

## **Amendments to the Criminal Procedure Law of the People's Republic of China (Draft) and Explanatory Notes**

For Chinese version, please visit the NPC website at <http://www.npc.gov.cn/>; published on 30 August 2011

At its 22<sup>nd</sup> Session, the Standing Committee of the 11<sup>th</sup> National People's Congress held the first reading of the Draft Amendments to the Criminal Procedure Law of the People's Republic of China and has published the draft and the draft explanatory notes on its website in order to invite suggestions from the public. All members of the public are invited to send their suggestions to the Legislative Affairs Commission of the NPC Standing Committee by mail (No. 1 West Qianmen Road, Xicheng District, Beijing 100805; The envelope should be titled "Suggestions for Draft Amendments to the Criminal Procedure Law of the People's Republic of China".) or log onto the NPC's website (<http://www.npc.gov.cn/>) for online submission. Suggestions should be submitted by 30 September 2011.

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

(1) Article 14, paragraph 2 shall be deleted.

(2) Article 20 shall be amended to read: "An intermediate people's court shall have jurisdiction over the following first-instance criminal cases:

- (a) Cases posing a threat to national security;
- (b) Ordinary criminal cases punishable by life imprisonment or death sentence; and
- (c) Criminal cases involving a crime committed by a foreign national."

(3) Article 33 shall be amended to read: "A suspect of a crime shall, after being interrogated by an investigating authority for the first time or as of the date on which compulsory measures are imposed, have the right to designate a defender. Only an attorney-at-law may be designated as a defender during the investigation. Where the investigating authority interrogates a suspect of a crime for the first time or imposes compulsory measures upon such suspect, it shall advise the suspect of his or her right to designate a defender. The people's prosecutor's office shall, within three days upon receiving the case materials to review for prosecution, inform the suspect of his or her right to designate a defender.

A defendant shall have the right to designate a defender at any time. A people's court shall, within three days upon admitting a private prosecution case, advise the defendant of his or her right to designate a defender.

Upon accepting a designation by a suspect or a defendant, the defender shall promptly give the judicial authority dealing with the case notice thereof."

(4) Article 34 shall be amended to read: "Where a suspect or a defendant has not designated a defender due to financial difficulties, that person or a close relative may apply for assistance from a legal aid organization. Where the suspect or defendant is eligible for legal aid, the legal aid organization shall assign an attorney to defend him or her.

Where a suspect or a defendant is blind, deaf or mute and has not designated a defender, the people's court, the people's prosecutor's office or the public security authority, as the case may be, shall notify a legal aid organization to assign an attorney to defend the suspect or defendant.

Where a suspect or a defendant has not designated an attorney and may be sentenced to life imprisonment or death, the people's court, the people's prosecutor's office or the public security authority, as the case may be, shall notify a legal aid organization to assign an attorney to defend the suspect or defendant."

(5) Article 35 shall be amended to read: "It is the responsibility of the defender to present, in accordance with the facts and law, materials or opinions that show the suspect or the defendant has committed no crime or a lesser crime, or materials or opinions that reduce his or her criminal liability or exclude him or her from criminal liability, and to safeguard the procedural rights and other legitimate rights and interests of the suspect or the defendant."

(6) A new article shall be inserted as article 36 to read: "A defence attorney may offer legal assistance to a suspect of a crime during an investigation, represent the suspect in making a complaint or accusation, and inquire from the investigating authority the crime that the suspect is suspected to have committed and information relevant to the case."

(7) Article 36 shall be divided into articles 37 and 38 and be amended to read:

"Article 37: A defence attorney may meet and correspond with a detained suspect or detained defendant. Other defenders may, with the approval of a people's court or a people's prosecutor's office, as the case may be, also meet and correspond with a detained suspect or detained defendant.

Where a defence attorney holds a practicing license, law firm certificate and letter of attorney or an official legal aid letter and requests to meet with a detained suspect or detained defendant, the custody facility shall arrange such a meeting promptly and no later than within 48 hours.

When a defence attorney meets with a detained suspect or detained defendant, he or she may inquire about the case and offer legal consultation. The defence attorney may, as of the date on which the case is delivered for review by the prosecutor, verify the evidence with the suspect or the defendant. No monitoring shall be permitted during the meeting between the defence attorney and the suspect or the defendant.

Where a defence attorney meets, during an investigation, with a suspect of a joint offence that involves a crime threatening national security, a crime of conducting terrorist activities or a major crime of bribery, the meeting shall require the approval of the investigating authority. The investigating authority shall notify the custody facility of the nature of such cases prior to the meeting.

Where a defence attorney meets or corresponds with a suspect or a defendant under residential surveillance, the provisions of paragraphs 1, 3 and 4 in this article shall apply.

Article 38: A defence attorney may, starting from the date of the review for prosecution by the people's prosecutor's office, access, excerpt and copy any materials that include facts of the

charged crime. Other defenders may, with the approval of the people's court or the people's prosecutor's office, as the case may be, also access, excerpt and copy any of the above materials."

(8) A new article shall be inserted as article 39 to read: "Where a defender is of the opinion that during the investigation or review for prosecution evidence has been collected but not submitted by the public security authority or the people's prosecutor's office that proves the innocence of the suspect or defendant or the pettiness of a crime, the defender may apply to the people's court or the people's prosecutor's office, as the case may be, for such evidence to be subpoenaed."

(9) A new article shall be inserted as article 39 to read: "Evidence collected by a defender in support of the suspect of a crime having an alibi, being under the age of criminal liability, and being mentally ill and excluded from criminal liability shall be made known to the public security authority or the people's prosecutor's office."

(10) Article 38 shall be changed to article 42 and paragraph 1 thereof be amended to read: "A defender or any other person shall not assist a suspect or a defendant in concealing, destroying and falsifying evidence or in giving a colluded statement; nor shall a defender or any other person threaten or coerce a witness to commit perjury and perform other acts that interfere with the procedures of the judicial authorities."

(11) A new article shall be inserted as article 46 to read: "An attorney shall have the right to maintain confidentiality about information that he or she obtains about a client while performing his or her professional duty. Nevertheless, where an attorney comes to know, while performing his or her professional duty, that a client or any other person is preparing or performing a criminal act that threatens national security or public safety or gravely threatens the personal safety of other persons, he or she shall promptly notify the judicial authorities of such act."

(12) Article 42 shall be changed to article 47 and be amended to read: "Any material that may be used to prove the facts of a case shall be considered evidence."

Evidence shall include:

- (a) Physical evidence and documentary evidence;
- (b) Testimonies by witnesses;
- (c) Statements by the victim;
- (d) Statements and pleas by the suspect or defendant;
- (e) Expert opinions;
- (f) Documentation of crime scene investigations, inspections, identifications, investigative experiments; and
- (g) Audio and visual materials, and electronic data.

Evidence must be verified to be used as a basis for deciding a case."

(13) A new article shall be inserted as article 48 to read: "The onus of proof that a defendant is guilty shall be on the public prosecutor in a public prosecution case and on the private prosecutor in a private prosecution case, save where otherwise stipulated by law."

(14) Article 43 shall be changed to article 49 and be amended to read: "Judges, prosecutors or investigators, as the case may be, must, pursuant to statutory procedures, collect all forms of evidence that prove the guilt or innocence of a suspect or a defendant as well as mitigating and aggravating evidence. The use of torture or extortion to obtain a confession and the use of other illegal means to collect evidence shall be strictly prohibited; no person may be forced to prove

his or her own guilt. It must be ensured that all persons relevant to or with knowledge about a case are given the conditions necessary to provide objective and sufficient evidence; and except in special circumstances, such persons may be enlisted to assist in the investigation.”

(15) Article 45 shall be changed to article 51 and a new paragraph be inserted as paragraph 2 to read: “Evidence such as physical and documentary evidence collected by administrative authorities during administrative law enforcement may be used as evidence after verification by the judicial authorities.”

(16) Article 46 shall be changed to article 52 and be amended to read: “Decisions for any and all cases shall be based on evidence and investigations, and confessions shall not be overemphasized therein. Where there is only a confession by the defendant and no other evidence, the defendant shall not be found guilty and no punishment shall be imposed; where there is no confession by the defendant and the evidence is reliable and conclusive, the defendant may be found guilty and a punishment be imposed.

The requirements for reliable and conclusive evidence shall be as follows:

- (a) Evidence exists for each fact needed to determine guilt and a sentence;
- (b) All evidence needed to decide a case is verified through statutory procedures; and
- (c) Based on overall evaluation of the evidence, all facts are proved beyond reasonable doubt.”

(17) A new article shall be inserted as article 53 to read: “Confessions extracted by torture and confessions by a suspect or a defendant extracted by other illegal means, as well as statements of witnesses and victims collected by the use of force, threats and other illegal means shall be excluded. Physical and documentary evidence collected in violation of the provisions of the law and severely affecting judicial justice shall also be excluded.

Where evidence that should be excluded is found during an investigation, review for prosecution or trial, such evidence shall be excluded in accordance with the law and shall not be used as a basis for opinions or decisions on prosecution and decisions of courts.”

(18) A new article shall be inserted as article 54 to read: “Where the people's prosecutor's office receives a case report, an accusation or information by informants or discovers that the investigator collected evidence illegally, it shall investigate and verify the allegation. Where the prosecutor's office confirms that evidence has been collected through illegal means, it shall issue an opinion on the correction of such situation and, where necessary, advise the investigating authority to substitute the person dealing with the case. Where illegal collection of evidence constitutes a crime, criminal liability shall be assumed in accordance with the law.”

(19) A new article shall be inserted as article 55 to read: Where, in a court hearing, a judge is of the opinion that illegally obtained evidence as stated in article 53 herein may exist, a court investigation shall be performed to establish the legality of such evidence.

A party and his or her defender, and agents *ad litem* shall have the right to apply to the people's court to exclude evidence obtained illegally in accordance with the law. Where exclusion of illegally obtained evidence is applied for, relevant information and evidence shall be furnished.”

(20) A new article shall be inserted as article 56 to read: “During a court investigation to establish the legality of the evidence collected, the people's prosecutor's office shall provide evidence for the legality thereof.

The people's court may notify relevant investigators or other persons to make an explanation before court, and the investigators or other persons shall appear upon such legal notification. The relevant investigators or other persons may also themselves request to appear for an explanation."

