate disapproves the arrest, it shall give its reasons therefor; and if it deems a supplementary investigation necessary, it shall at the same time notify the public security organ of the need.

**Article 89** If the public security organ deems it necessary to arrest a detainee, it shall, within three days after the detention, submit a request to the People's Procuratorate for examination and approval. Under special circumstances, the time limit for submitting a request for examination and approval may be extended by one to four days.

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

The People's Procuratorate shall decide either to approve or disapprove the arrest within seven days from the date of receiving the written request for approval of arrest submitted by a public security organ.

If the People's Procuratorate disapproves the arrest, the public security organ shall, upon receiving notification, immediately release the detainee and inform the People's Procuratorate of the result without delay. If further investigation is necessary, and if the released person meets the conditions for releasing on bail pending trial or for residential surveillance, he shall be allowed to be released on bail pending trial or subjected to residential surveillance according to law.

**Article 90** If the public security organ considers the People's Procuratorate's decision to disapprove an arrest to be incorrect, it may request a reconsideration but must immediately release the detainee. If the public security organ's opinion is not accepted, it may request a review by the People's Procuratorate at the next higher level. The People's Procuratorate at the higher level shall immediately review the matter, decide whether or not to make a change and notify the People's Procuratorate at the lower level and the public security organ to implement its decision.

**Article 91** When making an arrest, a public security organ must produce an arrest warrant.

Upon arrest, an arrested person shall be immediately transferred to a detention house for custody. The family of the arrested person shall be notified within 24 hours after the arrest, unless the notification cannot be processed.

**Article 92** Interrogation must be conducted within 24 hours after the arrest, by a People's Court or People's Procuratorate with respect to a person it has decided to arrest, and by a public security organ with respect to a person it has arrested with the approval of the People's Procuratorate. If it is found that the person should not have been arrested, he must be immediately released and issued a release certificate.

**Article 93** After a criminal suspect or defendant is arrested, the relevant people's procuratorate shall still examine the necessity for detention. Where the criminal suspect or defendant no longer needs to be put under detention, the people's procuratorate shall suggest the release thereof or change of compulsory measures. Relevant organs shall notify the people's procuratorate of the handling of the case within ten days.

**Article 94** If a People's Court, a People's Procuratorate or a public security organ finds that the compulsory measures adopted against a criminal suspect or defendant are inappropriate, such measures shall be cancelled or modified without delay. If a public security organ releases a person arrested or substitute the measure of arrest with a different measure , it shall notify the People's Procuratorate that approved the arrest.

**Article 95** A criminal suspect or defendant and his/her statutory representative, close relatives or defender shall be entitled to apply for change of the compulsory measures. The people's court, people's procuratorate and

public security organ concerned shall make a decision within three days upon receipt of the application, and shall inform the applicant of the reasons for disapproval of such changes.

**Article 96** If a case involving a criminal suspect or defendant under detention cannot be closed within the time limits stipulated herein for keeping the criminal suspect or defendant under custody for investigation, for conducting examination before prosecution, or for the proceedings of first or second instance, the criminal suspect or defendant shall be released. Where further investigation, verification or trial is necessary, the criminal suspect or defendant may be posted on bail with restricted freedom pending trial or be placed under residential surveillance.

**Article 97** A people's court, people's procuratorate, or public security organ shall, upon expiry of the statutory time period for compulsory measures imposed on a criminal suspect or defendant, release the criminal suspect or the defendant release, release him/her from bail with restricted freedom pending trial or residential surveillance, or change the compulsory measures in accordance with the law. The criminal suspect or defendant, and his or her statutory representative, close relatives or defenders shall be entitled to request the people's court, people's procuratorate or public security organ to terminate the compulsory measures upon expiry of the statutory time period thereof.

**Article 98** If in the process of examining and approving arrests, a People's Procuratorate discovers illegalities in the investigatory activities of a public security organ, it shall notify the public security organ to make corrections, and the public security organ shall notify the People's Procuratorate of the corrections it has made.

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

**Article 99** A victim who suffers from property losses due to the defendant's criminal offenses shall be entitled to bring an incidental civil action during criminal proceedings. Where the victim has died or lost his/her capacity for civil conduct, his/her statutory representative or close relative shall be entitled to bring an incidental civil action.

In the event of losses of State property or collectively-owned property, a people's procuratorate may bring an incidental civil action when initiating a

public prosecution.

**Article 100** When necessary, a people's court may take preservation measures to seal up, seize or freeze a defendant's property. The plaintiff to an incidental civil action or a people's procuratorate may request the people's court to take preservation measures. The people's court shall comply with the Civil Procedure Law when taking preservation measures.

**Article 101** A people's court, in hearing an incidental civil case, may conduct mediation or make a ruling or judgment according to property losses.

**Article 102** An incidental civil action shall be heard together with the criminal case. Only for the purpose of preventing excessive delay in a trial of the criminal case may the same judicial organization, after completing the trial of the criminal case, continue to hear the incidental civil action.

### **Chapter VIII: Time Periods and Service**

**Article 103** Time periods shall be calculated by the hour, the day and the month.

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

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

If the last day of a statutory time period falls on a public holiday, the day immediately following the public holiday shall be regarded as the expiry date of the time period. However, the time limit for holding a criminal suspect, defendant or criminal under custody shall expire on the last day of the time period, and shall not be extended due to the public holiday.

**Article 104** When a party cannot meet a deadline due to irresistible causes or for other legitimate reasons, he may, within five days after the obstacle is removed, apply to continue the proceedings that should have been completed before the expiration of the time period.

A People's Court shall decide whether or not to approve the application

described in the preceding paragraph.

**Article 105** Summons, notices and other court documents shall be delivered to the addressee himself; if the addressee is absent, the documents may be received on his behalf by an adult member of his family or a responsible person of his unit.

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

## **Chapter IX: Other Provisions**

**Article 106** For the purpose of this law, the definitions of the following terms are:

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

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

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

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

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

(5) agents ad litem means persons entrusted by victims in cases of public prosecution and their legal representatives or close relatives and by private prosecutors in cases of private prosecution and their legal representatives to participate in legal proceedings on their behalf, and persons entrusted by

parties in incidental civil actions and their legal representatives to participate in legal proceedings on their behalf.

(6) Close relatives means a person's husband or wife, father, mother, sons, daughters, and brothers and sisters born of the same parents.

## **Part Two: Filing a Case, Investigation, and Initiation of Public Prosecution**

### **Chapter I: Filing a Case**

**Article 107** The public security organs or the People's Procuratorates shall, upon discovering facts of crimes or criminal suspects, file the cases for investigation within the scope of their jurisdiction.

**Article 108** Any unit or individual, upon discovering facts of a crime or a criminal suspect, shall have the right and duty to report the case or provide information to a public security organ, a People's Procuratorate or a People's Court.

When his personal or property rights are infringed upon, the victim shall have the right to report to a public security organ, a People's Procuratorate or a People's Court about the facts of the crime or bring a complaint to it against the criminal suspect.

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

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

**Article 109** Reports, complaints and information may be filed in writing or orally. The officer receiving an oral report, complaint or information shall make a written record of it, which, after being read to the reporter,

complainant or informant and found free of error, shall be signed or sealed by him or her.

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

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

**Article 110** A People's Court, People's Procuratorate or public security organ shall, within the scope of its jurisdiction, promptly examine the materials provided by a reporter, complainant or informant and the confession of an offender who has voluntarily surrendered. If it believes that there are facts of a crime and criminal responsibility should be investigated, it shall file a case. If it believes that there are no facts of a crime or that the facts are obviously incidental and do not require investigation of criminal responsibility, it shall not file a case and shall notify the complainant of the reason. If the complainant does not agree with the decision, he may ask for reconsideration.

**Article 111** Where a People's Procuratorate considers that a case should be filed for investigation by a public security organ but the latter has not done so, or where a victim considers that a case should be filed for investigation by a public security organ but the latter has not done so and the victim has brought the matter to a People's Procuratorate, the People's Procuratorate shall request the public security organ to state the reasons for not filing the case. If the People's Procuratorate considers that the reasons for not filing the case given by the public security organ are untenable, it shall notify the public security organ to file the case, and upon receiving the notification, the public security organ shall file the case.

**Article 112** As to a case of private prosecution, the victim shall have the right to bring a suit directly to a People's Court. If the victim is dead or has lost

his ability of conduct, his legal representatives and near relatives shall have the right to bring a suit to a People's Court. The People's Court shall accept it according to law.

## **Chapter II: Investigation**

### **Section 1: General Provisions**

**Article 113** With respect to a criminal case which has been filed, the public security organ shall carry out investigation, collecting and obtaining evidence to prove the criminal suspect guilty or innocent or to prove the crime to be minor or grave. Active criminals or major suspects may be detained first according to law, and criminal suspects who meet the conditions for arrest shall be arrested according to law.

**Article 114** After investigation, the public security organ shall start preliminary inquiry into a case for which there is evidence that supports the facts of the crime, in order to verify the evidence which has been collected and obtained.

