

ADMINISTRATION OF CRIMINAL JUSTICE LAW

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A BILL

FOR

A LAW TO PROVIDE FOR THE ADMINISTRATION OF CRIMINAL JUSTICE IN DELTA STATE AND OTHER MATTERS CONNECTED THEREWITH

BE IT ENACTED by the Delta State House of Assembly as follows:

PART 1

PRELIMINARY

1. This law may be cited as the Administration of Criminal Justice Law, 2016 and shall come into force on the day of 2016. Short title and commencement

2. (1) In this Law, unless the context otherwise requires: Interpretation

“adult” means a person who has attained the age of eighteen years or above;

asylum” includes a lunatic asylum, a mental or other hospital, a prison and any other suitable place of safe custody of person of unsound mind for medical observation;

“charge” means the statement of offence or statement of offences with which a defendant is charged in a trial whether by way of summary trial or trial by way of information before a court;

“Chief Judge” means Chief Judge of High Court of Delta State;

“child” means a person who has not attained the age of eighteen years;

“Committee” means the Administration of Criminal Justice Monitoring Committee established under section 464 of this Law;

“complainant” includes any informant or prosecutor in any case relating to summary trial;

“complaint” means the allegation that any named person has committed an offence made before a court or police officer for the purpose of moving him to issue process under this Law;

“Court” includes the High Courts, the Magistrates’ Court, Area court and any other Court having criminal Jurisdiction in the State

“Currency” means coins, notes and legal tender;

“defendant” means any person against whom a complaint, charge or information is made;

“district” means a district into which a State is divided for the purposes of any Law under which a Magistrate’s court is established;

“division” means a judicial division of the High Court of the State within the meaning of the High Court Law;

“Federation” means the Federal Republic of Nigeria;

“Federal law” means any Act enacted by the National Assembly having effect with respect to the Federation or any part thereof and any Act enacted prior to 1st October, 1960, which under the Constitution of the Federal Republic of Nigeria has effect with respect to the Federation or any part thereof;

felony means an offence on conviction for which a person can, without proof of his having been previously convicted of an offence, be sentenced to death or to imprisonment for three years or more, or which is declared by law to be a felony;

“fine” includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under this Law;

“functions” includes powers and duties;

“future enactment” means any enactment passed after the commencement of this Law;

“guardian” in relation to a child or young person means the parent or other person having lawful custody of such child or young person, and includes any person who, in the opinion of the court having cognizance of any case in which such child or young person is concerned, has for the time being the custody, control over, or charge of such child or young person;

“High Court” means the High Court of Delta State;

“indictable offence” means an offence which on conviction may be punished by:

(a) a term of imprisonment exceeding two years; or

(b) of a fine exceeding forty thousand naira not being an offence declared by the law creating it to be punishable on summary conviction;

“indictment” means the filing of an information against a person in the High Court;

“infant” means a person who has not attained the age of seven years;

“Judge” means a Judge of the High Court of Delta State;

“Justice of the Peace” means a person appointed to be a Justice of the Peace under the Magistrates’ Court Law;

“Juvenile offender” means an offender who has not attained the age of seventeen years;

“law officer” has the meaning assigned thereto in the Criminal Code Law;

“Law of Delta State” means a Law enacted by the House of Assembly of Delta State or having the effect as if it were a law enacted by the House of Assembly of Delta State, and includes any order, regulation, rule of court or proclamation made under the authority of such law;

“legal guardian” in relation to an infant, child, young person, or juvenile offender, means a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction;

“Magistrate” means a Magistrate (or other such officer performing like functions) appointed in accordance with the law of Delta State ;

“Magistrates’ Court” means Magistrates’ Court established under the law of Delta State;

“medical officer” means a medical doctor attached to an asylum or a medical doctor from whom a court requires an opinion;

“misdemeanor” is an offence punishable by imprisonment for not less than six months, but less than three years or which is declared by law to be a misdemeanor;

“member” means a member of the Committee and includes the Chairman;

“offence” means an offence against the Laws of the Delta State;

“officer in charge” includes, the officer in charge of a police station or the officer in charge of a unit in any other law enforcement agency or other officer who acts in the absence of the officer in charge;

“open court” means a room or place in which a court sits to hear and determine matters within its jurisdiction and to which room or place the public may have access so far as the room or space can conveniently contain them;

“order” includes any conviction in respect of a summary conviction offence;

“penalty” includes any pecuniary fine, forfeiture, costs, or compensation recoverable or payable under an order;

“place of safety” includes a suitable place, the occupier of which is willing temporarily to receive an infant, child, or young person;

“Plea bargain” means the process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case; including the plea of the defendant to a lesser offence than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than that for the higher charge subject to the Court’s approval;

“Police” has the same meaning as in the Police Act;

“police officer” includes any member of the Nigeria Police Force established by the Police Act or where the context so admits, shall include any officer of any law enforcement Agency established by an Act of the National Assembly;

“prescribed” means as provided by rules made under the authority of this Law;

“President” means the President of Area Customary Court;

“private prosecutor” includes a private legal practitioner or a person prosecuting on behalf of the State;

“reasonable time” is as defined in the Constitution of the Federal Republic of Nigeria for the time being in force;

“Registrar” includes the Chief Registrar and a Registrar of a court;

“rules” or “the rules” means rules of court relating to the practice and procedure of the High Court or of the Magistrates’ courts in the exercise of their criminal jurisdiction;

“sentenced to imprisonment” shall include cases where imprisonments imposed by a court on any person either with or without the option of a fine, or in respect of the non-payment of any sum of money, or for failing to do or abstaining from doing any act or thing required to be done or left undone, and the expression “sentence of imprisonment” shall be construed accordingly;

“sheriff” means a sheriff within the meaning of the Sheriffs and Civil Process Law and includes a deputy sheriff and any person authorised by the sheriff or a deputy sheriff to execute process of a court;

“summary conviction offence” means an offence punishable by a high court or a Magistrates’ court on summary conviction and includes any matter in respect of which a high court or a Magistrates’ court can make an order in the exercise of its summary jurisdiction;

“summary court” means unless the same is expressly or by necessary implications qualified:

- a) A Judge of the High Court when sitting in court and presiding over a summary trial, and
- b) A Magistrate or president when sitting in court to hear and determine any matters within his power and jurisdiction either under the provisions of this Law or any other written law, and the Judge when so sitting and presiding, and the Magistrate when so sitting, shall be deemed to be a “court”;

“summary trial” means any trial by a Magistrate or an Area Customary

Court or a trial by a High Court commenced without filing an information;

“Superintendent of Prison” has the same meaning as in the Prisons Act;

“superior police officer” has the same meaning as in the Police Act;

“suspect” means a person who has been arrested on the suspicion of committing any offence, and who is yet to be formally charged for that offence;

“State” means Delta State of Nigeria;

- (2) *Unless the context otherwise requires, all words and expressions used in this Law and defined in the Criminal Code shall have the meanings attributed to them by the Code.*

PART 2 - ARREST, BAIL AND PREVENTIVE JUSTICE

- | | | |
|----|---|--|
| 3. | Except as otherwise provided by this law, a suspect or a defendant alleged or charged with committing an offence established by the Law of the State shall be investigated, arrested, inquired into, tried or dealt with according to the provisions of this Law. | Arrest Generally |
| 4. | In making an arrest, the police officer or other persons making the arrest shall actually touch or confine the body of the suspect, unless there is a submission to the custody by word or action. | Arrest, how made |
| 5. | A suspect or defendant may not be handcuffed or bound be subjected to restraint except:
(a) there is reasonable apprehension of violence or an attempt to escape;
(b) the restraint is considered necessary for the safety of the suspect or defendant; or
(c) by order of a court. | No unnecessary restraint. |
| 6. | (1) Except when the suspect is in the actual course of the commission of the offence or is pursued immediately after the commission of an offence or has escaped from lawful custody, the Police officer or other persons making the arrest shall inform the suspect immediately of the reason for the arrest.

(2) The police officer or the person making the arrest or the police officer in charge of a police station shall inform the suspect of his rights (and shall have the | Notification of cause of arrest and rights of suspect. |

responsibility of affording him an opportunity to exercise his rights) to:

- (a) remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice;
- (b) consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest;
- (c) free legal representation by the Legal Aid Council of Nigeria where applicable.

Provided that the authority having custody of the suspect shall afford him an opportunity to make a phone call to anybody of his choice or have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect within 24 hours of arrest.

7. A person shall not be arrested in place of a suspect.

Arrest in lieu prohibited.

8. (1) A suspect shall –
- (a) be accorded humane treatment, having regard to his right to the dignity of his person;
 - (b) not be subjected to any form of torture, cruelty, inhuman or degrading treatment.
- (2) A suspect shall not be arrested merely on a civil wrong or breach of contract.
- (3) A suspect shall be brought before the court as prescribed by this Law or any other law or otherwise released conditionally or unconditionally.
- (4) The arraignment and trial of a suspect for a crime shall be in accordance with the provisions of this Law unless otherwise stated in this Law.

Humane treatment of arrested suspect.

9. (1) Where a suspect is arrested by a police officer or a private person, the officer making the arrest or to whom the private person hands over the suspect:
- a) may search the suspect, using such force as may be reasonably necessary for the purpose; and
 - b) shall place in safe custody all articles other than necessary wearing apparel found on the suspect.
- (2) Where an arrested suspect is admitted to bail and bail is furnished, he shall not, subject to the provisions of section 11 of this Law, be searched unless there are reasonable

Search of arrested suspect.

grounds for believing that he has on his person, any:

- (a) stolen articles;
- (b) instruments of violence or poisonous substance;
- (c) tools connected with the kind of offence which he is alleged to have committed; or
- (d) other articles which may furnish evidence against him in regard to the offence, which he is alleged to have committed.

(3) Where it is necessary to search a suspect, the search shall be made decently and by a person of the same sex unless the urgency of the situation or the interest of due administration of justice makes it impracticable for the search to be carried out by a person of the same sex.

(4) Notwithstanding the provisions of this section, a police officer or any other person making an arrest may in any case take from the suspect any instruments of violence or poisonous substance which he has on his person.

- 10.** (1) A police officer making an arrest or to whom a private Person hands over the suspect, shall immediately record information about the arrested suspect and an inventory of all items or properties recovered from the suspect.
- (2) An inventory recorded under subsection (1) of this section shall be duly signed by the police officer and the arrested suspect, provided that the failure of the arrested suspect to sign the inventory shall not invalidate it.
- (3) The arrested suspect, his legal practitioner, or such other person as the arrested suspect may direct, shall be given a copy of the inventory.
- (4) Where any property has been taken under this section from a suspect, a police officer may upon request by either the owner of the property or parties having interest in the property release such property on bond pending the arraignment of the suspect before a Court.
- (5) Where a police officer refuses to release the property to the owner or any person having interest in the property under subsection (4) of this Section, the police officer shall make a report to the court of the fact of the property taken from the arrested suspect and the particulars of the property.

*Inventory of
property of
arrested suspect*

- (6) The court to which a report is made under subsection (5) of this Section, may if of the opinion that the property or any portion of it can be returned in the interest of justice to the safe custody of the owner or person having interest in the property, direct that the property or any portion of it be returned to the owner or to such person(s) having interest in the property.
- (7) Where any property has been taken from a suspect under this section, and the suspect is not charged before a court but is released on the ground that there is no sufficient reason to believe that he has committed an offence, any property so taken from the suspect shall be returned to him, provided the property is neither connected to nor a proceed of offence.
- (8) Notwithstanding anything to the contrary in this section, any owner or any person having interest in the property that a police officer under subsection (5) has refused to release may apply to any court having jurisdiction for the release of such property

11. Where a suspect is in lawful custody on a charge of committing an offence of such a nature and alleged to have been committed in such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence, a qualified medical practitioner or any certified professional with relevant skills, acting at the request of a police officer may make such an examination of the suspect in custody as is reasonably necessary in order to ascertain the facts which may afford the evidence, and to use such force as is reasonably necessary for that purpose.

Examination of arrested suspect.

12. (1) Where a person or police officer acting under a warrant of arrest or otherwise having authority to arrest, has reason to believe that the suspect to be arrested has entered into or is within any house or place, the person residing in or being in charge of the house or place shall, on demand by the police officer or person acting for the police officer, allow him free access to the house or place and afford all reasonable facilities to search the house or place for the suspect sought to be arrested.

Search of place entered by the suspect sought to be arrested

(2) Where access to a house or place cannot be obtained under subsection (1) of this section, the person or police officer may enter the house or place and search it for the suspect to be arrested, and in order to effect an entrance into the house or place, may break open any outer or inner door or window of any house or place, whether that of the suspect to be arrested or of any other person or otherwise effect entry into such house or place, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise

obtain admittance.

(3) Where the suspect to be arrested enters a house or place in the actual occupancy of another person being a woman who by custom or religious practice does not appear in public, the person making the arrest shall:

(a) before entering the house or place, give notice to the woman that she is at liberty to withdraw; and

(b) afford her every reasonable opportunity and facility for withdrawing, and may then enter the house or place, but the notice shall not be necessary where the person making the arrest is a woman.

13. A police officer or any other person authorized to make an arrest may break out of a house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained in the house or place.

Power to break out of any house for purpose of liberation

14. (1) A suspect who is arrested, whether with or without a warrant, shall taken immediately to a police station, or other lawful place for reception of suspects and shall be promptly informed of the allegation against him in the language he understands.

Arrested suspected to be taken immediately to police station

(2) A person who has the custody of an arrested suspect shall give the suspect reasonable facilities for obtaining legal advice, access to communication for taking steps to furnish bail, and otherwise making arrangements for his defence or release.

(3) Notwithstanding the provision of subsection (2) of this Section, any such communication or legal advice shall be done in the presence of an officer who has custody of the arrested suspect; provided such officer shall maintain a distance of 5 meters from the suspect and his lawyer

15. (1) Where a suspect is arrested, whether with or without a warrant, and taken to a police station or any other agency effecting the arrest, the police officer making the arrest or the officer in charge shall cause to be taken immediately, in the prescribed form, the following record of the suspect arrested:

Recording of arrests.

(a) the alleged offence(s);

(b) the date and circumstances of his arrest;

(c) his full name, occupation and residential address; and

(d) for the purpose of identification;

(i) his height;

(ii) his photograph;

- (iii) his full fingerprint impressions; or
- (iv) such other means of his identification.

(2) The process of recording in subsection (1) of this section shall be concluded within a reasonable time of the arrest of the suspect, but not exceeding forty-eight hours.

(3) Any further action in respect of the suspect arrested pursuant to subsection (1) of this section shall be entered in the record of arrests.

(4) Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means:

Provided that in the absence of video facility such statement shall be made in writing in the presence of any person of his choice.

(5) Notwithstanding the provision of subsection (4) of this Section, an oral confession of arrested suspect shall be admissible in evidence.

16. (1) There shall be established at the Nigeria Police Force Delta State Command, a Criminal Records Registry.

*Criminal
Records Registry*

(2) (a) Where the person arrested is charged and tried, the Registrar of the court where the offence is tried shall upon conclusion of the trial forward to the appropriate Police Division the judgment of the court within fourteen days. It shall be the duty of the Divisional Police Officer to transmit same to the State Criminal Records Registry immediately upon receipt.

(b) The State Criminal Records Registry at the State Police Command shall upon receipt of the copy of any judgment transmit same to the Central Criminal Records Registry, Abuja within ten days.

(3)(a). Where there is default by the Registrar to transmit the records referred to in this section within fourteen days after judgment, he shall be liable to appropriate disciplinary measures by the Judicial Service Commission.

(b) In the case of a default by the Divisional Police

Officer to transmit the judgment referred to in this section immediately on receipt thereof, he shall be liable to disciplinary measures by the appropriate authority.

- (4) (a) Any police officer in charge of any police station, or officers in charge of any agency authorized by law to make arrest and take records as provided in section 15 (1) of this Law, shall forward to the Criminal Records Registry at the State Police Command on the first week of every month all records as described in that section taken at that station or agency in the manner provided in the aforementioned section for entry into the Register kept for that purpose: Provided that the person arrested or his legal representative shall have access to all the information in the Register with regard to his arrest or information relevant for his defence.
 - (b) Where there is default by any officer in charge of a police station or official in-charge of any agency authorized to make arrest to comply with the provision of this section, such default shall be treated as a misconduct and shall be dealt with in accordance with the relevant Police Regulation under the Police Act, or pursuant to any other disciplinary procedure prescribed by any provision regulating the conduct of such officer or official of such agency.
 - (c) The Officer in Charge of the Legal Unit or any person acting in that capacity shall make available to the Administration of Criminal Justice Monitoring Committee, upon request, all documents and records in the Criminal Records Registry.
- 17.** (1) Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.
- (2) Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice. Provided that the Legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement except for the purpose of discharging his role as a legal practitioner.
- (3) Where a suspect does not understand or speak or write in the

*Recording of
statement of
suspects*

English language, an interpreter, shall record and read over the statement to the suspect to his understanding and the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement.

(4) The interpreter shall endorse his name, address, occupation, designation, and the language which he interpreted to the suspect and state also that he read the statement to the suspect who appears to understand same before affixing his right thumb impression or signature.

- 18. (1)** A police officer may, without an order of a Court and without a Warrant, arrest a suspect:
- (a) whom he suspects on reasonable grounds of having committed an offence against a law in Nigeria or against the law of any other State, unless the law creating the offence provides that the suspect cannot be arrested without a warrant;
 - (b) who commits any offence in his presence;
 - (c) who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;
 - (d) in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to the thing;
 - (e) whom he suspects on reasonable grounds of being a deserter from any of the armed forces of Nigeria;
 - (f) whom he suspects on reasonable grounds of having been involved in an act committed at a place outside of Nigeria which, if committed in Nigeria, would have been punished as an offence, and for which he is, under a Law in force in Nigeria, liable to be apprehended and detained in Nigeria;
 - (g) having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking, car theft, firearm or any offensive or dangerous weapon;
 - (h) whom he has reasonable cause to believe that a warrant of arrest against that person has been issued by a court of competent jurisdiction in Nigeria;
 - (i) found in Nigeria taking precautions to conceal his presence in circumstances, which afford reason to believe that he is taking such precautions with a view to committing an offence;
 - (j) for whose arrest a warrant has been issued or whom he is directed to arrest by a Judge, Magistrate, Justice of the Peace or superior police officer;
 - (k) whom he reasonably suspects to be designing to commit an

Arrest by police officer without warrant

offence for which the police may arrest without a warrant, if it appears to him that the commission of the offence cannot be otherwise prevented; or

(l) required to appear by a public summons issued under this Law or any Law.

(2) The authority given to a police officer to arrest a suspect who commits an offence in his presence shall be exercisable in respect of offences committed in the officer's presence notwithstanding that the Act creating the offence provides that the suspect cannot be arrested without a warrant.

19. (1) Where a suspect who in the presence of a police officer has committed or has been accused of committing an offence triable summarily, refuses on demand of the officer to give his name and residential address, or gives a name or residential address which the officer has reason to believe to be false, he may be arrested by the officer in order that his name or residential address may be ascertained.

*Refusal to give
name and
residence*

(2) Where the true name and residential address of the suspect have been ascertained he shall be released on his executing a recognisance, with or without sureties, to appear before a Magistrate if so required, but if the person is not resident in the State a surety or sureties resident in the State shall secure the recognisance.

(3) Where the true name and address of the suspect cannot be ascertained within twenty four hours from the time of arrest, or if he fails to execute recognisance, or, where so required, to furnish sufficient sureties, he shall forthwith be brought before the nearest Magistrate having jurisdiction.

(4) Where the suspect on being brought before the court still refuses, the court may deal with him as it will deal with an uncooperative witness under this Law.

20. A private person may arrest a suspect in Nigeria who in his presence commits an offence, or whom he reasonably suspects of having committed an offence for which the police is entitled to arrest without a warrant.

*Arrest by private
persons*

21. A suspect found committing an offence involving injury to property may be arrested without a warrant by the owner of the property or his servants, agent or persons authorized by him.

*Arrest by
owners of
property*

22. A private person may arrest any suspect found damaging public property.

Arrest of suspect doing damage to public property

23. (1) A private person who arrests a suspect without a warrant shall immediately hand over the suspect so arrested to a police officer, or in the absence of a police officer, shall take the suspect to the nearest police station, and the police officer shall make a note of the name, address and other particulars of the private person making the arrest.

Handing over of an arrested suspect by private person

(2) Where there is reason to believe that the arrested suspect comes under the provisions of Section 18 (1) of this Law, a police officer shall re-arrest him.

(3) Where there is reason to believe that the suspect has committed an offence, and he refuses on the demand of a police officer to give his name and address, or gives a name or address which the officer has reason to believe to be false, he shall be dealt with under the provisions of Section 19 of this Law.

(4) Where a suspect so arrested by a private person is handed over to a police officer or to an official of an agency authorized by law to make arrests, the police officer or official shall take note of the name, residential address and other particulars of the private person making the arrest, and the date, time and other circumstances of the arrest, and where the arrested suspect is taken to the police station or to the agency, the charge room officer shall make the entries in the crime diary.

(5) The police officer or official to whom the arrested suspect is handed over by the private person shall obtain from the private person who made the arrest a formal witness statement setting out the facts and circumstances of the arrest.

(6) Where there is sufficient reason to believe that the suspect handed over has committed an offence he shall immediately be re-arrested but if there is no sufficient reason to believe that the suspect has committed an offence, he shall be released immediately.

(7) The provisions of Section 15 of this Law do not apply to this section unless the suspect arrested and handed over has been re-arrested in accordance with sub section (2) of this Section.

- 24.** Where a private person makes an arrest in accordance with sections 21, 22 and 23 of this law, it shall not be lawful for him to subject the suspect to any form of physical abuse, inhuman or degrading treatment; provided that the private person may use reasonable force in defending himself *Prohibition of inhumane treatment of suspect by private person.*
- 25.** Where an offence is committed in the presence of a Judge or Magistrate within the division or district in which the Judge is sitting or to which the Magistrate is assigned, the Judge or Magistrate may himself arrest or order a person to arrest the suspect and may thereupon, subject to the provisions contained in this Law as to bail, commit the suspect to custody. *Offence committed in presence of Judge or Magistrate*
- 26.** (1) A Magistrate may arrest or direct the arrest in his presence of a suspect whose arrest on a warrant he could have lawfully ordered if the facts known to him at the time of making or directing the arrest had been stated before him on oath by some other person. *Arrest by Magistrate*
- (2) Where a suspect is arrested in accordance with the provisions of either Section 23 or 25 of this Law, the Judge or Magistrate making or directing the making of such arrest may deal with the suspect so arrested in the same manner as if the suspect had been brought before him by or under the directions of any other person.
- 27.** A Judge, Magistrate, or Justice of the Peace may arrest or direct the arrest of a suspect committing an offence in his presence and shall thereupon hand him over to a police officer who shall proceed to take necessary action. *Arrest for offence committed in presence of Judge, Magistrate or Justice of Peace*
- 28.** A person is bound to assist a Judge, Magistrate, Justice of the Peace, police officer or other person reasonably demanding his aid in arresting or preventing the escape of a suspect whom the Judge, Magistrate, Justice of the Peace, police officer or other person is authorized to arrest. *When public is bound to assist in arrest*
- 29.** A person authorized to effect the arrest of any suspect may for the purpose of effecting the arrest pursue him into any part of Nigeria. *Pursuit of suspect into other jurisdiction*

30. (1) The Commissioner of Police in a State and head of every agency authorized by law to make arrest within a State shall remit quarterly to the Attorney-General of that State a record of all arrests made with or without warrant in relation to State offences or arrests within the State.

*Quarterly report
of arrests to the
Attorney-
General*

(2) The report shall contain the full particulars of arrested suspects as prescribed by section 15 of this Law.