(21) A new article shall be inserted as article 57 to read: "Where by means of a court hearing evidence is determined to have been obtained illegally or where there is material suspicion of the illegal collection of evidence, such evidence shall be handled in keeping with the provisions laid down in article 53 herein."

(22) Article 47 shall be changed to article 58 and be amended to read: "A statement by a witness may serve as a basis for deciding a case only after it has been examined and verified in court by the public prosecutor and the victim, as well as the defendant and the defender. Where the court finds that the witness has wilfully given a false statement or concealed evidence proving guilt, it shall sanction such conduct in accordance with the law."

(23) A new article shall be inserted as article 61 to read: "Where, in cases involving crimes threatening national security, crimes of terrorist activities, organized crimes of the underworld and drug-related crimes, the personal safety of a witness or victim, or his or her close relatives is at risk because of his or her testimony in a trial, the people's court, people's prosecutor's office and public security authority shall take any or several of the following protection measures:

- (a) Withhold the real name, address, place of work and other personal particulars
- (b) Withhold the appearance and real voice in a testimony before court;
- (c) Prohibit certain persons to be in contact with the witness or the victim and his or her close relatives;
- (d) Offer special personal and residential protection; and
- (e) Offer any other necessary protection measures.

Where a witness or victim believes that his or her personal safety or the personal safety of his or her close relatives is at risk because of his or her testimony in a proceeding, he or she may apply to the judicial authorities for protection."

(24) A new article shall be inserted as article 62 to read: "A witness shall be reimbursed for transportation, accommodation and meal expenses as well as losses arising from his or her absence from work due to his or her performing a testimonial obligation. The testimonial reimbursement for a witness shall be included in the operating expenses of the judicial authority and be ensured by the fiscal department of the government at the same level.

In respect of witnesses working for an employer, the employer must not reduce or covertly reduce the witness's salary, wage, bonuses and other social benefits."

(25) Article 51 shall be changed to article 64 and be amended to read: "The people's court, people's prosecutor's office and public security authority may release on bail a suspect or a defendant fitting into any of the following categories:

- (a) Persons that may be sentenced to surveillance (*guan zhi*), criminal detention (*ju yi*) or a secondary sanction only;
- (b) Persons that may be sentenced to imprisonment or severer punishment but in respect of whom a release on bail does not pose a risk to the public; and
- (c) Persons whose cases have not been closed at the end of the detention period and for whom release on bail needs to be granted.

Releases on bail shall be executed by the public security authorities.”

(26) Articles 52 shall be changed to article 65 and be amended to read: “Detained suspects and detained defendants, as well as their statutory representatives, close relatives and defenders shall have the right to apply for modifications to a compulsory measure. The people’s court, people’s prosecutor’s office or the public security authority, as the case may be, shall make a decision within three days of receiving an application. Where modification to the compulsory measure is not agreed to, the applicant shall be informed thereof and given the grounds for the disapproval.”

(27) Article 55 shall be changed to article 68 and be amended to read: “A guarantor shall perform the following obligations:

- (a) Supervise the person guaranteed to comply with the provisions of article 69 herein; and
- (b) Promptly report to the enforcement authority where it is found that the person guaranteed is unlikely to or does not comply with the provisions of article 69 herein.

Where the conduct of the person guaranteed is in violation of the provisions of article 69 herein, the guarantor shall, where he or she has failed to perform his or her obligation, be ordered to pay a fine or, where such non-performance constitutes a crime, be held criminally liable.”

(28) Article 56 shall be divided into articles 69, 70 and 71 and be amended to read:

“Article 69: Suspects or defendants released on bail shall comply with the following provisions under which they:

- (a) Shall not leave their residential city or county without prior approval by the enforcement authority;
- (b) Give 24 hour notice to the enforcement authority in the event of a change of address, place of work or contact details;
- (c) Appear before court in good time where subpoenaed;
- (d) Shall not in any form interfere with a witness giving a testimony; and
- (e) Shall not destroy or falsify evidence or give a colluded statement.

The people’s court, people’s prosecutor’s office and public security authority may, based on the case, order a suspect or a defendant released on bail to comply with any or several of the provisions below under which he or she:

- (a) Shall not enter certain designated venues;
- (b) Shall not meet or correspond with certain designated persons;
- (c) Shall not engage in certain designated activities; and
- (d) Shall surrender his or her travel documents and driver certificates to the enforcement authority.

Where the suspect or defendant released on bail is in violation of the provisions in the preceding two paragraphs and the bail has been paid, the bail may be partially or wholly forfeited and the suspect or the defendant may, depending on the individual circumstances, be ordained to enter into a recognizance, pay a new bail and name a new guarantor, or be arrested (*daibu*).

Where the suspect or defendant violates the provisions for release on bail and such violation requires arrest, the suspect or the defendant may be committed to detention (*juliu*) first.

Article 70: An authority deciding on bail shall, in order to set the bail amount, balance the need to ensure normal operation of legal proceedings, the risk the person on bail poses to the public, the nature and circumstances of the case, the gravity of the sentence that may be imposed and the financial situation of the person to be released on bail.

After the bail amount has been set, the person providing the bail shall deposit the bail in the bank account designated by the enforcement authority.

Article 71: Where the suspect or defendant complies with the provisions in article 69 herein during the period of release on bail, the bail may be collected at the end of the bail period on presentation of a notice showing its expiration.”

(29) A new article shall be inserted as article 72 to read: “The people’s court, people’s prosecutor’s office or public security authority may place under residential surveillance suspects or defendants that meet the conditions for arrest and fall under one of the following categories:

- (a) Seriously ill persons unable to take care of themselves;
- (b) Pregnant women or women currently breastfeeding their infants;
- (c) Persons in respect of whom residential surveillance is more appropriate due to the special circumstances of the case or requirements for investigation; and
- (d) Persons whose detention period has ended and whose case has not been concluded.

Where the suspect or defendant meets the conditions for release on bail but is unable to name a guarantor or pay the bail, residential surveillance may also be imposed.

Residential surveillance shall be enforced by the public security authority.”

(30) A new article shall be inserted as article 73 to read: “Residential surveillance shall be enforced at the domicile of the suspect or defendant. Where there is no permanent domicile, surveillance may be enforced at a designated place of residence. Where, in cases of a crime suspected to threaten national security, crimes of terrorist activities and major crimes of bribery, residential surveillance at the domicile may impede the investigation, it may, upon approval by the next higher people’s prosecutor’s office or public security authority, be enforced at a designated place of residence, provided that the place of residence under surveillance is not a detention facility or an investigation facility.

Where residential surveillance is enforced at a designated domicile, the family members of the person under surveillance shall be informed of the reason for and the place under residential surveillance within 24 hours upon enforcement, save where a notice cannot be furnished or where crimes threatening national security or crimes of terrorist activities are suspected and a notice may impede the investigation.

Where a suspect or a defendant is placed under residential surveillance at his or her designated domicile and designates a defender, the provisions of article 33 herein shall apply.

The people’s prosecutor’s office shall oversee whether or not the decision and enforcement of residential surveillance at a designated domicile is in keeping with the law.”

(31) A new article shall be inserted as article 74 to read: “The period of surveillance of a designated domicile shall be deducted from the sentence term. For offenders sentenced to

surveillance, the sentence term shall be reduced by one day for each day of residential surveillance; for criminal detention and imprisonment sentences, the sentence term shall be reduced by one day for two days of residential surveillance.”

(32) Article 57 shall be changed to article 75 and be amended to read: “A suspect or a defendant under residential surveillance shall comply with the following provisions which require him or her:

- (a) Not to leave the place of surveillance without prior approval by the enforcement authority;
- (b) Not to meet or correspond with **certain designated persons** without the prior approval by the enforcement authority;
- (c) To appear before court in good time when subpoenaed.
- (d) Not to interfere in any form with a witness giving a testimony;
- (e) Not to destroy or falsify evidence or give a colluded statement; and
- (f) To surrender his or her identification documents, travel documents and driver certificates to the enforcement authority.

Where a suspect or a defendant under residential surveillance violates the provisions in the preceding paragraph, the suspect or the defendant may be arrested where the circumstances are severe; where arrest is required, the suspect or the defendant may be committed to detention first.

(33) A new article shall be inserted as article 76 to read: “The enforcement authority may impose on a suspect or a defendant under residential surveillance electronic monitoring, irregular inspections and other surveillance measures to oversee the compliance of the suspect or defendant with the surveillance provisions. During the investigation, the enforcement authority may control the correspondence of the suspect or defendant under residential surveillance.”

(34) A new article shall be inserted as article 77 to read: “Decisions by the public security authority on residential surveillance and bail shall be enforced promptly. Where a decision by law enforcement personnel on residential surveillance or bail is not strictly enforced and such failure impedes progress of the case, the person responsible for such failure shall be held liable in accordance with the law.”

(35) Article 60 shall be changed to article 80 and be amended to read: “Where evidence exists that proves there are facts for a crime, and the suspect or defendant may be punished by imprisonment or by a sentence more severe than imprisonment, and where bail, residential surveillance or other measures are inadequate to prevent any of the following risks to the public, the suspect or defendant shall be arrested:

- (a) The person may commit a new crime;
- (b) The person poses an actual risk to national security, public safety or social order;
- (c) The person may destroy, falsify or conceal evidence and interfere with the testimony of a witness or give a colluded statement;
- (d) The person may commit an act of retaliation on the victim, informant or accuser; and
- (e) The person may commit suicide or abscond.

Where evidence exists that proves there are facts for a crime, and where the sentence imposed for the crime may be a term of imprisonment of more than ten years; or may be more severe than imprisonment but the suspect or defendant has intentionally committed a prior crime or his

or her identity is unknown, he or she shall be arrested.

Where a suspect or a defendant released on bail or under residential surveillance breaches the provisions for release on bail or residential surveillance and the circumstances are grave, the suspect or the defendant shall be arrested.”

(36) Article 64 shall be changed to article 84 and paragraph 2 thereof be amended to read: “Upon detention, a detained person shall promptly and no later than within 24 hours be delivered into a custody facility for custody. The family members of the detained person shall be informed of the reason for detention and place of custody within 24 hours upon the detention, save where a notice cannot be furnished or where crimes threatening national security, crimes of terrorist activities or other serious crimes are suspected and a notice may impede the investigation.”

(37) Article 65 shall be changed to article 85 and be amended to read: “The public security authority shall interrogate a detained person within 24 hours after detention. Where it is found that the detention should not be imposed, the detained person must be released immediately and given proof of release.”