**Article 115** The party concerned, his/her defender, the agent ad litem or an interested party shall be entitled to file a petition or complaint to a judicial organ if he/she is of the opinion the judicial organ or its staff members have any of the following acts:

- (1) To fail to order release from, or termination of, or alteration to, a compulsory measure upon expiry of the statutory time period;
- (2) To fail to return the bond for bail with restricted freedom pending trial that shall be returned;
- (3) To seal up, seize or freeze property irrelevant to the case at hand;
- (4) To fail to terminate the sealing, seizure and freeze of property as required;  
or
- (5) To embezzle, misappropriate, privately divide, replace, or use in violation of relevant provisions the property that has been sealed up, seized or frozen.

The organ that has accepted the petition or complaint shall handle the petition

or complaint in a timely manner. The party lodging the petition or complaint may appeal to the people's procuratorate at the same level if he/she has objections to the handling results. For a case accepted directly by a people's procuratorate, the party concerned may appeal to the people's procuratorate at the next higher level. The people's procuratorate shall review the appeal in a timely manner and shall notify the relevant organ to make correction if the appeal is found to be true.

## **Section 2: Interrogation of the Criminal Suspect**

**Article 116** Interrogation of a criminal suspect must be conducted by the investigators of a People's Procuratorate or public security organ. During an interrogation, there must be no fewer than two investigators participating.

Investigators shall interrogate a criminal suspect who has been transferred to a detention house for custody in the detention house.

**Article 117** A criminal suspect who does not need to be arrested or held in custody may be summoned to a designated location of the city or county where he/she lives or to his/her domicile for interrogation, provided that the supporting documents issued by the relevant people's procuratorate or public security organ are furnished. A criminal suspect found at the scene may be orally summoned by a law enforcement officer by presenting his/her work certificate, provided that the oral summon shall be noted in the written records of interrogation.

Summons or compelled appearance in court shall not last longer than 12 hours. For complicated cases of grave circumstances where detention or arrest is necessary, summons or compelled appearance in court shall not last longer than 24 hours.

A criminal suspect shall not be detained under the disguise of successive summons or compelled appearance. A criminal suspect shall be guaranteed with necessary food and rest when he/she is summonsed or compelled to appear before investigators.

**Article 118** When interrogating a criminal suspect, the investigators shall first ask the criminal suspect whether or not he has committed any criminal act, and let him state the circumstances of his guilt or explain his innocence; then they may ask him questions. The criminal suspect shall answer the

investigators' questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case.

When interrogating criminal suspects, investigators shall inform the criminal suspect of the legal provisions allowing for leniency for those who truthfully confess their crimes.

**Article 119** During the interrogation of a criminal suspect who is deaf or mute, an officer who has a good command of sign language shall participate, and such circumstances shall be noted in the record.

**Article 120** The record of an interrogation shall be shown to the criminal suspect for checking; if the criminal suspect cannot read, the record shall be read to him. If there are omissions or errors in the record, the criminal suspect may make additions or corrections. When the criminal suspect acknowledges that the record is free from error, he shall sign or affix his seal to it. The investigators shall also sign the record. If the criminal suspect requests to write a personal statement, he shall be permitted to do so. When necessary, the investigators may also ask the criminal suspect to write a personal statement.

**Article 121** Investigators, when interrogating a criminal suspect, may record or videotape the interrogation process, and shall do so where the criminal suspect is involved in a crime punishable by life imprisonment or capital punishment or in a otherwise major criminal case.

Recording or videotaping shall run throughout the interrogation process for the purpose of completeness.

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

**Article 122** Investigators may question a witness at the scene, his/her employer's premises, his/her domicile or a location designated by the witness. Where necessary, the witness may be notified to provide testimony at a people's procuratorate or a public security organ. Where the witness is questioned at the scene, the investigators shall present their work certificates; and where the witness is questioned at his/her employer's premises, his/her domicile or a location designated by the witness, the investigators shall present the supporting documents issued by the people's procuratorate or the public security organ.

Witnesses shall be questioned individually.

**Article 123** When a witness is questioned, he shall be instructed to provide evidence and give testimony truthfully and shall be informed of the legal responsibility that shall be incurred for intentionally giving false testimony or concealing criminal evidence.

**Article 124** The provisions of Article 120 of this Law shall also apply to the questioning of witnesses.

**Article 125** The provisions of all articles in this Section shall apply to the questioning of victims.

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

**Article 126** Investigators shall conduct an inquest or examination of the sites, objects, people and corpses relevant to a crime. When necessary, experts may be assigned or invited to conduct an inquest or examination under the direction of the investigators.

**Article 127** Each and every unit and individual shall have the duty to preserve the scene of a crime and to immediately notify a public security organ to send officers to hold an inquest.

**Article 128** To conduct an inquest or examination, the investigators must have papers issued by a People's Procuratorate or a public security organ.

**Article 129** If the cause of a death is unclear, a public security organ shall have the power to order an autopsy and shall notify the family members of the deceased to be present.

**Article 130** To ascertain certain features, conditions of injuries, or physical conditions of a victim or a criminal suspect, a physical examination may be conducted, and fingerprints, blood, urine and other biological samples may be collected.

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

Examination of the persons of women shall be conducted by female officers

or doctors.

**Article 131** A record shall be made of the circumstances of an inquest or examination, and it shall be signed or sealed by the participants in the inquest or examination and the eyewitnesses.

**Article 132** If, in reviewing a case, a People's Procuratorate deems it necessary to repeat an inquest or examination that has been done by a public security organ, it may ask the latter to conduct another inquest or examination and may send procurators to participate in it.

**Article 133** To ascertain the circumstances of a case, where necessary, investigative experiments may be conducted with the approval of the person in charge of a public security organ.

Information on an investigative experiment shall be recorded in writing and be signed or stamped by the participants.

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

## **Section 5: Search**

**Article 134** In order to collect criminal evidence and track down an offender, investigators may search the person, belongings and residence of the criminal suspect and anyone who might be hiding a criminal or criminal evidence, as well as other relevant places.

**Article 135** Any entity or individual shall have the obligation to submit the physical evidence, documentary evidence, audio-visual materials and other evidence that may serve as the evidence of guilt or evidence of innocence for a criminal suspect as required by a people's procuratorate or public security organ.

**Article 136** When a search is to be conducted, a search warrant must be shown to the person to be searched.

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

**Article 137** During a search, the person to be searched or his family members, neighbours or other eyewitnesses shall be present at the scene.

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

**Article 138** A record shall be made of the circumstances of a search, and it shall be signed or sealed by the investigators and the person searched or his family members, neighbours or other eyewitnesses. If the person searched or his family members have become fugitives or refuse to sign or affix their seals to the record, this shall be noted in the record.

### **Section 6: Seal up, Seizure of Material Evidence and Documentary Evidence**

**Article 139** All property and documents found during investigation that may prove a criminal suspect's guilt or innocence shall be sealed up or seized. Property and documents irrelevant to the case shall not be sealed up or seized.

The property and documents sealed up or seized shall be properly preserved or sealed for safekeeping, and may not be used, replaced or damaged.

**Article 140** The property or documents sealed up or seized shall be clearly accounted for in the presence of the witness and the holder of the such property and documents. A list shall be made in duplicate at the scene and be signed or sealed by the investigators, witness and the said holder, with one copy given to the holder and the other attached to the archives for future reference.

**Article 141** If the investigators deem it necessary to seize the mail or telegrams of a criminal suspect, they may, upon approval of a public security organ or a People's Procuratorate, notify the post and telecommunications offices to check and hand over the relevant mail and telegrams for seizure.

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

**Article 142** When required by investigation, a people's procuratorate or public security organ may access or freeze a criminal suspect's deposits, remittance, bonds, stocks, shares of funds or other property in accordance

with applicable provisions, in which case the relevant entities and individuals shall provide cooperation.

A criminal suspect's deposits, remittance, bonds, stocks, shares of funds or other property may not be repeatedly frozen.

**Article 143** The property, documents, mails or telegraphs sealed up or seized or the deposits, remittance, bonds, stocks or shares of funds frozen shall be freed and returned within three days after they are found to be irrelevant to the case upon investigation.

### **Section 7: Expert Appraisal**

**Article 144** When certain special problems relating to a case need to be solved in order to clarify the circumstances of the case, experts shall be assigned or invited to give their appraisal.

**Article 145** After appraisal, an expert shall give appraisal opinions in writing and affix his/her signature thereto.

The expert shall be subject to legal liability if he/she intentionally gives a false appraisal opinion.

**Article 146** The investigation organ shall notify the criminal suspect and the victim of the opinions of the expert verification which will be used as evidence in his case. A supplementary expert verification or another expert verification may be conducted upon application submitted by the criminal suspect or the victim.

**Article 147** The period during which the mental illness of a criminal suspect is under verification shall not be included in the period of time for handling the case.

### **Section 8: Technical Investigation Measures**

**Article 148** After putting a case on file, a public security organ may, based on the needs for criminal investigation, and after going through stringent approval procedures, employ technical investigation measures if the case involves crimes endangering State security, crimes of terrorist activities, organized crimes committed by groups in the nature of criminal syndicates,

major drug-related crimes or other crimes seriously endangering the society.