(3) A Register of arrests containing the particulars prescribed in section 15 of this Law shall be kept in the prescribed form at every police station or agency authorized by law to make arrests, and every arrest, whether made with or without warrant, within the local limits of the police station or agency, or within Delta State, shall be entered accordingly by the officer in charge of the police station or official in charge of the agency as soon as the arrested suspect is brought to the station or agency.

(4) The Attorney-General of the State shall establish an electronic and manual database of all records of arrests at the State and Federal level.

31. (1) Where a suspect has been taken into police custody without a warrant for an offence, other than an offence punishable with death, an officer in charge of a police station shall inquire into the case and release the suspect arrested on bail subject to subsection (2) of this section, and if it will not be practicable to bring the suspect before a court having jurisdiction with respect to the offence alleged, within twenty-four hours after the arrest.

*Release on bail
of suspect
arrested
without warrant*

(2) The officer in charge of a police station shall release the suspect on bail on his entering into a recognisance with or without sureties for a reasonable amount of money to appear before the court or at the police station at the time and place named in the recognisance.

(3) Where a suspect is taken into custody and it appears to the police officer in charge of the station that the offence is of a capital nature, the arrested suspect shall be detained in custody, and the police officer shall refer the matter to the Attorney-General of the State for legal advice and cause the suspect to be taken

before a court having jurisdiction with respect to the offence within a reasonable time.

- 32.** (1) Where a suspect is taken into custody, and it appears to the officer that the inquiry into the case cannot be completed forthwith, he may discharge the suspect on his entering into a recognisance, with or without sureties for a reasonable amount, to appear at the police station and at such times as are named in the recognisance, unless he previously receives notice in writing from the police officer in charge of that police station that his attendance is not required. *Power to release on bail before charge is accepted*
- (2) A recognisance under subsection (1) of this section may be enforced as if it were a recognisance conditional for the appearance of the said suspect before a Magistrate's Court or the place in which the police station named in the recognisance is situate.
- 33.** (1) Where a suspect taken into custody in respect of a non-capital offence is not released on bail after twenty four hours, a Court having jurisdiction with respect to the offence may be notified by application on behalf of the suspect. *Remedy of suspect detained in custody*
- (2) The court shall order the production of the suspect detained and inquire into the circumstances constituting the grounds of the detention and where he deems fit, admit the suspect detained to bail.
- (3) An application for bail under this section may be made orally or in writing.
- 34.**(1) An officer in charge of a police station or an official in charge of an agency authorized to make arrest shall on the last working day of every month report to the nearest Magistrate the cases of all suspects arrested without warrant within the limits of their respective stations or agency whether the suspects have been admitted to bail or not. *Police to report to supervising magistrate*
- (2) The report shall contain the particulars of the suspects arrested as prescribed in Section 15 of this Law.
- (3) The Magistrate shall on receipt of the reports, forward them to the Criminal Justice Monitoring Committee which shall analyze the reports and advice the Attorney-General of the

State as to the trends of arrests, bail and related matters.

(4) The Attorney-General of the State shall upon request by the National Human Rights Commission, the Legal Aid Council of Nigeria or a Non-Governmental Organization make the report available to them.

(5) Where no report is made in accordance with sub-section (1) of this section the Magistrate shall forward a report to the Chief Judge of the State and the Attorney-General of the State for appropriate remedial action.

(6) All officers of the Delta State Transport Management Authority shall remit to the office of the Attorney-General of the State a record of:

- (a) all arrest made in relation to the State traffic offences not later than one week after the arrest;
- (b) any person arrested for traffic offence who elects to waive his right to court trial by paying the fine stipulated for the offence not later than one week after the payment of the fine; or
- (c) any persons convicted under the State traffic Laws not later than one week after conviction.

35. (1) The Chief Magistrate, or where there is no Chief Magistrate within the police division, any Magistrate designated by the Chief Judge for that purpose, shall, at least once every month, conduct an inspection of police stations or other places of detention within his territorial jurisdiction other than the prison.

*Chief
Magistrate to
visit police
station every
month*

(2) During a visit, Magistrate may:

- (a) call for, and inspect the record of arrests;
- (b) direct the arraignment of the suspect;
- (c) where bail has been refused, grant bail to any suspect where appropriate if the offence for which the suspect is held is within the jurisdiction of the Magistrate.

(3) An officer in charge of a police station or official in charge of an agency authorized to make arrest shall make available to the visiting Chief Magistrate or designated Magistrate exercising his powers under subsection (1) of this section:

- (a) the full record of arrest and record of bail;
- (b) applications and decisions on bail made within the period; and
- (c) any other facilities the Magistrate requires to exercise his

powers under that subsection.

- (4) With respect to other Federal Government agencies authorized to make arrests, the High Court having jurisdiction shall visit such detention facilities for the purpose provided in this section.
- (5) Where there is default by an officer in charge of a police station or official in-charge of an agency authorized to make arrest to comply with the provisions of subsection (3) of this section, the default shall be treated as a misconduct and shall be dealt with in accordance with the relevant Police Regulation under the Police, or pursuant to any other disciplinary procedure prescribed by any provision regulating the conduct of the officer or official of the agency.

PART 3 – WARRANTS

*General
authority to
issue warrant*

- 36.** Where under a Law, there is power to arrest a suspect without warrant a warrant for his arrest may be issued.

- 37.** (1) A warrant of arrest issued under this Law or, unless the contrary is expressly provided under any other law, shall:
- (a) bear the date of the day of issue;
 - (b) contain all necessary particulars;
 - (c) be signed by the Judge or Magistrate by whom it is issued.

*Form and
requisites of
warrant of
arrest*

- (2) A warrant shall state concisely the offence or matter for which it is issued and shall name or otherwise describe the suspect to be arrested, and it shall order the police officer or officers to whom it is directed to arrest the suspect and bring him before the court to answer the complaint or statement, or to testify or otherwise be dealt with according to the circumstances of the case, and to be further dealt with according to Law.

- 38.** A warrant of arrest shall not be issued in the first instance in respect of any complaint or statement unless the complaint or statement is on oath either by the complainant himself or by a material witness.

*Warrant issue
on complainant
only if on oath*

- 39.** A warrant of arrest may be issued on any day, including a Sunday or public holiday.

*Warrant maybe
issued on any
day*

- 40.** (1) A warrant of arrest may be directed to a police officer by name or to all police officers.

*Warrant, to
whom directed
and duration*

- (2) It is not necessary to make a warrant of arrest returnable at any particular time and a warrant shall remain in force until it is executed or until a Judge or a Magistrate, as the case may be, cancels it.
- (3) Where a warrant of arrest has been executed and the suspect arrested has been released the warrant shall no longer be valid authority for re-arresting the suspect.
- 41.** (1) A court issuing a warrant of arrest may, if its immediate execution is necessary and no police officer is immediately available, direct it to some other person or persons and the person or persons shall execute the same. *Warrant of arrest may in exceptional cases be directed to other person*
- (2) A person, when executing a warrant of arrest directed to him, shall have all the powers, rights, privileges and protection given to or afforded by law to a police officer executing a warrant of arrest and shall conform with the requirement placed by law on a police officer.
- 42.** Where a Court has reason to believe, whether after evidence or not, that a suspect, against whom a warrant of arrest has been issued by itself or by any court or Justice of the Peace, has absconded or is concealing himself so that the warrant cannot be executed, the court may publish a public summons in writing requiring that person to appear at a specific place and a specific time not less than thirty days from the date of publishing the public summons. *Public summons for person absconding*
- 43.** (1) A public summons shall be published in any of the following ways- *Publication of public summons*
- (a) in a newspaper that enjoys wide circulation or circulated in any other medium as may be appropriate;
 - (b) by affixing it to some conspicuous part of the house or premises or to some conspicuous place in the town or village, in which the person ordinarily resides; or
 - (c) by affixing a copy to some conspicuous part of the High Court or Magistrate's Court building.
- (2) A statement in writing from the Judge of the High Court or a Magistrate to the effect that the public summons was duly published on a specified day shall be conclusive evidence that requirements of this section have been complied with and that the public summons was published on such day.
- 44.** (1) A warrant of arrest may be executed on any day, *Execution of warrant and*

including a Sunday or public holiday.

procedure

(2) A warrant of arrest may be executed by any police officer at any time and in any place in any State other than within the actual court room in which a court is sitting.

(3) The Police officer executing a warrant of arrest shall, before making the arrest, inform the suspect to be arrested that there is a warrant for his arrest unless there is reasonable cause for abstaining from giving the information on the ground that it is likely to occasion escape, resistance, or rescue.

(4) A suspect arrested on a warrant of arrest shall, subject to the provisions of the Constitution of the Federal Republic of Nigeria, sections 45 and 46 of this Law be brought before the court that issued the warrant of arrest.

45. A warrant of arrest may be executed notwithstanding that it is not in the possession at the time of the person executing the warrant but the warrant shall, on the demand of the suspect, be shown to him as soon as practicable after his arrest.

Power to arrest on warrant without the warrant

46. (1) A Court, on issuing a warrant for the arrest of a suspect in respect of a matter other than an offence punishable with death, may, if it thinks fit by endorsement on the warrant, direct that the suspect named in the warrant be released on bail on his entering into such a recognisance for his appearance as may be required in the endorsement.

Court may direct particulars of security to be taken on execution of warrant

(2) The endorsement shall specify:

- (a) the number of sureties, if any;
- (b) the amount in which they and the suspect named in the warrant are, respectively, to be bound; or are to provide as cash security;
- (c) the court before which the arrested suspect is to attend; and
- (d) the time at which the suspect is to attend, including an undertaking to appear at a subsequent time as may be directed by any court before which he may appear.

(3) Where an endorsement is made, the officer in charge of a police station to which on arrest the suspect named in the warrant is brought, shall discharge him on his entering into a recognisance, with or without sureties approved by that officer, in accordance with the endorsement and the fulfillment of the conditions for his appearance before the Court and at the time

and place named in the recognisance.

- (4) Where security is taken under this section the officer who takes the recognisance shall cause it to be forwarded to the court before which the suspect named in the recognisance is bound to appear.
- (5) Subject to the provisions of section 47 of this Law, the provisions of subsections (3) and (4) of this section shall not have effect with respect to a warrant executed outside the State.

- 47.** (1) Where a warrant of arrest is executed in a State outside the division or district of the Court by which it was issued, the suspect shall, unless security is taken under Section 46 of this Law, be taken before the court within the division or district in which the arrest was made.

Procedure on arrest of suspect outside division or district of court issuing warrant

- (2) The court shall if the suspect, on such inquiry as the court considers necessary, appears to be the suspect intended to be arrested by the court which issued the warrant, direct his removal in custody to that court, but if the suspect has been arrested in respect of any matter other than an offence punishable with death, and:
 - (a) is ready and willing to give bail to the satisfaction of
 - (b) the court within the division or district of which he was arrested; or
 - (b) where a direction had been endorsed under Section 46 of this Law on the warrant and the suspect is ready and willing to give the security required by the direction, the court shall take bail or security, as the case may be, and shall forward the recognisance, if such be entered into, to the court, which issued the warrant.
- (3) Nothing in this section is deemed to prevent a police officer from taking security under Section 46 of this Law.

- 48.** (1) A Warrant of arrest issued by Delta State High Court sitting in any part of the State
- (2) A Warrant issued under this section may be executed in accordance with Section 44 of this Law.

Warrant issued by the State High court

- 49.** Where a suspect in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued or any other person may pursue and re-arrest him in any place in Nigeria.

Re-arrest of suspect escaping

50. The provisions of Sections 12 and 13 of this Law shall apply to arrests under Section 49 of this Law, although the person making any such arrest is not acting under a warrant and is not police officer having authority to arrest.

Provisions of sections 12 and 13 to apply to arrests under section 48.

PART 4 - PREVENTION OF OFFENCES AND SECURITY FOR GOOD BEHAVIOUR

51. (1) A police officer may intervene for the purpose of preventing, and shall to the best of his ability, prevent the commission of an offence.

Police to prevent offences and injury to public property

(2) A police officer may of his authority interpose to prevent an injury attempted to be committed in his presence to any public property, whether movable or immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation.

52. A police officer receiving information of a design to commit any offence shall communicate the information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of the offence.

Information of design to commit offences

53. Notwithstanding the provisions of this Law or any other law relating to arrest, a police officer upon a reasonable suspicion of a design to commit an offence may arrest, without orders from a Magistrate and without a warrant, the suspect so designing, if it appears to the officer that the commission of the offence cannot otherwise be prevented.

Arrest by police to prevent offence

54. (1) A Judge, Magistrate, or any other public officer charged with responsibility for maintaining law and order may intervene for the purpose of preventing and shall to the best of his ability prevent the commission of an offence, for which he is authorized to arrest without a warrant, or any damage to any public property movable or immovable.

Prevention by other public officers of offences and injury to public property

(2) A person is bound to assist a Judge or Magistrate or police officer or any other public officer reasonably demanding his aid:
(a) in preventing, and shall to the best of his ability prevent the omission of an offence for which he is authorized to arrest without a warrant or any damage to any public property movable or immovable;

- (b) in the suppression of a breach of the peace or in the prevention of any damage to any property, movable or immovable or to any railway, canal, water supply, telecommunication system, oil pipelines or oil installations, or electrical installation; or
- (c) in the prevention of the removal of any public landmark, buoy or other mark used for navigation.

55. (1) Where a Magistrate is informed on oath that a suspect is likely to:

(a) commit a breach of the peace or disturb the public tranquillity; or

(b) do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the Magistrate may in the manner provided in this Part, require the suspect to show cause why he should not be ordered to enter into a recognisance, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

Power of Magistrate to require execution of recognisance for keeping peace

(2) Proceeding shall not be taken under this section unless the suspect:

(a) is the State and

(b) subject of the information under subsection (1) of this section within the jurisdiction of the Magistrate, or the place where the breach of the peace or disturbance has occurred or where the suspect is within the jurisdiction of the Magistrate.

56. Where a Magistrate is informed on oath that:

(a) a suspect is taking precautions to conceal his presence within the local limits of the Magistrate's jurisdiction; and

(b) there is reason to believe that the suspect is taking the precautions with a view to committing an offence, the Magistrate may, in the manner provided in this Part, require the suspect to show cause why he should not be ordered to enter into a recognisance, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

Security for good behavior for suspected persons

57. Where a Magistrate is informed on oath that a suspect within the local limits of his jurisdiction:

(a) is by habit an armed robber, a housebreaker, or a thief;

(b) is by habit a rapist, defiler given to violence or domestic violence

(c) is by habit a receiver of stolen property, knowing the same to have been stolen;

Security for good behavior for habitual offender

- (d) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or
- (e) habitually commits or attempts to commit, or aids or abets the commission of any offences relating to property.
- (f) habitually commits or attempts to commit, or aids or abets in the commission of, offence involving a breach of the peace; or
- (g) is so desperate or dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in manner provided in this Law, require such suspect to show cause why he should not be ordered to enter into a recognisance, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

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| <p>58. Where a Magistrate acting under Sections 55, 56 or 59 of this Law considers it necessary to require a suspect to show cause under the section, he shall make an order in writing setting out:</p> <ul style="list-style-type: none"> (a) the substance of the information received; (b) the amount of the recognisance to be executed; (c) the term for which it is to be in force; and (d) the number, character, and class of sureties, if any, required. | <p><i>Order to be made</i></p> |
| <p>59. Where the suspect in respect of whom an order is made is present in court, it shall be read over to him or, if he so desires, the substance of the information shall be explained to him.</p> | <p><i>Procedure in respect of suspect present in court</i></p> |
| <p>60. (1) Where the suspect is not present in court, the Magistrate shall issue a summons requiring him to appear, or, where the suspect is in custody, a warrant directing the officer in whose custody he is to bring him before the Court.</p> <p>(2) Where it appears to the Magistrate, on the report of a police officer or on other information, the substance of which report or information shall be recorded by the Magistrate, that there is reason to fear the commission of a breach of the peace, and that the breach of the peace cannot be prevented otherwise than by the immediate arrest of the suspect, the Magistrate may at any time issue a warrant for his arrest.</p> | <p><i>Summon or warrant in case of suspect not present</i></p> |
| <p>61. A summons or warrant of arrest issued under Section 60 of this Law shall be accompanied by a copy of the order made under Section 58 of this Law, and the copy shall be delivered by the officer serving or executing the summons or warrant to the suspect served with or arrested under it.</p> | <p><i>Copy of order under section 60 to accompany summons or warrant</i></p> |
| <p>62. The Magistrate may, where he sees sufficient cause, dispense with the personal attendance of a suspect called on to show cause</p> | <p><i>Power to dispense with</i></p> |

why he should not be ordered to enter into a recognisance for keeping the peace, and may permit him to appear by a legal practitioner.

*personal
attendance*

- 63.** (1) Where an order under section 58 of this Law has been read or explained under Section 59 of this Law to a suspect in Court, or where the suspect appears or is brought before a Magistrate in compliance with or in execution of a summons or warrant issued under Section 60 of this Law, the Magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.
- (2) The inquiry shall be made, as nearly as may be practicable, in the manner prescribed in this section for conducting trials, and recording evidence, except that the standard of proof shall be that of preponderance of evidence.
- (3) Pending the completion of the inquiry under subsection (1) of this section, the Magistrate, if he considers that immediate measures are necessary for the prevention of:
- (a) a breach of the peace or disturbance of the public tranquility; or
 - (b) the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the suspect in respect of whom the order under Section 58 of this Law has been made, to enter into a recognisance, with or without sureties, for keeping the peace or maintaining good behavior until the conclusion of the inquiry, and may detain the suspect in custody until the recognisance is entered into or, in default of execution, until the inquiry is concluded.
- (4) For the purposes of subsection (3) of this section:
- (a) a suspect against whom proceeding are not being taken under section 55 of this Law shall not be directed to enter into a recognisance for maintaining good behaviour;
 - (b) the conditions of the recognisance, whether as to the amount or as to the provisions of sureties or the number of sureties or the pecuniary extent of their liability shall not be more onerous than those specified in the order under Section 59 of this Law; and
 - (c) a suspect shall not be remanded in custody under the powers conferred by this section for a period exceeding fifteen days at a time.

*Inquiry as to
truth of
information*

(5) For the purposes of this section, the fact that a suspect comes within the provisions of Section 56 of this Law may be proved by evidence of general repute or otherwise.

(6) Where two or more suspects have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate thinks fit.

64. (1) Where on an inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the suspect in respect of whom the inquiry is made should enter into a recognisance, with or without sureties, the Magistrate shall make an order accordingly, but:
- (a) a suspect shall not be ordered to give security of a nature different from or of an amount larger than or for a period longer than that specified in the order made under Section 58 of this Law;
 - (b) the amount of a recognisance shall be fixed with due regard to the circumstances of the case and shall not be excessive; and
 - (c) where the suspect in respect of whom the inquiry is made is a child, the recognisance shall be entered into as provided in Section 166 of this Law or relevant provision of the Child's Right Law.
- (2) A suspect ordered to give security for good behaviour under this section may appeal to the High Court.

Order to give security

65. Where on an inquiry under section 63 of this Law it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the suspect in respect of whom the inquiry is made should enter into a recognisance, the Magistrate shall make an entry on the record to that effect, and, shall, if the suspect:
- (a) is in custody only for the purpose of the inquiry, release him; or
 - (b) is not in custody, discharge him.

Discharge of suspect informed against

PART 5 - PROCEEDING IN ALL CASES SUBSEQUENT TO ORDER TO FURNISH SECURITY

66. (1) Where a suspect in respect of whom an order requiring security is made under Section 58 of this Law is, at the time the order is made, sentenced to or undergoing a sentence of imprisonment, the period for which the security is required shall commence on the expiration of the sentence.

Commencement of period for which security is required

(2) In other cases, the period shall commence on the date of the order unless the Court, for sufficient reason, fixes a later date.

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| <p>67. The recognisance to be entered into by a suspect under Section 58 of this Law, shall bind him to keep the peace or be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling, or procuring the commission, anywhere within Nigeria, of an offence punishable with imprisonment, wherever it may be committed, any time during the continuance of the recognisance, shall be a breach of the recognisance.</p> | <p><i>Conditions of recognisance</i></p> |
| <p>68. A Court may refuse to accept a surety offered under any of the preceding sections on the ground that, for reasons to be recorded by the Court, the surety is an unfit person but not on ground of gender.</p> | <p><i>Power to reject sureties</i></p> |
| <p>69. (1) Where a suspect ordered to give security does not give the security on or before the date on which the period for which the security is to be given commences, he shall, except in the case mentioned in subsection (2) of this section, be committed to prison until the period expires or until within the period he gives the security to the Court that made the order requiring it.</p> | <p><i>Procedure on failure of suspect to give security</i></p> |
| <p>70. Where a Court is of the opinion that a suspect imprisoned for failing to give security may be released without hazard to the community, the Court may, if he deems fit, order the suspect to be discharged.</p> | <p><i>Power to release suspect imprisoned for failure to give security.</i></p> |
| <p>71. The High Court may at any time, for sufficient reasons to be recorded in writing, cancel any recognisance for keeping the peace or for good behaviour executed under any of the preceding sections by order of any lower Court.</p> | <p><i>Power of High Court to cancel recognisance</i></p> |
| <p>72. (1) A surety for the peaceable conduct or good behaviour of another suspect may at any time apply to a Court to discharge a recognisance executed under any of the preceding sections within the district or division to which the Court is assigned.</p> <p>(2) On an application being made, the Magistrate shall, if satisfied there is good reason for the application, issue such summons or warrant, as he thinks fit, requiring the suspect for whom the surety is bound to appear or to be brought before him.</p> <p>(3) where the suspect appears or is brought before a</p> | <p><i>Discharge of sureties</i></p> |

Magistrate, the Magistrate after hearing the suspect may discharge the recognisance and order the suspect to give, for the unexpired portion of the term of the recognisance, fresh security for the unexpired portion of the same description as the original security.

(4) An order made under subsection (3) of this section shall, for the purposes of Sections 66, 67, 68 and 69 of this Law, be deemed to be an order under Section 58 of this Law.

PART 6 - PUBLIC NUISANCE

- 73.** Where a Court considers, on receiving a police report or other information and on taking such evidence, if any, as it thinks fit, that an offence relating to public nuisance is being committed, the court may make a conditional order requiring the suspect:
- Conditional order for removal of nuisance*
- a) within a time fixed in the order to cease committing the offence and to amend or remove the cause of the nuisance in such manner as is specified in the order; or
 - (b) to appear before the court at a time and place to be fixed by the order and apply to have the order set aside or modified in manner hereinafter provided.
- 74.** (1) An order made under Section 73 of this Law shall if practicable be served on the suspect against whom it is made in the manner provided for the service of a summons.
- Service of order*
- (2) Where an order referred to in subsection (1) cannot be served in the manner laid down in that subsection, it may be served by Registered letter through the post, addressed to the suspect against whom it is made at his last known address or, where his last address is not known, then by affixing a notice in some conspicuous place in the town or village or near which the nuisance or offence is being committed.
- 75.** A suspect against whom an order under Section 73 of this Law is made shall:
- Suspect to whom order is addressed to obey order or to appear*
- (a) perform, within the time and in the manner specified in the order, the act directed by the order; or
 - (b) appear in accordance with the order and apply to have the order set aside or modified.
- 76.** Where a suspect against whom an order under Section 73 of this Law is made does not perform the act specified in the order or appear and apply to have the order set aside or modified, he is liable,
- Consequences of failure to obey order or to appear*

where the act:

- (a) offends public safety, to a fine of one hundred thousand Naira for individual and one million Naira in case of a corporate body or imprisonment for a term of six months; or
- (b) threatens human life, to a fine of two hundred thousand Naira for individual and two million Naira in case of a corporate body or imprisonment for a term of twelve months.

- 77.** (1) Where a suspect against whom an order under Section 73 of this Law is made to appear and applies to have the order set aside or modified, the court shall take evidence in the matter in the same manner as in a summary trial.