(38) A new article shall be inserted as article 87 to read: Where a people's prosecutor's office reviews and approves an arrest application, it *may* question the suspect; the suspect *shall* be questioned in any of the following cases:

- (a) Doubts exist about whether or not the conditions of arrest are met;
- (b) The suspect requests to give a statement to the prosecutor face-to-face; or
- (c) The investigation may be in serious violation of the law.

When examining and approving an arrest application, the people's prosecutor's office may question witnesses and other participants in a proceeding, and consider the opinion of the defence attorney; if the defence attorney requests to express his or her opinion, the opinion *shall* be heard.”

(39) Article 71 shall be changed to article 92 and paragraph 2 thereof be amended to read: “Upon arrest, an arrested person shall be promptly delivered into a custody facility for custody. The family members of the arrested person shall be informed of the reason for arrest and place of custody within 24 hours upon the arrest, save where a notice cannot be furnished or where crimes threatening national security, crimes of terrorist activities or other serious crimes are suspected and a notice may impede the investigation.”

(40) A new article shall be inserted as article 94 to read: “After the arrest of a suspect or a defendant, the people's prosecutor's office shall nevertheless examine the necessity for custody. Where custody is no longer necessary, the people's prosecutor's office shall advise the release of the suspect or defendant or alter the compulsory measures.”

(41) Article 74 shall be changed to article 96 and be amended to read: “Where, in a case involving a suspect or a defendant that has been committed to detention, the case is not closed within the periods prescribed in this law for investigative custody, review for prosecution, first instance decisions or second instance decisions, the suspect or defendant shall be released. Where further investigations and hearings are necessary, the suspect or defendant may be released on bail or placed under residential surveillance.”

(42) Article 75 shall be changed to article 97 and be amended to read: “The people's court, people's prosecutor's office or public security authority shall, upon expiration of the statutory

period for compulsory measures imposed on a suspect or a defendant, grant the suspect or the defendant release or liberation from bail or residential surveillance, or alter the compulsory measures in accordance with the law. The suspect or defendant and his or her statutory representative, close relatives or defender is entitled to request the people's court, people's prosecutor's office or security authority to rescind the compulsory measures upon expiration of the statutory period thereof."

(43) Article 79 shall be changed to article 101 and a new paragraph be inserted as paragraph 4 to read: "Where the last day of the statutory period is a public holiday, the expiration date shall be the first day after the holiday. However, where a suspect or a defendant is in custody, the expiration date shall be the last day of the period and shall not be delayed due to a public holiday."

(44) A new article shall be inserted as article 113 to read: "In grave cases such as murder registered for investigation by a public security authority, the people's prosecutor's office may give advice and suggestions on investigation and evidence collection."

(45) A new article shall be inserted as article 114 to read: "Any party, defender, agent *ad litem* or person with an interest involved has the right to submit a complaint or an accusation to a judicial authority where he or she believes the judicial authority or the personnel thereof to have violated his or her legitimate rights and interests by any of the following acts:

- (a) Failure to order release, or liberation from, or alteration to, a compulsory measure in accordance with the law where the statutory period of the imposed compulsory measure has ended;
- (b) Failure to return bail in accordance with the law where bail should be returned;
- (c) Illegal use of investigation measures such as search, sealing, seizure, and freezing;
- (d) Failure to terminate sealing, seizure or freezing in accordance with the law where it should be ended; and
- (e) Obstructing defenders or agents *ad litem* in performing their responsibilities in accordance with the law.

The authority admitting the complaint or accusation shall handle such promptly. Where the complaint or accusation is rejected, an appeal may be submitted to a people's prosecutor's office at the same or next higher level. The people's prosecutor's office shall review the appeal promptly and, where necessary, investigate and review the relevant circumstances; where the appeal is justified, rectifications shall be made in accordance with the law."

(46) Article 91 shall be changed to article 115 and a new paragraph be inserted as paragraph 2 to read: "Where investigating personnel interrogate a suspect of a crime after the suspect has been delivered into a custody facility for custody, the personnel shall implement such interrogation within the custody facility."

(47) Article 92 shall be changed to article 116 and paragraph 2 thereof be amended to read: "Summoning or compelled appearance (*juchuan*) shall last no longer than 12 hours; where a case is serious and complicated and detention or arrest measures need to be taken, summoning or compelled appearance shall last no longer than 24 hours.

No suspect of a crime shall be committed to *de facto* custody in the form of successive summoning or compelled appearance. Where a person suspected of a crime is summonsed or compelled to appear before the investigator, he or she shall be guaranteed enough to eat and drink and time to rest."

(48) Article 93 shall be changed to article 117 and a new paragraph be inserted as paragraph 2 to read: "An investigator shall, when interrogating a suspect of a crime, advise the suspect of the legal provisions allowing for leniency for suspects of a crime that confess their own crime in line with the truth."

(49) A new article shall be inserted as article 120 and read: "An investigator *may*, during the interrogation of a suspect of a crime, record or videotape the interrogation process. Where a suspect may be sentenced to life imprisonment or death, the investigator *shall* record or videotape the interrogation process.

Recording and videotaping shall be used during the entire period of interrogation for the purpose of completeness."

(50) Article 96 shall be deleted.

(51) Article 105 shall be changed to article 129 and paragraph 1 thereof be amended to read: "In order to determine any exceptional characteristics, injuries or the physical state of a victim or a suspect of a crime, physical examinations may be conducted and fingerprints, blood or other biological samples taken."

(52) "Seizure" (*kouya*) and "items" (*wupin*) in the section title of Part 2, Chapter 2, Section 6, and in articles 115, 118, 142, 158 and 198 shall be amended respectively to "seizure or sealing (*chafeng*)" and "assets" (*caiwu*).

(53) Article 114 shall be changed to article 138 and be amended to read: "Assets or documents discovered during an investigation that may be used to prove the guilt or innocence of a suspect of a crime shall be seized or sealed; assets or documents irrelevant to a case shall not be seized or sealed.

Seized or sealed assets or documents shall be preserved or closed up appropriately and must not be used, exchanged or destroyed."

(54) Article 120 shall be changed to article 144 and be amended to read: "An expert shall, after giving an evaluation, write and sign an expert opinion.

Where a medical re-evaluation of a bodily injury needs to be made due to diverging opinions or where a medical evaluation on a mental disease needs to be made, such evaluation shall be carried out by a medical facility designated by a provincial people's government. The expert shall, after making such evaluation, write and sign an expert opinion which shall bear the official stamp of the medical facility.

Where a medical facility designated by a provincial people's government carries out an evaluation set forth in paragraph 2, it shall do so pursuant to the provisions by the State on the administration of forensic investigation.

Where an expert intentionally makes a false evaluation, he or she shall assume legal liability."

(55) "Expert conclusion" in articles 121 and 157 shall be amended to "expert opinion".

(56) A section shall be inserted as Section 8 after Section 7 of Chapter 2 of Part 1 to read:

"Section 8: Technical Investigation

Article 147: After the public security authority has registered a case, it may, insofar as required for investigating a crime and after passing strict approval requirements, take measures for a technical investigation for cases involving crimes threatening national security, crimes of terrorist activities, organized crimes of the underworld, major drug-related crimes or other crimes that pose a serious threat to society.

After a people's prosecutor's office has registered a case, it may, as far as required for investigating a crime and after passing strict approval requirements, take technical investigation measures for cases involving crimes of serious corruption and bribery and major crimes where the use of power violates the personal rights of a citizen.

In pursuit of a fugitive suspect or a fugitive defendant whose arrest has been approved or decided, technical investigation measures necessary for the pursuit may be taken upon approval.

Technical investigation measures shall be enforced by the public security authority.

Article 148: An approval or decision shall determine, based on the need for the criminal investigation, the types of technical investigation measures to be applied and to whom such measures apply. The approval or decision shall be effective within three months of the date of issue thereof. Where technical investigation measures no longer need to be taken, they shall be cancelled promptly. Where the effective period in a complicated or difficult case expires but further technical investigation measures are necessary, the effective period may be extended upon approval, but each extension must not be longer than three months.

Article 149: Where a technical investigation measure is taken, it shall be executed strictly in keeping with the type, subject and duration approved.

Where an investigator becomes aware of a state or trade secret and the privacy of a person during the technical investigation, he or she shall maintain confidentiality. Any information or factual materials obtained through a technical investigation measure and unrelated to the case shall be destroyed promptly.

Materials obtained through technical investigation measures shall be used only for the investigation, prosecution and trial of a crime, and must not be used for other purposes.

Any organisation and individual shall be cooperative where a public security authority takes technical investigation measures in accordance with the law and shall maintain confidentiality about any related circumstances.

Article 150: In order to determine the state of a case, where necessary and subject to decision of the responsible officer of a public security authority at the county level or above, designated personnel may implement a secret investigation.

The secret investigation must not entice other persons to commit a crime, nor must it use methods that may threaten public safety or pose a serious risk to personal safety.

In the event of a criminal activity involving delivery of drugs and other contraband items or assets, the public security authority may, insofar as necessary for the criminal investigation, implement controlled delivery of such items and assets in accordance with the provisions.

Article 151: Materials obtained through investigative measures pursuant to this section may be used as evidence in criminal proceedings.

Where the use of evidence obtained through secret investigations may pose a risk to the personal safety of the designated personnel or may lead to other serious consequences, measures shall be taken to withhold the real identity of the designated personnel, and, where necessary, such evidence may be verified by the judge outside court.”

(57) Article 128 shall be changed to article 157 and paragraph 1 thereof be amended to read: “Where it is found during an investigation that the suspect of a crime has committed another crime, the investigation and detention term shall, upon approval by the next higher investigating authority, be re-determined pursuant to article 153 herein.”

(58) A new article shall be inserted as article 158 to read: “The investigating authority may, prior to closure of an investigation, hear the opinion of the defence attorney and note such opinion in the documentation. Where the defence attorney provides a written opinion, such opinion shall be attached to the documentation.”

(59) Article 133 shall be changed to article 163 and be amended to read: “Where the people's prosecutor's office directly admits a case for investigation, it shall interrogate the detained person within 24 hours upon detention. Where it finds that detention should not be imposed, the detained person must be released immediately and given proof of such release.”

(60) Article 134 shall be changed to article 164 and be amended to read: “Where the people's prosecutor's office is of the opinion that a detained person of a case directly admitted by it needs to be arrested, it shall make a decision on such arrest within 14 days. The period to make a decision on arrest may, in exceptional situations, be extended by one to three days. Where arrest is not necessary, release is to be granted promptly. Where further investigation is required and the conditions for bail or residential surveillance are met, the detained person shall be granted such bail or placed under such surveillance in accordance with the law.”