With respect to a major corruption or bribery case, or a case involving a major crime of gravely impairment of the personal right of citizens by abuse of power, after placing the case on file, a people's procuratorate may, based on the needs for criminal investigation and after going through stringent approval procedures, employ technical investigation measures and task relevant bodies with the implementation of such measures pursuant to applicable provisions.

In pursuit of a fugitive criminal suspect or a fugitive defendant who is on the wanted list or whose arrest has been approved or decided, necessary technical investigation measures may be taken upon approval.

**Article 149** A decision on approval of the types of technical investigation measures to be adopted and the parties to which such measures apply shall be made based on the needs for criminal investigation. The decision on approval shall be valid for three months from the date on which it is issued. The technical investigation measures shall be promptly terminated where they are no longer necessary. With respect to difficult and complex cases, if the technical investigation measures are still required upon expiry of the time limit, their term of validity may be extended upon approval, subject to a maximum of three months per extension.

**Article 150** Technical investigation measures shall be carried out in strict accordance with the approved types, applicable parties and time limits.

Investigators shall keep confidential the State secrets, trade secrets and personal privacy that come to their knowledge during investigation with technical investigation measures, and shall promptly destroy the information and materials that are obtained with technical investigation measures and are irrelevant to the cases.

Materials obtained by technical investigation measures shall only be used for the investigation, prosecution and trial of criminal cases, and shall not be used for any other purposes.

Relevant entities and individuals shall cooperate with public security organs in their adoption of technical investigation measures in accordance with the law, and shall keep confidential relevant information.

**Article 151** To ascertain the circumstances of a case, where necessary and subject to the approval of the person in charge of a public security organ, relevant personnel may be assigned to conduct an undercover investigation, provided that measures adopted in the secret investigation shall not induce others to commit crimes and shall not endanger public security or seriously threaten others' personal safety.

With respect to criminal activities involving the delivery of drugs, contraband goods or property, a public security organ may, as may be necessary for criminal investigation, implement controlled delivery in accordance with relevant provisions.

**Article 152** Materials collected by investigation means in accordance with the provisions of this section may be used as evidence in criminal proceedings. Where the use of such evidence may threaten the personal safety of relevant personnel or result in other serious consequences, protective measures shall be adopted to avoid the exposure of the applied technical measures and the true identity of such personnel, and when necessary, judges may verify the evidence outside courtrooms.

### **Section 9: Wanted Orders**

**Article 153** If a criminal suspect who should be arrested is a fugitive, a public security organ may issue a wanted order and take effective measures to pursue him for arrest and bring him to justice.

Public security organs at any level may directly issue wanted orders within the areas under their jurisdiction; they shall request a higher-level organ with the proper authority to issue such orders for areas beyond their jurisdiction.

### **Section 10: Conclusion of Investigation**

**Article 154** The time limit for holding a criminal suspect in custody during investigation after arrest shall not exceed two months. If the case is complex and cannot be concluded within the time limit, an extension of one month may be allowed with the approval of the People's Procuratorate at the next higher level.

**Article 155** If due to special reasons, it is not appropriate to hand over a particularly grave and complex case for trial even within a relatively long

period of time, the Supreme People's Procuratorate shall submit a report to the Standing Committee of the National People's Congress for approval of postponing the hearing of the case.

**Article 156** With respect to the following cases, if investigation cannot be concluded within the time limit specified in Article 154 of this Law, an extension of two months may be allowed upon approval or decision by the People's Procuratorate of a province, autonomous region or municipality directly under the Central Government:

(1)grave and complex cases in outlying areas where traffic is most inconvenient;

(2)grave cases that involve criminal gangs;

(3)grave and complex cases that involve people who commit crimes from one place to another; and

(4)grave and complex cases that involve various quarters and for which it is difficult to obtain evidence.

**Article 157** If in the case of a criminal suspect who may be sentenced to fixed-term imprisonment of ten years at least, investigation of the case can still not be concluded upon expiration of the extended time limit as provided in Article 156 of this Law, another extension of two months may be allowed upon approval or decision by the People's Procuratorate of a province, autonomous region or municipality directly under the Central Government.

**Article 158** If, during the period of investigation, a criminal suspect is found to have committed other major crimes, the time limit for holding the criminal suspect in custody for investigation shall be re-calculated as of the date of discovery of such other crimes in accordance with Article 154 herein.

The identity of a criminal suspect shall be investigated if his/her identity is unknown due to his/her refusal to give a true name or address, in which case the time limit for holding the criminal suspect in custody for investigation shall be calculated as of the date when his/her identity is ascertained, provided that the investigation of his/her criminal acts and the collection of evidence shall not be suspended. Where the identity of a criminal suspect is genuinely unable to be ascertained but the facts of the crimes are clear and the evidence

is sufficient and concrete, prosecution and trial may be conducted under the name provided by the criminal suspect.

**Article 159** An investigating organ shall listen to the opinions of a defense lawyer prior to closing the investigation of a case if so requested by the defense lawyer, and record the opinions in case files. The written opinions of the defense lawyer shall be attached to the case file.

**Article 160** A case whose investigation is closed by a public security organ shall have clear facts of crimes and sufficient and concrete evidence. The public security organ shall prepare written prosecution opinions, and submit the same together with the case files and evidence to the people's procuratorate at the same level for examination and decision, and shall at the same time inform the criminal suspect and his/her defense lawyer of the transfer of the case.

**Article 161** If it is discovered during investigation that a criminal suspect's criminal responsibility should not have been investigated, the case shall be dismissed; if the criminal suspect is under arrest, he shall be released immediately and issued a release certificate, and the People's Procuratorate which originally approved the arrest shall be notified.

### **Section 11: Investigation of Cases Directly Accepted by the People's Procuratorates**

**Article 162** Investigation of cases directly accepted by the People's Procuratorates shall be governed by the provisions of this Chapter.

**Article 163** If a case directly accepted by a People's Procuratorate conforms with the conditions provided in Article 79 and in sub-paragraph(4) or sub-paragraph(5) of Article 80 of this Law, thus arrest or detention of the criminal suspect is necessitated, the decision thereon shall be made by the People's Procuratorate and executed by a public security organ.

**Article 164** A people's procuratorate shall interrogate a detainee in a case directly accepted by it within 24 hours after the detention. If it is found that the person should not have been detained, the people's procuratorate shall immediately release the person and issue a release certificate.

**Article 165** Where a people's procuratorate deems it necessary to arrest a

detainee in a case directly accepted by it, it shall make a decision thereon within 14 days. The period to make a decision on arrest may, under exceptional circumstances, be extended by one to three days. Where arrest is not necessary, the detainee shall be promptly released. Where further investigation is required and the detainee satisfies the conditions for bail with restricted freedom pending trial or residential surveillance, the detainee shall be posted on bail with restricted freedom pending trial or be placed under residential surveillance in accordance with the law.

**Article 166** After a People's Procuratorate has concluded its investigation of a case, it shall make a decision to initiate public prosecution, not to initiate a prosecution or to dismiss the case.

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

**Article 167** All cases requiring initiation of a public prosecution shall be examined for decision by the People's Procuratorates.

**Article 168** In examining a case, a People's Procuratorate shall ascertain:

(1) whether the facts and circumstances of the crime are clear, whether the evidence is reliable and sufficient and whether the charge and the nature of the crime has been correctly determined;

(2) whether there are any crimes that have been omitted or other persons whose criminal responsibility should be investigated;

(3) whether it is a case in which criminal responsibility should not be investigated;

(4) whether the case has an incidental civil action; and

(5) whether the investigation of the case is being lawfully conducted.

**Article 169** A People's Procuratorate shall make a decision within one month on a case that a public security organ has transferred to it with a recommendation to initiate a prosecution; an extension of a half month may be allowed for major or complex cases.

If jurisdiction over a case to be examined and prosecuted by a People's

Procuratorate is altered, the time limit for examination and prosecution shall be calculated from the date on which another People's Procuratorate receives the case after the alteration.

**Article 170** When examining a case, a people's procuratorate shall interrogate the criminal suspect, consult the defender, the victim and his/her agent ad litem, and record their opinions in writing. Any written opinion of the defender, the victim and his/her agent ad litem shall be attached to the case files.

**Article 171** When examining a case, a people's procuratorate may request the relevant public security organ to provide the evidence materials needed for court trial proceedings, and may request the public security organ to explain the legality of evidence gathering if it is of the opinion that the evidence may have been gathered by unlawful means as stipulated in Article 54 herein.

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

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

A people's procuratorate shall make a decision on non-prosecution of a case for which a second supplementary investigation has been conducted, if it is of the opinion that there is still not sufficient evidence and that the case fails to meet the requirements for prosecution.

**Article 172** When a people's procuratorate is of the opinion that the facts of a crime committed by a criminal suspect have been ascertained, the evidence is concrete and sufficient, and the suspect shall be subject to the criminal liability in accordance with the law, it shall make a decision on prosecution, initiate a public prosecution in a people's court in accordance with the provisions on trial jurisdiction, and transfer relevant case materials and evidence to the people's court.

**Article 173** A people's procuratorate shall make a decision on

non-prosecution of a case if there is no fact pointing to the crime that has allegedly been committed by the criminal suspect or there is any of the circumstances set forth in Article 15 herein.