*Procedure
where suspect
appears*

(2) Where the court is:

- (a) satisfied that the order, with or without modification, is reasonable and proper, the court shall make it absolute with such modification, if any, as the court thinks fit; and
- (b) not satisfied it shall cancel the order.

- 78.** Where the acts directed by an Order under Section 73 of this Law which is made absolute under Sections 76 or 77(2)(a) of this Law is not performed within the time fixed and in the manner specified in the order, the court may cause it to be performed and may recover the cost of performing it either by:

*Consequence of
disobedience to
order made
absolute*

- (a) the sale of any building, goods or other property removed by its order; or
- (b) seizure and sale of any other movable property of the person against whom the order under Section 73 of this Law was made in manner prescribed in this Law for the recovery of a fine.

- 79.** (1) Where the court making an order under Section 73 of this Law considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, it may issue such further order to the suspect against whom the order was made as is required to obviate or prevent the danger or injury pending the determination of the matter.

*Order of
pending inquiry*

(2) In default of the suspect referred to in subsection (1) of this section immediately disobeying the further order referred to in that subsection or if notice of the order cannot, by the exercise of due diligence, be served on him immediately, the court may use or cause to be used such means as it thinks fit to obviate the danger or to prevent the injury.

80. A court may, in any proceedings under this Part or in any criminal proceedings in respect of a public nuisance, order any suspect not to repeat or continue the public nuisance.

Prohibition of repetition or continuance of nuisance

PART 7 - ATTACHMENT WHERE A PERSON DISOBEYS SUMMONS OR WARRANT

81. A Judge or a Magistrate may at any time after action has been taken under Section 42 of this Law or on an application made in that regard after summons or warrant has been issued but disobeyed, order the attachment of any property, movable or immovable or both, belonging to a suspect the subject of the public summons or warrant.

Attachment of property of suspect absconding

82. (1) An order under Section 81 of this Law shall authorize a public officer named in it to attach any property belonging to a suspect named in the order as the owner of the property within the area of jurisdiction of the Judge or Magistrate by seizure or in any other manner by which for the time being the property may be attached by way of civil process.

Order to attach property

- (2) Where a suspect who is the subject of an order does not appear within the time specified in the public summons, the property under attachment shall be at the disposal of the Court.

- (3) Any property under attachment shall not be sold until the expiration of three months from the date of the attachment unless it is subject to speedy decay or the Judge or Magistrate considers that the sale would be for the benefit of the owner, in either of which cases the Judge or Magistrate may cause it to be sold whenever he thinks fit.

83. (1) Where within three month from the date of the attachment, a suspect, whose property is or has been at the disposal of the Court under Section 81 of this Law, appears voluntarily or being arrested is brought before the Court and proves to its satisfaction that he:
- (a) did not abscond or conceal himself for the purpose of avoiding execution of the warrant; and
 - (b) had no notice of the public summons or warrant as to enable him to attend within the time specified therein, that property, so far as it has not been sold, and the net proceeds of any part of it which has been sold shall, after satisfying from the proceeds all costs incurred in consequence of the attachment, be delivered to him.

Restoration of attached property

- (2) Where after six month from the date of attachment, the suspect whose property is attached or has been at the disposal of the court does not appear voluntarily, the property or the net proceed of its sale shall be forfeited to the State or Federal Government as the case maybe.
- (3) Where the suspectin eventual found not guilty of the accusations against him and his property has already been sold in accordance with subsection (2) above, the proceeds of the sale, after satisfying all cost incurred in consequence of the attachment, shall bedelivered to him.

- 84.** (1) A Court or Justice of the Peace empowered by this Law to issue a summons for the appearance of a suspect may, after recording reasons in writing, issue a warrant for his arrest in addition to or instead of the summons where:
- (a) whether before or after the issuance of the summons, the Court or Justice of the Peace sees reason to believe that the suspect has absconded or will not obey the summons; or
 - (b) at the time fixed for his appearance, the suspect fails to appear and the summons is proved to have been duly served in time to allow for his appearance and no reasonable excuse is offered for his failure to appear.
- (2) A Court or Justice of the Peace empowered by this Law to issue a warrant for the arrest of a suspect may issue a summons in place of a warrant where he thinks fit.

Issue of warrant in lieu of or in addition to summons

- 85.** Where a suspect for whose appearance or arrest a summon or warrant may be issued is present before a court or Justice of the Peace, the court or Justice of the Peace may require him to execute a bond, with or without sureties, for his appearance before a Court.
- 86.** The provisions contained in this Part relating to summonses and warrants and their issue, service and execution shall, so far as may be, apply to every summons and every warrant issued under this Law.

Power to take bond for appearance

Provisions of this chapter generally applicable to summons and warrant

PART 8 - PROVISIONS RELATING TO CRIMINAL TRIALS AND INQUIRIES IN GENERAL

- 87.** The provisions of this Part and Parts 9 to 29 of this Law shall apply to all criminal trials and proceedings unless express provision is made in respect of any particular court or form of trial or proceeding.

Application of part 8

- 88.** A Court has authority to compel the attendance before it of a suspect who is within the jurisdiction and is charged with an offence committed within the State, as the case may be, or which according to law may be dealt with as if the offence had been committed within the jurisdiction and to deal with the suspect according to Law. *General authority to bring suspect before courts*
- 89.** (1) A person may make a complaint against any other person alleged to have committed or to be committing an offence. *Right of making complaint*
- (2) Notwithstanding anything to the contrary contained in any other law, a police officer may make a complaint in a case of assault even though the party aggrieved declines or refuses to make a complaint.
- 90.** (1) It is not necessary that a complaint shall be in writing, unless it is required to be so by the Law on which it is founded, or by some other law, and where a complaint is not made in writing, the Court or Registrar shall reduce it into writing. *Form of complaint*
- (2) Subject to the provisions of Section 38 of this Law a complaint, may unless some law otherwise requires, be made without oath.
- (3) A complaint may be made by the complainant in person, or by a legal practitioner representing him, or by any person authorized in writing in that behalf.
- (4) A complaint shall be for one offence only, but the complaint shall not be avoided by describing the offence, or any material act relating to it in alternative words according to the language of the law constituting such offence.
- (5) All complaints made to the court directly under this section may first be referred to the police for investigation before any action is taken by the Court.
- 91** A complaint, summons, warrant or any other document laid, issued or made for the purpose of or in connection with any proceedings before a court for an offence, shall be sufficient if it contains a statement of the specific offence with which the suspect is charged, together with such particulars as may be necessary for giving reasonable information *Form of documents in criminal proceedings*

as to the nature of the charge.

- 92.** Any exception, exemption, proviso, condition, excuse, or qualification, whether it does or does not in any enactment creating an offence accompany in the same section, the description of the offence, may be proved by the defendant, but need not be specified or refuted in the complaint, and where so specified or refuted, no proof in relation to the matter so specified or refuted shall be required on the part of the complainant. *Rule as to statement of exception*
- 93.** In every case where no time is specially limited for making a complaint for a summary conviction offence in the law relating to such offence, such complaint if made other than by a person in his official capacity shall be made within six years from the time when the matter of such complaint arose, and not after. *Limitation of period for making a private complaint*

PART 9 - PLACE OF TRIAL OR INQUIRY

- 94.** (1) An offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction: *Venue generally*
- (a) the offence was wholly or in part committed, or some act forming part of the offence was done;
 - (b) the consequence of the offence has ensued;
 - (c) an offence was committed by reference to which the offence is denied; or
 - (d) a person against whom, or property in respect of which, the offence was committed is found, having been transported there by the suspect or by a person knowing of the offence.
- (2) A criminal charge shall be filed and tried in the division where the alleged offence was committed unless it can be shown that it is convenient to do otherwise for security reasons.
- (3) The commissioner of police shall ensure that one or more armed policemen (or as the circumstances may require), are posted to provide security during every criminal trial.
- 95.** An offence committed at sea or outside the territory of Nigeria, which according to law may be tried or inquired into at any place in Nigeria to which the suspect is first brought, or to which he may be taken thereafter. *Offence at sea or outside Nigeria*
- 96.** An offence committed while the suspect is in the course of *Offence*

- performing a journey or voyage may be tried or inquired into by a Court in the State or division or district of whose jurisdiction the suspect or the person against whom or the thing in respect of which the offence was committed resides, is or passed in the course of that journey or voyage. *committed on a journey*
- 97.** Where an offence:
 (a) is commenced in a State and completed in another State; or
 (b) is completed in the State, after being commenced in another State:
 the suspect may be dealt with, tried and punished as if the offence had been actually or wholly committed in any of the States. *Offence commenced and completed in different states*
- 98.** Where a question arises as to which of two or more Courts of the State Capital, ought to inquire into or try any offence, it shall be decided by the Chief Judge of the State. *Chief Judge to decide, question as to court of inquiry or place of trial*
- 99.** The Chief Judge of the State may, where it appears to him that the transfer of a case will promote the ends of justice or will be in the interest of the public peace, transfer any case from one court to another. *Chief Judge may transfer a case*
- 100.** A Court before which a person charged with having committed an offence is brought shall where:
 (a) the offence ought to be properly inquired into or tried by another Court; or
 (b) in the opinion of the Court, the offence ought to be conveniently inquired into or tried by another court, within a reasonable period not exceeding seven days, send the case and all processes relating to the case to the head of court for re-assignment to that other court, and where appropriate, remand the suspect charged in custody or require him to give security for his attendance before that other court to answer the charges and to be dealt with accordingly. *When case may be remitted to another court*
- 101.** (1) Where a suspect is to be remanded in custody, a warrant shall be issued by the remitting Court and that warrant shall be sufficient authority to any person to whom it is directed to: *Removal under warrant*

- (a) receive and detain the suspect named in the warrant; and
- (b) produce him to the court to which the suspect charged is remitted.

(2) The person to whom the warrant is directed shall execute it according to its terms without any delay.

102. Where a suspect is:

- (a) in custody and the court directing a transfer thinks it expedient that the custody should be continued; or
- (b) not in custody, that he should be placed in custody, the Court shall, by its warrant, commit the suspect to prison, subject to such security as it may deem appropriate in the circumstances, until he can be taken before a Court wherein the cause of complaint arose.

Transfer of case where cause of complaint has arisen out of jurisdiction of court

103. (1) Notwithstanding the provisions of sections 94 and 99 of this Law, a Judge or Magistrate of a division or district in which a suspect:

- (a) is arrested and charged with an offence, alleged to have been committed in another division or district;
- (b) is in custody on the charge; or
- (c) has appeared in answer to summons lawfully issued charging the offence, may where he considers that justice would be better served and having regards to the accessibility and convenience of the witnesses, proceed to hear the charge, try and punish the suspect as if the offence had been committed in the division or district.

Court may assume jurisdiction under certain condition

(2) The offence referred in subsection (1) of this section shall for all purposes be deemed to have been committed in that division or district.

104. Where a case is commenced in any other division or district than that in which it ought to have been commenced, the court may assume jurisdiction in accordance with the provisions of Section 102 of this Law and all acts performed and all decisions given by the Court during the trial or any other proceedings shall be deemed to be valid in all respect as if the jurisdiction had been assumed prior to the performance of the acts and the giving of the decisions.

Assumption of jurisdiction after commencement of proceedings

PART 10 - POWERS OF THE ATTORNEY-GENERAL

105. (1) The Attorney-General of the State may prefer information in any court in respect of an offence created by a Law of the state.

Information by the Attorney-General

(2) The Attorney-General of the State may authorize any other person to exercise any or all the powers conferred on him under this section.

106. (1) The Attorney-General of the State may issue legal advice or such other directive to the Police or any other law enforcement agency in respect of an offence created by a Law of the State.

Issuance of legal advice and other directives to police

(2) Where any proceeding is pending in respect of the offence for which legal advice or other direction referred to in subsection (1) of this section is given, a copy of the legal advice or direction shall be forwarded by the Attorney-General of the State or Director of Public Prosecutions to the Court before whom the proceeding is pending.

(3) The Attorney-General of the State may request from the Police or any other agency for the case file in any matter in respect of an offence created by a Law of the State and the Police or other agency shall immediately send the case file as requested.

107. Subject to the provisions of the Constitution, relating to the powers of prosecution by the Attorney-General of the State, prosecution of all offences in any court in the State shall be undertaken by:

Prosecution of offences

- (a) the Attorney-General of the State or a Law Officer in his Department;
- (b) a legal practitioner authorized by the Attorney-General of the State;
- (c) a legal practitioner authorized by this Law or any other enactment of the National Assembly;
- (d) a legal practitioner in the Nigeria Police Force;
- (e) any other person authorized by any law in the State to prosecute offences under such law.

PART 11 - CONTROL BY THE ATTORNEY-GENERAL OF CRIMINAL PROCEEDINGS

108. (1) In any criminal proceedings for an offence created by a Law of the State, and at any stage of the proceedings before judgment, the Attorney-General of the State may discontinue the proceedings either by stating in court or informing the court in writing that the Attorney-General of the State intends that the proceedings shall

Discontinuance of criminal cases.

not continue and based on the notice the suspect shall immediately be discharged in respect of the charge or information for which the discontinuance is entered.

(2) Where the suspect:

- (a) has been committed to prison, he shall be released; or
- (b) is on bail, the recognisance shall be discharged.

(3) Where the suspect is not:

- (a) before the Court when the discontinuance is entered, the Registrar or other proper officer of the court shall immediately cause notice in writing of the entry of the discontinuance to be given to the officer in charge of the prison or other place in which the suspect may be detained and the notice shall be sufficient authority to discharge the suspect; or
- (b) in custody the Court shall immediately cause notice in writing to be given to the suspect and his sureties and shall in either case cause a similar notice in writing to be given to any witnesses bound over to prosecute.

(4) Where discontinuance is entered in accordance with the provisions of this section, the discharge of a suspect shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

109. (1) In any trial proceedings before a court, a prosecutor, may, or on the instruction of the Attorney-General of the State, in case of offence against a Law of the State, may, at any stage before judgment is pronounced withdraw the charge against any defendant either generally or in respect of one or more of the offences with which the defendant is charged.

*Withdrawals
from
prosecution in
trials and
inquires before
a court*

(2) On the withdrawal, where it is made:

- (a) before the Defendant is called upon to make his defence, he shall be discharged of the offence,
- (b) after the Defendant is called upon to make his defence, he shall be acquitted of the offence.

(3) In any trial before a court in which the prosecutor

withdraws in respect of the prosecution of an offence before the Defendant is called upon to make his defence, the court may in its discretion order the Defendant to be acquitted if it is satisfied on the merits of the case that the order is a proper one, and when an order of acquittal is made, the court shall endorse its reasons for

making the order on the record.

- (4) Where a private prosecutor withdraws from a prosecution for an offence under the provisions of this section, the Court may, in its discretion, award costs against the prosecutor.
- (5) A discharge of a Defendant under this section does not operate as a bar to subsequent proceedings against him on account of the same facts, except as otherwise provided under this section.

PART 12 - INSTITUTION OF PROCEEDINGS

110. (1) Subject to the provisions of any other enactment, criminal proceedings may in accordance with the provisions of this Law be instituted:

Methods of instituting criminal proceedings generally.

(a) summarily in Magistrates' Courts, on a charge or complaint whether or not on oath; and

(b) in the High Court:

(i) by information of the Attorney-General of the State in accordance with the provisions of Section 105; or

(ii) by Information, filed by a private prosecutor pursuant to the provisions of this Law; or

(iii) by Information filed in the Court after the defendant has been summarily committed for perjury by a Judge or Magistrate under the provisions of this Law; or

(iv) summarily in respect of contempt; or

(v) by information or charge filed in the court by any other prosecuting authority.

(2) (a) The prosecution shall file and serve on the defendant or his counsel, along with the charge sheet upon arraignment, the documents of the description given in sections 376 (4) and 379(1) of this Law, as the case maybe;

(b) The Defendant shall file and serve on the prosecution all documents and materials it intends to rely for his defence within fourteen days of service on him by the prosecution.

111. (1) Criminal proceedings instituted in a Magistrates' Court may be:

Methods of instituting criminal proceedings in Magistrates' Courts

(a) by bringing a suspect arrested without a warrant before the Court

on a charge contained in a charge sheet specifying the name, address, age, sex and occupation of the suspect charged, the charge against him and the time and place where the offence is alleged to have been committed; and the charge sheets shall be signed by any of the persons mentioned in Section 107 of this Law; court

- (b) subject to the provision of Section 90 of this Law, by complaint to the Court, whether or not on oath, that an offence has been committed by a suspect whose presence the Magistrate has power to compel, and an application to the Magistrate, in the manner set out in this section for the issue of either a summons directed to, or a warrant to arrest, the suspect.

(2) The charge sheet filed by the prosecution shall be served on the defendant within seven days of its being filed or such time as the Court may allow.

- (3) The trial of a charge preferred under subsection (1) paragraphs (a) and (b) of this section shall commence not later than thirty days from the date of filing the charge, and the trial of the person brought under the charge shall be completed within a reasonable time.

- (4) Where a charge *is* preferred under subsection (1) paragraphs (a) and (b) of this section and the trial does not commence within thirty days of bringing the charge, or trial has commenced but has not been completed after one hundred and eighty days of arraignment on that charge, the Court shall forward to the Chief Judge the particulars of the charge and reasons for failure to commence the trial or to complete the trial.

- (5) A Court seized of criminal proceedings shall make quarterly returns of the particulars of all cases, including charges, remand and other proceedings commenced and dealt with in his Court within the quarter, to the Chief Judge.

- (6) In reviewing the returns made by a Court under subsections (4) and (5) of this section, the Chief Judge shall have regard to the need to ensure that:

- (a) criminal matters are speedily dealt with;
- (b) congestion of cases in courts is drastically reduced;
- (c) congestion of prisons is reduced to the barest minimum; and
- (d) persons awaiting trial are, as far as possible, not detained in prison custody for a length of time beyond that prescribed in Section 293 of this Law.

- (7) The Administration of Criminal Justice Monitoring Committee, shall

have power to consider all returns made to the Chief Judge under subsections (4) and (5) of this section for the purpose of ensuring expeditious disposal of cases, and the National Human Rights Commission set up under the National Human Rights Commission Act shall have access to the returns on request to the Chief Judge.

112. (1) The State Comptroller of Prisons shall make returns every ninety days to the Chief Judge of the State High Court and to the Attorney-General of the State of all persons awaiting trial held in custody within the State for a period beyond one hundred and eighty days from the date of arraignment.

*Returns by
Comptroller-
General of
Prisons*

(2) The returns referred to in subsection (1) of this section shall be in a prescribed form and shall include:

- (a) the name of the defendant held in custody, or Awaiting Trial Persons,
- (b) passport photograph of the defendant;
- (c) the date(s) of his arraignment or remand;
- (d) the date(s) of his admission to custody;
- (e) the particulars of the offence with which he was charged;
- (f) the courts before which he was arraigned;
- (g) name of the prosecuting agency; and
- (h) any other relevant information.

(3) Upon receipt of such return, the recipient shall take such steps as are necessary to address the issues raised in the return in furtherance of the objectives of this Law.

PART 13 - ENFORCING APPEARANCE OF SUSPECT

113. A Magistrate may issue a summons or warrant as provided in this Law to compel the appearance before it of any suspect accused of having committed in any place, whether within or outside the State, any offence triable in the State.

*Compelling
appearance of a
suspect*

- | | |
|---|--|
| <p>114. In every case, the court may proceed either by way of summons to the suspect or by way of warrant for his arrest in the first instance according to the nature and circumstances of the case.</p> | <p><i>Summons and Warrant</i></p> |
| <p>115. (1) Subject to the provisions of section 90 of this Law, a person who believes from a reasonable or probable cause that an offence has been committed by another person whose appearance a Magistrate has power to compel, may make a complaint of the committing of the offence to a Magistrate who shall consider the allegations of the Complainant and may:</p> <p style="margin-left: 40px;">(a) in his discretion, refuse to issue process and shall record his reasons or such refusal; or</p> <p style="margin-left: 40px;">(b) issue a summons or warrant as he shall deem fit to compel the attendance of the defendant before a Magistrates' Court in the district.</p> <p>(2) The Magistrate shall not refuse to issue a summons or warrant only because the alleged offence is one for which a suspect may be arrested without warrant.</p> | <p><i>Making of complaint and issue of process thereon</i></p> |

PART 14 - ISSUE, FORM AND SERVICE OF SUMMONS

- | | |
|--|---|
| <p>116. A summons may be issued or served on any day, including a Sunday or public holiday.</p> | <p><i>Issue and service</i></p> |
| <p>117. Where a complaint is made before a Magistrate as provided in section 115 of this Law. and the Magistrate decides to issue a summons, the summons shall be directed to the suspect, stating concisely the substance of the complaint and requiring him to appear at a certain time and place not less than forty-eight hours after the service of the Summons before the court to answer to the complaint and to be further dealt with according to Law.</p> | <p><i>Issue of summons and content thereof</i></p> |
| <p>118. The Court may, if it deems fit and with the consent of the parties, hear and determine a complaint notwithstanding that the time within which the accused was required to appear may not have elapsed.</p> | <p><i>Hearing by consent before return date of summons</i></p> |
| <p>119. Where on a complaint being made before a Magistrate as provided in Section 115 of this Law, the Magistrate decides to issue a Summons, the defendant may be directed to appear immediately in cases where an affidavit is made by the complainant either at the time of making the complaint or subsequently that the defendant is likely to leave the district within forty-eight hours.</p> | <p><i>Summons with immediate return date in special circumstances</i></p> |
| <p>120. Nothing contained in Sections 117, 118, or 119 of this Law shall oblige</p> | <p><i>Discretion in ex-</i></p> |

- any Magistrate to issue a summons in any case where the application for an order may by law be made *ex parte*. *parte application*
- 121.** A Summons issued by a Court under this Law shall be in writing, made in duplicate, signed by the presiding officer of the Court or by such other officer as the Chief Judge may specify, from time to time. *Summons to be in duplicate*
- 122.** A summons shall be served by a police officer or by an officer of the court issuing it or other public officer, or through a courier service company duly Registered with the Chief Judge as a process service agent of the Court under this Law. *Service of summons*
- 123.** The person effecting service of a summons shall effect it by delivering it on: *Normal methods of effecting service*
- (a) an individual, to him personally; or
 - (b) a firm or corporation, to one of the following:
 - (i) to one of the partners;
 - (ii) to a director;
 - (iii) to the secretary;
 - (iv) to the chief agent within the jurisdiction;
 - (v) by leaving it at the principal place of business in Nigeria of the firm or corporation; or
 - (vi) to anyone having at the time of service control of the business of the firm;
 - (c) a Local Government Council, then in accordance with the Local Government Law;
 - (d) the Nigeria Police Force, or the office of the Inspector-General of Police, or the office of the Assistant Inspector General of Police, zone 5, or the Commissioner of Police of the State, or the office of the Area Commander or the Divisional Police Officer, as the case may be.
- 124.** Where service in the manner provided by Section 123(a) of this Law cannot by the exercise of due diligence be effected, the serving officer may, with leave of the Court, affix one of the duplicates of the summons to some conspicuous part of the premises or place in which the individual to be served ordinarily resides or works, and on doing so the summons shall be deemed to have been duly served. *Service where person summoned cannot be found*
- 125. (1)** Where a public officer is to be served with a summons, the court issuing the summons may send it in duplicate to the officer in charge of the department in which the person is employed for the purpose of being served on the person, if it appears to the Court that it may be *Service on public officer*

most conveniently so served.