(61) Article 139 shall be changed to article 169 and be amended to read: “When a people's prosecutor's office reviews a case, it shall question the suspect of the crime and hear the opinion of the defender, the victim and its agent *ad litem*, and note such opinions in the documentation. Where the defender and the victim and its defender express a written opinion, such opinion shall be attached to the documentation.”

(62) Article 141 shall be changed to article 171 and be amended to read: “Where the people's prosecutor's office is of the opinion that the facts for a crime have been made clear, the evidence is reliable and complete, and criminal responsibility shall be assumed according to the law, it shall decide to prosecute and initiate, pursuant to the provisions on courts' jurisdiction, public prosecution before the people's court and furnish to it the documentation and evidence.”

(63) Article 150 shall be changed to article 180 and be amended to read: “After the people's court has reviewed a case for which public prosecution has been initiated, where the indictment shows clear facts for a charged crime and evidence thereof is attached, it shall decide to commence trial.”

(64) Article 151 shall be changed to article 181 and be amended to read: “After the people's court has decided to commence trial, it shall determine the members of the judicial panel and deliver a copy of the indictment by the people's prosecutor's office to the defendant no later than ten days prior to the hearing. Where the defendant has not designated a defender, the court shall advise the defendant that he or she may designate a defender or notify a legal aid organization to assign an attorney to defend the defendant.

Prior to the hearing, the judge may convene the public prosecutor, the parties, the defender and the agent *ad litem* to make them aware of the questions related to the trial, such as recusal, witness lists and exclusion of illegally obtained evidence, and to hear their opinions.

After the people's court has set the court date, it shall, three days prior to the court date, notify the people's prosecutor's office, the party, the defender, the agents *ad litem*, the witnesses, the experts, and the interpreters of such date and the venue. In respect to open trial cases, it shall announce a summary of the case, the name of the defendant, the court time and the venue three days prior to the hearing.

The above activities shall be recorded in the court file and signed by the judge and registrar.”

(65) Article 152 shall be changed to article 182 and paragraph 2 thereof be deleted.

(66) Article 153 shall be changed to article 183 and be amended to read: “When a people's court tries a public prosecution case, a people's prosecutor's office shall send a member to be present before court to support the public prosecution.”

(67) A new article shall be inserted as article 186 to read: “Where a written statement by a witness has material influence on the determination of a sentence and where the public prosecutor, the party or the defender, or the agent *ad litem* objects to such statement, or the people's court believes it to be necessary for a witness to appear before court to testify, the witness shall do so.

Where a member of the people's police appears before court to give a testimony about a crime that he or she eye-witnessed while on duty, the provisions of the above paragraph are to be applied.

Where the public prosecutor, the party or the defender, or the agent *ad litem* objects to the opinion of an expert, or the people's court believes it to be necessary for an expert to appear before court, the expert shall appear to give a testimony. Where an expert has been notified by the people's court but does not appear for the testimony, the opinion of such expert must not be used as a basis for a decision.”

(68) A new article shall be inserted as article 187 to read: “Where a people's court notifies a witness to appear before court for a testimony, the witness shall do so. Where the witness has no good reason not to appear before court in accordance with the notice by the people's court, the people's court may compel the witness to appear, unless the witness is a spouse, parent or child of the defendant.

Where the witness evades appearance without good reason or refuses to testify during appearance and the circumstances are grave, the witness may be committed to detention of not more than ten days upon approval by the president of the court. Where a witness committed to detention is not satisfied with the detention decision, it may appeal to the next higher people's court for reconsideration. During the review, the detention shall not be suspended.

Where an expert appears to testify, the provisions laid down in the preceding two articles shall apply.”

(69) Article 159 shall be changed to article 191 and a new paragraph be inserted as paragraph 2 to read: “The prosecutor, the parties and the defender, and the agent *ad litem* may apply to the court for persons with specific expertise to appear as a witness to present their view of an opinion provided by an expert.”

(70) Article 160 shall be changed to article 192 and be amended to read: "Upon approval by the presiding judge, the public prosecutor, the party and the defender, and the agent *ad litem* may state and argue about their opinions on the evidence, the case circumstances, the conviction or the sentence. After the presiding judge has declared the arguments to be over, the defendant shall have the right to a closing statement."

(71) Article 162 shall be changed to article 194 and a new paragraph be inserted as paragraph 2 to read: "A people's court shall, in its judgment, make a decision on the handling of seized, sealed and frozen assets and the fruits thereof."

(72) A new article shall be inserted as article 199 to read: "During a trial, a hearing may be suspended where a case cannot be heard further for a relatively long period of time due to any of the following circumstances:

- (a) The defendant or the private prosecutor fall seriously ill and are unable to attend court;
- (b) The defendant escapes; or
- (c) A force majeure event occurs.

The hearing shall be resumed after the reason for the suspension thereof has lapsed. The duration of suspension shall not be included in the trial period."

(73) Article 168 shall be changed to article 201 and paragraph 1 thereof be amended to read: "When a people's court hears a public prosecution case, it shall pronounce its judgment within one month and no later than one month and a half after admission of such case. In circumstances falling under the provisions of article 155 herein and where approval is given or a decision made by the high people's court of a province, autonomous region or municipality, the pronouncement may be extended by two months. Where the trial period needs to be extended further due to exceptional circumstances, the decision or approval shall be made or given by the Supreme People's Court."

(74) Article 174 shall be changed to article 207 and be amended to read: "A people's court may apply summary trial procedures for cases that fall under the jurisdiction of a basic people's court and meet the following conditions:

- (d) The facts of a case are clear and sufficient evidence exists;
- (e) The defendant pleads guilty to the crimes he or she committed and does not object to the facts for the crimes charged in the indictment; and
- (f) The defendant agrees to the use of a summary procedure.

When a people's prosecutor's office initiates public prosecution, it may suggest to the people's court to apply a summary procedure."

(75) A new article shall be inserted as article 208 to read: "No summary procedures shall be used under any of the following circumstances:

- (a) The defendant is blind, mute or deaf;
- (b) The case has a material influence on the public;
- (c) A defendant in a case of a joint crime does not plead guilty or objects to the use of summary procedure; or
- (d) Other reasons exist against the use of summary procedure."

(76) Article 175 shall be changed to article 209 and be amended to read: "In cases where a summary procedure is applied and where a term of imprisonment of less than three years may be imposed, the trial may be conducted by one judge; where a term of imprisonment of more than three years may be imposed, a judicial panel shall be formed to conduct the trial.

The people's prosecutor's office shall assign members to attend court in public prosecution cases where a summary trial procedure is applied."

(77) A new article shall be inserted as article 210 to read: "Where a summary trial procedure is applied, the judge shall, after the indictment has been read out, hear the opinion of the defendant on the facts for the crimes charged in the indictment, advise the defendant of the legal provisions on the summary procedure and find out whether or not the defendant agrees thereto."

(78) Article 176 shall be changed to article 211 and be amended to read: "In cases where a summary procedure is applied, the defendant may make a statement on and defend him or herself against the crimes charged in the indictment. Upon approval by the judge, the defendant and his or her defender may engage in arguments with the public or private prosecutor and his or her agent *ad litem*."

(79) Article 177 shall be changed to article 212 and be amended to read: "Cases where a summary procedure is applied shall not be subject to the procedural provisions in section 1 of this chapter on service period, interrogating a defendant, questioning a witness and an expert, presenting evidence and court arguments. The above notwithstanding, the closing statement of the defendant shall be heard prior to the pronouncement of the judgment."

(80) Article 178 shall be changed to article 213 and be amended to read: "In cases where a summary procedure is applied, the people's court shall conclude a case within 20 days after admitting it; where a term of imprisonment of more than three years may be passed, the period may be extended up to one month."

(81) Article 187 shall be changed to article 222 and the first paragraph thereof be amended to read: "The people's court of second instance shall form a judicial panel to hold a court hearing in any of the following cases:

- (a) Appeal cases where the defendant or private prosecutor and his or her statutory representative object to the facts found or evidence in the first instance and the people's court of second instance is of the opinion the appeal may influence the determination of the conviction or sentence;
- (b) Appeal cases where the defendant has been sentenced to death;
- (c) Cases appealed by a people's prosecutor's office; and
- (d) Other cases where the people's court of second instance believes a court hearing shall be held.

Where the people's court of second instance decides not to hold a court hearing, it shall examine the defendant and hear the opinion of other parties, the defender and the agent *ad litem*."

(82) Article 188 shall be changed to article 223 and be amended to read: "In cases of an appeal by a people's prosecutor's office or public prosecution cases where the people's court of second instance holds a court hearing, the people's prosecutor's office at the same level shall assign members to attend the hearing. The people's court of second instance shall, after it has decided to hold a court hearing, promptly notify the people's prosecutor's office to review the documentation of the case and the people's prosecutor's office shall finish such review within

20 days upon notice. The duration of review shall not be included in the trial period.”

(83) Article 189 shall be changed to article 224 and a new paragraph be inserted as paragraph 2 to read: “Where the original people’s court has made a decision on a case remanded to it for a new trial pursuant to subparagraph (c) of the preceding paragraph and the defendant or the people’s prosecutor’s office files an appeal, the people’s court of second instance shall, where after a hearing it continues to believe that the facts are unclear or the evidence is insufficient, make a decision in accordance with the law.”

(84) Article 196 shall be changed to article 231 and be amended to read: “Where a people’s court of second instance admits an appeal by the defendant or prosecutor, it shall conclude the case within one month and no more than one month and a half. Where the people’s court of second instance holds a court hearing on the case of appeal by the defendant or prosecutor, it shall conclude the case within no more than two months. In any of the circumstances set forth in article 155 of this law and where approval is granted or a decision is made by the high people’s court of a province, autonomous region or municipality, the period to conclude a case may be extended by two months. The above notwithstanding, extensions for appeals admitted by the Supreme People’s Court shall be decided by the Supreme People’s Court itself. Where the period to conclude a case needs to be extended further due to exceptional circumstances, the decision or approval shall be made or given by the Supreme People’s Court.”

(85) A new article shall be inserted as article 238 to read: “Where the Supreme People’s Court reviews a death penalty case, it shall decide whether or not it approves the death sentence. Where it disapproves, it may remand the case for a new trial or revise the sentence through a review hearing (*tishen*).”