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

Where a people's procuratorate has decided not to prosecute a case, it shall take measures to free up the property sealed up, seized or frozen during investigation. Where administrative punishments, administrative sanctions or confiscation of illegal gains shall be imposed on the person spared from prosecution, the people's procuratorate shall issue procuratorial opinions and transfer the case to relevant authorities for handling. Such relevant authorities shall promptly notify the people's procuratorate of the handling results.

**Article 174** A decision not to initiate a prosecution shall be announced publicly, and the decision shall, in written form, be delivered to the person who is not to be prosecuted and his unit. If the said person is in custody, he shall be released immediately.

**Article 175** With respect to a case transferred by a public security organ for prosecution, if the People's Procuratorate decides not to initiate a prosecution, it shall deliver the decision in writing to the public security organ. If the public security organ considers that the decision not to initiate a prosecution is wrong, it may demand reconsideration, and if the demand is rejected, it may submit the matter to the People's Procuratorate at the next higher level for review.

**Article 176** If the People's Procuratorate decides not to initiate a prosecution with respect to a case that involves a victim, it shall send the decision in writing to the victim. If the victim refuses to accept the decision, he may, within seven days after receiving the written decision, present a petition to the People's Procuratorate at the next higher level and request the latter to initiate a public prosecution. The People's Procuratorate shall notify the victim of its decision made after reexamination. If the People's Procuratorate upholds the decision not to initiate a prosecution, the victim may bring a lawsuit to a People's Court. The victim may also bring a lawsuit directly to a People's Court without presenting a petition first. After the People's Court has accepted the case, the People's Procuratorate shall transfer

the relevant case file to the People's Court.

**Article 177** If the person against whom a People's Procuratorate decides, in accordance with the provisions of the second paragraph of Article 173 of this Law, not to initiate a prosecution still refuses to accept the decision, he may present a petition to the People's Procuratorate within seven days after receiving the written decision. The People's Procuratorate shall make a decision to conduct a reexamination, notify the person against whom no prosecution is to be initiated and at the same time send a copy of the decision to the public security organ.

## **Part Three: Trial**

### **Chapter I: Trial Organizations**

**Article 178** Trials of cases of first instance in the Primary and Intermediate People's Courts shall be conducted by a collegial panel composed of three judges or of judges and people's assessors totaling three. However, cases in which summary procedure is applied in the Primary People's Courts may be tried by a single judge alone.

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

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

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

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

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

**Article 179** If opinions differ when a collegial panel conducts its deliberations, a decision shall be made in accordance with the opinions of the

majority, but the opinions of the minority shall be entered in the records. The records of the deliberations shall be signed by the members of the collegial panel.

**Article 180** After the hearings and deliberations, the collegial panel shall render a judgment. With respect to a difficult, complex or major case, on which the collegial panel considers it difficult to make a decision, the collegial panel shall refer the case to the president of the court for him to decide whether to submit the case to the judicial committee for discussion and decision. The collegial panel shall execute the decision of the judicial committee.

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

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

**Article 181** After a people's court has examined a case for which public prosecution has been initiated, it shall decide to commence court sessions to try the case if the indictment contains clear facts of the crime charged.

**Article 182** After having decided to commence court sessions to try a case, a people's court shall determine the members of the collegial panel, and serve on the defendant and his/her defender the duplicate of the indictment of the people's procuratorate no later than ten days before the commencement of a court session.

Before the commencement of a court session, judges may convene a meeting with the public prosecutor, the party concerned and his/her defender and agent ad litem to deliberate and consult their opinions on withdrawal, the list of witnesses, exclusion of illegal evidence and other trial-relevant issues.

Once the date for a court session is determined, the people's court shall notify the people's procuratorate of the time and place of the court session, summon the party concerned, inform the defender, agent ad litem, witnesses, experts and court interpreters, and serve the summons and notices three days before the commencement of the court session. If a case is to be tried in an open court session, the name of the defendant, the causes of action and the time and location of the court session shall be announced publicly three days before the scheduled open court session.

The circumstances of the above-mentioned proceedings shall be recorded in writing, and be signed by the judges and the court clerk.

**Article 183** A people's court shall try cases of first instance in open court sessions, except for the cases involving State secrets or personal privacy. Cases involving trade secrets may be tried in closed court sessions if the parties concerned so applies.

For cases not tried in open court sessions, the reasons for non-public trial shall be announced in court.

**Article 184** When a case of public prosecution is being tried in a people's court, the relevant people's procuratorate shall send its personnel to appear before the court to support the public prosecution.

**Article 185** When a court session opens, the presiding judge shall ascertain if all the parties have appeared in court and announce the subject matter of the case. He shall announce the roll, naming the members of the collegial panel, the court clerk, the public prosecutor, the defender, agent ad litem, the expert witnesses and the interpreter; he shall inform the parties of their right to apply for withdrawal of any member of the collegial panel, the court clerk, the public prosecutor, any expert witnesses or the interpreter; and he shall inform the defendant of his right to defence.

**Article 186** After the public prosecutor has read out the bill of prosecution in court, the defendant and the victim may present statements regarding the crime accused in the bill of prosecution, and the public prosecutor may interrogate the defendant.

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

The judges may interrogate the defendant.

**Article 187** A witness shall appear before a people's court to give testimony where the public prosecutor, the party concerned or the defender or agent ad litem has objections to the testimony of a witness, and the testimony of the witness has material impact on case conviction and sentencing, and the people's court deems it necessary to ask the witness to appear before the court.

Where a member of the people's police appears before a court as a witness to give testimony of a crime witnessed when performing official duties, the preceding Paragraph shall apply.

Where the public procurator, the party concerned or the defender or agent ad litem has objections to the appraisal results, and the people's court deems it necessary for the expert concerned to appear before the court, the expert shall appear before the court to give testimony. Where the expert refuses to appear before the court to give testimony upon receipt of the notice of the people's court, the appraisal results shall not be taken as the basis for deciding the case.

**Article 188** Where a witness, without good reasons, fails to appear before a people's court to give testimony upon receipt of the notice of the people's court, the people's court may compel the witness to appear, unless the witness is the spouse, parent or child of the defendant.

Where a witness, without justifiable reasons, refuses to appear before the people's court or refuses to testify when in court, the witness shall be admonished, and in the case of grave circumstances, the witness may be detained for not more than ten days with the approval of the president of the people's court. The punished person may apply to the people's court at the next higher level for reconsideration if he/she has objections to the detention decision. Detention shall not be suspended during the reconsideration period.

**Article 189** Before a witness gives testimony, the judges shall instruct him to give testimony truthfully and explain to him the legal responsibility that shall be incurred for intentionally giving false testimony or concealing criminal evidence. The public prosecutor, the parties, the defenders and agents ad litem, with the permission of the presiding judge, may question the witnesses and expert witnesses. If the presiding judge considers any questioning irrelevant to the case, he shall put a stop to it.

The judges may question the witnesses and expert witnesses.

**Article 190** The public prosecutor and the defenders shall show the material evidence to the court for the parties to identify; the records of testimony of witnesses who are not present in court, the opinions of expert witnesses who are not present in court, the records of inquests and other documents serving as evidence shall be read out in court. The judges shall

heed the opinions of the public prosecutor, the parties, the defenders and the agents ad litem.

**Article 191** During a court hearing, if the collegial panel has doubts about the evidence, it may announce an adjournment, in order to carry out investigation to verify the evidence.

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

**Article 192** During a court hearing, the parties, the defenders and agents ad litem shall have the right to request new witnesses to be summoned, new material evidence to be obtained, a new expert evaluation to be made, and another inquest to be held.

The public prosecutor, the party concerned, the defender and the agent ad litem may apply to the relevant people's court for notifying persons with specific expertise to appear before the court to present their views on the appraisal opinions made by the expert concerned.

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

The appearance of persons with specific expertise before people's court as specified in Paragraph 2 shall be governed by the provisions applicable to experts.

**Article 193** During court proceedings, all facts and evidence relating to case conviction and sentencing shall be investigated and debated.

With the permission of the presiding judge, the public prosecutor, the party concerned, the defender and the agent ad litem may express their views on the evidence and the circumstances of the case and may debate with each other.

After the presiding judge has declared the conclusion of the debate, the defendant shall be entitled to make a final statement.

**Article 194** If any participant in the proceedings of a trial or by-stander violates the order of the courtroom, the presiding judge shall warn him to

desist. If any person fails to obey, he may forcibly be taken out of the courtroom. If the violation is serious, the person shall be fined not more than 1,000 Yuan or detained not more than 15 days. The fine or detention shall be subject to approval of the president of the court. If the person under punishment is not satisfied with the decision on the fine or detention, he may apply to the People's Court at the next higher level for reconsideration. However, the execution of the fine or detention shall not be suspended during the period of reconsideration.