- (2) The officer in charge of the department shall on receiving the summons cause it to be served in the manner provided by Section 123(a) of this Law and shall return the duplicate to the Court under his signature, with the endorsement required by Section 115 of this Law, which signature shall be evidence of the service.
- 126.** Where a Court issues a Summons to a person outside its jurisdiction, the summons shall be sent in duplicate to a Court in whose jurisdiction the person resides or works. *Service outside jurisdiction of court*
- 127.** Where the officer who served a summons is not present at the hearing of the case, proof of service, may be done by endorsement on a duplicate of the summons and by an affidavit showing when and how the service was effected. *Proof of service when serving officer not present*
- 128.** (1) Where a summons has been served on the person to whom it is addressed or is delivered to any other person, the person to whom it is addressed or the person to whom it is delivered, as the case may be, shall acknowledge receipt at the back of the duplicate. *Receipt of service of summons*
- (2) Where service is not effected by delivering the summons to an individual but by some other method approved by this Law, the person effecting service shall endorse on the duplicate particulars of the method by which he effected service.
- 129.** A person who is required to sign a receipt on the back of a duplicate summons to the effect that he has received the summons and fails to sign the receipt may be: *Person refusing to sign receipt maybe arrested*
- (a) arrested by the person serving the summons or any other person with powers of arrest under this Law and taken before the court which issued the summons; and
- (b) detained in custody or committed to prison for such time not exceeding fourteen days as the court may deem fit.
- 130.** An affidavit or declaration made before a court by the serving officer or by a witness to the service or return slip of a Registered courier service company that a summons has been served and a duplicate of the summons endorsed, by the person to whom it was delivered or tendered or with whom it was left, is admissible in evidence and the statements made in it is deemed to be correct unless and until the contrary is proved. *Proof of service*

- 131.** Where the Court is satisfied that the suspect has been served with a summons and the suspect does not appear at the time and place appointed in and by the summons and his personal attendance has not been dispensed with under Section 135 of this Law, the Court may issue a warrant for his arrest and production before the Court. *Summons disobeyed, warrant maybe issue*
- 132.** Where a complaint is before a Magistrate as provided in this Law, and the Magistrate decides to issue a warrant, he shall issue a warrant to arrest the suspect and bring him before the Court to answer the complaint and be dealt with according to Law. *Issue of warrant for suspect in the first instance.*
- 133.** Where a warrant of arrest is issued in consequence of a complaint on oath as provided under Section 132 of this Law, the provisions of Sections 36 to 48 of this Law shall apply to such warrant. *Application of sections 36 to 48 to such warrant*
- 134.** Notwithstanding the issue of a Summons as in Section 177 of this Law, a Warrant may issue at any time before or after the time appointed for the appearance of the defendant. *Warrant may issue before or after return date of summons*
- 135.** (1) Where a Magistrate issues a summons in respect of any offence for which the penalty is a fine not exceeding Ten Thousand Naira or imprisonment for a term not exceeding six months or both, the Magistrate on application of the defendant:
- (a) may dispense with the personal attendance of the defendant where the offence is punishable by fine or imprisonment or both; and
 - (b) shall dispense with personal attendance of the defendant where the offence is punishable by fine only if the defendant pleads guilty in writing or appears and so pleads by his legal practitioner.
- Power to dispense with personal attendance of defendant in certain cases*
- (2) The Magistrate trying a case in which the presence of the defendant has been dispensed with may, in his discretion, at any subsequent stage of the proceedings, direct the personal attendance of the defendant and where necessary, enforce the attendance by means of the issuance of a warrant to arrest the defendant and bring him before the Court.
- (3) Where a Magistrate imposes a fine on a defendant whose personal attendance has been dispensed with under this section, the Magistrate may at the same time direct that if the fine is not paid within a stated time, the amount shall be recovered by distress or that the defendant shall be imprisoned for a period calculated in

accordance with the provisions contained in this Law for the non-payment of a fine.

(4) Where the attendance of a defendant is dispensed with and previous convictions are alleged against him not admitted in writing or through his legal practitioner, the Court may adjourn the proceedings and direct the personal attendance in the same manner as provided in sub-section (2) of this Section.

(5) Where the attendance of a defendant has been dispensed with, and his attendance is subsequently required, the cost of any adjournment for that purpose shall be borne by the defendant.

136. Where a defendant is before a Court, whether voluntarily, or on Summons, or after being arrested with or without warrant, or while in custody for the same or any other offence, the trial may be held notwithstanding:
- Irregularity in summons, warrant, service, or arrest*
- (a) any irregularity, defect, or error in the summons or warrant, or the issuing, service, or execution of the summons or warrant;
 - (b) the want of any complaint on oath; or
 - (c) any defect in the complaint, or any irregularity in the arrest or custody of the defendant.

PART 15 - MISCELLANEOUS PROVISIONS REGARDING PROCESS

137. Where a Court or Justice of the Peace, who is not empowered by law does any of the following things:
- Irregularity in summons, warrant, service, or arrest*
- (a) attaches and sells property under Section 81 of this Law;
 - (b) demands security to keep the peace;
 - (c) demands security for good behaviour;
 - (d) discharges a person lawfully bound to be of good behaviour;
 - (e) cancels a bond to keep the peace;
 - (f) makes an order under Section 73 of this Law as to a public nuisance;
 - (g) prohibits, under section 80 of this Law, the repetition or continuance of a public nuisance;
 - (h) tries an offender; or
 - (i) decides an appeal;
- the proceedings shall be void.
138. A variance between the charge contained in the summons or warrant and the offence alleged in the complaint, or between any of them and the evidence adduced on the part of the prosecution, shall not affect
- Variance between charge and complaint*

the validity of any proceedings.

- 139.** A summons, warrant of any description or other process issued under a law shall not be invalidated by reason of the person who signed the summons or warrant being dead, ceasing to hold office or have jurisdiction.

Process valid notwithstanding death or vacation of office of person issuing

PART 16 - SAVING OF VALIDITY OF PROCESS

- 140.** (1) A warrant of commitment shall not be held void by reason of any defect in it, where it is alleged that the defendant has been convicted or ordered to do or abstain from doing an act or a thing required to be done or left undone, and there is a good and valid order to sustain the warrant.

Validity of process: warrant of commitment and warrant of distress.

- (2) A warrant of distress shall not be held void by reason of any defect, where it is alleged that an order has been made, and there is a good and valid ground to sustain the order, and a person acting under a warrant of distress is not deemed a trespasser from the beginning by reason of any defect in the warrant or of any irregularity in the execution of the warrant.

- (3) This Law shall not prejudice the right of a person to compensation for any special damage caused by defect or irregularity in the execution of a warrant of distress.

- 141.** (1) In addition to the provisions of sections 37 and 41 of this Law in respect of warrants of arrest, all summonses, warrant of every description and process of whatever description shall be sufficiently addressed for service or execution by being directed to the Sheriff.

General addressee of process for issuance and execution

- (2) Notwithstanding the provisions of subsection (1) of this section, a warrant or summons may be addressed to a person by name or to an officer by his official designation.

- (3) Where a warrant of arrest is addressed to the Sheriff the warrant may be executed by a police officer or officer of a Court.

- 142.** The provisions contained in this Law in respect of warrants of arrest, and the provisions contained in this Part relating to summonses, warrants of any description and other process and their

Certain provisions applicable to all summonses and

issuance, service, enforcement and execution shall, so far as may be, apply to every summons, warrant of any description and other process issued in respect of matters within the criminal jurisdiction of the Court.

*warrants in
criminal matters*

PART 17 - SEARCH WARRANTS

- 143.** Where an investigation under this Law is being made by a police officer, he may apply to a court or Justice of the Peace within the local limits of whose jurisdiction he is, for the issue of a Search Warrant.

*Application for
search warrant*

- 144.** (1) Where a Court or Justice of the Peace is satisfied by information on oath and in writing that there is reasonable ground for believing that there is in any building, ship, carriage, receptacle, motor vehicle, aircraft or place:
- (a) anything upon or in respect of which any offence has been or is suspected to have been committed; or
 - (b) anything which there is reasonable ground for believing will provide evidence as to the commission of an offence; or
 - (c) anything which there is reasonable ground for believing is intended to be used for the purpose of committing an offence, the court or Justice of the Peace may at any time issue a warrant authorizing an officer of the Court, member of the police force, or other person named to act in accordance with subsection (2) of this section.

*Cases in which
search warrants
may be issued*

- (2) A search warrant issued under subsection (1) shall authorize the officer of the court, a police officer, or other person named, to:
- (a) search such building, ship, carriage, receptacle, motor vehicle, aircraft or place for any such thing, and to seize any such thing until further trial proceedings before the court issuing the search warrant or some other court to be dealt with according to law; and
 - (b) arrest the occupier of the house or place where the thing was found where the Court thinks fit so to direct on the warrant.

- 145.** Where the occupier of any building or the person in whose possession a thing named in a search warrant is found and is brought before a court or Justice of the Peace and a complaint is not made that he has committed an offence, the Court or Justice of the Peace shall immediately discharge him. *Discharge of suspected persons*
- 146.** (1) A search warrant shall be under the hand of the Judge, Magistrate or Justice of the Peace issuing it. *Search warrant to be signed by Magistrate or Justice of the Peace.*
- (2) A warrant shall remain in force until it is executed or until it is cancelled by the court or the Justice of the Peace which issued it.
- 147.** A search warrant may be directed to one or more persons and when directed to more than one it may be executed by all or by any one or more of them. *Search warrant to whom directed*
- 148.** A search warrant may be issued and executed at any time on any day, including a Sunday or public holiday. *Time when search warrant may issue and executed*
- 149.** (1) Where any building or other thing or place liable to search is closed, a person residing in or being in charge of the building, thing or place shall, on demand of the police officer or other person executing the search warrant, allow him free and unhindered access to it and afford all reasonable facilities for its search. *Person in charge of closed place to allow access*
- (2) Where access into the building, thing or place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by Sections 9, 10, 12 and 13 of this Law.
- (3) Where a suspect in or about the building, thing or place is reasonably suspected of concealing on his person an article for which search should be made, the suspect may be searched and where the suspect to be searched is a woman she shall be searched by another woman and may be taken to a police station for that purpose.

(4) A search under this part shall, except the Court or Justice of the Peace owing to the nature of the case otherwise directs, be made in the presence of two witnesses and the person to whom the search warrant is addressed may also provide a witness within the neighbourhood.

(5) A list of all things found on his person and seized shall be drawn up by the person carrying out the search and shall be signed or sealed by the person to whom the search warrant is addressed, the person executing the search warrant, the witnesses and a witnessed copy of the list shall be delivered to the person searched.

(6) Where a place to be searched is a building physically occupied by a woman who according to custom or religion does not appear in public, the person making the search shall, before entering the building, give notice to the woman that she may withdraw and shall afford her every reasonable facility for withdrawing and may then enter the building.

150. The occupant of a place searched or some person on his behalf shall be permitted to be present at the search and shall, if he so requires, receive a copy of the list of things seized there, signed or sealed by the witnesses, if any.

Occupant of place searched may attend

151. A person executing a search warrant beyond the jurisdiction of the court or Justice of the Peace issuing it shall, before doing so, apply to the court within whose jurisdiction search is to be made and shall act under its directions.

Execution of search warrant outside jurisdiction

152. A Magistrate or Justice of the Peace may direct a search to be conducted in his presence of any place for the search of which he is competent to issue a search warrant.

Magistrate may direct search in his presence

153. (1) When upon the execution of a search warrant anything referred to in Section 144 of this Law is recovered, it may be detained by the police, taking reasonable care that it is preserved until the trial or any further proceedings.

Detention of articles recovered

(2) A list of all things recovered in the course of search and of the places in which they are found shall be drawn up by the person carrying out the search in accordance with Section 149 (5) of this Law and a copy of the list forwarded to the Judge, Magistrate or

Justice of the Peace who issued the warrant for his information with indication as in the prescribed form set out in the First Schedule to this Law on the search warrant of the things:

- (a) seized that are detained or caused to be detained; and
- (b) that were seized but have been released to the owners.

(3) Where a defendant is charged to Court with an offence or no appeal or further proceedings is pending in relation to an item recovered during a search, the police shall:

- (a) restore to the person who appears to be entitled to them; and
- (b) where he is the defendant, cause to be restored to him or to his legal practitioner or to such other person as the defendant may direct.

(4) where the police or any other agency carrying out the search is authorised or required by Law to dispose of the items seized in accordance with the provisions of this section, the police or agency shall release the proceeds of the disposal of the seized items to the person entitled to it.

(5) Any property or a part of the property may be applied to the payment of any cost or compensation directed by the court to be paid by the defendant, or person entitled to the property.

154. Where a thing seized under a search warrant is of a perishable or noxious nature, it may be disposed of in such manner as the court may direct.

Perishable articles may be disposed of by court

155. Where the thing to be searched for under a search warrant is gunpowder, arms, ammunition or any other explosive, dangerous or noxious substance or thing, the person making the search shall have the powers and protection as are given by any written law for the time being in force to any person lawfully authorized to search for the thing, and the thing itself shall be disposed of in the same manner as directed by any such written Law, or, in the absence of such direction, as the Court may either generally or in any particular instance order.

Search for and disposal of gun powder

156. Where, in consequence of the execution of a search warrant, there is brought before a Court any forged banknote, banknote paper, counterfeit coin, instrument, or other thing for forgery or counterfeiting, the possession of which, in the absence of lawful excuse, is an offence, the court may cause the thing to be defaced or

Disposal of counterfeit currency and certain other things

destroyed.

- 157.** Where a search warrant is issued in respect of an offence against the Law of any other State of the Federation and a summons has been issued for that offence by, or any person has been charged with that offence before a Court of that State, the Magistrate or other such officer issuing the search warrant may, except he has disposed of the thing in accordance with Section 153 of this Law, transmit anything seized and brought before him to that court and in relation to anything so transmitted, the functions conferred on a Magistrate or other such officer by this Law shall be exercised and performed by that Court instead of the Magistrate or other such officer who issued the Search Warrant.

Transmission to court of other jurisdiction

PART 18 - BAIL AND RECOGNISANCES: GENERALLY

- 158.** (1) When a person who is suspected to have committed an offence or is accused of an offence is arrested or detained, or appears or is brought before a Court, he shall, subject to the provisions of this Part, be entitled to bail.
- (2) The amount of bail to be taken in any case, which shall be in the discretion of the Court by whom the order for the taking of such bail is made, shall be fixed with due regards to the circumstances of the case and shall not be excessive: Provided that at the time of making the application for bail, the applicant shall deposit with the Registrar –
- (a) 1 ream of typing sheet paper;
 - (b) 2 standard office file jackets;
 - (c) 1 bottle of correction fluid;
- for the official use of the Court.

General entitlement to bail

- 159.** (1) Where a suspect or defendant is detained in a prison, police station or any other lawful place of detention, the court may issue an order to the officer in charge of the prison, police station or other lawful place to produce the suspect or defendant at the time and date specified in the order before the Court.

Power of court to order person in custody to be brought before it.

- (2) The Court may, on production of the person or subsequently, make such order or give such directives, as it considers appropriate in the circumstances in accordance with the provisions of this Law.

- 160.** (1) Where a child is arrested with or without warrant and

Recognisance by parent or

cannot be brought forthwith before a court, the police officer in immediate charge for the time being of the police station to which the child is brought, shall inquire into the case and shall, except:

- (a) the charge is one of homicide;
- (b) the offence charged is punishable with imprisonment for a term exceeding three years;
- (c) it is necessary in the interest of the child to remove him from association with any reputed criminal or prostitute;

release the child on a recognisance entered into by his parents or guardian, with or without sureties.

guardian of a child

(2) The parents or guardian of the child shall execute a bond for such an amount as will in the opinion of the officer secure the attendance of the child for the hearing of the charge.

161. (1) A suspect arrested, detained or charged with an offence punishable with death shall only be admitted to bail by a Judge of the High Court, under exceptional circumstances.

Bail where a suspect is charged with capital offence

(2) For the purpose of exercise of discretion in subsection (1) of this section, "exceptional circumstance" include:

- (a) ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a Government hospital; provided that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him;
- (b) extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or
- (c) any other circumstances that the Judge may, in the particular facts of the case, consider exceptional.

162. A defendant charged with an offence punishable with imprisonment for a term exceeding three years shall on application to the court, be released on bail except in any of the following circumstances:

Bail where a suspect is charged with offence exceeding three years imprisonment

- (a) where there is reasonable ground to believe that the defendant will, where released on bail, commit another offence;
- (b) attempt to evade his trial;
- (c) attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case;
- (d) attempt to conceal or destroy evidence;
- (e) prejudice the proper investigation of the offence; or

- (f) undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system.
- 163.** In any other circumstance other than those referred to in Sections 161 and 162 of this Law, the defendant shall be entitled to bail, unless the court sees reasons to the contrary. *Where a defendant is charged with offence not exceeding three years imprisonment*
- 164.** Where a defendant is brought before a court on any process in respect of any matter not included within Sections 158 to 163 of this Law, the person may, at the discretion of the Court, be released on his entering into recognisance, in the manner provided in this Law, for his appearance before the Court or any other Court at the time and place mentioned in the recognisance. *Bail in respect of matters in other offences*
- 165.** (1) The conditions for bail in any case shall be at the discretion of the Court with due regard to the circumstances of the case and shall not be excessive. *Conditions for bail*
- (2) The Court may require the deposit of a sum of money or other security as the Court may specify from the defendant or his surety before the bail is approved.
- (3) The money or security deposited shall be returned to the defendant or his surety or sureties, as the case may be, at the conclusion of the trial or on an application by the surety to the Court to discharge his recognisance.
- 166.** Where in any case the defendant in respect of whom the court makes an order requiring that a recognisance be entered into is a child, the child shall not execute the recognisance but the court shall require a parent, legal guardian or other fit person, with or without sureties, to enter into a recognisance that the child shall do what is required under the Court's order. *Recognisance in respect of a child*
- 167.** (1) A defendant admitted to bail may be required to produce such surety or sureties as, in the opinion of the Court, will be sufficient to ensure his appearance as and when required. *Sureties*

(2) The defendant or his surety or sureties may be required to enter into recognisance, accordingly.

(3) A person shall not be denied, prevented or restricted from entering into a recognisance or standing as surety for any defendant or applicant on the ground only that the person is a woman.

- 168.** A Judge of a High Court may direct that the:
- (a) bail conditions required by a Magistrates court or police officer be reviewed; or
 - (b) defendant in custody within the State be admitted to bail.

Judge may vary bail fixed by Magistrate or police

- 169.** Where an defendant has been admitted to bail and circumstances arise which in the opinion of the Attorney-General of the State would justify the Court in cancelling the bail or requiring a greater amount, a court may, on application being made by the Attorney- General of the State, issue a warrant for the arrest of the defendant and, after giving the defendant an opportunity of being heard, may commit him to prison to await trial, or admit him to bail for the same or an increased amount.

Reconsideration of bail

- 170.** (1) The terms of recognisance fixed by the Court in respect to any surety or sureties shall be processed in that Court.

Before whom recognisance may be executed

(2) The recognisance as mentioned in subsection (1) of this section may be entered into by the parties before any other court, any Registrar, superior police officer, officer in charge of a police station or any official in charge of a prison.

(3) Recognisance entered into as described in subsection (2) of this section shall have the same effect as if they have been entered into before that Court.

- 171.** (1) As soon as recognisance has been entered into in accordance with the provisions of Section 164 of this Law or money or other security deposited in the registry of the court:
- (a) the defendant for whose appearance it has been entered into or security executed shall be released;
 - (b) where he is in prison or police station or other place of detention, the Court admitting him to bail shall immediately issue a written order of release to the official in charge of the

Release on execution of recognisance

prison or such other place of detention and the official on receipt of the order shall immediately release him.

(2) The release order or any process in relation to it may be served in accordance with the relevant law regulating service of processes in the Court, or by such person or courier company as the Chief Judge may authorize, to serve criminal processes of the Court.

(3) Nothing in this section or in any other section relating to bail is deemed to require the release of a defendant liable to be detained for some matter other than that in respect of which the recognisance was entered into or to which the bail relates.

172. Where as a condition for the release of any defendant, he is required to enter into a recognisance with sureties, the recognisance of the sureties may be taken separately and either before or after the recognisance of the principal, and if so taken, the recognisance of the principal and sureties shall be as binding as if they had been taken together and at the same time.

Mode of entering into recognisance

173. (1) Where a defendant is released on bail, the recognisance may be conditioned for his appearance at every time and place to which, during the course of the proceedings, the hearing may from time to time be adjourned.

Continuous bail

(2) The court may where the circumstances appear just:

(a) vary the order of release on bail of the defendant at any subsequent hearing; and

(b) at any subsequent stage of any proceedings, cause a defendant who has been released on bail to be arrested and be committed to custody:

Provided that the Judge shall state in his records the reason for the variation of the order or committal of the defendant.

(3) Nothing in this section or in any other section relating to bail is deemed to require the release of a defendant liable to be detained for some matter other than that in respect of which the recognisance was entered into or to which the bail relates.

174. Where an application is made before the Court by information on oath by a complainant, surety or other person that a defendant bound by recognisance to appear before court or police

Defendant bound by recognisance to appear before any court or

officer:

*police may be
committed to
prisons*

- (a) is about to leave the State; or
- (b) for the purpose of evading justice, is about to leave or has left the division or district of the court before which he is to appear or in which he normally resides, the court may cause him to be arrested and may commit him to prison until the trial, unless the court considers it fit to admit him to bail on further recognisance.

*Reconsideration
of amount of
bail on
application by
law officer or
police*

- 175.** Where a defendant has been admitted to bail and circumstances arise which, if the defendant had not been admitted to bail would, in the opinion of a law officer or police officer, justify the court in refusing bail or in requiring bail of greater amount, a court, may:

*Reconsideration
of amount of
bail on
application by
law officer or
police*

- (a) on the circumstances being brought to its notice by a law officer or police officer, issue a warrant for the arrest of the defendant; and
- (b) after giving him an opportunity of being heard, commit him to prison to await trial or admit him to bail for the same or an increased amount as the court may think just.

- 176.** Where at any time after a recognisance has been entered into, it appears to the Court that for any reason the surety or sureties are unsuitable, the Court, may:

*Variation of a
recognisance if
surety
unsuitable*

- (a) issue a summons or warrant for the appearance of the principal; and
- (b) on his coming to the court, order him to execute a fresh recognisance with other surety or sureties, as the case may be.

- 177.** (1) All or any of the sureties to a recognisance may at any time apply to the court which caused the recognisance to be taken to discharge the bond either wholly or so far as relates to the applicant.

*Discharge of
sureties*

- (2) On an application under subsection (1) of this section, the court shall issue a warrant for the arrest of the defendant on whose behalf the recognisance was executed and on his appearance shall discharge the recognisance either wholly or so far as relates to the

applicant and shall require the defendant to find other sufficient sureties or meet some other conditions and if he fails to do so, may make such order as it considers fit.

- 178.** Where a surety to a recognisance becomes insolvent or dies or where a recognisance is forfeited, the court may order the defendant from whom the recognisance was demanded to furnish fresh security in accordance with the directions of the original order and, if the security is not furnished, the court may proceed as if there had been default in complying with the original order.

Order of fresh security upon original order

- 179.** (1) Where it is proved to the satisfaction of the court by which a recognisance has been taken or, when the recognisance bond is for appearance before a court and it is proved to the satisfaction of the court, that a recognisance has been forfeited, the court shall record the grounds of proof and may call on any person bound by the bond to pay the penalty thereof or to show cause why it should not be paid.

Forfeiture of recognisance

(2) Where sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the penalty from a person bound, or from his estate if he is dead, in the manner laid down in this Law for the recovery of fines.

(3) A surety's estate shall only be liable under this section if the surety dies after the recognisance is forfeited.

(4) When the penalty is not paid and cannot be recovered in manner provided in this Law, the person bound shall be liable to imprisonment for a term not exceeding six months.

(5) The court may at its discretion remit any portion of the penalty and enforce payment in part only.

- 180.** The Court may at any time cancel or mitigate the forfeiture, on the person liable under the recognisance applying and giving security to the satisfaction of the court, for the future performance of the condition of the recognisance and paying, or giving security for the payment of the costs incurred in respect of the forfeiture or on such other conditions as the Court may consider just.