(86) A new article shall be inserted as article 239 to read: “Where the Supreme People’s Court reviews a case for which the death sentence has been imposed, it shall examine the defendant and hear the opinion of the defender.

During the review of such case, the Supreme People’s Prosecutor’s Office may advise the Supreme People’s Court of its opinion.”

(87) Article 213 shall be changed to article 250 and paragraphs 1 and 2 thereof shall be amended to read: “When an offender is committed for enforcement of his or her sentence, the people’s court that commits the offender for enforcement shall serve all relevant legal documents on the public security authority, prison or other enforcement authorities, as the case may be.

Offenders sentenced to death with a two-year reprieve, life imprisonment or fixed-term imprisonment shall be committed to prison by a public security authority to serve their sentence. For offenders sentenced to fixed-term imprisonment in respect of whom the remaining term prior to commitment is less than three months, the sentence shall be enforced by a custody facility. For offenders sentenced to criminal detention, the sentence shall be enforced by a public security authority.”

(88) Article 214 shall be changed to article 251 and be amended to read: “A sentence may be temporarily enforced outside prison for any offender sentenced to fixed-term imprisonment or criminal detention that is:

- (a) Seriously ill and needs to be released on bail for medical treatment;
- (b) A pregnant woman or a woman currently breastfeeding her infant; and

- (c) Unable to take care of him or herself and where temporary enforcement outside prison does not pose a risk to the public.

In respect of offenders sentenced to life imprisonment, the sentence may be temporarily enforced outside prison where subparagraph (b) of the preceding paragraph applies.

Where an offender released on bail for medical treatment may pose a risk to the public or harm or mutilate him or herself, the offender shall not be granted bail for medical treatment.

Where an offender is seriously ill and must be released on bail for medical treatment, a hospital designated by the provincial people's government shall provide a diagnosis and issue documents of proof.

Any temporary enforcement of a sentence outside prison prior to commitment of the offender will be decided by the people's court committing the offender for execution of punishment. Any temporary enforcement of a sentence outside prison after committing the offender requires, upon suggestion by the prison or custody facility, approval of the authority for prison administration at the provincial level or above, or the public security authority of a municipality divided into precincts or above."

(89) A new article shall be inserted as article 252 to read: "Where a prison or custody facility provides a written suggestion on temporary enforcement of a sentence outside prison, it shall service a copy of such suggestion on the people's prosecutor's office. The people's prosecutor's office may furnish a written suggestion to the deciding or approving authority."

(90) Article 216 shall be changed to article 254 and be amended to read: "Offenders whose sentence is temporarily enforced outside prison shall promptly be committed to prison in any of the following circumstances:

- (a) It is found that the conditions for temporary enforcement of punishment outside prison are not met;
- (b) The provisions on the supervision and administration of temporary enforcement of punishment outside prison are violated materially; and
- (c) The reason for temporary enforcement of punishment outside prison has lapsed and the term of punishment has not expired.

Where offenders that are granted by a people's court temporary enforcement of punishment outside prison shall be committed to prison, the decision on such committal shall be made by the people's court. The court shall serve any relevant legal documents on the public security authority, prison or other enforcement authorities, as the case may be.

Where offenders do not meet the conditions of temporary enforcement outside prison and are granted such enforcement by means of bribery and other illegal means, the duration of enforcement outside prison shall not be included in the term of punishment. Where an offender escapes during temporary enforcement outside prison, the duration of escape shall not be included in the term of punishment.

Where an offender dies during temporary enforcement outside prison, the prison or custody facility shall be notified promptly."

(91) Article 217 shall be changed to article 255 and be amended to read: "Where an offender in respect of whom surveillance is imposed, or a sentence is suspended, or parole or temporary enforcement outside prison has been pronounced, the offender shall be subject to community

correction; a community correction centre shall be responsible for enforcing such sentence.”

(92) Article 218 shall be changed to article 256 and be amended to read: “Where an offender has been sentenced to be deprived of his or her political rights, the sentence shall be enforced by a public security authority. Upon expiration of the sentence, the enforcing authority shall notify that person and make an announcement to the relevant public stating that the person’s political rights have been restored.”

(93) Article 221 shall be changed to article 259 and paragraph 2 thereof be amended to read: “Where an offender sentenced to surveillance, criminal detention, fixed-term imprisonment or life imprisonment shows genuine remorse or exhibits good behaviour during the enforcement period, the enforcing authority shall, where the sentence shall be commuted or parole awarded according to law, issue an opinion to request the people’s court to make a decision and service a copy of the opinion on the people’s prosecutor’s office. The people’s prosecutor’s office may furnish a written opinion to the people’s court.”

(94) A new part shall be inserted as part 5 to read: “Special Procedures”.

(95) A new chapter shall be inserted as chapter 1 of part 5 to read:

#### “Chapter 1: Procedures for Cases of Juvenile Crime

Article 263: Juveniles committing a crime shall be educated, reformed and rehabilitated on the basis of “applying primarily educational measures and regarding punitive sanctions as ancillary means”.

In handling juvenile crime cases, the people’s courts, the people’s prosecutor’s offices and the public security authorities shall ensure that the juvenile exercises his or her procedural rights and receives legal support, and that cases are handled by judges, prosecutors and investigators that understand the physical and psychological characteristics of juveniles.

Article 264: Where a juvenile suspect or defendant has not designated a defender, the people’s court, the people’s prosecutor’s office and the public security authority shall notify a legal aid organization to assign an attorney to defend the suspect or defendant.

Article 265: Measures of arrest imposed on a juvenile suspect or defendant shall be taken in a strictly restrictive manner. When a people’s court decides on an arrest and a people’s prosecutor’s office reviews and approves the arrest application, they shall question the juvenile suspect or defendant.

Juveniles that have been detained, arrested or are serving their punishment shall be detained, administered and educated separately from adults.

Article 266: In cases of juvenile crime, the statutory representative of the suspect or defendant shall be notified to be present during the interrogation and trial. Where a notice cannot be served, the statutory representative is unable to attend or the statutory representative is a co-offender, other close adult relatives of the suspect or the defendant, the representative of the school, place of work, rural or urban residents’ committee at the place of residence of the suspect or the defendant, or a juvenile protection agency may be notified to be present, and the circumstances shall be noted in the written records of the interrogation. The statutory representative present may, on behalf of the suspect or defendant, exercise his or her procedural rights.

Where the statutory representative or another person present believes that the legitimate rights

and interests of the juvenile are infringed upon during the interrogation or trial, he or she may express their opinion thereon. The interrogation or court records shall be given to the statutory representative or the other person present to read or shall be read out to them.

Where female juvenile suspects of a crime are interrogated, a female officer shall be present.

When a case of juvenile crime is tried, the statutory representative may, after the concluding statement by the defendant, add a statement.

Where a juvenile victim or witness is questioned, the provisions in paragraphs one, two and three shall apply.

Article 267: Juveniles that are suspected of any of the crimes set forth in chapters 4, 5 and 6 of the Special Provisions of the Criminal Law, may be sentenced to a term of imprisonment of less than one year; if they meet the prosecution criteria but show regret, the people's prosecutor's office may conditionally drop the case. The people's prosecutor's office shall, prior to granting conditional non-prosecution, hear the opinion of the public security authority and victim.

Where the juvenile suspect and his or her statutory representative object to the decision by a people's prosecutor's office to grant conditional non-prosecution, the people's prosecutor's office shall decide to prosecute.

Article 268: During the probation period for conditional non-prosecution, a people's prosecutor's office shall supervise and observe the suspect conditionally exempt from prosecution. The guardian of the suspect shall especially discipline the suspect and assist the people's prosecutor's office in its supervision and observation.

The probation period for conditional non-prosecution shall be more than six months but less than one year and commence on the day of the decision by a people's prosecutor's office to grant conditional non-prosecution.

Suspects of a crime that are conditionally exempt from prosecution shall:

- (a) Comply with the law and administrative regulations, and obey the supervision;
- (b) Report their activities in accordance with the regulations by the observing authority;
- (c) Apply for approval of the observing authority where they wish to leave their residential city or county or move;
- (d) Be educated or corrected as required by the observing authority.

Article 269: A people's prosecutor's office shall rescind its decision to conditionally exempt a suspect of a crime from prosecution and initiate public prosecution where the suspect is, during the probation period, found to:

- (a) Have committed a new crime or have committed another prosecutable crime prior to being granted conditional non-prosecution; or
- (b) Have broken administrative provisions on public order or the administrative regulations by the observing authority on the supervision of suspects conditionally exempt from prosecution and the circumstances are serious.

Where none of the circumstances above applies to the suspect conditionally exempt from prosecution during the probation period, the people's prosecutor's office shall, upon expiration of the probation period, decide not to prosecute.

Article 270: No public hearing shall be held in cases where the defendant is under the age of 18 at the time of trial.

Article 271: During a court investigation, judges shall enquire about experiences the juvenile defendant has had throughout his or her development, the reasons for the crime and the conditions of reform through education.

Article 272: Where an offender is under the age of 18 at the time of a crime and is sentenced to a term of imprisonment of less than five years, the judicial authorities and other relevant authorities shall seal the relevant records of the crime.

Where the records of a crime are sealed, they shall not be disclosed to any organisation or individual, save where they are required by a judicial authority for handling the case or by a relevant organisation that is conducting an inquiry in accordance with the provisions and regulations of the law. Organisations conducting a lawful inquiry shall maintain confidentiality about the information in the records sealed.

Article 273: Cases involving juvenile crimes shall, unless provided for in this chapter, be handled in accordance with the other provisions set forth in this law.”

(96) A new chapter shall be inserted as chapter 2 of part 5 to read:

“Chapter 2: Procedures for Reconciliation between Parties in Public Prosecution Cases

Article 274: Where the suspect or defendant voluntarily and sincerely expresses his or her remorse and obtains the forgiveness of the victim by means of compensation or an apology, the two parties may conclude a reconciliation agreement in any of the following public prosecution cases:

- (a) Cases of a crime caused by a civil dispute and suspected to fall under chapters 4 and 5 of the Special Provisions of the Criminal Law for which a term of imprisonment of less than three years may be passed;
- (b) Cases of a crime of negligence for which a term of imprisonment of less than seven years may be passed, except for crimes of malpractice.

Where the suspect or defendant has committed an intentional crime within the past five years, the procedures stipulated in this chapter shall not apply.