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

**Article 195** After a defendant makes his final statement, the presiding judge shall announce an adjournment and the collegial panel shall conduct its deliberations and, on the basis of the established facts and evidence and in accordance with the provisions of relevant laws, render one of the following judgments:

(1) If the facts of a case are clear, the evidence is reliable and sufficient, and the defendant is found guilty in accordance with law, he shall be pronounced guilty accordingly;

(2) If the defendant is found innocent in accordance with law, he shall be pronounced innocent accordingly;

(3) If the evidence is insufficient and thus the defendant cannot be found guilty, he shall be pronounced innocent accordingly on account of the fact that the evidence is insufficient and the accusation unfounded.

**Article 196** In all cases, judgments shall be pronounced publicly.

Where the judgment is pronounced in court, the relevant people's court shall serve the written judgment on the parties concerned and the people's procuratorate that has initiated the public prosecution within five days. Where the judgment is to be pronounced at a fixed future date, the people's court shall serve the written judgment on the parties concerned and the people's procuratorate that has initiated the public prosecution immediately after the

announcement of the judgment. The written judgment shall also be served on the defender and the agent ad litem.

**Article 197** A written judgment shall bear the signatures of the judges and the court clerk, and shall specify the time limit and the court for appeal.

**Article 198** A hearing may be postponed if during a trial one of the following situations affecting the conduct of the trial occurs:

(1) if it is necessary to summon new witnesses, obtain new material evidence, make a new expert evaluation or hold another inquest;

(2) if the procurators find that a case for which public prosecution has been initiated requires supplementary investigation, and they make a proposal to that effect; or

(3) if the trial cannot proceed because of application for the withdrawal of a judicial officer.

**Article 199** If the hearings of a case is postponed in accordance with the provisions of sub-paragraph(2) in Article 198 of this Law, the People's Procuratorate shall complete the supplementary investigation within one month.

**Article 200** During trial proceedings, trial of a case may be suspended where the case cannot be tried further for a relatively long period of time due to any of the following circumstances:

(1) The defendant is seriously ill, therefore unable to appear before the court;

(2) The defendant has escaped;

(3) The private prosecutor is unable to appear before the court due to serious illness, but has failed to entrust an agent ad litem to appear before the court; or

(4) Force majeure.

The trial shall resume once the causes for suspension have lapsed. The duration of suspension shall not be included in the time limit for trial.

**Article 201** The court clerk shall make a written record of the entire court proceedings, which shall be examined by the presiding judge and then signed by him and the court clerk.

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

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

**Article 202** A people's court shall pronounce the judgment on a case of public prosecution within two months or, not later than three months, upon acceptance thereof. For a case involving the crime punishable by capital punishment or an incidental civil case under any of the circumstances as specified in Article 156 herein, the period may be extended for three months upon approval of a people's court at the next higher level. If the period needs to be further extended under special circumstances, an application shall be made to the Supreme People's Court for approval.

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

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

**Article 203** If a People's Procuratorate discovers that in handling a case a People's Court has violated the litigation procedure prescribed by law, it shall have the power to suggest to the People's Court that it should set it right.

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

**Article 204** Cases of private prosecution include the following:

(1)cases to be handled only upon complaint;

(2)cases for which the victims have evidence to prove that those are minor criminal cases; and

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

**Article 205** After examining a case of private prosecution, the People's Court shall handle it in one of the following manners in light of the different situations:

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

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

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

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

**Article 206** A people's court may mediate cases of private prosecution. A private prosecutor may settle with the defendant or withdraw the private prosecution on his/her own before the announcement of the judgment. However, mediation is not applicable to cases as specified in Item (3) of Article 204 herein.

The time limit for a people's court to try a case of private prosecution shall be governed by Paragraph 1 and Paragraph 2 of Article 202 herein if the

defendant has been detained. Where the defendant has not been detained, the judgment of a case of private prosecution shall be pronounced within six months upon acceptance of the case.

**Article 207** In the process of the proceedings, the defendant in a case of private prosecution may raise a counterclaim against the private prosecutor. The provisions governing private prosecutions shall apply to counterclaims.

### **Section 3: Summary Procedure**

**Article 208** A case under the jurisdiction of a primary-level people's court may be tried according to summary procedures if it satisfies all of the following conditions:

- (1) The facts of a case are clear and the evidence is concrete and sufficient;
- (2) The defendant pleads guilty to his/her crime, and has no objection on facts of the crime charged; and
- (3) The defendant has no objection on the application of the summary procedures.

A people's procuratorate may suggest a people's court to adopt summary procedures when initiating a public prosecution.

**Article 209** Summary procedures are not applicable under any of the following circumstances:

- (1) Where the defendant is visual, hearing or speech impaired, or is a mentally challenged person who has not lost all the capacity to discern or control his/her own behaviors;
- (2) Where the case has a major social impact;
- (3) Where some of the co-defendants in a case of joint crimes do not plead guilty or have objection on the application of summary procedures; or
- (4) Where there are other circumstances under which summary procedures are not appropriate.

**Article 210** As regards a case to which summary procedures apply and in which the defendant is punishable by fixed-term imprisonment of not more than three years, a people's court may form a collegial panel or have a single judge to try the case; where the defendant is punishable by fixed-term imprisonment of over three years, the people's court shall form a collegial panel to try the case.

For a case of public prosecution that is tried according to summary procedures, the relevant people's procuratorate shall send its personnel to appear before the court.

**Article 211** For a case tried according to summary procedures, the judge shall question the defendant on his/her opinions on the facts of the crime charged, inform the defendant of the legal provisions on the application of summary procedures, and confirm whether the defendant agrees to the application of summary procedures.

**Article 212** For a case tried according to summary procedures, the defendant and his/her defender may, with the permission of the judges, debate with the public prosecutor, or the private prosecutor and his/her agent ad litem.

**Article 213** Cases tried according to summary procedures shall not be subject to the procedural provisions of Section 1 of this Chapter on service periods, interrogating defendants, questioning witnesses and experts, producing evidence, and court debates, provided that people's courts shall hear the final statements of the defendants before pronouncing judgments.

**Article 214** A people's court shall close a case tried according to summary procedures within 20 days upon acceptance thereof. If the defendant is punishable by fixed-term imprisonment of over three years, the time limit may be extended to one and a half month.

**Article 215** If in the course of trying a case the People's Court discovers that the summary procedure is not appropriate for the case, it shall try it anew in accordance with the provisions in Section 1 or Section 2 of this Chapter.

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

**Article 216** If the defendant, private prosecutor or their legal

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

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

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

**Article 217** If a local People's Procuratorate at any level considers that there is some definite error in a judgment or order of first instance made by a People's Court at the same level, it shall present a protest to the People's Court at the next higher level.

**Article 218** If the victim or his legal representative refuses to accept a judgment of first instance made by a local People's Court at any level, he shall, within five days from the date of receiving the written judgment, have the right to request the People's Procuratorate to present a protest. The People's Procuratorate shall, within five days from the date of receiving the request made by the victim or his legal representative, decide whether to present the protest or not and give him a reply.

**Article 219** The time limit for an appeal or a protest against a judgment shall be 10 days and the time limit for an appeal or a protest against an order shall be five days; the time limit shall be counted from the day after the written judgment or order is received.

**Article 220** If a defendant, private prosecutor, or a plaintiff or defendant in an incidental civil action files an appeal through the People's Court which originally tried the case, the People's Court shall within three days transfer the petition of appeal together with the case file and the evidence to the People's Court at the next higher level; at the same time it shall deliver duplicates of the petition of appeal to the People's Procuratorate at the same level and to the other party.

If a defendant, private prosecutor, or a plaintiff or defendant in an incidental civil action files an appeal directly to the People's Court of second instance,

the People's Court shall within three days transfer the petition of appeal to the People's Court which originally tried the case for delivery to the People's Procuratorate at the same level and to the other party.

**Article 221** If a local People's Procuratorate protests against a judgment or order of first instance made by the People's Court at the same level, it shall present a written protest through the People's Court which originally tried the case and send a copy of the written protest to the People's Procuratorate at the next higher level. The People's Court which originally tried the case shall transfer the written protest together with the case file and evidence to the People's Court at the next higher level and shall deliver duplicates of the written protest to the parties.

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

**Article 222** A People's Court of second instance shall conduct a complete review of the facts determined and the application of law in the judgment of first instance and shall not be limited by the scope of appeal or protest.

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

**Article 223** A people's court of second instance shall form a collegial panel and commence court sessions to try a case that falls under any of the following categories:

- (1) A case of appeal in which, the defendant, private prosecutor and his/her agent ad litem have objections on the facts or evidence ascertained in the first instance and the objections may affect case conviction and sentencing;
- (2) A case of appeal in which the defendant is sentenced to capital punishment;
- (3) A case protested by a people's procuratorate; or
- (4) A case that falls under other circumstances that require a trial in court sessions.

The people's court of second instance shall interrogate the defendant and consult other parties concerned, defenders and agents ad litem when it decides not to hold a court session to try a case.

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

**Article 224** With respect to a case protested by a people's procuratorate or a case of public prosecution tried by a people's court of second instance in a court session, the people's procuratorate at the same level shall send its personnel to attend the court session. The people's court of second instance shall, after having determined to commence a court session for trial of the case, notify the people's procuratorate to examine the case files, and the latter shall finish the examination within one month. The time for the people's procuratorate to examine the case files is not included in the time limit for trial.