Mitigation of forfeiture

- 181.** Where a defendant required by a court to find sufficient

Where defendant fails

- sureties fails to do so, the Court, shall, unless it is just and proper in the circumstances, make some other order in the case of a defendant: *to find surety*
- (a) charged with an offence and released on bail, an order committing him to prison until he is brought to trial, discharged or finds sufficient sureties, or meets such other conditions as the court may direct in the circumstances; or
 - (b) ordered to give security for good behaviour, an order committing him to prison for the remainder of the period for which he was originally ordered to give security or until he finds sufficient sureties.
- 182.** (1) Where a recognisance to keep the peace and be of good behaviour or not to do or commit some act or thing, has been entered into by a defendant as principal or as surety before a court, a court, on proof that the person bound by the recognisance as principal has been convicted of an offence which is by law a breach of the condition of the recognisance, may order that the: *Forfeiture on conviction*
- (a) recognisance be forfeited; and
 - (b) persons bound by it, whether as principal or as sureties or any of those persons, shall pay the sums for which they are respectively bound.
- (2) A certified copy of the judgment of the court by which the defendant was convicted of the offence may be used as evidence in proceedings under this section and, where the certified copy is so used, the court shall presume the defendant committed the offence until the contrary is proved.
- 183.** Where a recognisance is ordered to be forfeited, the court having jurisdiction over the matter, may immediately or at any time after the order, issue a warrant of commitment against a person liable, whether as principal or surety under the recognisance, for any term not exceeding the term prescribed in respect of a like sum in the scale of imprisonment set out in this Law, except the amount due under the recognisance is paid. *Where recognisance forfeited warrant may issue*
- 184.** Where a defendant who is bound by a recognisance or bond to appear before a Court or police station does not so appear, the court may issue a warrant for his arrest. *Arrest on failure to appear*
- 185.** All sums paid or recovered in respect of a recognisance order by a Court in pursuance of Section 178 of this Law to be forfeited shall be paid to the Treasury and a receipt issued which shall be produced in *Payment on recognisance*

court as evidence of payment.

- 186.** An order of forfeiture made under this Law shall be subject to appeal.

Appeal

- 187.** (1) The Chief Judge of the State High Court may, by regulation, register and license individuals or corporate bodies or persons to act as Bondsperson within the jurisdiction of the Court in which they are registered.

Registration of Bondsperson.

(2) The regulation referred to in subsection (1) above shall stipulate the qualification for registration and grounds for revocation of licence of the Bondsperson.

(3) No person shall engage in the business of bail bond services without being duly registered and licensed in accordance with the provisions of subsection (1) of this section.

(4) Any person who engages in bail bond services without registration and licence under this Law, or otherwise violates the terms of his licence, shall be liable to a fine of five hundred thousand Naira (₦500,000.00) or imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

(5) On conviction under this section, the court shall forward a report to the Chief Judge and in instances of gross violation of the terms of the licence revoke the licence.

(6) A Bondsperson registered under subsection (1) of this Section may undertake recognisance, act as surety, or guarantee the deposit of money as required by the bail condition of any person granted bail by the court within the division or district in which the Bondsperson is registered.

(7) No person or organisation shall be registered as a Bondsperson unless the person is, or the organisation is composed of persons of unquestionable character and integrity and deposits with the Chief Judge sufficient bank guarantee in such amount as may be determined by the Chief Judge in the regulation, having regard to the registered class or limit of the Bondsperson's recognisance.

(8) Every registered Bondsperson shall maintain with a bank or insurance company designated in his licence, such fully paid deposit to the limit of the amount of bonds or recognisances to which his licence

permits him to undertake.

(9) The Chief Judge shall cause to be withdrawn the license of a Bondsperson in the following circumstances:

- a) where he contravenes the terms of his license;
- b) where he unreasonably forfeits his bond for non-production of any person granted bail under his recognisance;
- c) where he becomes insolvent, bankrupt or otherwise legally incapacitated;
- d) if he is convicted for an offence involving fraud or dishonesty.

188. Where a Bondsperson arrests a defendant or any person granted bail. who is absconding or who the Bondsperson may believe is trying to evade or avoid appearance in Court he shall:

- (a) immediately hand him over to the nearest police station; and
- (b) the defendant arrested shall be taken to the appropriate court within twelve hours.

Bonds person may arrest absconding defendant or any person granted bail.

PART 19 - PROPERTY AND PERSONS

189. Where in a complaint, summons, warrant of any description, charge sheet, information or any document whatsoever issued by a court in the exercise of its criminal jurisdiction it is necessary to refer to the ownership of any property, whether movable or immovable, which belongs to, or is in the possession of more than one person, may if:

- (a) the property belongs to, or is in the possession of more than one person whether as partners in trade or otherwise, joint tenants, tenants in common or other joint owners or possessors, be described in the name of any one of those persons and another or others;
- (b) the property belongs to a company, association, club or society, be described, subject to the provisions of any other law, as the property of the official of the company, association, club or society, or as belonging to the company, association, club or society by its legal or registered title;
- (c) the property belongs to, or is provided for the use of a public establishment, service or department, be described as the property of the State;
- (d) it is necessary to state the ownership of a church, chapel, mosque or building or place set apart for religious worship or of anything belonging to or being in the place, be stated as the property of a person in charge of or officiating in the church,

Methods of stating multiple ownership of property

chapel, mosque, or building or place, or thing, without naming him or them;

- (e) it is necessary to state the ownership of any money or other property whatsoever in the charge, custody, or under the control of any public officer, such money or property may be stated to be the money or property of the State;
- (f) where it is necessary to state the ownership of:
 - (i) any work or building made, erected or maintained, either wholly or in part, at the expense of the public revenue or of any part of it;
 - (ii) any township, town, or village or any Local Government, or of anything belonging to or being in or used in relation to the same;
 - (iii) anything provided for the use of any part or of any public institution or establishment, or of any materials or tools provided or used for repairing any work or building or any public road or highway; or
 - (iv) any other property whether movable or immovable, as aforesaid, be sufficient to state as the property of the State or of the town, or village, or of any Local Government, as the case may be, without naming any of the inhabitants of the area or jurisdiction;
- (g) the property belongs to a woman who has contracted a marriage under the Marriage Act or a marriage recognized as a valid marriage under any law in force in Nigeria, be stated as belonging to the married woman.

190. (1) Where in a complaint, summons, warrant of any description, charge sheet, information or any document issued by a Court in the exercise of its criminal jurisdiction, it is necessary to refer to a person, the description or designation of that person shall be such as is reasonably sufficient to identify him except as provided under Section 232 of this Law.

*Description of
persons in
criminal process*

- (2) It shall not be necessary to state the person's correct name, or his residence, degree, or occupation, so far as the person has been reasonably described to identify him.
- (3) Where it is impracticable to give the person's correct and exact description or designation because the name or the description or designation of the person is not known or for any other reason, the description or designation shall be given as is reasonably practicable in the circumstances, or the person may,

subject to subsection (4) of this section, be described as “Person Unknown”.

(4) A defendant who is accused of an offence shall not be described as “a person unknown” except in the case of a verdict found on a coroner’s inquisition.

191. A woman who has contracted a valid marriage shall have in her own name against all persons whatsoever, including the husband of the marriage, the same remedies and redress by way of criminal proceedings for the protection and security of her person or her own separate property as if such property belonged to her as an unmarried woman.

Remedies of married woman against her husband and others in respect of her person or property

192. In any proceedings taken under the provisions of Section 191 of this Law the husband and wife shall be competent and compellable witnesses in accordance with the provisions of the Evidence Act.

Husband and wife competent as witnesses

PART 20 - THE CHARGE

193. A charge may be as in the forms set out in the Second Schedule of this Law, with such modification as may be necessary in the circumstances of each case.

Form of charges in Second Schedule to be used and adapted

194. (1) A charge shall state the offence with which the defendant is charged.

Offence to be stated in charge

(2) Where the Law creating the offence:

(a) gives it a specific name, the offence shall be described in the charge by that name only; and

(b) does not give it a specific name, so much of the definition of the offence shall be stated as to give the defendant notice of the facts of the offence with which he is charged.

(3) The Law, the section of the Law and the punishment section of the written Law against which the offence is said to have been committed shall be set out in the charge.

195. The fact that a charge is made is equivalent to a statement that every legal condition required by Law to constitute the offence charged was fulfilled in the particular case.

Legal presumption of charge

- 196.** (1) The charge shall contain such particulars as to the time and place of the alleged offence and the defendant, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the defendant notice of the matter with which he is charged. *Particulars in charge*
- (2) A charge sheet shall be filed with the photograph of the defendant and his finger –print impression provided that where the photograph and finger print impression are not available, it shall not invalidate the charge
- 197.** Where a defendant is charged with criminal breach of trust or fraudulent appropriation of property, it is sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of a single offence. *Charge of criminal breach of trust*
- 198.** When a defendant is charged with falsification of accounts, fraudulent falsification of accounts or fraudulent conversion, it shall be sufficient to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud or any particular day on which the offence was committed. *Charge of criminal falsification of accounts*
- 199.** Where the nature of the offence is such that the particulars required by Sections 194 and 196 of this Law do not give the defendant sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the offence was committed as will be sufficient for that purpose. *Charge may contain the manner in which the offence was committed*
- 200.** (1) In a charge, words used in describing an offence are deemed to have been used in the sense attached to them, respectively, in the Law creating the offence. *Sense of words used in charge*
- (2) Figures, expressions and abbreviation may be used for expressing anything which is commonly expressed by those figures, expression or abbreviation.
- 201.** (1) The description of property in a charge shall be in the ordinary language indicating with reasonable clearness the property referred to and where the property is so described, it is not necessary, except when required for the purpose of describing *Description of property and joint owners*

an offence depending on any special ownership of property or special value of property, to name the person to whom the property belongs or the value of the property.

(2) Where property is vested in more than one person and the owners of that property are referred to in the charge, the property may be described as being owned in accordance with the appropriate provision set out in Section 189 of this Law.

(3) Where the owner of any property is a company, association, club or society, proof of the registration of the company, association, club or society shall not be required unless the Court decides that proof shall be given, in which case, the further hearing may be adjourned for the purpose or the court may, in its discretion, amend the proceedings by substituting the name of some person or persons for the registered title.

202. (1) Any coin, bank or currency note may be described as money, and any averment as to money, regarding the description of the property, shall be sustained by proof of any amount of any coin, bank or currency note, although the particular species of coin of which the amount was composed or the particular nature of the bank or currency note need not be proved.

*Description of
bank or
currency notes*

(2) In a case of stealing and defrauding by false pretences, the coin, bank or currency note, may be described by proof that the defendant dishonestly appropriated or obtained any coin, bank or currency note, or any portion of its value, although the coin, bank or currency note may have been delivered to him in order that some part of its value should be returned to the party delivering it or to any other person, and that part should have been returned accordingly.

203. (1) Where a Law constituting an offence states the offence to be the omission to do any one of different acts in the alternative, or the doing or the omission to do any act in any one of the different capacities, or with any one of the different intentions, or states any part of the offence in the alternative, the act, omission, capacity, or intention, or other matter stated in the alternative in the law, may be stated in the alternative in the charge.

*Provision as to
statutory
offences*

(2) It shall not be necessary in any charge where the offence is one constituted by a Law to negate any exception or exemption

from or qualification to the operation of the law creating the offence.

- 204.** The description or designation of the defendant in a charge or of any other person to whom reference is made therein, may be in the manner set out in Section 190 of this Law. *Description of persons*
- 205.** Where it is necessary to refer to a document or an instrument in a charge, it shall be sufficient to describe it by any name or designation by which it is commonly known, or by the purport of the document without setting out the content or attaching a copy of such document to the charge. *Description of document*
- 206.** Subject to any other provisions of this Law, it shall be sufficient to describe any place, time, thing, matter, act, or omission whatsoever to which it is necessary to refer in a charge in ordinary language in such a manner as to indicate with reasonable clarity the place, time, thing, matter, act or omission referred to. *General rule as to description*
- 207.** It is not necessary in stating an intent to defraud, deceive or injure, to state an intent to defraud, deceive or injure any particular person, where the Law creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence. *Statement of intent*
- 208.** The following defendants may be charged and tried together, defendants accused of: *Defendant who may be charged jointly*
- (a) the same offence committed in the course of the same transaction;
 - (b) an offence and another of abetting or being accessory to or attempting to commit the same offence;
 - (c) more than one offence of the same or similar character, committed by them jointly;
 - (d) different offences committed in the course of the same transaction;
 - (e) offences which include theft, extortion or criminal misappropriation and another accused of receiving or retaining or assisting in the disposal or concealment of property, the possession of which has been transferred by offences committed by the first named persons, or of abetment of or attempting to commit any of the last named offences; and
 - (f) dishonestly receiving stolen property and or assisting in concealment of stolen property, or in respect of stolen property

the possession of which has been transferred by one offence, and another accused of offences committed during a fight or series of fights arising out of another fight, and persons accused of abetting any of these offences.

- 209.** For every distinct offence with which a defendant is accused, there shall be a separate charge and every charge shall be tried separately except in the following circumstances: *Separate charges for distinct offences*
- (a) any three offences committed by a defendant within 12 months whether or not they are of the same or similar character or whether or not they are in respect of the same person or persons; or
 - (b) any number of the same type of offence committed by a defendant; or
 - (c) any number of offence committed by a defendant in the course of the same transaction having regard to the proximity of the time and place, continuity of action and community of purpose; or
 - (d) cases mentioned in Sections 210 to 215 of this Law.
- 210.** An offence is deemed to be an offence of the same kind as an attempt to commit that offence where the attempt is itself an offence. *Attempt same as substantive offences*
- 211.** Where in one series of acts or omissions so connected together as to form the same transaction or which form or are part of a series of offences of the same or a similar character, more offences than one are committed by the same person, charges for the offences, whether felonies, misdemeanours, or simple offences, may be joined and the person accused tried for the offences at one trial. *Trial for more than one offence*
- 212.** Where the acts or omissions alleged constitute an offence falling within two or more separate definitions in any law for the time being in force under which offences are defined or punished, the defendant accused of them may be charged with and tried at one trial for each of those offences. *Offences falling within two definitions*
- 213.** Where several acts or omissions, of which one or more than one would by itself or themselves constitute an offence, constitute when combined with a different offence, the defendant accused of them may be charged with and tried at one trial for the offence constituted by those acts or omission when combined or for any offence constituted by any one or more of those acts. *Acts constituting one offence but constituting a different offence when combined*

- 214.** Where a single act or omission or series of acts or omissions is of such a nature that it is doubtful which of several offences, the facts of which can be proved, will constitute the offence with which the defendant may be charged with having committed all or any of those offences and any number of those charges may be tried at once or he may be charged in the alternative with having committed any of those offences. *Where it is doubtful which offence has been committed*
- 215.** Where in a single act or omission the fact or combination of facts constitutes more than one offence, the defendant may be charged and tried at one trial for one or more of those offences. *Incidental offences in the same transaction*

PART 21 - ALTERATION OR AMENDMENT OF CHARGES

- 216.** (1) A Court may permit an alteration or amendment to a charge or framing of a new charge at any time before judgment is pronounced. *Alteration and amendment of charge by permission of court*
- (2) An alteration or amendment or a new charge shall be read and explained to the defendant and his plea to the altered, amended or new charge shall be taken.
- (3) Where a defendant is arraigned for trial on an imperfect or erroneous charge, the Court may permit or direct the framing of a new charge, or an amendment to, or the alteration of the original charge.
- 217.** (1) Where a new charge is framed, or amendment or alteration made to a charge under the provisions of Section 216 of this Law, the Court shall call on the defendant to plead to the new, amended or altered charge, as if he has been arraigned for the first time. *Procedure on alteration of charge*
- (2) The Court shall proceed with the trial as if the new, amended or altered charge had been the original charge.
- 218.** (1) Where the charge as revised under Section 216 or 217 of this Law is such that proceeding immediately with the trial is not likely in the opinion of the Court to prejudice the defendant in his defence or the prosecutor, as the case may be, in the conduct of the case, the Court may in its discretion forthwith proceed with the trial as if the charge so revised had been the original charge. *When court may proceed with trial immediately after altering adding to or framing charge*

(2) Where a charge is so amended, a note of the order for amendment shall be endorsed on the charge, and the charge shall be treated for the purpose of all proceedings in connection therewith as having been filed in the amended form.

219. Where a charge is altered, amended or substituted after the commencement of the trial, the prosecutor and the defendant shall be allowed to recall or re-summon and examine any witness who may have been examined and to call any further witness, provided that such examination shall be limited to the alteration, amendment or substitution made.

Recall of witnesses when charge is revised

220. An error in stating the offence or the particulars required to be stated in a charge or an omission to state the offence or those particulars, or any duplicity, mis-joinder or non-joinder of the particulars of the offence shall not be regarded at any stage of the case as material unless the defendant was in fact misled by the error or omission.

Effect of error

221. Objections shall not be taken or entertained during proceeding or trial on the ground of an imperfect or erroneous charge.

Objection to a charge

222. (1) Where an appellate court is of opinion that a defendant convicted of an offence was misled in his defence by the absence of a charge, or by an error in the charge, which has occasioned a miscarriage of justice, it may direct that the trial be recommenced on another charge.

Effect of material error

(2) Where the appellate Court is of the opinion that the facts of the case are such that no valid charge could have been preferred against the defendant in respect of the facts proved, it shall quash the conviction.

PART 22 - CONVICTION WHEN CHARGED WITH ONE OF SEVERAL OFFENCES OR OF ANOTHER OFFENCE

- 223.** Where a defendant is charged with one offence and it appears in evidence that he committed a similar offence with which he might have been charged under the provisions of this Law, he may be convicted of the offence, which he is shown to have committed although he was not charged with it. *Where defendant charged with one offence may be convicted of another*
- 224.** Where a defendant is charged with an offence but the evidence establishes an attempt to commit the offence, he may be convicted of having attempted to commit that offence although the attempt is not separately charged. *Full offence charged attempt proved*
- 225.** Where a defendant is charged with an attempt to commit an offence but the evidence establishes the commission of the full offence, he shall not be entitled to an acquittal but he may be convicted of the attempt and punished accordingly. *Attempt charged full offence proved*
- 226.** Where a defendant has been convicted of an attempt under either Section 224 or 225 of this Law, he shall not subsequently be liable to be prosecuted for the offence for which he was convicted of attempting to commit. *Liability as to further prosecution*
- 227.** Where a defendant is charged with an offence and the evidence establishes that he is an accessory after the fact to that offence or to some other offence of which a defendant charged with the first-mentioned offence may be convicted by virtue of any of the provisions of this Law, he may be convicted as an accessory after the fact to that offence or that other offence, as the case may be, and be punished accordingly. *On charge of an offence conviction as accessory after the fact to that or connected offence may follow*
- 228.** (1) Where on the trial of a defendant for a lesser offence it appears that the facts proved in evidence amount in law to a higher offence not charged, the defendant shall not by this reason be acquitted of the lesser offence. *Defendant tried for lesser offence but a high offence is proved*
- (2) The defendant referred to in subsection (1) of this section is not liable afterwards to be prosecuted for the higher offence proved, but the court may in its discretion stop the trial of the lesser offence or direct that the defendant be charged and tried for the higher offence, in which case, the defendant may be dealt with in all respects as if he had not been put to trial for the lesser offence.
- (3) Where a charge is brought for the higher offence

pursuant to this section, the defendant shall be tried before another Court.

- 229.** Where a defendant is charged with an offence relating to property and the evidence establishes the commission by him with respect to the same property of another offence, he may be convicted of that other offence although he was not charged with it. *Conviction of kindred offences relating to property*
- 230.** Where on trial for burglary, housebreaking or related offence, the facts proved in evidence justify a conviction for some other offences and not the offence with which the defendant is charged, he may be convicted of the other offence and be punished as if he had been convicted on a charge or an information charging him with the offence. *Defendant charged with burglary maybe convicted of kindred offence*
- 231.** Where on a trial for rape, defilement, incest, unnatural or indecent offences against a person, the facts proved in evidence can ground conviction for an indecent assault and not the offence with which the defendant is charged, he may be convicted of the offence of indecent assault, and be punished as if he had been convicted on a charge or an information charging him with the offence of indecent assault. *On charge of rape conviction under defilement, incest unnatural or indecent assault may follow*
- 232.** (1) A trial for the offences referred to in subsection (4) of this section may not, where the Court so determines, be held in an open Court. *Procedure for trial on charge for certain offences*
- (2) The names, addresses, telephone numbers and identity of the victims of such offences or witnesses shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witnesses with a combination of alphabets.
- (3) Where in any proceedings the court deems it is necessary to protect the identity of the victim or a witness, the court may take any or all of the following measures:
- (a) receive evidence by video link;
 - (b) permit the witness to be screened or masked;
 - (c) receive written deposition of expert evidence; and
 - (d) any other measure that the court considers appropriate in the circumstance.
- (4) The provision of this section shall apply to:
- (a) offences under Section 231 of this Law;
 - (b) offences under The Delta State Anti-Kidnapping and Anti–

Terrorism Law ;

- (c) offences relating to Economic and Financial Crimes;
- (d) Trafficking in Persons and related offences; and
- (e) any other offence in respect of which the Law of the State permits the use of such protective measures or as the Judge may consider appropriate in the circumstances.

(5) Any contravention of the provisions of subsection (2) of this section shall be an offence and liable on conviction to a minimum term of one year imprisonment.

- 233.** Where on a trial for an offence of defilement, the facts proved in evidence warrant a conviction for an indecent assault and not the offence with which the defendant is charged, the defendant may be convicted of indecent assault although he was not charged with that offence. *On charge of defilement, conviction of indecent assault may follow*
- 234.** Where a defendant is charged and tried for the murder of a child or for infanticide and it appears on the evidence that the defendant was not guilty of murder or of infanticide, as the case may be, but was guilty of the offence of concealment of birth, the defendant may be convicted of that offence. *Where murder or infanticide is charged and concealment of birth is proved*
- 235.** (1) Where a defendant is charged and tried for the murder of a newly-born child and it appears on the evidence that the defendant was not guilty of murder but was guilty of infanticide, the defendant may be convicted of infanticide. *Where murder is charged and infanticide proved*
- (2) Nothing in subsection (1) of this section prevents a defendant who is tried for the murder of a newly-born child from being:
- (a) convicted of manslaughter; or
 - (b) found guilty of concealment of birth; or
 - (c) acquitted on the ground that by virtue of the applicable law he was not criminally responsible, and dealt with accordingly or in accordance with this Law or any other Law.
- 236.** (1) Where a defendant is charged with an offence consisting of several particulars, a combination of some of which constitutes a lesser offence in itself and the combination is proved but the remaining particulars are not proved, he may be convicted of, or plead guilty to the lesser offence although he was not charged with it. *Where offence proved is not included in offence charged*

- (2) Where a defendant is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it.

- 237.** (1) where more than one charge is made against a defendant and a conviction has been had on one or more of them, the prosecutor may, with the consent of the court, withdraw the remaining charge or charges or the court, of its own motion, may stay the trial of the charge or charges.

Withdrawal of remaining charges on conviction on one of several charges

- (2) A withdrawal has the effect of an acquittal on the charge or charges unless the conviction which has been had is set aside, in which case, subject to any order of the court setting aside such conviction, the court before which the withdrawal was made may, on the request of the prosecutor, proceed on the charge or charges withdrawn.

PART 23 - PREVIOUS ACQUITTALS OR CONVICTION

- 238.** (1) Without prejudice to Section 226 of this Law, a defendant charged with an offence is not liable to be tried for that offence where it is shown that he has previously been:
- (a) convicted or acquitted of the same offence by a competent Court;
 - (b) convicted or acquitted by a competent Court on a charge on which he might have been convicted of the offence charged; or
 - (c) convicted for or acquitted of an offence by a competent Court other than the offence charged, being an offence for which, apart from this section, he might be convicted by virtue of being charged with the offence charged.

Defendant convicted or acquitted not to be tried again for same or kindred offence

- (2) Nothing in subsection (1) of this section shall prejudice the operation of a law giving power to a Court, on an appeal, to set aside a verdict or finding of another court and order a re-trial.