Article 275: Where both parties wish to reconcile, the public security authority, the people's prosecutor's office and the people's court shall hear the opinions of the parties and other relevant persons, review whether or not the reconciliation agreement is concluded voluntarily and lawfully, and direct the formulation of such agreement.

Article 276: In cases for which a reconciliation agreement is reached, the public security authority may suggest to the people's prosecutor's office to treat the defendant with leniency. The people's prosecutor's office may suggest to the people's court to pass a lenient punishment; for minor offences that do not require a punishment, the people's prosecutor's office may decide not to prosecute. The people's court may treat the defendant with leniency.

(97) A new chapter shall be inserted as chapter 3 of part 5 to read:

“Chapter 3: Procedures for the Confiscation of Illegal Earnings in Cases Where the Suspect or Defendant Has Absconded or Died

Article 277: In cases of crimes of corruption and bribery, terrorist activities and other serious crimes, where the suspect or defendant has absconded and does not appear before court one year after an arrest warrant has been issued, or where the suspect or defendant is dead and the illegal earnings or other assets of the suspect or the defendant related to the case shall be recovered pursuant to the provisions of the Criminal Law, a people's prosecutor's office may apply to a people's court for confiscation of such illegal earnings.

The application for confiscation of illegal earnings shall show the type, quantity, location and the sate of seizure, sealing or freezing of the asset, and shall have attached to it relevant materials of proof.

When necessary, the people's court may seize, seal or freeze the assets for which confiscation has been applied.

Article 278: An application for confiscation of illegal earnings and other assets related to a case shall be heard by the judicial panel formed by the intermediate people's court with jurisdiction over the place of crime or place of residence of the suspect or defendant.

The people's court shall, after admitting an application for confiscation of illegal earnings, issue a public notice. The duration of the public notice shall be six months.

The people's court shall, after expiration of the public notice, conduct a hearing on the application for confiscation of illegal earnings. The close relatives of the suspect or defendant and other interest parties shall be entitled to apply for participation in the proceedings or may entrust an agent *ad litem* to participate in the proceedings. Where the interested parties object to the application for confiscation, the people's court shall hold a court hearing.

Article 279: A people's court shall, after a hearing, order the confiscation of assets determined to be illegal earnings, save where such assets shall be returned to the victim in accordance with the law; assets that cannot be determined to be illegal earnings shall be ordered to be freed from seizure, sealing or freezing.

Either party may submit an appeal against orders made by the people's court pursuant to the preceding paragraph.

Article 289: During a court hearing, where an absconded suspect or absconded defendant surrenders voluntarily or is captured, the people's court shall terminate the hearing.

Where assets of the suspect or defendant are wrongly confiscated, the assets shall be returned.”

(98) A new chapter shall be inserted as chapter 4 of part 5 to read:

“Chapter 4: Compulsory Medical Procedures for Violent Acts by Mentally Ill Persons

Article 281: Where a mentally ill person carries out violent acts that endanger public safety or lead to the death or serious injury of a person, and where an expert confirms through statutory procedures that where the mentally ill person is excluded from criminal liability in accordance with the law, if he or she may pose a further risk to the public, a people's court may decide to impose compulsory medical treatment on such person.

Article 282: A people's prosecutor's office shall apply to a people's court for compulsory medical treatment of a mentally ill person carrying out a violent act. The people's court shall form a judicial panel to conduct a hearing and may decide to impose compulsory medical treatment where the person subject to the application fulfills the conditions for such treatment. Where the people's court finds during the hearing of the case that the defendant meets the conditions for compulsory medical treatment, it may decide immediately to impose such treatment.

When a people's court hears a case on compulsory medical treatment, it shall notify the statutory representative of the person subject to the application or the defendant to appear before court.

Prior to a decision on compulsory medical treatment by a people's court, the court may impose protective restriction measures on the person subject to an application or the defendant.

Article 283: A facility for compulsory medical treatment shall regularly diagnose and evaluate the condition of a person under such treatment. Where a risk to personal safety no longer exists and compulsory medical treatment no longer needs to be imposed, the facility shall promptly recommend the person's discharge and report to the people's court imposing compulsory medical treatment to approve the discharge. A person receiving compulsory medical treatment and his or her close relatives shall have the right to apply for termination of such treatment.

Article 284: The people's prosecutor's office shall monitor whether the enforcement measures by the facility for compulsory medical treatment are in keeping with the law."

(99) The numbering of the provisions in articles 99, 126, 127, 132, 146, 166, 171, 172, 192 and 193 shall be adjusted based on this amendment. The numbering of the chapters and provisions in the Criminal Procedure Law shall be adjusted based on this amendment.

Annex: Comparative Table of the Criminal Procedure Law of the People's Republic of China Prior and Subsequent to Amendment

## Explanatory Notes on the Draft Amendment to the Criminal Procedure Law of the People's Republic of China

China's existing Criminal Procedure Law was formulated in 1979 and amended in 1996 at the 4<sup>th</sup> Session of the 8<sup>th</sup> National People's Congress (NPC). Practice has shown that the design of the criminal procedures and distribution of responsibilities and powers are, on the whole, scientific and rational. However, rapid social and economic development, constant progress in building a democratic legal system and an increasing judicial demand from the people have dated some aspects of the criminal procedure system which need to be improved.

In recent years, representatives of the NPC and other parties have expressed their opinion and advice on revising and enhancing the Criminal Procedure Law. The Central Government, in its opinion on promoting the reform of the judicial system and its working mechanism, has also laid down clear requirements on how to advance the criminal procedure system. Since the 10<sup>th</sup> National People's Congress, the Legislative Affairs Commission has, as required under the legislative plan of the Standing Committee, followed up, strengthened its understanding of and examined the state of enforcement of the law and issues arising out of such enforcement.

In early 2009, the Commission began the task of elaborating and drafting a plan for the revision of the Criminal Procedure Law. The task was (a) to conclude judicial practices and experiences to gradually improve China's criminal procedure system on the basis of facts, a rule of law with Chinese-socialist characteristics and China's national conditions; (b) to improve, on the basis of responsible labour division, mutual assistance and mutual restraint, the distribution of power among judicial authorities involved in criminal procedures in order to effectively adjust to the need of procedural actions; and (c) to implement the lenient criminal justice (*kuan yan xiang ji*) policy and balance criminal sanctions and the protection of human rights, i.e., to timely and adequately punish offenders to ensure the interests of the people, society and the nation while safeguarding the legitimate rights and interests of participants in criminal procedures, including suspects or defendants.

The Draft Amendment to the Criminal Procedure Law was, on the basis of substantial discussions and consensus, formulated after repeated considerations by the Supreme People's Court, the Supreme People's Prosecutor's Office, the Ministry of Public Security, the Ministry of State Security, the Ministry of Justice and other ministries, and after various meetings to hear the opinions of representatives of the NPC, basic departments handling cases, lawyers, experts and academics, as well as those of members of the standing committees of local people's congresses. The following is an explanation of the main issues:

#### (I) Improvement of the Evidentiary System

The evidentiary system is essential in and throughout all procedural activities and plays a crucial role in conducting fair trials and determining adequate sentences. In response to opinions that provisions of evidence in the existing Criminal Procedure Law are too general, and cannot meet practical requirements, it is advised to make the following insertions and amendments:

##### (1) Improvement of the Types and the Standard of Proof

Article 42 of the Criminal Procedure Law lays down seven types of evidence including physical and documentary evidence, as well as testimonies by witnesses. In consideration of the new circumstances and practical needs in criminal procedures, it is advised to accommodate electronic data among the types of evidence.

(Draft Amendment Article 12)

The Criminal Procedure Law lays down that in order to conclude an investigation, initiate public prosecution and pass a conviction, "the facts of a case shall be clear and evidence be reliable and complete". In order to apply this standard of proof accurately, it is advised to further specify criteria of "reliable and complete evidence", meaning that evidence shall exist for each fact needed to determine a conviction or sentence; all evidence needed to decide a case shall be verified through statutory procedures; and evidence for the case must be evaluated as a whole and any reasonable doubts in the facts be removed.

(Draft Amendment Article 16)

Moreover, in order to reinforce the link between administrative law enforcement and criminal justice and increase efficiency in proceedings, it is advised to insert and set forth that evidence such as physical and documentary evidence collected by administrative authorities during administrative law enforcement may be used as evidence after verification by the judicial authorities.

(Draft Amendment Article 15)

## (2) Improvement of the System for the Exclusion of Illegal Evidence

Article 43 of the Criminal Procedure Law prohibits the extraction of confessions by torture and other illegal means to collect evidence. In order to further restrict the use of such methods to obtain evidence and in order to promote judicial justice and protect the legitimate rights and interests of participants in criminal proceedings, it is advised that after the provision on the prohibition of torture, there be inserted and set forth that:

- (a) No person must be forced to prove his or her own guilt;
- (b) Confessions extracted by torture and statements by a suspect or a defendant extracted by other illegal means, as well as statements of witnesses and victims collected by the use of force, threats and other illegal means shall be excluded; and physical and documentary evidence collected in violation of the provisions of the law and severely affecting judicial justice shall also be excluded; and
- (c) The people's courts, people's prosecutor's offices and public security authorities have the responsibility to exclude illegal evidence.

It is also advised to lay down investigation procedures in a court hearing for excluding illegal evidence.

(Draft Amendment Articles 14, 17 to 21)

In consideration of the circumstances that in judicial practice, acts of extracting confessions by torture mostly occur prior to the commitment of the suspect of a crime to the custody facility, it is further advised that there be clearly stated that:

- (a) Upon detention or arrest (*daibu*), a detained or arrested person shall be promptly delivered into a custody facility for custody;
- (b) Where investigating personnel interrogate a suspect of a crime after the suspect has been delivered into a custody facility for custody, the personnel shall implement such interrogation within the custody facility;

It is also advised to set forth a system for recording and videotaping during an interrogation.

(Draft Amendment Articles 36, 39, 46 and 49)

## (3) Improvement of the System for Witnesses and Experts Appearing Before Court

The appearance of a witness to testify before court is essential to determine the circumstances of a case, verify the evidence and make the right judgment. In judicial practice, witnesses and experts should appear to testify, but in many cases they do not, affecting the fairness of the trial. This issue requires regulating.

It is therefore advised to clarify the circumstances in which witnesses have to appear to testify and to set forth that where a statement by a witness has material influence on the determination of a sentence and where the public prosecutor, the parties or the defender, and the agents *ad litem* object to such statement, or the people's court believes it to be necessary for a witness to appear before court to testify, the witness shall do so.