**Article 225** After hearing a case of appeal or protest against a judgment of first instance, the People's Court of second instance shall handle it in one of the following manners in light of the different situations:

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

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

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

After the original people's court has rendered a judgment on a case remanded for retrial in accordance with Item (3) of the preceding paragraph, if the defendant lodges an appeal or the people's procuratorate lodges a protest, the people's court of second instance shall make a judgment or ruling pursuant to

the law, and shall not remand the case to the original people's court for a new trial.

**Article 226** When trying an appeal case filed by the defendant or his/her statutory representative, defender or close relative, a people's court of second instance shall not aggravate the punishments on the defendant. Where a case is remanded to the original people's court for new trial by the people's court of second instance, unless there are new facts of the crime and the people's procuratorate has initiated supplementary prosecution, the original people's court shall not aggravate the punishments on the defendant.

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

**Article 227** If a People's Court of second instance discovers that when hearing a case, a People's Court of first instance violates the litigation procedures prescribed by law in one of the following ways, it shall rule to rescind the original judgment and remand the case to the People's Court which originally tried it for retrial:

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

**Article 228** The People's Court which originally tried a case shall form a new collegial panel for the case remanded to it for retrial, in accordance with the procedure of first instance. With respect to the judgment rendered after the retrial, an appeal or protest may be lodged in accordance with the provisions of Article 216, 217 or 218 of this Law.

**Article 229** After a People's Court of second instance has reviewed an

appeal or protest against an order of first instance, it shall order rejection of the appeal or protest or rescind or revise the original order respectively with reference to the provisions of Article 225,227 or 228 of this Law.

**Article 230** The People's Court which originally tried a case shall calculate the time limit anew for the trial of the case remanded to it by the People's Court of second instance from the date of receiving the case remanded.

**Article 231** A People's Court of second instance shall try cases of appeal or protest with reference to the procedure of first instance, in addition to applying the provisions in this Chapter.

**Article 232** A people's court of second instance shall close the trial of a case of appeal or protest within two months upon acceptance of the case. For a case in which the defendant commits a crime punishable by capital punishment or an incidental civil case that is under any of the circumstances as listed in Article 156 herein, the time limit may be extended by two months upon approval or decision by a high people's court at the level of province, autonomous region or municipality directly under the Central Government. Where further extension is needed under special circumstances, an application shall be submitted to the Supreme People's Court for approval.

The Supreme People's Court shall decide the time limit for trial of the cases of appeal or protest accepted thereby.

**Article 233** All judgments and orders of second instance and all judgments and orders of the Supreme People's Court are final.

**Article 234** A public security organ, people's procuratorate and people's court shall properly keep the property and the fruits accrued therefrom of the criminal suspects and defendants that have been sealed up, seized or frozen for future verification, and shall prepare a list of the property and the accrued fruits, and transfer the same with the cases. No entity or individual may misappropriate or dispose of the property or accrued fruit by itself. The legitimate property of a victim shall be promptly returned to the victim. The contraband goods and other goods not suitable for long-term storage shall be disposed of in accordance with applicable State provisions.

Any tangible objects used as evidence shall be transferred together with a case. In the case of a tangible object that is not suitable for transfer, its list,

photograph or other evidence document shall be transferred together with the case.

The judgment rendered by a people's court shall deal with the disposal of the property and the accrued fruits that have been sealed up, seized or frozen.

After the judgment rendered by a people's court takes effect, the relevant organ shall dispose of the property and the accrued fruits that have been sealed up, seized or frozen in accordance with the judgment. All such property and accrued fruits shall be turned over the State treasury, except for those returned to the victim in accordance with the law.

A judicial officer who embezzles, misappropriates or disposes, without authorization, of the property and the accrued fruits that have been sealed up, seized or frozen shall be subject to criminal liabilities in accordance with the law. If no crime is constituted, the judicial officer shall be given disciplinary sanctions.

#### **Chapter IV: Procedure for Review of Death Sentences**

**Article 235** Death sentences shall be subject to approval by the Supreme People's Court.

**Article 236** A case of first instance where an Intermediate People's Court has imposed a death sentence and the defendant does not appeal shall be reviewed by a Higher People's Court and submitted to the Supreme People's Court for approval. If the Higher People's Court does not agree with the death sentence, it may bring the case up for trial or remand the case for retrial.

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

**Article 237** A case where an Intermediate People's Court has imposed a death sentence with a two-year suspension of execution, shall be subject to approval by a Higher People's Court.

**Article 238** Reviews by the Supreme People's Court of cases involving death sentences and reviews by a Higher People's Court of cases involving

death sentences with a suspension of execution shall be conducted by collegial panels each composed of three judges.

**Article 239** The Supreme People's Court shall make a ruling on approval or non-approval of the death penalty sentence when reviewing a case involving death penalty sentence. If the Supreme People's Court disapproves the capital punishment sentence, it may remand the case for retrial or revise the sentence.

**Article 240** In reviewing a case involving capital punishment sentence, the Supreme People's Court shall interrogate the defendant, and consult the defense lawyer if so requested by the defense lawyer.

The Supreme People's Procuratorate may submit its opinions to the Supreme People's Court when the latter reviews a case involving capital punishment sentence. The Supreme People's Court shall notify the review results of the case to the Supreme People's Procuratorate.

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

**Article 241** A party or his legal representative or his close relative may present a petition to a People's Court or a People's Procuratorate regarding a legally effective judgment or order, however, execution of the judgment or order shall not be suspended.

**Article 242** Where the petition lodged by the party concerned or his/her statutory representative or close relatives falls under any of the following circumstances, a people's court shall retry the case:

(1) Where there is new evidence to prove the errors in the facts ascertained in the original judgment or ruling, which may affect case conviction and sentencing;

(2) Where the evidence that serves as the basis for conviction and sentencing is unreliable and insufficient, or shall be excluded in accordance with the law, or where the main evidence establishing the facts of the case contradict with each other;

(3) Where the original judgment or ruling is erroneous in the application of law;

(4) Where the case is tried in violation of statutory proceedings, which may affect the impartiality of the trial; or

(5) Where the judge committed bribery and corruption, practiced favoritism for personal gains or bended the law in the trial of the case.

**Article 243** If the president of a People's Court at any level finds some definite error in a legally effective judgment or order of his court as to the determination of facts or application of law, he shall refer the matter to the judicial committee for handling.

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

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

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

**Article 244** Where a higher-level people's court orders an inferior people's court to retry a case, an inferior people's court other than the original people's court shall be ordered to conduct the retrial. Where it is more appropriate for the original people's court to conduct the retrial, the original people's court may be ordered to retry the case.

**Article 245** Where a case shall be retried according to the trial supervision procedures by the original people's court, a new collegial panel shall be formed to conduct the retrial. In the event of first-instance cases, the retrial

shall be conducted in accordance with first instance procedures, and the judgment or ruling rendered can be appealed or protested against. In the event of second–instance cases or cases brought before higher-level people’s courts for trial, the retrial shall be conducted in accordance with the second instance procedures, and the judgment or ruling rendered shall be the judgment or ruling of final instance.

For cases retried by a people’s court in court sessions, the people’s procuratorate at the same level shall send its personnel to attend the court sessions.

**Article 246** Where it is necessary to take compulsory measures against the defendant to a case that a people's court has decided to retry, the people's court shall make a decision on the compulsory measures in accordance with the law. Where it is necessary to take compulsory measures against the defendant to a retrial case against which the people's procuratorate has lodged a protest, the people's procuratorate shall make a decision on the compulsory measures in accordance with the law.

When trying cases in accordance with the trial supervision procedures, a people’s court may decide to suspend the execution of the original judgments or rulings.

**Article 247** With respect to a case retried by a People's Court in accordance with the procedure for trial supervision, it shall conclude the trial within three months from the day on which it makes the decision to bring the case up for trial itself or on which the decision is made for it to retry the case. If it is necessary to extend the time limit, the period shall not exceed six months.

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

## **Part Four: Execution**

**Article 248** Judgments and orders shall be executed after they become legally effective.

The following judgments and orders are legally effective:

(1) judgments and orders against which no appeal or protest has been filed within the legally prescribed time limit;

(2) judgments and orders of final instance; and

(3) judgments of the death penalty approved by the Supreme People's Court and judgments of the death penalty with a two-year suspension of execution approved by a Higher People's Court.

**Article 249** If a defendant in custody is given the verdict of not guilty or exempted from criminal punishment by a People's Court of first instance, he shall be released immediately after the judgment is pronounced.

**Article 250** When a judgment of the death penalty with immediate execution is pronounced or approved by the Supreme People's Court, the President of the Supreme People's Court shall sign and issue an order to execute the death sentence.

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

**Article 251** After receiving an order from the Supreme People's Court to execute a death sentence, the People's Court at a lower level shall cause the sentence to be executed within seven days. However, under one of the following conditions the People's Court at a lower level shall suspend execution and immediately submit a report to the Supreme People's Court for an order:

(1) If it is discovered before the execution of the sentence that the judgment

may contain an error;

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

(3)If the criminal is pregnant.

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

**Article 252** Before a People's Court causes a death sentence to be executed, it shall notify the People's Procuratorate at the same level to send an officer to supervise the execution.