- 239.** An defendant acquitted or convicted of an offence may afterwards be tried for a distinct offence for which a separate charge might have been made against him on the previous trial under the provisions of Section 211 of this Law.

A defendant may be tried again on separate charge in certain cases

- 240.** A defendant acquitted or convicted of an offence constituted by an act or omission causing consequences which together with that act or omission constitute a different offence from that for which he was

Consequences supervening or not known at previous trial

acquitted or convicted, may afterwards be tried for the last mentioned offence if the consequences had not happened or were not known to the court to have happened at the time when he was acquitted or convicted when the consequences create the offence of murder or manslaughter.

PART 24 - WITNESSES: COMPELLING ATTENDANCE AND TAKING OF OATH OR MAKING OF AFFIRMATION

- 241.** (1) The court may, on an application of the prosecution or the defence, issue a summon or a writ of subpoena on a witness requiring him to attend Court to give evidence in respect of the case, and to bring with him any specified documents or things and any other documents or thing relating to them which may be in his possession or power or under his control.

*Issue of
summons for
witness*

- (2) Where the prosecutor is not a public officer the person to whom the summons is addressed is not bound to attend unless his traveling expenses are paid to him.

- 242.** (1) A Court with criminal jurisdiction shall have a process server specifically assigned to it.

*Service of
summons and
other processes
on witnesses*

- (2) The process server has the responsibility to effect due efficient service of witness summons, defendant's production orders, writs and all other processes issued in the court in respect of all criminal matters.

- (3) A summons shall be served on the person to whom it is directed in the same manner as is set out in Section 122 or 123 of this Law or, with leave of the court, Section 124 and Sections 126 to 130 of this Law shall apply to the summons.

- (4) Service of processes may be effected by registered reputable courier companies, recognized and authorized by the Chief Judge in accordance with the provisions of this Law, and the registered courier companies may be assigned to a court with criminal jurisdiction as a process server in accordance with subsection (1) of this section.

- (5) The Attorney-General of the State or a person so authorized by him or the police, may serve on a person whom the prosecutor wishes to call as witness, a witness summons or writ of subpoena.

(6) Proof of service of a process or document shall be endorsed by the process server effecting the service, and shall be filed in the court's file.

- 243.** Where a witness summoned to give evidence does not:
- (a) attend Court at the time and place indicated on the summons; and
 - (b) provide any reasonable excuse for his non-attendance, then after proof that the summons was duly served on him, or that the person to be served willfully avoids service, the court may issue a warrant to arrest and bring him before the Court.
- Warrant for witness after summons*
- 244.** Where the court is satisfied in the first instance, by proof on oath, that a person likely to give material evidence, either for the prosecution or for the defence, will not attend to give evidence without being compelled to do so, then, instead of issuing a summons, it may issue a warrant for the arrest of the person.
- Issue of warrant for witness*
- 245.** (1) A witness arrested under a warrant shall, if practicable and where the hearing of the case for which his evidence is required is fixed for a time which is more than twenty-four hours after the arrest, be taken before a Magistrate, and the Magistrate:
- (a) may on the witness furnishing security by recognisance to the satisfaction of the Magistrate for his appearance at the hearing, order him to be released from custody; or
 - (b) shall, on the witness failing to furnish the security, order him to be detained for production at the hearing.
- (2) The provisions of this Law relating to bail, summons and warrants in respect of the defendant shall apply to witnesses.
- (3) A witness arrested or detained under this section shall not be kept in the same room or place as the defendant, if the defendant is in custody and the defendant shall not be allowed to make any contact with the witness.
- Mode of dealing with witness arrested under warrant*
- 246.** (1) A witness who:
- (a) refuses or neglects, without reasonable cause to attend Court in compliance with the requirements of a summons duly served in the manner prescribed by law; or
 - (b) departs from the premises of the Court without the leave of the Judge or Magistrate hearing the case, is liable, on summary conviction, to a fine not exceeding ten thousand naira or to
- Penalty on witnesses refusing to attend*

imprisonment for a term not exceeding two months.

- (2) A complaint shall not be made for an offence under this section except by the order of the Court made during the hearing of the case for which the evidence of the witness is required.

- 247.** A witness who is present when the hearing or further hearing of a case is adjourned, or who has been duly notified of the time and place to which the hearing or further hearing is so adjourned, shall attend any subsequent hearing and if he defaults, he may be dealt with in the same manner as if he had refused or neglected to attend the Court in obedience to a witness summons.

Non-attendance of witness on adjourned hearing

- 248.** A person present in court and compellable as a witness, whether a party or not, in a cause, may be compelled by a Court to give evidence, and produce any document in his possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce the document and may be punished in like manner for any refusal to obey the order of the Court.

Persons in court may be required to give evidence though not summoned

- 249.** A witness shall take an oath or make a solemn affirmation in such a manner as the court considers binding on his conscience.

Manner of taking oath or affirmation

- 250.** (1) When a person attending court and who is required to give evidence, without any sufficient excuse or reason:
- (a) refuses to be sworn or to affirm as a witness; or
 - (b) having been sworn or having taken affirmation refuses to answer any question put to him; or
 - (c) refuses or neglects to produce any document or anything which he is required by the court to produce, the court may adjourn the hearing of the case and may in the meantime by warrant, commit the person to prison or other place of safe custody for a period not exceeding thirty days.

Witness refusing to be sworn, or produce document

- (2) Nothing in this section shall:
- (a) affect the liability of the person to any other punishment for refusing or neglecting to do what is so required of him; or
 - (b) prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken by it.

PART 25 - WITNESSES: EXPENSES

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| <p>251. Where a person attends court as a State witness, the witness shall be entitled to payment of such reasonable expenses as may be prescribed</p> | <p><i>Expenses of witnesses for prosecution</i></p> |
| <p>252. Where a person attends court as a witness to give evidence for the defence, the Court may in its discretion on application, order payment by the Registrar to such witness of Court such sums of money, as it may deem reasonable and sufficient to compensate the witness for the expenses he reasonably incurred in attending the Court.</p> | <p><i>Expenses of witnesses for defence</i></p> |
| <p>253. The court may permit, on application of a party, for an adjournment of the proceedings, and in so doing, may order the party seeking the adjournment to pay to a witness present in court and whose evidence it has not been possible to take owing to the adjournment, such sum in the amount payable to a witness in accordance with section 251 and 252 of this Law, or such sum as the court may fix.</p> | <p><i>Adjournment maybe granted subject to witnesses costs</i></p> |
| <p>254. The amount of the expenses payable to a witness pursuant to Sections 251 and 252 of this Law shall be processed and paid by the Registrar of the Court to the witness out of the relevant vote as appropriated by the Judiciary.</p> | <p><i>Ascertainment of witnesses expenses</i></p> |

PART 26 - EXAMINATION OF WITNESSES

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| <p>255. Subject to the provisions of any other law, the examination of witnesses shall be in accordance with the provisions of the Evidence Act.</p> | <p><i>Application of Evidence Act</i></p> |
| <p>256. The Court may, at any stage of any trial, inquiry or other proceedings under this Law, either of its own motion or on application of either party to the proceeding call a person as a witness or recall and re-examine a person already examined where his evidence appears to the court to be essential to the just decision of the case.</p> | <p><i>Power to call or recall witnesses</i></p> |
| <p>257. A certificate signed by any of the officers named in Section 55 of the Evidence Act, shall be admissible in evidence in accordance with the provisions of that Act.</p> | <p><i>Certificates of certain Government technical officers</i></p> |
| <p>258. In a case where the right of reply depends on the question whether evidence has been called for the defence, the fact that the</p> | <p><i>Right of reply</i></p> |

defendant charged has been called as a witness shall not of itself confer on the prosecution the right of reply, but a law officer for the prosecution shall in all cases have the right of reply.

- 259.** (1) Subject to the provisions of Sections 232, 260 to 262 of this Law and of any other Law specifically relating thereto, the room or place in which a trial is to take place under this Law shall be an open Court to which the public generally may have access as far as it can conveniently contain them.

Public to have access to hearing

- (2) Notwithstanding the provisions of subsection (1) of this section, the Judge or Magistrate presiding over a trial may, in his discretion and subject to the provisions of section 260 of this Law, exclude the public at any stage of the hearing on the grounds of public policy, decency or expedience.

- (3) Where the court is sitting in a place other than in a building, the authority given in subsection (2) of this section to exclude the public shall be construed as being authority to prevent the public approaching so near to where the court is sitting, as in the opinion of the Judge or Magistrate, to be able to hear what is taking place at the trial or be able to communicate with a person allowed to be present.

- 260.** Where a person who in the opinion of the court has not attained the age of eighteen is called as witness in any proceedings in relation to an offence against or any conduct contrary to decency or morality, the Court may direct that all or any persons not being:
- (a) members or officers of the court; or
 - (b) parties to the case, their legal representatives or persons otherwise directly concerned in the case, be excluded from the Court during the taking of the evidence of such person.

Court may exclude certain persons while taking evidence of a child or young person

- 261.**(1) An order made under Section 259 or 260 of this Law excluding the public from a Court shall not unless specifically stated:

- (a) authorise the exclusion of *bona fide* representatives of a newspaper or news agency; or
- (b) apply to messengers, clerks and other persons required to attend the Court for purposes connected with their employment.

Order under section 259 or 260 not to apply to press and certain others

- (2) Where an order is made, the Court shall record the grounds on which the order is taken.

- 262.** An infant, other than an infant in the arms of parent or guardian, or child shall not be permitted to be present in court during the trial of a defendant charged with an offence or during any proceedings preliminary to the trial, except: *Prohibition on children being present in court during the trial of other persons*
- (a) he is the defendant charged with the alleged offence; or
 - (b) his presence is required as a witness or otherwise for the purposes of justice in which event he may remain for so long as his presence is necessary.
- 263.** (1) Where it appears to the Court that in the interest of justice, the Court should have a view of any place, person or thing connected with the case, the Court may, where the view relates to a place, either adjourn the Court to that place and there continue the proceedings or adjourn the case and proceed to view the place, person or thing concerned. *Visit by court to locus*
- (2) The defendant shall be present at the viewing of the place, person or thing concerned.
- (3) At the locus, the Court shall give directions as it may deem fit for the purpose of preventing communication between the witnesses and the defendant.
- (4) A breach of a direction given under subsection (3) of this section shall not affect the validity of the proceedings unless the Court otherwise directs.
- 264.** (1) Where the age of a person is in issue in any criminal proceedings, the Court may determine the question by taking into account one or both of the following: *Determination of age*
- (a) the apparent physical appearance of the person concerned;
 - (b) any evidence, in relation to the age of the person concerned, received by the Court in accordance with the provisions of the Evidence Act, the Child Rights Law, or any other law in force.
- (2) The evidence of a witness, who is not an expert within the meaning of Section 68 of the Evidence Act, shall be admissible for the purpose of this section.
- (3) An order or judgment of the court shall not be invalidated by any subsequent proof that the age of the person has not been correctly stated to the court, and the age presumed or declared by

the court to be the age of that person shall, for the purpose of this Law, be deemed to be the true age of that person.

- 265.** Where in a charge for an offence, it is alleged that the person by or in respect of whom the offence was committed was a child under or above a specified age, and he appears to the Court to have been at the date of the commission of the alleged offence a child or was under or above the specified age, as the case may be, he shall, for the purposes of this Law, be presumed at that date to have been a child or to have been under or above that age, as the case may be, unless the contrary is proved. *Age in relation to offences*
- 266.** A defendant shall, subject to the provisions of Section 135 of this Law, be present in court during the whole of his trial unless:
(a) he misconducts himself in such a manner as to render his continuing presence impracticable or undesirable;
(b) at the hearing of an interlocutory application. *Presence of defendant at trial*
- 267.** (1) The complainant and defendant shall be entitled to conduct their cases by a legal practitioner or in person except in a trial for a capital offence or an offence punishable with life imprisonment. *Conduct of cases by legal practitioner for complainant or for defendant*
- (2) Where the defendant is in custody or on remand he shall be allowed access to his legal practitioner at all reasonable times.
- (3) Where the defendant elects to defend himself in person, the court shall inform him of his rights within the trial and the consequences of his election.
- (4) The Court shall ensure that the defendant is represented by Counsel in capital offences provided that a defendant who refuses to be represented by counsel shall, after being informed under Section 349 (6) of this Law of the risks of defending himself in person, be deemed to have elected to defend himself in person and this shall not be a ground to void the trial.
- 268.** (1) Where a private legal practitioner prosecute on behalf of the Attorney-General of the State or a public officer prosecuting in his official capacity in any criminal proceedings, the private legal practitioner or public officer shall prosecute subject to such direction as may be given by the Attorney-General of the State. *General control of prosecution by the Attorney-General*

- (2) Where proceedings in respect of an offence against a law of the State within the criminal jurisdiction of a court are brought by a Police officer in the exercise of his official duty and it is not provided by a written law that such proceedings shall only be brought by or in the name of specified persons, such proceedings may, subject to any special or general directions given by the Attorney-General of the State, be brought in the name of the public officer, police officer instituting the proceedings or making the arrest if any, or in the case of a member of the police force in the name of the "Commissioner of Police of Delta State".
- (3) The provisions of subsections (1) and (2) shall apply in relation to proceedings for an offence against a Federal Law as they apply in relation to offences against a Law of the State but as if references to the Attorney-General of the State were references to the Attorney-General of the Federation.
- (4) Where a proceeding in respect of an offence is instituted on behalf of the Attorney-General of the State, it shall be in the name of "The State".
- (5) The Attorney-General of the Federation may delegate to the Attorney-General of the State the powers conferred on him by this section either generally or with respect to any offence or class of offences and such offence(s) shall be prosecuted in the name of the Federal Republic of Nigeria.
- (6) The powers of the Attorney-General of the State may be exercised directly by him or any officer in his ministry or department.

- 269.** Where a defendant appears before a court on a summons, he may be required to enter the dock, to stand or sit in it, except where circumstances do not permit, as may be directed by the Court.

Position in court of person summoned

PART 27 - PLEA BARGAIN AND PLEA GENERALLY

- 270.** (1) Notwithstanding anything in this Law or in any other Law, the Prosecutor may:
- (a) receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf;
 - (b) offer a plea bargain to a defendant charged with an offence.
- (2) The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative

Defendant may plead guilty for lesser offence (s) than offence charged

during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence, provided that all of the following conditions are present:

- (a) the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;
- (b) where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or
- (c) where the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.

(3) Where the prosecutor is of the view that the offer or acceptance of
a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process, he may offer or accept the plea bargain.

(4) The prosecutor and the defendant or his legal practitioner may before the plea to the charge, enter into an agreement in respect of :

- (a) the term of the plea bargain which may include the sentence recommended within the appropriate range of punishment stipulated for the offence or a plea of guilty by the defendant to the offence(s) charged or a lesser offence of which he may be convicted on the charge; and
- (b) an appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty.

(5) The prosecutor may only enter into an agreement contemplated in subsection (4) of this section :

- a. after consultation with the police responsible for the investigation of the case and the victim or his representative; and
- b. with due regard to the nature of and circumstances relating to the offence, the defendant and public interest:

Provided that in determining whether it is in the public interest to enter into a plea bargain, the prosecution shall weigh all relevant factors, including:

- (i) the defendant's willingness to cooperate in the investigation or prosecution of others;

- (ii) the defendant's history with respect to criminal activity;
- (iii) the defendant's remorse or contrition and his willingness to assume responsibility for his conduct;
- (iv) the desirability of prompt and certain disposition of the case;
- (v) the likelihood of obtaining a conviction at trial, the probable effect on witnesses;
- (vi) the probable sentence or other consequences if the defendant is convicted;
- (vii) the need to avoid delay in the disposition of other pending cases;
- (viii) the expense of trial and appeal; and
- (ix) the defendant's willingness to make restitution or pay compensation to the victim where appropriate.

(6) The prosecution shall afford the victim or his representative the opportunity to make representations to the prosecutor regarding:

- (a) the content of the agreement; and
- (b) the inclusion in the agreement of a compensation or restitution order.

(7) An agreement between the parties contemplated in subsection (4) shall be reduced to writing and shall:

- (a) state that, before the conclusion of the agreement, the defendant has been informed:
 - (i) that he has a right to remain silent;
 - (ii) of the consequences of not remaining silent; and
 - (iii) that he is not obliged to make any confession or admission that could be used in evidence against him;
- (b) state fully, the terms of the agreement and any admission made;
- (c) be signed by the prosecutor, the defendant, the legal practitioner and the interpreter, as the case may be;
- (d) A copy of the agreement signed by the parties in paragraph (c) of subsection (6) of this section shall be forwarded to the Attorney-General of the State.

(8) The presiding judge or magistrate before whom the criminal proceedings are pending shall not participate in the discussion contemplated in subsection (4) of this section.

(9) Where a plea agreement is reached by the prosecution and the defence, the prosecutor shall inform the court that the

parties have reached an agreement and the presiding Judge or Magistrate shall then inquire from the defendant to confirm the correctness of the agreement.

(10) The presiding Judge or Magistrate shall ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may where :

(a) satisfied that the defendant is guilty of the offence to which he has pleaded guilty, convict the defendant on his plea of guilty, to that offence, and shall award the compensation to the victim in accordance with the terms of the agreement which shall be delivered by the Court in accordance with section 308 of this Law; or

(b) he is for any reason of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant's right referred to in subsection (7) of this section, he shall record a plea of not guilty in respect of such charge and order that the trial proceed.

(11) Where a defendant has been convicted under subsection (10) (a), the presiding Judge or Magistrate shall consider the sentence as agreed upon and where he is:

(a) satisfied that such sentence is an appropriate sentence, impose the sentence; or

(b) of the view that he would have imposed a lesser sentence than the

sentence agreed, impose the lesser sentence; or

(c) of the view that the offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to be appropriate.

(12) The presiding Judge or Magistrate shall make an order that any money, asset or property agreed to be forfeited under the plea bargain shall be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible.

(13) Notwithstanding the provisions of the Sheriffs and Civil Process Act, the

prosecutor shall take reasonable steps to ensure that any money,

asset or property agreed to be forfeited or returned by the offender under a plea bargain are transferred to or vested in the victim, his representative or other person lawfully entitled to it.

(14) Any person who willfully and without just cause, obstructs or impedes the vesting or transfer of any money, asset or property under this Law, shall be guilty of an offence and is liable on conviction to imprisonment for 7 years without an option of fine.

(15) Where the defendant has been informed of the heavier sentence as contemplated in subsection (11) (c) of this section, the defendant may:

(a) abide by his plea of guilty as agreed upon and agree that, subject to the defendant's right to lead evidence and to present argument relevant to sentencing, the presiding Judge or Magistrate may proceed with the sentencing; or

(b) withdraw from his plea agreement, in which event the trial shall proceed de novo before another presiding Judge or Magistrate, as the case may be.

(16) Where a trial proceeds as contemplated under subsection (15) (a) or de novo before another presiding Judge or Magistrate as contemplated in subsection (15) (b):

(a) no references shall be made to the agreement;

(b) no admission contained therein, or statements relating thereto, shall be admissible against the defendant; and

(c) the prosecutor and the defendant may not enter into a similar plea and sentence agreement.

(17) Where a person is convicted and sentenced under the provisions of subsection (1) of this section, he shall not be charged or tried again on the same facts for the greater offence earlier charged to which he had pleaded to a lesser offence.

(18) The judgment of the court contemplated in subsection 10(a) of this section shall be final and no appeal shall lie in any court against such judgment, except where fraud is alleged.

271. (1) Before a defendant takes his plea, the court shall inform him of his rights under the provisions of section 270 of this Law.

*Plea to
information or
charge.*

(2) The defendant to be tried on a charge or an information shall be:
(a) brought before the court unfettered unless the court sees cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the Registrar or other officer of the Court; and

(b) called upon to plead instantly unless, where the person is entitled to service of the information, he objects to the non-service and where the court finds that he has not been duly served.

(3) The court shall record the fact that it is satisfied that the defendant understands the charge or information read over and explained to him in the language he understands, and shall record the plea of the defendant to the charge or information as nearly as possible in the words used by him.

272. Where the fact of a previous conviction of a defendant is a fact in issue, the prosecution shall prove the same in accordance with the provisions of the Evidence Act.

Proof of previous conviction.

273. A defendant who pleads not guilty shall be deemed to have put himself to trial.

Effect of plea of not guilty.

274. (1) Where a defendant pleads guilty to an offence with which he is charged, the court shall:
(a) record his plea as nearly as possible;
(b) invite the prosecution to state the fact of the case; and
(c) enquire from the defendant whether his plea of guilty is to the fact as stated by the prosecution.

Effect of plea of guilty.

(2) Where the court is satisfied that the defendant intends to admit the truth of all the essential elements of the offence for which he has pleaded guilty, the court shall convict and sentence him or make such order as may be necessary, unless there shall appear sufficient reason to the contrary.

(3) Where the defendant pleads guilty to a capital offence, a plea of not guilty shall be recorded for him.

275. Without prejudice to other provisions of this Law, where the

Amending charge where

defendant

pleads guilty to an offence not contained in the charge or information on which he was arraigned, the Court shall direct the prosecution to amend the charge or information accordingly to include the admitted offence, in which case, a fresh plea of the defendant shall be taken on the amended charge or information.

*defendant
pleads guilty to
offence not
charged.*

- 276.** (1) Where the defendant, when called upon to plead remains silent or refuses to answer, the Court shall enter a plea of not guilty on his behalf.

*Failure to plead
due to malice or
otherwise.*

(2) A plea entered under subsection (1) of this section shall have the same effect as if the defendant actually pleaded to the charge.

(3) The Court may inquire into the mental state of the defendant, and if the court is satisfied that the defendant is of sound mind, the court shall proceed with his trial.

(4) Where the court finds that the defendant is of unsound mind, the provisions of this Law in relation to persons of unsound mind shall apply.

- 277.** (1) A defendant against whom a charge or information is filed may plead that:
- (a) by virtue of section 238 of this Law he is not liable to be tried for the offence with which he is charged; or
 - (b) he has obtained a pardon for his offence.

*Pleas: autrefois
acquitt or
convict, pardon.*

(2) Where either of the pleas under subsection (1) of this section is raised in any case and denied to be true in fact, the court shall determine whether such plea is true in fact or not.

(3) Where the Court holds that the facts alleged by the defendant do not prove the plea, or if it finds that it is false in fact, the defendant shall be required to plead to the charge or information.

4) Nothing in this section shall prevent a defendant from pleading that, by virtue of some other provision of law, he is not liable to be prosecuted or tried for an offence with which he is charged.

PART 28 - PERSONS OF UNSOUND MIND

- 278.** (1) Where in the course of a criminal trial, the court has reason to suspect the mental capacity or soundness of mind of a defendant, by virtue of which he is unable to stand trial or defend himself, the Court shall order the medical examination of the defendant's mental state or soundness of mind.
- (2) An investigation under subsection (1) of this section may be held in the absence of the defendant where the court is satisfied that owing to the state of the defendant's mind it would be in the interest of the defendant or of other persons or in the interest of public decency that he should be absent.
- (3) Where the Court is not satisfied that the defendant is capable of making his defence, the Court shall adjourn the trial or proceedings and shall remand the person for a period not exceeding 1 month to be detained for observation in some suitable place.
- (4) A defendant detained in accordance with subsection (3) of this section shall be kept under observation by a medical officer during the period of his remand and before the expiration of that period, the medical officer shall:
- (a) give to the court his opinion in writing as to the state of mind of that person; and
 - (b) where he is unable within the period to form any definite opinion, he shall so certify to the court and ask for a further remand and such further remand may extend to a period of 3 months.
- (5) Where further period of remand is granted under subsection (4) of this section, the case shall be fixed returnable by the court at the expiration of the period granted under subsection 4 (b) of this section.
- (6) A court, before which a defendant suspected to be of unsound mind is accused of any offence may, on the application of the Attorney-General of the State or a law officer made at any stage of the proceedings prior to the trial, order that the person be sent to an asylum or such other suitable place for observation.