There shall also be laid down a system for compulsory appearance in court which states that where a witness or expert has no good reason not to appear before court, the people's court may force the witness to appear and, in serious circumstances, may detain the witness or expert for a period not exceeding ten days.

It is further set forth that a spouse, parent or child of a defendant shall be excluded from appearing before court to accuse the person, given that such appearance could harm family relations.

(Draft Amendment Articles 67 and 68)

#### (4) Improvement of the System for the Protection of Witnesses

Article 49 of the Criminal Procedure Law stipulates that the judicial authorities shall protect the safety of witnesses and their close relatives. In practice, witnesses may be protected by holding liable persons that carry out acts of retaliation and by particularly strengthening the protection of witnesses in certain cases of serious crimes.

It is therefore advised to insert and set forth that in cases involving crimes threatening national security, crimes of terrorist activities, organized crimes of the underworld, and drug-related crimes, the real name, address, place of work and other personal particulars of witnesses or victims and their appearance and real voice in a testimony before court may, insofar as required in a case, be withheld and special personal and residential protection be given.

(Draft Amendment Article 23)

#### (II) Improvement of Compulsory Measures

In order to ensure the implementation of criminal procedures, the Criminal Procedure Law lays down five compulsory measures including arrest (*daibu*), detention, residential surveillance, release on bail and compelled appearance (*juchuan*). However, due to increasingly complicated crimes and changes in the enforcement environment, some of the existing provisions on compulsory measures are no longer in line with the requirements of judicial practice. Therefore, it is advised to make the following insertions and amendments:

##### (1) Improvement of the Conditions for Arrest

Article 60 of the Criminal Procedure Law sets forth that where evidence exists that proves there are facts for a crime and the suspect or defendant may be given a sentence of imprisonment or above, and where release on bail, residential surveillance or other measures are inadequate to prevent a risk to the public and arrest is necessary, arrest shall be imposed promptly in accordance with the law.

In order to ensure more consistent interpretations of arrest criteria in judicial practice, it is advised that the provisions for the words "prevent a risk to the public and arrest is necessary" be defined as:

- (a) The person may commit a new crime;
- (b) The person may pose an imminent threat to national security, public safety or social order;
- (c) The person may destroy, falsify or conceal evidence and interfere with the testimony of a witness or give a colluded statement;
- (d) The person may commit an act of retaliation on the victim, informant or accuser; and

- (e) The person may commit suicide or abscond.

It is also advised to set forth that where evidence exists that proves there are facts for a crime, and the imposed sentence may be a term of imprisonment of more than ten years, or any term of imprisonment for a suspect or defendant who has intentionally committed a prior crime or whose identity is unknown, the suspect or defendant shall be arrested.

(Draft Amendment Article 35)

## (2) Improvement of the Procedures for Reviewing Arrest Applications

In order to improve the procedures for reviewing arrest applications to allow prosecuting authorities to gain a more comprehensive understanding of the circumstances of a case and to adequately apply arrest measures, it is advised, on the basis of evaluating practices and experiences, to insert and set forth that where a people's prosecutor's office reviews and approves an arrest, it *may* question the suspect, and *shall* question the suspect where doubts exist about whether or not the conditions of arrest are met; where the suspect requests to give a statement to the prosecutor face-to-face; or where the investigation may be in serious violation of the law. If a defence attorney requests to express his or her opinion, the opinion shall be heard.

In order to reinforce the supervision by the people's prosecutor's office over custody measures and to prevent illegally prolonged detention and unnecessary detention, it is advised to insert and set forth that after the arrest of a suspect or a defendant, the people's prosecutor's office shall examine the need for custody.

(Draft Amendment Articles 38 and 40)

## (3) Improvement of Residential Surveillance Measures

Although residential surveillance and release on bail both serve as measures to restrict the personal freedom of suspects and defendants, their degree of restriction may vary. The Criminal Procedure Law lays down equal criteria for the application of the two measures. In consideration of the actual state of enforcement of residential surveillance, residential surveillance should be regarded as an alternative to reduce custody measures, and it is more appropriate to lay down implementation provisions different from those for release on bail.

It is therefore advised to set forth individual implementation provisions for residential surveillance that apply to suspects or defendants that meet the conditions for arrest but are seriously ill and unable to take care of themselves; suspects and defendants who are pregnant and currently breastfeeding their infants; suspects and defendants in respect of whom residential surveillance is more appropriate due to the special circumstances of the case or requirements for handling the case; and suspects and defendants whose detention period has ended and whose case has not been concluded.

Residential surveillance may also be imposed in cases where the suspect or defendant meets the conditions for release on bail but is unable to name a guarantor or pay the bail. In cases of a crime suspected to threaten national security, crimes of terrorist activities and major crimes of bribery where residential surveillance at the domicile may impede the investigation, residential surveillance may, upon approval by the next higher judicial authority, be enforced at a designated place of residence.

It is further advised to lay down provisions on the supervision by a people's prosecutor's office over the enforcement of residential surveillance; the prohibition of enforcing residential surveillance at a custody facility or facility for handling cases; notification of family members,

visits by an attorney and other remedies; and the deduction of the duration of residential surveillance from the term of punishment.

(Draft Amendment Articles 29 to 31)

#### (4) Appropriate Extension for Compelled Appearance

Article 92 of the Criminal Procedure Law lays down that compelled appearance (*juchuan*) shall not exceed 12 hours. In line with the opinions collected, it is advised to insert and set forth that where a case is serious and complicated and detention or arrest measures need to be taken, compelled appearance shall last no longer than 24 hours. It is also advised to set forth that a suspect of a crime that is compelled to appear shall be guaranteed enough to eat and drink and time to rest during the appearance.

(Draft Amendment Article 47)

### (III) Improvement of the Defence System

In order to improve the defence system, ensure the professional rights of attorneys and strengthen legal aid, it is advised to make the following insertions and amendments:

#### (1) Provisions on Entrusting an Attorney as a Defender During the Investigation Period

Articles 33 and 96 of the Criminal Procedure Law lay down that a suspect or offender of a crime may designate an attorney-at-law during review for prosecution and trial, and that during an investigation an attorney may be designated only to provide "legal assistance".

In consideration of the fact that a suspect or defendant has the right to a defender throughout the whole procedure, it is advised to insert and set forth that a suspect of a crime may also entrust an attorney to provide him or her with legal assistance as a defender during an investigation.

(Draft Amendment Articles 3 and 6)

#### (2) Improvement of the Provisions on Attorneys Visiting Detained Suspects or Defendants

Article 96 of the Criminal Procedure Law lays down that during an investigation, if a suspect in a case of a crime involving a state secret designates an attorney and the attorney meets the detained suspect, the visit needs to be approved by the investigating authority.

The amended Law on Lawyers introduced a number of new provisions, laying down that where an attorney holds a practicing license, law firm certificate and letter of attorney or an official legal aid letter, he or she has the right to meet with the suspect or defendant. The meeting must not be monitored.

It has been unanimously agreed that relevant provisions of the Law on Lawyers shall be adopted in the Criminal Procedure Law, but that a meeting between attorney and suspect requires prior approval by the investigating authority for a small number of cases involving national security and substantial interests. In light of this, it is advised to adopt relevant provisions of the Law on Lawyers and to set forth that where a defence attorney meets, during an investigation, with a suspect of a case involving joint crimes threatening national security and joint crimes of terrorist activities and major bribery, the meeting shall require the approval of the investigating authority.

(Draft Amendment Article 7)

#### (3) Improvement of the Provisions on Access to Documentation for Attorneys

Article 36 of the Criminal Procedure Law stipulates that a defending attorney may access, excerpt and copy procedural documents and expert materials of a case during the period of review for prosecution, and may access, excerpt and copy any materials that include facts of the charged crimes during the trial period. The amended Law on Lawyers expanded the range of documentation that a defence attorney may access during the period of review for prosecution.

It is therefore advised to adopt the relevant provisions of the Law on Lawyers and set forth that the defending attorney may, during both review for prosecution and trial, access, excerpt and copy any materials that include facts of the charged crimes.

(Draft Amendment Article 7)

#### 4) Improvement of the Legal Aid System

In order to effectively ensure the right of defence of a suspect or defendant, it is advised to expand the use of legal aid in criminal proceedings and to revise the last part in "Where a suspect or a defendant is blind, deaf, mute or under age, may be sentenced to death and has not designated a defender, the people's court shall designate a defender for him or her" to read "the people's court, people's prosecutor's office and public security authority shall notify a legal aid organization to assign an attorney to defend the suspect or defendant".

It is also advised to insert and set forth that where a suspect or a defendant has not designated an attorney and may be sentenced to life imprisonment, the people's court, people's prosecutor's office and public security authority shall also provide legal assistance.

(Draft Amendment Articles 4 and 95)

#### (IV) Improvement of Investigation Measures

Economic and social development and changes in criminal behaviour have made it necessary (a) to enhance investigative measures and equip investigating authorities with methods necessary to respond to crimes more effectively, and (b) to regulate, restrict and monitor investigative measures to prevent their misuse. It is therefore advised to make the following insertions and amendments:

##### (1) Explicit Provisions on Measures of Technical Investigation and Secret Investigation

On the basis of practical needs, it is advised to insert the following provisions:

- (a) Technical investigation measures may, insofar as required for investigating a crime and after passing strict approval requirements, be taken for cases involving crimes threatening national security, crimes of terrorist activities, organized crimes of the underworld, major drug-related crimes or other crimes that pose a serious threat to the public as well as for cases involving crimes of serious corruption and bribery and serious crimes where the use of power violates the personal rights of citizens;
- (b) Public security authorities may decide to designate special personnel to carry out a secret investigation and to implement controlled delivery of drugs and other contraband items or assets in accordance with the provisions;
- (c) Materials obtained through investigative measures, secret investigation measures and materials obtained through controlled delivery may be used as evidence in criminal proceedings.

(Draft Amendment Article 56)

##### (2) Improvement of Provisions on Supervision over Investigation

In order to reinforce the supervision over investigations, it is advised to insert provisions on procedures for complaints, accusations and the their disposition where parties and persons with an interest involved believe the judicial authority and the personnel thereof to have violated their legitimate rights and interests by:

- (a) Failing to order release, or liberation from, or alteration to, a compulsory measure in accordance with the law;
- (b) Failing to return bail in accordance with the law;
- (c) Using investigation measures such as search, seizure, sealing and freezing in violation of the law;
- (d) Failing to terminate seizure, sealing or freezing in accordance with the law; and
- (e) Obstructing defenders or agents *ad litem* in performing their responsibilities in accordance with the law.