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

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

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

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

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

After a death sentence is executed, the People's Court that caused the death

sentence to be executed shall notify the family members of the criminal.

**Article 253** Where a criminal is handed over to the relevant authorities to serve his/her sentence, the people's court that hands over the criminal shall serve the relevant legal documents on the relevant public security organ, prison or any other enforcement organ within ten days after the effective date of the judgment.

A criminal sentenced to capital punishment with a two-year reprieve, or life imprisonment or fixed-term imprisonment shall, in accordance with the law, be handed over by a public security organ to a prison for execution of criminal punishments. As to a criminal sentenced to fixed-term imprisonment, if the remaining term of sentence is not more than three months before he/she is handed over for serving his/her sentence, the criminal shall serve his/her sentence in a detention house instead. As to a criminal sentenced to criminal detention, the criminal shall serve his/her sentence under the supervision of the relevant public security organ.

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

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

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

**Article 254**

A criminal sentenced to fixed-term imprisonment or criminal detention may be permitted to temporarily serve his/her sentence outside prison under any of the following circumstances:

- (1) Where the criminal is seriously ill and needs to be released on bail for medical treatment;
- (2) Where the criminal is in pregnancy or breast-feeding period; or
- (3) Where the criminal is unable to take care of himself/herself in everyday life, and his/her temporary service of sentence outside prison will not

endanger public security.

If a criminal sentenced to life imprisonment is under the circumstance provided for in Item (2) of the preceding Paragraph, she may be permitted to temporarily serve her sentence outside prison.

A criminal shall not be released on bail for medical treatment if such release may endanger public security or if the criminal may injure or mutilate him/herself.

If a criminal is indeed seriously ill and must be released on bail for medical treatment, a hospital designated by a people's government at the provincial level shall conduct a diagnosis and issue supporting documents.

Before a criminal begins to serve his/her sentence, the decision on temporary service of sentence outside prison shall be made by the people's court that shall hand the criminal over for the service of his/her sentence. After the criminal has been handed over to the relevant authority to serve his/her sentence, the prison or detention house concerned shall put forward written opinions on temporary service of sentence outside prison and report the same to a prison administrative organ at or above the provincial level or a public security organ at or above the level of cities with districts for approval.

**Article 255** A prison or detention house that puts forward the written opinions on temporary service of sentence outside prison shall copy the duplicate of the written opinions to the people's procuratorate. The people's procuratorate may submit written opinions to the deciding or approving authority.

**Article 256** The organ that decides or approves the temporary service of sentence outside prison shall copy the decision on temporary service of sentence outside prison to the people's procuratorate concerned. Where the people's procuratorate deems temporary service of sentence outside prison as inappropriate, it shall, within one month from the receipt of the notice, send its written opinions to the organ that has decided or approved the temporary service of sentence outside prison. Upon receipt of the written opinions of the people's procuratorate, the said organ shall promptly re-examine the decision.

**Article 257**

Where a criminal who has obtained the permission for temporarily serving

his/her sentence outside prison involves any of the following circumstance, he/she shall be promptly committed to prison:

- (1) Where the criminal is found to have failed to satisfy the conditions for temporary service of sentence outside prison;
- (2) Where the criminal has committed grave violation of the provisions on the supervision and administration over the temporary service of sentence outside prison; or
- (3) Where the circumstances under which the criminal is permitted to temporarily serve his/her sentence outside prison no longer exist, and the criminal's term of sentence has not expired.

Where a criminal who has been permitted by a people's court to temporarily serve his/her sentence outside prison shall be committed to prison, the people's court shall make a decision thereon, and serve relevant legal documents on the public security organ, prison or other executing organs concerned.

Where a criminal who does not satisfy the conditions for temporary service of sentence outside prison gets the permission for to do so through bribery or other unlawful means, the period of service of sentence outside prison shall not be included in the execution term of the sentence. Where a criminal escapes during the temporary service of sentence outside prison, the duration of the escape shall not be included in the execution term of the sentence.

Where a criminal dies during the temporary service of sentence outside prison, the executing organ shall inform the prison or detention house of the same in a timely manner.

**Article 258** Where a criminal is sentenced to public surveillance, gets suspended sentence, is on parole or temporarily serves his/her sentence outside prison, the criminal shall, in accordance with the law, be subject to community correction carried out by a community correction organization.

**Article 259** The deprivation of political rights of a criminal shall be enforced by a public security organ. Upon expiry of the execution period, the executing organ concerned shall inform in writing the criminal and his/her employer or the basic-level organization in the place where the criminal

resides.

**Article 260** If a criminal sentenced to a fine fails to pay the fine within the time limit, the People's Court shall compel him to pay. If he has true difficulty in paying because he has suffered an irresistible disaster, an order may be made to reduce the fine or exempt him from payment.

**Article 261** All judgments on confiscation of property, whether imposed as a supplementary punishment or independently, shall be executed by the People's Courts; when necessary, the People's Courts may execute such judgments jointly with the public security organs.

**Article 262** If a criminal commits a crime again while serving his sentence, or if a criminal act that is discovered was not known at the time of judgment, he shall be transferred by the executing organ to a People's Procuratorate for handling.

Where a criminal sentenced to public surveillance, criminal detention, fixed-term imprisonment or life imprisonment shall have his/her sentence commuted or be granted parole due to true repentance or meritorious service during the execution of the sentence, the executing organ shall submit a written proposal to the relevant people's court for decision and approval, and shall copy the duplicate of the proposal to the relevant people's procuratorate. The people's procuratorate may put forward written opinions to the people's court.

**Article 263** If a People's Procuratorate considers that the order on commutation of sentence or on parole made by a People's Court is improper, it shall, within 20 days from the date of receiving a copy of the written order, submit a written recommendation to the People's Court for correction. The People's Court shall, within one month from the date of receiving the recommendation, form a new collegial panel to handle the case and render a final order.

**Article 264** If, during execution of a criminal punishment, the prison or any other executing organ believes that there is an error in the judgment or the criminal lodges a petition, it shall refer the matter to the People's Procuratorate or the People's Court that pronounced the original judgment for handling.

**Article 265** The People's Procuratorates shall supervise the execution of criminal punishments by executing organs to see if the execution conforms to law. If they discover any illegalities, they shall notify the executing organs to correct them.

## **Part V: Special Procedures.**

### **Chapter 1: Procedures for Criminal Cases Committed by Minors**

**Article 266** Minors who have committed crimes shall be educated, reformed and rehabilitated by upholding the principles of adopting education as primary means and using punishments as ancillary means.

People's courts, people's procuratorates and public security organs shall ensure the litigation rights of minors when handling criminal cases committed by minors, ensure the availability of legal assistance for minors, and assign judges, procuratorial personnel and investigators who are familiar with the physical and mental characteristics of minors to undertake the cases.

**Article 267** Where a minor criminal suspect or defendant has not entrusted a defender, the people's court, people's procuratorate or public security organ concerned shall notify a legal aid agency to assign a lawyer as the defender of the minor.

**Article 268** In handling criminal cases committed by minors, a public security organ, people's procuratorate and people's court may investigate into the growing up experience, reasons for committing crimes and education and guardianship conditions of the minor criminal suspects or defendants depending on the circumstances.

**Article 269** The application of arrest to minor criminal suspects and defendants shall be strictly restricted. Where a people's procuratorate reviews and approves the arrest of a minor criminal suspect or defendant, and the relevant people's court decides to make the arrest, the minor criminal suspect or defendant shall be interrogated and the opinions of the defense lawyer shall be heard.

Minors who are held in custody or arrested or who are serving sentences shall be held under detention, managed and educated separately from adults.

**Article 270** For a criminal case committed by a minor, the statutory representative of the minor criminal suspect or defendant shall be informed to attend the interrogation and trial. Where the statutory representative cannot be reached or is unable to be present, or is an accomplice him/herself, other adult relatives of the minor criminal suspect or defendant, or representatives from his/her school or employer, the basic-level organization in his/her domicile or the minor protection organization may be informed to attend the interrogation and trial, and relevant information shall be recorded in writing. The statutory representative that shows up may perform the litigation rights of the minor criminal suspect or defendant on his/her behalf.

The statutory representative or other persons present may offer their opinions if they think the personnel handling the case have prejudiced the legitimate rights and interests of the minor during interrogation or trial. The interrogation records and court records shall be given or read to the statutory representative or other persons present.

Female staff members shall be present during the interrogation of a female minor criminal suspect.

In the trial of a criminal case committed by a minor, his/her statutory representative may make additional statements after the minor defendant has made final statements.

Paragraph 1, Paragraph 2 and Paragraph 3 shall apply where minor victims or witnesses are questioned.

**Article 271** A people's procuratorate may make a conditional non-prosecution decision on a minor who is suspected of crimes provided for in Chapter 4, Chapter 5 or Chapter 6 under the Special Provisions of the Criminal Law if he/she is punishable, which are punishable by fixed-term imprisonment of no longer than one year, and the conditions for prosecution are satisfied, but he/she has shown repentance over the crimes. The people's procuratorate shall consult the public security organ and the victim before make a conditional non-prosecution decision.