Procedure when defendant is suspected to be of unsound mind.

(7) The medical officer in charge of the asylum or such other suitable place shall, within a period not exceeding 1 month in the first instance or on application to the court for a further period of 3 months, submit to the court a report in writing containing his opinion on the soundness of mind of the defendant.

279. Where the medical officer or such officer in charge of the asylum or other suitable place to which the defendant is referred for observation under the provisions of this section fails to submit a report as provided in section 278 (4) and (7) of this Law within the period stipulated in those sub sections, the court may discharge the person, or shall release him on bail in accordance with the provisions of this Law relating to bail.

Report from
medical officer.

280. (1) Where the medical officer certifies that the defendant is of:

- (a) sound mind and capable of making his defence, the court shall, unless satisfied by the defence that the defendant is of unsound mind, proceed with the trial; or
- (b) unsound mind and incapable of making his defence, the court shall, where satisfied of the fact, postpone the proceeding.

Certificate of
medical officer.

(2) The trial of the issue as to whether or not the defendant is of unsound mind and incapable of making his defence shall, where the finding is that he is of sound mind and capable of making his defence, be deemed to be part of his trial before the court.

(3) The certificate of the medical officer who issued the certificate shall be admissible under this section even in the absence from court of the medical officer: provided there is sufficient explanation for his absence.

(4) Where the defendant is certified to be of unsound mind and incapable of making his defence, it shall not be necessary for him to be present in court during proceedings under this section.

281. (1) Where a defendant is found to be of unsound mind and incapable of making his defence, if the offence charged is bailable by the court, it may in its discretion, release him on sufficient security being given:

Release of
defendant of
unsound mind
pending
investigation or
trial.

- (a) that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person; and

(b) for his appearance when required before the court or such officer as the court appoints in that behalf.

(2) Where a defendant is before a Magistrate charged with an offence which is bailable by a Judge but not by a Magistrate or where the offence is bailable by a Magistrate but the Magistrate refused to grant bail, the Magistrate shall inform the defendant of his right to apply to a Judge for bail.

(3) Where the offence charged is not bailable by the Magistrates Court or where a Judge has refused bail under subsection (1) of this section or after an application made under subsection (2) of this section or where sufficient security is not given or where no application is made for bail, the Judge shall report the case to the Attorney-General of the State, who, after consideration of the report may, in his discretion, order the defendant to be confined in a lunatic asylum or other suitable place of safe custody and the Judge shall give effect to the order.

(4) Where the order is not given within 2 months, the court may discharge the defendant or release him on bail on satisfaction that doing so will not endanger the life of the defendant or the life of anyone else.

(5) Pending the order of the Attorney-General of the State, the defendant, may be committed to an asylum or other suitable place of custody for safe custody.

282. Where a proceeding or trial is postponed under section 278 or 279 of this Law, the court may at any time re-open the proceeding or re-commence the trial and require the defendant to appear or be brought before the court.

Resumption of proceedings or trial.

283. Where the defendant has been released under section 281 of this Law, the court may at any time require the defendant to appear or be brought before it and may again proceed with the proceeding or trial.

Resumption of proceedings after release under section 281.

284. Where the defendant appears to be of unsound mind at the time of any remand or similar pre-trial proceedings before a court, and the issue of the state of soundness of mind of the defendant is in issue, being a defence to the main offence for which he is arrested relating to insanity or intoxication, the court shall proceed to deal with the defendant in accordance with sections 278 to 291 of this Law and

Where defendant appears to have been of unsound mind.

shall not make any finding of fact in relation to such defence that the defendant is open to plead at his trial for the offence.

- 285.** Where the finding states that the defendant committed the act alleged, the court before which the trial has been held shall, where the act would have but for the finding of incapacity constituted an offence, order the person to be kept in safe custody in such place and manner as the court thinks fit and shall, within 31 days of the order, report the case for an order of the Attorney-General of the State. Safe custody of defendant discharged.
- 286.** (1) The Attorney-General of the State may at his discretion order the defendant to be confined pursuant to section 285 in a mental health asylum, prison or other suitable place of safe custody. Order of the Attorney-General in pursuance to section 285.
- (2) In exercising this discretion, the Attorney-General of the State shall ensure that the defendant is placed in such facility as to afford him adequate care at the expense of the State.
- 287.** Where a defendant is confined under sections 281 (3) and (5), 285 or **286** of this Law, the medical officer of the prison, where such defendant is confined in a prison, or the medical officer attached to the asylum or other facility where he is confined in any asylum or such facility, shall keep him under observation in order to ascertain his state of mind and such medical officer shall make a special report for the information of the Attorney-General of the State as to the state of mind of such defendant at that time or times as the Attorney-General of the State shall require. Observation of prisoner of unsound mind
- 288.** Where a defendant is, under the provisions of section 279 of this Law, confined in a prison, asylum or other facility and is certified by the medical officer to whom the case is referred for his report to be capable of making his defence, the defendant shall be taken before the court at such time as the court appoints, and the court shall proceed with the trial or proceeding, as the case may be, and the certificate shall be receivable as evidence. Procedure when defendant of unsound mind is reported to be able to make his defence
- 289.** (1) Where the medical officer of a prison or the medical officer attached to an asylum or other facility in which a defendant is confined under sections 281, 285 or 286 of this Law certifies that the defendant in his judgment may be discharged without the danger of him causing injury to himself or to any other person, the Attorney-General of the State may, on the receipt of that report, order the defendant to be Procedure where defendant of unsound mind is reported fit for discharge

discharged or to be detained in custody or in prison or to be in custody or be transferred to an asylum where he has not already been sent to an asylum.

(2) Where the Attorney-General of the State orders a defendant to be transferred to an asylum, he may appoint two medical officers to report on the state of mind of the defendant and on any other facts the court may require, and on receipt of the report, the court may order his discharge or detention as it thinks fit.

290. Where a defendant is confined in a prison or an asylum, the Attorney-General of the State may direct his transfer from one prison or asylum to any other prison or asylum as often as may be necessary or may at any time order for his release from detention as he may consider necessary.

Transfer from one place of custody to another.

291. (1) Where a relative or friend of a defendant confined under section 281 or 286 of this Law desires that the defendant be delivered over to his care and custody, the court may, on the application of the relative or friend and on his giving security to the satisfaction of the court that the defendant delivered shall be:

Delivery of defendant of unsound mind to care of relative.

(a) properly taken care of; and

(b) prevented from doing injury to himself or to any other person,

in its discretion, order the defendant to be delivered to the relative or friend on condition that the defendant shall be produced for the inspection of such officer and at such times as the court may direct.

(2) Where a defendant delivered to a relative or friend under subsection (1) of this section is confined under the provisions of section 285 of this Law, the court may further require the relative or friend to give satisfactory security that if at any time it appears to the court that the defendant is capable of making his defence, the relative or friend shall produce the defendant for trial.

(3) Sections 281 and 287 of this Law shall apply, with necessary modifications, to a defendant delivered to the care and custody of a relative or friend under this section.

292. Where it is necessary to remove a prisoner to a prison or asylum under

Removal to

the provisions of this Part, an order for the removal given under the provisions of this Part shall be sufficient authority for the removal and the detention of the prisoner in any prison or such other place of detention within the Federation. another State.

PART 29 - DETENTION TIME LIMITS

293. (1). A suspect arrested for an offence which the Magistrate Court has no jurisdiction to try, shall within a reasonable time of arrest be brought before the Magistrate Court by way of an application for remand. Application for remand or other interlocutory proceedings.
- (2) An application for remand under this section shall be made ex parte and shall:
- (a) be made in the prescribed "Report and Request for Remand Form" as contained in Form 8, in the First Schedule to this Law;
 - (b) be verified on oath and contain reasons for the remand request; and
 - (c) be accompanied by the original or certified true copy of the case file containing all the evidence the prosecution intends to rely on.
- (3) In the case that the court finds probable cause to remand the suspect to custody, the Registrar of the Court shall forward the case file to the Attorney General for legal advice and shall also serve a copy on the suspect.
294. (1) Where the Court, after examining the reason for the arrest and for the request for remand in accordance with the provisions of section 293 of this Law, is satisfied that there is probable cause to remand the suspect pending the receipt of a copy of the legal advice from the Attorney-General of the State and arraignment of the suspect before the appropriate court, as the case may be, may remand the suspect in custody. A court may remand in prison custody.
- (2) In considering whether "probable cause" has been established for the remand of a suspect pursuant to subsection (1) of this section, the court may take into consideration the following:
- (a) the nature and seriousness of the alleged offence;
 - (b) reasonable grounds to suspect that the suspect has been involved in the commission of the alleged offence;
 - (c) reasonable grounds for believing that the suspect may abscond or commit further offence where he is not committed to custody; and

- (d) any other circumstance of the case that justifies the request for remand.

295. The court may, in considering an application for remand brought under section 293 of this Law, grant bail to the suspect brought before it, taking into consideration the provisions of sections 158 to 188 of this Law relating to bail.

Court may grant bail in remand proceedings

296. (1) Where an order of remand of the suspect is made pursuant to section

Time and protocol for remand orders.

293 of this Law, the order shall be for a period not exceeding 14 days in the first instance, and the case shall be returnable within the same period.

(2) Where, on application in writing, good cause is shown why there should be an extension of the remand period, the court may make an order for further remand of the suspect for a period not exceeding 14 days and make the proceedings returnable within the same period.

(3) Where the suspect is still in custody on remand at the expiration of the period provided for under subsection (1) or (2) of this section, the court may, on application of the suspect, grant bail in accordance with the provisions of sections 158 to 188 of this Law.

(4) At the expiration of the remand order made pursuant to subsection (1) or (2) of this section, and where the suspect is still remanded with his trial having not commenced, or charge having not been filed at the relevant court having jurisdiction, the court shall issue a hearing notice on:

(a) the Commissioner of Police of the State or the Attorney-General of the State; or

(b) any relevant authority in whose custody the suspect is or at whose instance the suspect is remanded, and adjourn the matter within a period not exceeding 14 days of the expiration of the period of remand order made under subsection (1) or (2) of this section, to inquire as to the position of the case and for the Commissioner of Police of the State and the Attorney-General of the State to show cause why the suspect remanded should not be unconditionally released.

- (5) Where the Commissioner of Police of the State and the Attorney-General of the State show good cause pursuant to subsection (4) of this section and make a request to that effect, the court:
- (a) may extend the remand of the suspect for a final period not exceeding 14 days for the suspect to be arraigned for trial before an appropriate court; and
 - (b) shall make the case returnable within the said period of 14 days from the date the hearing notice was issued pursuant to subsection (4) of this section.
- (6) Where a good cause is not shown for the continued remand of the suspect pursuant to subsection (4) of this section, or where the suspect is still on remand custody after the expiration of the extended period under subsection (5), the court shall, with or without an application to that effect, forthwith discharge the suspect and the suspect shall be immediately released from custody.
- (7) No further application for remand shall be entertained by any court after the proceeding in subsection (6) of this section.
- 297.** (1) The powers conferred on the court under this Part maybe exercised by the court:
- When court may exercise power of remand
- (a) whether the suspect remanded is present in court or not; and
 - (b) on its own motion or on application, including an application by a person in charge of the prison or other place of custody where the suspect remanded is detained.
- (2) The legal advice of the Attorney-General of the State shall in all cases be copied to the court, and the court may act only on the copy of the advice to make any order that may be necessary in the circumstances.
- (3) Where the legal advice of the Attorney-General of the State indicates that the suspect remanded has no case to answer, the court shall release the suspect immediately.
- 298.** (1) During remand, the court may nevertheless order the suspect remanded to be brought before it.
- Court may bring up person remanded or make any order during remand.
- (2) The court may order that the suspect remanded be transferred to a hospital, asylum or any suitable place for the purpose of giving him

medical treatment, or may make any order that it considers necessary to make at any time during the remand period.

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| 299. A suspect committed to prison under this Law shall be remanded in prison or other place of safe custody. | Place of remand. |
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PART 30 - PRESENTATION OF CASE BY PROSECUTION AND DEFENCE

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| 300. (1) After a plea of not guilty has been taken or no plea has been made, the prosecutor may open the case against the defendant stating shortly by what evidence he expects to prove the guilt of the defendant. | Presentation of case for prosecution |
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(2) The prosecutor shall then examine the witnesses for the prosecution who may be cross-examined by the defendant or his legal practitioner and thereafter re-examined by the prosecutor, where necessary.

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| 301. After the case of the prosecution is concluded, the defendant or the legal practitioner representing him, if any, is entitled to address the court to present his case and to adduce evidence where so required. | Defendant's case |
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| 302. The court may, on its own motion or on application by the a defendant after hearing the evidence for the prosecution, where it considers that the evidence against the defendant or any of several defendants is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of the defendant without calling on him or them to enter his or their defence and the defendant shall accordingly be discharged and the court shall then call on the remaining defendant, if any, to enter his defence. | No case submission at the instance of the court |
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| 303. (1) Where the defendant or his legal practitioner makes a no case submission in accordance with the provisions of this Law, the court shall call on the prosecutor to reply. | No case submission by the defence and replies |
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(2) The defendant or his legal practitioner has the right to reply to any new point of law raised by the prosecutor, after which, the court shall give its ruling.

(3) In considering the application of the defendant under this section, the court shall, in the exercise of its discretion, have regard to the following:

- (a) whether an essential element of the offence has been proved;
- (b) whether there is evidence linking the defendant with the commission of the offence with which he is charged;
- (c) whether the evidence so far led is such that no reasonable court or tribunal would convict on it; and
- (d) any other ground on which the court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer.

304. (1) After the case for the prosecution is concluded, the defendant or the

Defence and prosecutor's right of reply.

legal practitioner representing him, if any, is entitled to address the court at the commencement or conclusion of his case, as he deems fit, and if no witnesses have been called for the defence than the defendant himself or witnesses solely as to character of the defendant and no document is put in as evidence for the defence, the prosecution shall not be entitled to address the court a second time but if, in opening the case for the defence, the legal practitioner appearing for the defendant introduces a new matter without supporting it by evidence, the court in its discretion may allow the prosecution to reply.

(2) Where any witness, other than the defendant himself or witnesses solely as to the defendant's character, is called or any document is put in as evidence for the defence, the legal practitioner appearing for the defendant is entitled after evidence has been adduced to address the court a second time on the whole case and the prosecution shall have a right of reply.

(3) The provisions of this section shall not affect the right of reply by a law officer.

305. (1) Where a question as to the interpretation of the Constitution of the Federal Republic of Nigeria arises in the course of a trial and is referred to the Court of Appeal under the provisions of the Constitution, the court before which the question arose may in its discretion:

Reference to the Court of Appeal.

- (a) adjourn the trial until the question has been considered and decided;

(b) conclude the trial and postpone the verdict until such time as the question has been considered and decided; or

(c) conclude the trial and pass sentence but suspend execution until such time as the question has been considered and decided,

and in any such case the court in its discretion shall commit the defendant or convict to prison or admit him to bail in accordance with the provisions of Part 18 of this Law.

(2) When the question referred to in subsection (1)(a) of this section has been decided by the Court of Appeal, the Court shall:

(a) continue the trial or discharge the defendant;

(b) acquit or convict the defendant; or

(c) order the execution of the sentence as the circumstance may require.

306. Subject to the provisions of the Constitution of the Federal Republic of Nigeria, an application for stay of proceedings in respect of any criminal matter before the High Court or Magistrates' Court or any other Court within the State, shall not be entertained until judgment is delivered.

Stay of proceedings.

307. (1) When the case for both sides is closed, the court shall consider its verdict and for this purpose may retire or adjourn the matter for judgment.

Consideration of case by court and announcement of finding.

(2) After the court has made its finding, the court shall pronounce that finding in the open court.

308. (1) The Judge or Magistrate shall record his judgment in writing and every judgment shall contain the point or points for determination, the decision and the reasons for the decision and shall be dated and signed by the Judge or Magistrate at the time of pronouncing it.

Judgment to be in writing.

(2) The Magistrate, instead of writing the judgment, may record briefly in the book his decision or finding and his reason for the decision or finding, and then deliver an oral judgment.

- 309.** Where the court finds the defendant not guilty, it shall immediately discharge him and record an order of discharge and acquittal accordingly. Defendant to be discharged where found not guilty
- 310.** (1) Where the finding is guilty, the convict shall, where he has not previously called any witness to character, be asked whether he wishes to call any witness and, after the witness, if any, has been heard, he shall be asked whether he desires to make any statement or produce any necessary evidence or information in mitigation of punishment in accordance with section 311 (3) of this Law. Procedure on finding of guilty.
- (2) After the defendant has made his statement, if any, in mitigation of punishment the prosecution shall, unless such evidence has already been given, produce evidence of any previous conviction of the defendant.
- 311.** (1) Where the provisions of section 310 of this Law have been complied with, the court may pass sentence on the convict or adjourn to consider and determine the sentence and shall then announce the sentence in open court. Sentence and sentencing hearing.
- (2) The court shall, in pronouncing sentence, consider the following factors in addition to sections 239 and 240 of this Law:
- (a) the objectives of sentencing, including the principles of reformation and deterrence;
 - (b) the interest of the victim, the convict and the community;
 - (c) appropriateness of non-custodial sentence or treatment in lieu of imprisonment; and
 - (d) previous conviction of the convict.
- (3) A court, after conviction, shall take all necessary aggravating and mitigating evidence or information in respect of each convict that may guide it in deciding the nature and extent of sentence to pass on the convict in each particular case, even though the convicts were charged and tried together.
- 312.** The court may, in any case in recording sentence, make a recommendation for mercy and shall give the reasons for its Recommendation for mercy.

recommendation.

- 313.** (1) Where a defendant is found guilty of an offence, the court may, in passing sentence, take into consideration any other charge then pending against him, where the defendant admits the other charge and desires that it be taken into consideration and if the prosecutor of the other charge consents.

Conviction on other charges pending.

- (2) Where a desire is expressed under subsection (1) of this section and consent given, the court shall:

- (a) make an entry to that effect on the record book;
- (b) the prosecution shall state the facts of the case in accordance with section 300 of this Law.

- (3) Where the other charge pending against the defendant is considered in accordance with subsections (1) and (2) of this section and sentence passed on the defendant with consideration or in respect of the other pending charge, the defendant shall not, subject to the provisions of sections 236 to 237 of this Law, or unless the conviction has been set aside, be liable to be charged or tried in respect of any such offence so taken into consideration.

- 314.** (1) Notwithstanding the limit of its civil or criminal jurisdiction, a court has power, in delivering its judgment, to award to a victim commensurate compensation by the defendant or any other person or the State.

Compensation to victim in judgment.

- (2) The Court in considering the award of compensation to the victim may call for additional evidence to enable it determine the quantum of compensation to award in subsection (1) of this section.

- 315.** Where a Judge or Magistrate having tried a case is prevented by illness or other unavoidable cause from delivering his judgment or sentence, the judgment or the sentence, if it has been reduced into writing and signed by the Judge or Magistrate, may be delivered and pronounced in open court by any other Judge or Magistrate in the presence of the defendant.

Delivery of judgment when Judge or Magistrate is unavoidably absent.

- 316.** Where a sentence or conviction does not order the payment of money

Warrant of commitment.

but orders the convict to be imprisoned, the court shall issue a warrant of commitment accordingly.

- 317.** A warrant under the hand of the Judge or Magistrate by whom a convict has been sentenced or committed to prison for non-payment of a penalty or fine, grants full authority to the officer in charge of any prison and to all other persons for carrying into effect the sentence described in the warrant not being a sentence of death. Authority for carrying out sentence other than of death.
- 318.** The court may, at any time, amend any defect in an order or warrant of commitment and no: Error or omission not to affect legality of act.
- (a) omission or error as to time and place; or
 - (b) defect in form in any order or warrant of commitment given under this Law, shall be held to render void or unlawful an act done or intended to be done by virtue of the order or warrant if it is mentioned, or may be inferred, that it is founded on a conviction or judgment sufficient to sustain it.

PART 31 - COSTS, COMPENSATION, DAMAGES AND RESTITUTION

- 319.** (1) A court may, within the proceedings or while passing judgment, order the defendant or convict to pay a sum of money: Power of court to order payment of expenses or compensation.
- (a) as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict, where substantial compensation is in the opinion of the court recoverable by civil suit;
 - (b) in compensating a bona fide purchaser for value without notice of the defect of the title in any property in respect of which the offence was committed and has been compelled to give it up; and
 - (c) in defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.
- (2) Where the fine referred to in subsection (1) of this section is imposed in a case which is subject to appeal, no payment additional to the fine shall be made before the period allowed for presenting the appeal has elapsed or, where an appeal is presented, before the decision on the appeal.

(3) Order for cost or compensation may be made under this section irrespective of the fact that no fine has been imposed on the defendant in the judgment.

320. (1) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into consideration any sum paid or recovered as compensation under this part.

Payment to be taken into consideration in subsequent civil suit.

(2) The pendency of criminal proceedings shall not be a bar to a civil action in respect of the same subject matter.

321. A court after conviction may adjourn proceedings to consider and determine sentence appropriate for each convict:

Power of court to order restitution.

(a) in addition to or in lieu of any other penalty authorized by law, order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted, or to the victim's estate; or

(b) order for the restitution or compensation for the loss or destruction of the victim's property and in so doing the court may direct the convict:

(i) to return the property to the owner or to a person designated by the owner;

(ii) where the return of the property is impossible or impracticable, to pay an amount equal to the value of the property; or

(iii) where the property to be returned is inadequate or insufficient, to pay an amount equal to the property calculated on the basis of what is fair and just.

322. (1) The court may, in a proceeding instituted by a private prosecutor or on a summons or complaint of a private person, on acquittal of the defendant, order the private prosecutor or person to pay to the defendant such reasonable costs as the court may deem fit.

Cost against private prosecutor

(2) In this section, "private prosecutor" does not include a person prosecuting on behalf of the State, a public officer prosecuting in his official capacity and a police officer.

- 323.** (1) Where a person causes the arrest, or arrest and charge of a defendant or defendants and it appears to the court that there was no sufficient ground for causing the arrest, or that the accusation is false, vexatious or frivolous, it may for reason recorded, order the person to pay reasonable compensation to the defendant or defendants arrested and charged.
- (2) The court may, in default of payment of such compensation or any part of it, award a term of imprisonment against the person against whom the order was made, for any term not exceeding the term prescribed in respect of a like sum in the scale of imprisonment set out in this Law or the court may sentence the person to Community Service in accordance with section 457 of this Law.
- (3) Subject to the provisions of the Constitution relating to appeals, a person against whom an order for payment of compensation is made under this section may appeal against the order as if he had been convicted after trial by the court that issued the order.
- 324.** (1) A person to whom compensation is awarded may refuse to accept the compensation.
- (2) Where the person receives the compensation or where the convict, having been ordered to pay compensation, suffers imprisonment for non-payment, the receipt of the compensation, or the undergoing of the imprisonment, as the case may be, shall act as a bar to any further action for the same injury.
- (3) Before making an order for compensation under this Law, the court shall explain the full effect of this section to the person to whom compensation is payable.
- 325.** Any compensation ordered to be paid under this Law or any other Law, relating to any criminal proceedings, may be enforced as if it were a fine.
- 326.** (1) Where a convict is ordered to pay a fine, or a defendant is ordered to pay compensation to another person under section 319 of this Law, or a person is subject to recovery of penalty for forfeiture of a bond under this Law, the Court passing the sentence or making the order may, notwithstanding that, in default of the payment of the fine or compensation or penalty, the convict or
- Compensation in cases of false and vexatious accusation.
- Injured person may refuse to accept compensation, but payment of compensation is bar to further liability.
- Monies paid as compensation, recoverable as fines.
- Warrant for levy of fine.

defendant may be imprisoned, issue a warrant for the levy of the amount by any means permitted by law, including:

- (a) by the seizure and sale of any movable property belonging to the defendant or convict;
- (b) by the attachment of any debt due to the defendant or convict; and
- (c) subject to the provisions of the Land Use Act (Cap.L5 LFN 2004), by the attachment and sale of any immovable property of the convict situated within the jurisdiction of the court.