(Draft Amendment Article 45)

#### (V) Improvement of Trial Procedures

In order to distribute judicial resources more efficiently and increase efficiency, it is necessary to differentiate, while ensuring justice, between different cases and enhance trial procedures. It is therefore advised to make the following insertions and amendments:

##### (1) Adjustments to the Scope of Summary Procedures

The Criminal Procedure Law lays down summary procedures for public and private prosecution cases for which a term of imprisonment of less than three years may be imposed. On the basis of the requirements of judicial practice, it is advised to revise the scope of cases involving summary trial procedures to be "guilty plea" cases under the jurisdiction of the basic people's courts, i.e., cases where a sentence less severe than imprisonment may be imposed and the defendant pleads guilty to all the crimes he or she committed. In cases where a term of imprisonment of less than three years may be ordered, the trial may still be conducted by one judge; where a term of imprisonment of more than three years may be imposed, a judicial panel shall be formed to conduct the trial.

Moreover, in order to strengthen checks and supervision, it is set forth that where summary procedures are applied in public prosecution cases, the people's prosecutor's office shall assign members to attend court.

(Draft Amendment Articles 74 to 76)

##### (2) Improvement of First and Second Instance Procedures

In respect of first instance proceedings, it is, on the basis of judicial practice and actual needs, advised to enhance the system of transfer of prosecution documentation and to set forth that a people's prosecutor's office, when initiating public prosecution, shall furnish the documentation and evidence to the people's court;

It is also advised to improve preparatory procedures prior to a hearing by setting forth that a judge may notify the public prosecutor, the parties, the defender and the agent *ad litem* to make them aware of the issues related to the trial, such as recusal, witness lists and exclusion of illegal evidence, and to hear their opinions;

It is further advised to insert provisions on sentencing in court hearing procedures and to insert and set forth that a people's court shall, in its ruling, make a decision on the handling of seized, sealed and frozen assets and the fruits thereof.

(Draft Amendment Articles 62, 63, 64, 70 and 71)

In respect of second instance procedures, the scope for cases of second instance hearings shall be specified in order to ensure the just handling of a case. It is advised to insert and set forth that in appeal cases where a party objects to the facts found and evidence taken in the first instance, and the people's court of second instance is of the opinion the appeal may influence the determination of conviction and sentencing, or where the defendant has been sentenced to death, the people's court of second instance shall hold a court hearing.

In order to prevent repeated remands for retrial, it is advised to improve the system of remands for retrial by inserting and laying down that where the original people's court has made a decision on a case that has been remanded to it for retrial because the facts are unclear, the evidence is insufficient, and the case was again appealed, the people's court of second instance shall, where after a hearing it continues to believe that the facts are unclear or the evidence is insufficient, make a decision in accordance with the law.

(Draft Amendment Articles 81 and 83)

Additionally, the duration for first and second instance hearings has been appropriately extended for severe and complicated cases for which the trial period, as practice has shown, is insufficient and influences the quality of the handling of cases.

(Draft Amendment Articles 73, 82 and 84)

### (3) Improvement of the Review Procedures for Death Sentences

In order to better ensure the quality of reviews in death penalty cases, it is, on the basis of the nature of the procedures for death penalty reviews, advised to set forth that where the Supreme People's Court reviews a death penalty case, it shall decide whether or not it approves the death sentence. Where it disapproves, it may remand the case for new trial or revise the sentence through review hearing (*tishen*).

It is also advised to lay down that where the Supreme People's Court reviews a case for which the death sentence has been imposed, it shall examine the defendant and hear the opinion of the defender, and that the Supreme People's Prosecutor's Office may advise the Supreme People's Court of its opinion.

(Draft Amendment Articles 85 and 86)

### (VI) Improvement of the Enforcement Provisions

In order to further improve the provisions for the enforcement of sentences, it is, on the basis of the opinions heard, advised to make the following insertions and amendments:

#### (1) Improvement of the Provision on Temporary Enforcement Outside Prison

Temporary enforcement outside prison serves as a system that allows offenders that are seriously ill, pregnant, breastfeeding their infant or unable take care of themselves to serve their sentences outside prison. It is advised to improve the system by means of the following three points:

- (a) Expanding, according to actual necessity, the scope of subjects to pregnant or breastfeeding women sentenced to life imprisonment;
- (b) Specifying further the procedures for decision and approval of temporary enforcement outside prison; and

- (c) Inserting and setting forth that where offenders do not meet the conditions of temporary enforcement outside prison and are granted such enforcement by means of bribery and other illegal means, the duration of enforcement outside prison shall not be included in the term of punishment; where an offender escapes during temporary enforcement outside prison, the duration of escape shall not be included in the term of punishment.

(Draft Amendment Articles 88 and 90)

## (2) Strengthening Legal Supervision by the Prosecutor over the Enforcement of Sentences

In order to improve the system of supervision by the prosecuting authorities over sentence commutation, parole and temporary enforcement outside prison, it is advised to insert and set forth that where a prison or custody facility provides an opinion on sentence commutation, parole or temporary enforcement of a sentence outside prison, it shall service a copy of such opinion on the people's prosecutor's office. The people's prosecutor's office may furnish a written opinion to the people's court or approving authority.

(Draft Amendment Articles 89 and 93)

## (3) Reinforcement of the Provisions on Community Correction

On the basis of the opinions heard, it is advised to set forth that offenders temporarily serving their sentence outside prison shall also be subject to community correction.

(Draft Amendment Article 91)

## (VII) Provisions for Special Procedures

Some representatives of the NPC and other parties noted repeatedly that cases of juvenile crime and other special cases and circumstances require special procedures. It is therefore advised to insert a part to read "Special Procedures" and make the following relevant insertions and provisions:

### (1) Establishing Procedures for Cases of Juvenile Crime

In light of the characteristics of cases of juvenile crime, it is advised to set forth guidelines, principles, and special procedures for different stages of a juvenile crime case. It is also advised to establish a system for conditional non-prosecution that sets forth that where a juvenile suspected of having violated personal rights, democratic rights, property rights or of having disrupted public order may be sentenced to a term of imprisonment of less than one year and meets the prosecution criteria but shows remorse, the people's prosecutor's office may conditionally exempt the juvenile from prosecution.

In order to better re-integrate juvenile offenders into society, it is further advised to set up a system for the sealing of criminal records that lays down that where a juvenile offender is under the age of 18 at the time of a crime and is sentenced to a term of imprisonment of less than five years, the records of the crime shall be sealed and shall not be disclosed to any organisation or individual, except where they are required by a judicial authority for handling the case or by a relevant organisation that is conducting an inquiry in accordance with the provisions and regulations of the law.

(Draft Amendment Article 95)

### (2) Provisions for Reconciliation Procedures for Special Public Prosecution Cases

The Criminal Procedure Law sets forth provisions for reconciliation in private prosecution cases. According to the opinions collected, in order to reconcile disputes effectively, it is necessary to expand the scope of reconciliation and incorporate certain public prosecution cases in the procedures for reconciliation.

In consideration of the nature of prosecution by the State and the gravity of sentences in public prosecution cases, as well as the need to prevent new forms of injustice, it is appropriate to restrict reconciliation procedures in public prosecution cases to cases of intentional crimes caused by a civil dispute and suspected to constitute a violation of personal, democratic and property rights for which a term of imprisonment of less than three years may be passed, as well as cases of crimes of negligence, except for crimes of malpractice, for which a term of imprisonment of less than seven years may be passed. However, these procedures shall not apply where a suspect or defendant has committed an intentional crime within the past five years.

In cases where the parties reach a reconciliation agreement, public security authorities, people's prosecutor's offices and people's courts may treat the defendant with leniency in accordance with the law.

(Draft Amendment Article 96)

### (3) Provisions on the Procedures for the Confiscation of Illegal Earnings in Cases Where the Suspect or Defendant Has Absconded or Died

In order to strictly respond to crimes of corruption and terrorist activities, to timely freeze and confiscate criminal earnings, and on the basis of China's accession to the United Nations Convention Against Corruption and requirements of anti-terror resolutions, it is advised to insert and set forth that in cases of crimes of corruption and bribery, terrorist activities and other serious crimes where the suspect of the crime or the defendant has absconded and does not appear before court one year after an arrest warrant has been issued, or where the suspect or the defendant is dead and the illegal earnings or other assets of the suspect or the defendant related to the case shall be recovered pursuant to the provisions of the Criminal Law, a people's prosecutor's office may apply to a people's court for confiscation of such illegal earnings. It is also advised to establish specific hearing procedures.

(Draft Amendment Article 97)

### (4) Provisions on Compulsory Medical Treatment Procedures for Mentally Ill Persons Committing a Violent Act

Article 18 of the Criminal Law stipulates that where a mentally ill person is unable to identify or control his or her acts and the lack of such ability poses a threat, and where an expert confirms such threat and lack of ability, the person shall be excluded from criminal liability and his or her family members or guardian be ordained to give special care or medical treatment. Where necessary, the government may impose compulsory medical treatment.

In order to protect public safety and maintain social harmony and order, it is advised to set forth, on the basis of the above stipulation, that where a mentally ill person carries out violent acts that endanger public safety or lead to the death or serious injury of a person, where the mentally ill person is excluded from criminal liability in accordance with the law and he or she may pose a further risk to the public, a people's prosecutor's office shall apply to a people's court for compulsory medical treatment and the people's court may decide to impose such treatment.

It is also advised to set forth procedures for decisions by the people's court, cancellation of compulsory medical treatment and supervision by the people's prosecutor's office.

(Draft Amendment Article 98)

A further issue that needs to be laid out is that, considering the wide scope of the present amendments to the Criminal Procedure Law, the large number of inserted and amended provisions, and the addition of new parts, chapters and sections, it is advised that, after consideration and further amendments by the Standing Committee of the National People's Congress, the Standing Committee request the Plenary Session of the Congress to consider and pass the amendment.

*Translated by Johannis Bayer, freelance interpreter/translator; revised by Li Changshuan, professor, Beijing Foreign Studies University Graduate School of Translation and Interpretation, on behalf of the Danish Institute for Human Rights, September 26, 2011.*