Where a public security organ requires a conditional non-prosecution decision to be reconsidered or reviewed or where the victim concerned lodges a petition against the said decision, the provisions of Article 175 and Article 176 herein shall apply.

Where the minor criminal suspect and his/her statutory representative raise objections to the conditional non-prosecution decision rendered by a people's procuratorate, the people's procuratorate shall decide to prosecute the case.

**Article 272** During the probation period imposed by conditional non-prosecution, the people's procuratorate concerned shall supervise and inspect the minor criminal suspect who is conditionally exempted from prosecution. The guardian of the minor criminal suspect shall reinforce the disciplines against the suspect, and cooperate with the people's procuratorate in supervision and inspection.

The probation period for conditional non-prosecution shall be no less than six months but no more than one year, commencing from the date when the people's procuratorate makes the conditional non-prosecution decision.

A minor criminal suspect who is conditionally exempted from prosecution shall:

- (1) Abide by laws and regulations, and accept supervision;
- (2) Report his/her activities as required by the supervising organ;
- (3) Obtain the approval of the supervising organ before leaving the city or county in which he/she resides or before moving to another place of residence; and
- (4) Accept education and correction as required by the supervising organ.

**Article 273** A people's procuratorate shall revoke the conditional non-prosecution decision and initiate public prosecution if the relevant minor criminal suspect is found to be under any of the following circumstances during the probation period:

- (1) The minor criminal suspect has committed new crimes or needs to be prosecuted for crimes committed before the conditional non-prosecution decision was made; or
- (2) The minor criminal suspect has committed grave violations of public security provisions or the provisions on supervision and administration made

by the supervising organ relating to conditional non-prosecution.

The people's procuratorate shall make a non-prosecution decision upon expiry of the probation period expires if the relevant minor criminal suspect involves none of the aforesaid circumstances during the probation period.

**Article 274** A case in which the defendant is under the age of 18 at the time of trial shall be tried in closed court sessions, provided that, with the consent of the minor defendant and his/her statutory representative, the school the minor defendant attends and the minor protection organization may assign representatives to attend the trial.

**Article 275** Where a criminal who is under the age of 18 at the time of committing the crime has been sentenced to fixed-term imprisonment of no longer than five years, the criminal records concerned shall be sealed off.

No sealed criminal record may be provided for any entity or individual, except where it is required by judicial organs for case handling or is accessed by a relevant organization in accordance with State provisions. The organization that accesses the sealed criminal record in accordance with the law shall keep confidential the information therein.

**Article 276** Unless otherwise prescribed in this Chapter, criminal cases committed by minors shall be handled pursuant to other provisions herein.

## **Chapter 2: Procedures for Reconciliation Between Parties Concerned in Cases of Public Prosecution**

**Article 277** With respect to the following cases of public prosecution, the parties thereto may reach reconciliation agreements if the criminal suspects or defendants have showed true repentance and obtained the forgiveness of the victims by means of compensation and apologies and the victims have voluntarily accepted reconciliation:

(1) Cases involving crimes prescribed under Chapter 4 and Chapter 5 of the Special Provisions of the Criminal Law that arise out of private disputes, which are punishable by fixed-term imprisonment of no longer than three; and

(2) Cases of crimes of negligence which are punishable by a fixed-term imprisonment of no longer than seven years, except for crimes of

malfeasance.

The procedures stipulated under this Chapter shall not apply to any criminal suspect or defendant who has committed intentional crimes over the past five years.

**Article 278** Where the parties to a criminal case reach reconciliation, the public security organ, people's procuratorate and people's court concerned shall consult the parties concerned and other relevant persons, review the voluntariness and legitimacy of the reconciliation, and organize the preparation of the reconciliation agreement.

**Article 279** With respect to a case where a reconciliation agreement has been reached, the public security organ concerned may advise the people's procuratorate to seek for lenient punishment. The people's procuratorate may, in turn, advise the people's court concerned to mete out lenient punishment. The people's procuratorate may decide not to prosecute the case if the circumstances of the crime are minor and is not punishable by criminal punishment. The people's court may impose lenient punishment on the defendant in accordance with the law.

### **Chapter 3: Procedures for Confiscating Illegal Gains in Cases Where the Criminal Suspect or Defendant Has Absconded or Died**

**Article 128** A people's procuratorate may apply with a people's court for confiscation of illegal gains in a case of grave crimes such as corruption, bribery or terrorist activities where the criminal suspects or defendants have absconded and have not been found one year after the public arrest warrants were issued, or where the criminal suspects or defendants have died, and the illegal gains and other property involved in the case shall be confiscated pursuant to the Criminal Law.

Where a public security organ is of the opinion that any of the circumstances as specified in the preceding paragraph exists, it shall prepare the letter of opinions on confiscation of illegal gains, and refer the cases to the people's procuratorate.

An application for confiscation of illegal gains shall contain the relevant evidence materials concerning the facts of the crime and the illegal gains, and shall specify the types, amounts and locations of the property, and whether the

property has been sealed up, seized and frozen.

Where necessary, a people's court may seal up, seize and freeze the property for which an application for confiscation has been made.

**Article 281** An application for confiscation of illegal gains shall be heard by the collegial panel formed by the intermediate people's court in the place where the crime takes place or in the domicile of the criminal suspect or defendant.

A people's court shall issue an announcement after accepting an application for confiscation of illegal gains. The announcement shall be valid for six months. The close relatives and other interested parties of the criminal suspect or defendant concerned shall be entitled to apply to attend the litigation proceedings, or entrust agents ad litem to attend the proceedings.

The people's court shall hear the application for confiscation of illegal gains upon expiry of the announcement period. Where an interested party attends the proceedings, the people's court shall hear the application in court sessions.

**Article 282** A people's court shall, after investigation and hearing, make a ruling to confiscate the property that is found to be illegal gains or other property involved in the case, exclusive of the property that shall be returned to the victim in accordance with the law. Where the property shall not be confiscated, the people's court shall make a ruling to dismiss the application, and free the property from being sealed up, seized or frozen.

The close relatives and other interested persons of the criminal suspect or defendant concerned, or the people's procuratorate may appeal or protest against the ruling made by the people's court pursuant to the preceding paragraph.

**Article 283** A people's court shall terminate the trial of a case if the criminal suspect or defendant at large surrenders him/herself voluntarily or is captured during court proceedings.

Property that has been mistakenly confiscated shall be returned or repaid to the criminal suspect or defendant concerned.

#### **Chapter 4: Procedures for Compulsory Medical Treatment for Mentally**

### **III Persons who Are not Held Criminal Responsible**

**Article 284** A mentally ill person who has endangered public security or seriously endangered the personal security of citizens by committing acts of violence, but who is not criminally liable upon expert evaluation according to statutory procedures may be placed under compulsory medical treatment if he/she is likely to continue to pose a threat to the society.

**Article 285** People's courts shall decide on the compulsory medical treatment of persons with mental illness in accordance with the provisions of this Chapter.

Where a public security organ discovers that a mentally ill person satisfies the conditions for the compulsory medical treatment, it shall issue the letter of opinions on compulsory medical treatment, and refer the case to the relevant people's procuratorate. Where the people's procuratorate finds that a mentally ill person referred thereto by the public security organ satisfies the conditions for compulsory medical treatment, or finds the said circumstance during the examination before prosecution, the people's procuratorate shall apply with the relevant people's court for compulsory medical treatment. Where the people's court finds in the trial of the case that the defendant satisfies the conditions for compulsory medical treatment, it may make a decision on compulsory medical treatment.

With respect to a mentally ill person who has committed acts of violence, the relevant public security organ may take protective and temporary restraining measures thereon before the people's court renders a decision on compulsory medical treatment.

**Article 286** A people's court shall form a collegial panel to hear an application for compulsory medical treatment upon the acceptance thereof.

The people's court shall inform the statutory representative of the respondent or the defendant to attend the hearing of an application for compulsory medical treatment. Where the respondent or the defendant has not entrusted an agent ad litem, the people's court shall inform a legal aid agency to designate a lawyer to provide him/her with legal services.

**Article 287** Where a people's court, upon hearing, is of the opinion that the respondent or the defendant satisfies the conditions for compulsory medical

treatment, it shall make a decision on compulsory medical treatment within one month.

The person against whom the decision on compulsory medical treatment is made, or the victim and his/her statutory representative or close relatives who raise objections to the decision on compulsory medical treatment may apply for reconsideration with the people's court at the next higher level.

**Article 288** An institution providing compulsory medical treatment shall conduct regular diagnosis and assessment of the person receiving such treatment. If the person no longer poses threats to the personal security of others, and needs no further compulsory medical treatment, the said institution shall propose to lift the compulsory medical treatment on a timely basis and submit the proposal to the people's court that has made the decision on compulsory medical treatment for approval.

The person receiving compulsory medical treatment and his/her close relatives shall be entitled to apply for termination of compulsory medical treatment.

**Article 289** People's procuratorates shall supervise the decision and implementation of compulsory medical treatment.

### **Supplementary Provisions**

**Article 290** The security departments of the Army shall exercise the power of investigation with respect to criminal offences that have occurred in the Army.

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

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