(2) A warrant for seizure and sale of the movable property of a person under this section shall be addressed to the court within whose jurisdiction it is to be executed.

(3) Where execution of a warrant is to be enforced by attachment of debts or sale of immovable property, the warrant shall be sent for execution to any court competent to execute orders for the payment of money in civil suits and the court shall follow the procedure for the time being in force for the execution of such orders.

327. (1) Where a convict has been ordered by the Court to pay a fine with or without a sentence of imprisonment in default of payment of the fine, the Court authorized by section 326 of this Law to issue a warrant may, exercise any of the following powers:

Powers of court when convict is sentenced to only fine.

- (a) allow time for payment of the fine;
- (b) direct that the fine be paid by instalments;
- (c) postpone the issue of a warrant under section 326 of this Law;
 - (a) without postponing the issue of a warrant under section 326 of this Law, postpone the sale of any property seized under the warrant; or
 - (b) postpone the execution of the sentence of imprisonment in default of payment of the fine.

(2) An order made in the exercise of the powers referred to in subsection (1) of this section may be made subject to the convict giving such security as the court may consider fit, by means of a bond with or without sureties, in which case, the bond may be

conditioned either for the payment of the fine in accordance with the order or for the appearance of the convict as required in the bond or both.

(3) The Court may also, in the exercise of the powers referred to in subsection (1) of this section, order that the execution of the sentence of imprisonment on a convict who has been committed to prison in default of payment of a fine, be suspended and that he be released but only subject to the convict giving security as specified in subsection (2) of this section.

(4) Where the fine or any instalment of the fine is not paid in accordance with an order under this section, the authority making the order may enforce payment of the fine or of the balance outstanding, by any means authorised in this Law and may cause the offender to be arrested and may commit or recommit him to prison under the sentence of imprisonment in default of payment of the fine.

328. (1) Where in a charge of an offence relating to property and the Court is of the opinion that the evidence is insufficient to support the charge, but that it establishes wrongful conversion or detention of property, the court may order that such property be restored and may also award reasonable damages to the person entitled to the property.

Wrongful conversion or detention of property and award of damages.

(2) The damages awarded under this section, shall be recovered in like manner, as prescribed in section 325 of this Law.

PART 32 - CUSTODY, DISPOSAL, RESTORATION OF PROPERTY

329. In this Part, “property” in the case of property regarding which an offence appears to have been committed, includes not only the property as has been originally in the possession or under the control of a party, but also any property into or for which that same has been converted or exchanged and anything acquired by the conversion or exchange, whether immediately or otherwise.

Meaning of “property”.

330. Where any property regarding which an offence appears to have been committed or which appears to have been used for the commission of an offence is produced before a court during an inquiry or a trial, the court:

Order for custody and disposal of property pending trial.

- (a) may make such order as it thinks fit for the proper custody of that property pending the conclusion of the proceedings or trial; and
- (b) where the property is subject to speedy decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of, and the proceeds dealt with as the court may direct.

331. (1) Where any proceedings or trial in a criminal case is concluded, the court may make such order as it thinks fit, for the disposal by destruction, confiscation or delivery to a person appearing to be entitled to the possession or otherwise, of any movable property or document produced before it or in its custody or regarding which an offence appears to have been committed or which has been used for the commission of an offence.

Order for disposal of property after trial.

(2) Notwithstanding that the trial, proceeding or an appeal is pending in respect of the case, the court may, in any case, make an order under the provisions of subsection (1) of this section for the delivery of any property, to a person appearing to be entitled to the possession of the property, on his executing a bond, with or without sureties, to the satisfaction of the court, undertaking to restore the property to the court.

(3) An order made under this section may be appealed against as if it is a decision in the final judgment of the court giving the direction.

332. (1) Where the court orders the forfeiture or confiscation of any property but does not make an order for its destruction or for its delivery to any person, the court may direct that the property shall be kept or sold and that the property, if sold, the proceeds of the sale be held as it directs until some person establishes to the court's satisfaction, a right to the property.

Custody or sale of property.

(2) Where no person establishes a right within six months from the date of forfeiture or confiscation of the property, the proceeds of the sale shall be paid into the Consolidated Revenue Fund of the State or any other appropriate account, as the case may be.

(3) Where an order is made under this section in a case which an appeal lies, the order shall not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting the appeal has passed or

when the appeal is entered, until the disposal of the appeal.

PART 33 SEIZURE, FORFEITURE, CONFISCATION AND DESTRUCTION OF INSTRUMENTALITY OF CRIME

333. The court may:

(a) order the seizure of any instrument, material or thing which there is reason to believe is provided or prepared, or being prepared, with a view to the commission of an offence triable by the court; and

Seizure of things intended to be used in commission of crime

(b) direct the instrument, material or thing to be forfeited, confiscated, held or otherwise dealt with in the same manner as property under section 336 of this Law.

334. (1) Upon a conviction for an offence relating to obscene publication, the court may order the confiscation and destruction of all the copies of the publication or thing, including those that remain in the possession or power of the convict.

Destruction of seditious, prohibited or obscene publications and of obscene objects.

(2) Upon arrest for an offence relating to adulterated or unfit food, drink or drug, the court may order the confiscation and destruction of the food, drink or drug, including such other adulterated or unfit items in the possession or power of the defendant.

335. Where a court is satisfied by information on oath, that there is reasonable ground for believing that there is in the State in any building, ship, carriage, receptacle or place, anything in respect to which an order may be made under section 333 or 334 of this Law, the court may issue a search warrant to search for the thing and where the thing is found, it shall be brought before a court and dealt with as that court may deem proper.

Search warrant may be used to search for things subject to section 333 or 334.

336. (1) Where a defendant is convicted of an offence carried out by criminal force, and it appears to the court that by that force a victim has been dispossessed of any immovable property, the court may, where it deems fit, order the possession of the property to be restored to the victim.

Restoration of possession of immovable property.

(2) An order under this section shall not prejudice any right or interest to or in the immovable property which a victim, including the convict, may be able to establish in a civil suit.

337. (1) The seizure by the police of property taken during arrest or investigation under this Law, or alleged or suspected to have been stolen or found in circumstances which create a suspicion of the commission of an offence, shall, within a period not exceeding 48 hours of the taking of the property or thing, be reported to a court and the court shall make an order in respect of the disposal of the property or its delivery to the person entitled to its possession or such other orders as it may deem fit in the circumstances.

Procedure on seizure of property taken during arrest or investigation or stolen.

(2) Where the person entitled to the possession of property referred to in subsection (1) of this section is unknown, the court may detain it and shall issue a public notice specifying the articles of which the property consists and requiring any person who may have a claim to it, to appear before the court and establish his claim within six months from the date of the notice.

338. (1) Where no person within the period referred to in section 337 of this Law establishes his claim to property referred to in that section and where the person in whose possession the property was found is unable to show that it was lawfully acquired by him, the property shall be at the disposal of the court and may be sold in accordance with the order of the court and proceed forfeited to the Government of Delta State.

Procedure where owner of property seized is unknown.

(2) At any time within six years from the date of the property coming into the possession of the police, the court may, direct the property or the proceeds of the sale of the property to be delivered to any person proving his title to it, on payment by him, of any expenses incurred by the court in the matter.

339. Where the person entitled to the possession of property referred to in section 337 of this Law is unknown or absent and the property is subject to speedy decay or, for the benefit of the owner, the court

Power to sell perishable property.

may, at any time direct it to be sold and the provisions of sections 337 and 338 of this Law shall, as nearly as may be practicable, apply to the net proceeds of the sale.

340. Where a defendant is convicted of an offence relating to property and it is proved that a person has bought the stolen property from him without knowing or having reason to believe that the property was stolen, and that money has, on the arrest of the convict been taken out of his possession, the court may:

Payment to innocent person of money found on defendant

(a) on the application of the purchaser; and

(b) on the restitution of the stolen property to the person entitled to the

possession, order that out of the money a sum not exceeding the price paid by the purchaser, shall be delivered to him.

341. Where, on the arrest of a defendant charged with an offence, any property, other than that used in the commission of the offence, is taken from him, the court before which he is charged may order that the property or any part of it be:

Restitution and disposition of property found on defendant.

(a) restored to the person who appears to the court to be entitled to it, and where he is the person charged, that it be restored either to him or to such other person as he may direct; and/or

(b) applied to the payment of any costs or compensation directed to be paid by the defendant charged.

342. (1) Where a defendant is convicted of an offence relating to property, the court convicting him may order that the property or any part of it be restored to the person who appears to it to be the owner of it, either on payment or without payment by the owner, to the person in whose possession the property or any part of it then is, of any sum named in the order.

Restitution of stolen property

(2) This section does not apply to:

(a) a valuable security which has been paid or discharged in good faith by a person liable to pay or discharge the instrument; or

(b) a negotiable instrument which has been received in good faith by transfer or delivery by a person for a valuable

consideration without notice or without any reasonable cause to suspect that it had been stolen.

343. Where a defendant is charged with an offence relating to counterfeit currency and in that defendant's possession, actual or constructive, was found a counterfeit currency or thing intended to be used for the purpose of making counterfeit currency, then, whether the charge proceeds to conviction or not, the currency or thing shall not be returned to the defendant charged or to the person from whom it was taken but shall be destroyed in such a manner as the court may order.

Destruction of articles relating to counterfeiting where charge is laid.

344. (1) Where a person comes into possession of a currency, which he believes to be counterfeit or which in his opinion, is to be used for the purpose of making counterfeit currency, he may hand the currency or thing to an officer of the Central Bank of Nigeria designated by the Bank to receive it, or to any police officer not below the rank of an Inspector, and the officer of the Central Bank of Nigeria, or police officer if satisfied that the currency:

Destruction of articles relating to counterfeiting where no charge is laid.

(a) is not counterfeit, or that is not intended to be used for the purpose of making counterfeit currency shall return the currency or thing, as the case may be, to the person purporting to be the owner of it, if known; and

(b) is counterfeit or is intended to be used for the purpose of making counterfeit currencies and if no charge is to be preferred against a person in connection with the currency or thing, may destroy, or cause to be destroyed the currency or thing in such manner and by such persons as may be approved by the Central Bank of Nigeria.

(2) Notice of an action to be taken under subsection (1) (a) of this section

shall have been given to the person who appears to be the owner of a currency, matter or thing, where the person is known and can easily be found, that the coin or thing will be destroyed at the end of a specified number of days unless the owner shows that the currency is not counterfeit or that the thing is not intended to be used for the purpose of making counterfeit currency.

(3) A reasonable time shall be allowed for the person to provide proof that the currency is not counterfeit or that the thing is not intended to

be used for the purpose of making counterfeit currency and the person who alleges that he is the owner of or otherwise entitled to the currency or thing shall have no claim against the officer of the Central Bank of Nigeria, police officer or the State Government in respect of the coin or thing so destroyed

- 345.** (1) Subject to the provisions of this section, sections 343 and 344 of this Law shall apply in relation to notes purporting to be legal tender in Nigeria as those sections apply in relation to currency.

Detention and destruction of counterfeit currency, etc

- (2) Any currency, matter or thing shall not be destroyed by virtue of the provisions of this Part, except:

- (a) a court orders its destruction, in connection with a conviction for an offence;
- (b) it appears to a Magistrate court having jurisdiction in the place where the currency, matter or thing is for the time being situated, on an application made in accordance with rules of court, that the existence of the currency, matter or thing involves a breach of the law and the court makes an order for its forfeiture and destruction accordingly; or
- (c) in the absence of a conviction for an offence in respect of the currency, matter or thing and any pending prosecution for the offence, and of an order or pending application for an order for its forfeiture, the currency, matter or thing:
 - (i) has been voluntarily surrendered by the person having possession of it, to the proper official of the Central Bank of Nigeria or a superior police officer; or
 - (ii) is discovered in a lodgment made with the Central Bank by a commercial bank.

- 346.** Subject to the express provisions of any law, an article, not pecuniary, forfeited in respect of a summary conviction offence or the seizure, forfeiture or disposition of which may be enforced by the court may be sold or disposed of in such manner as the court may direct, and the proceeds of the sale shall be applied in the like manner as if the proceeds were a penalty imposed under the law on which the proceedings for the forfeiture is founded.

Mode of dealing with forfeiture not pecuniary.

PART 34 - SUMMARY PROCEDURE IN PERJURY

347. (1) Where it appears to a court that a person has committed perjury in any proceeding before it, the court, subject to the provisions of subsection (2) of this section and in addition, in the case of a Magistrate, to subsection (3) of this section, may:

Summary
procedure in
perjury.

(a) commit him for trial on information of perjury and bind any person by recognisance to give evidence at his trial; or

(b) try him summarily for contempt of court and where he is found guilty, commit him to prison for a period not exceeding 6 months or fine him in such sum in accordance with the scale of fine in the Fourth Schedule to this Law.

(2) Where a court decides to try a person summarily, under subsection (1) of this section, for contempt of court, the court shall:

(a) specify the perjury alleged and shall direct the attention of the person to be charged to the inconsistencies on which the charge is based; and

(b) require him to give his explanation to the inconsistencies and record the explanation.

(3) Where a court orders a person to be imprisoned or to pay a fine under subsection (1) of this section, it shall:

(a) not issue a warrant of commitment or make an order for imprisonment for non-payment of the fine but shall either remand the person or release him on a recognisance with or without sureties, to come up before the court when called upon; and

(b) immediately forward to the Chief Judge or such Judge as the Chief Judge may direct, a certified copy of the proceedings.

(4) The Chief Judge or Judge to whom a certified copy of the proceedings

is forwarded pursuant to subsection (3) of this section:

(a) may, without hearing argument and in the absence of the person

concerned, set aside or confirm the order or reduce the sentence of imprisonment or the amount of the fine; and

(b) shall inform the court immediately of his decision.

(5) Where the Chief Judge or Judge does not wholly set aside the court's order, the court shall immediately issue its warrant of commitment or make the necessary order for payment of the fine in accordance with the terms of the Chief Judge or Judge's order.

a (6) An imprisonment or a fine ordered or imposed under this section is bar to any other proceeding for the same offence except where the order of the court has been wholly set aside.

PART 35 - TRIALS AND SUMMARY TRIALS GENERALLY

Trials

348. (1) Trials shall be held in the High Court on information filed:

- (a) by the Attorney-General of the State or a law officer in his office;
- (b) by a Legal Officer of any prosecuting agency;
- (c) by a private prosecutor; or
- (d) summarily, in accordance with the provisions of this Law.

(2) Trials shall be held in the Magistrate Court or any other court or tribunal exercising criminal jurisdiction in accordance with the provisions of this Law relating to summary trials.

349. 1) Where a defendant charged before the court is not represented by a legal practitioner, the court shall:

- (a) inform him of his rights to a legal practitioner of his choice; and
- (b) enquire from him, whether he wishes to engage his own legal practitioner, or a legal practitioner engaged for him by way of legal aid.

Non-appearance and non-representation of legal practitioner

(2) Where the legal practitioner who had appeared on behalf of the defendant ceases to appear in court in two

consecutive sessions of the Court, the Court shall enquire from the defendant if he wishes to engage on his own another legal practitioner or a legal practitioner engaged for him by way of legal aid.

- (3) Where the defendant wishes to engage another legal practitioner of his choice, the court shall allow him reasonable time but not exceeding 30 days to do so.
- (4) Where the defendant fails, or is unable to secure a legal practitioner arranged by him after a reasonable time, the Court may direct that a legal practitioner arranged by way of legal aid to represent the defendant.
- (5) The Court may assign to any legal practitioner whose place of practice is within the jurisdiction of the court, any case of a defendant who has no legal representation, and the legal practitioner shall undertake the defence of the defendant with all due diligence, in which case, the legal practitioner shall not pay any filing fee or service fee in respect of the case so assigned.
- (6) Where the defendant chooses to represent himself, the court shall:
 - (a) inform him of all his rights under the Constitution of the Federal Republic of Nigeria and under this Law; and
 - (b) indicate the fact of having so informed the defendant on the record, but a defendant charged with a capital offence or an offence punishable with life imprisonment shall not be allowed to represent and defend himself.
- (7) A legal practitioner, other than a law officer, engaged in any matter shall be bound to conduct the case on behalf of the prosecution or defendant until final judgment, unless allowed for any special reason to cease from acting by the court of its own motion or upon application by the legal practitioner.
- (8) Where a legal practitioner intends to disengage from a matter, he shall notify the court, not less than 3 days before the date fixed for hearing and such notice shall be served on the court and all parties.

350. (1) Trial shall be held summarily:

- (a) in the High Court in respect of perjury;
- (b) in respect of an offence which by an Law of Delta State is triable summarily; and
- (c) in respect of a trial for an offence punishable with less than 3 years imprisonment in the Magistrate Court or tribunal.

(2) In a trial in the Magistrates' Court or Tribunal, the prosecution shall, provide the defendant all materials that the prosecution intends to rely on at the trial, before or at the commencement of the trial.

351. (1) When the case is called, the defendant appears voluntarily in obedience to the summons or is brought before the court under a warrant, and the complainant having, to the satisfaction of the court, had due notice of the time and place of hearing, does not appear in person or in the manner authorized by a written law, the court may dismiss the complaint.

Non-appearance of complainant.

(2) Where the court receives a reasonable excuse for the non-appearance of the complainant or his representative or for other sufficient reason, it shall adjourn the hearing of the complaint to some future day on such terms as the Court may deem just.

352. (1) Where a case is called in which summons has been issued and the defendant does not appear, or pleads guilty under the provisions of section 135 of this Law, and no sufficient excuse is offered for his absence, then the court:

Non-appearance of defendant

(a) where satisfied that the summons, if any, has been duly served, may issue a warrant, called bench warrant for his arrest; or

(b) where not satisfied that the summons has been duly served or where a warrant had been issued, in the first instance, for the arrest of the defendant, shall adjourn the hearing of the case to some future day, in order that proper service may be effected or, until the defendant is arrested, as the case may be.

(2) Where the defendant is afterwards arrested on a bench warrant, he shall be immediately brought before the court that

issued the warrant or where not practicable, a court nearest to that court, which may then commit him by warrant to prison or to such other place of safe custody as it deems fit, and order him to be brought before the court that issued the bench warrant at a certain time and place.

(3) The complainant shall, by direction of the court, be served due notice of the time and place ordered under subsection (2) of this section.

(4) Where the Court, in exercise of its discretion, has granted bail to the defendant and the defendant, in disregard for the court orders, fails to surrender to the order of court or fails to attend court without reasonable explanation, the court shall continue with the trial in his absence and convict him unless the court sees reasons otherwise: provided that proceedings in the absence of the defendant shall take place after two adjournments or as the court may deem fit.

(5) The Court shall impose a sentence only when the defendant is arrested or surrenders to the custody of the court.

353. (1) Where the case is called and neither the prosecutor nor the defendant appears, or the defendant appears and the prosecutor does not appear, the court shall make such order as the justice of the case requires.

Non-appearance of both parties.

(2) The court may, in the order, include such direction as to the payment of costs as the court considers fit, and the payment of the costs may be as if it were a fine.

354. When the case is called and both the complainant and the defendant appear, the court shall proceed to hear and determine the case.

Appearance of both parties.

355. (1) In any trial before a High Court or Magistrates' Court or before any other Court in the State, a prosecutor with the consent of the Court, or on the instruction of the Attorney-General in the case of an offence against a Law of the State, at any time before judgment is pronounced or an order of committal is made, may withdraw from the prosecution of any person either generally or in respect of one or more of the offences with which such person is charged and upon such withdrawal:

Withdrawals from Prosecution in Trials before a High Court or Magistrates' Court

- (a) if it is made in the course of a trial:
 - i. before the defendant is called upon to make his defence, he shall
 - be discharged in respect of such offence; or
 - ii. after the defendant is called upon to make his defence, he shall be acquitted in respect of such defence:

Provided that in any trial before a Judge or Magistrate in which the prosecutor withdraws in respect of the prosecution of any offence before the defendant is called upon to make his defence, the Judge or Magistrate may in his discretion order the defendant to be acquitted if he is satisfied upon the merits of the case that such order is a proper one and when any such order of acquittal is made, the Judge or Magistrate shall endorse his reasons for making such order on the record.
- (2) Where any private prosecutor withdraws prosecution for any offence under the provisions of this Section, the Judge or Magistrate may, in his discretion, award costs against such a prosecutor.
- (3) A discharge of a defendant under this Section shall not operate as a bar to subsequent proceedings against him on account of the same facts.

- 356.** (1) At the commencement of the hearing, the court shall state, or cause to be stated to the defendant, the substance of the complaint, and shall ask him whether he is guilty or not guilty.
- (2) Where the defendant pleads guilty and the court is satisfied that he intends to admit the offence and shows no cause or no sufficient cause why sentence should not be passed, the court shall proceed to sentence.
- (3) Where the defendant pleads not guilty, the court shall direct all witnesses to leave the court and upon the direction, the provisions of section 212 of the Evidence Act, shall apply, but failure to comply with the provisions of this subsection shall not invalidate the proceedings but would affect the weight of evidence given by that witness who fails to leave the court on the direction being given.
- (4) Notwithstanding the provision of subsections (1), (2) and (3), in capital offences, the court shall proceed with the trial irrespective of the plea by the defendant.

Manner of
hearing.

- (5) The court shall then proceed:
- (a) to hear the prosecutor and such witnesses as he may call and such other evidence as he may adduce in support of the charge;
 - (b) also to hear the defendant and such witnesses as he may call and such other evidence as he may adduce in his defence; and
 - (c) also, where the court deems fit, to hear such witnesses as the prosecutor may call in reply if the defendant has called any witness or given any evidence.
- (6) The prosecutor and the defendant may put questions to each witness called by the other side and where the defendant gives evidence he may be cross-examined.
- (7) Where the defendant is not represented by a legal practitioner, the court shall at the close of the examination of each witness for the prosecution, ask the defendant whether he wishes to put any question to that witness, and shall record the defendant's answer.
- (8) The defendant shall take his plea in the dock, except the Judge directs otherwise.

357. Where at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the defendant sufficiently to require him to make a defence, the court shall, as to that particular charge, discharge him being guided by the provisions of section 302 of this Law.

Discharge of defendant when no case to answer.

358. At the close of the evidence in support of the charge, where it appears to the court that a prima facie case is made out against the defendant sufficiently to require him to make a defence, the court shall call on him for his defence and

Defence

- (a) where the defendant is not represented by a legal practitioner, the court shall inform him of the alternatives open to him namely, that he may:
 - i. make a statement, without being sworn, from the place where he then is, in which case he will not be liable to cross-

- examination; or
- ii. give evidence in the witness box, after being sworn as a witness, in which case he will be liable to cross-examination; or
- iii. he need not say anything at all, if he so wishes, and in addition the Court shall ask him if he has any witnesses to examine or other evidence to adduce in his defence and the Court shall then hear the defendant and his witnesses and other evidence, if any; and

(b) where the defendant is represented by a legal practitioner, the court shall call on the legal practitioner to proceed with the defence.

359. (1) If the defendant or his legal practitioner states that he has witnesses to call but that they are not present in court, the court may, in the circumstances set forth in Sections 241 – 250 take the necessary steps to compel their attendance for the purpose of examination or the production of a document or any other thing.

Process for compelling production of evidence at instance of defendant.

(2) On an application by the defendant under subsection (1) of this section, the court shall issue the process unless for reasons to be recorded by it in writing, it considers that the application is made for the purpose of vexation or delay or of defeating the aims of justice.

360. Failure to comply with the requirements of section 358 (a) of this Law shall not of itself vitiate the trial:
Provided that the court called upon the defendant for his defence and asked him if he had any witnesses and heard the defendant and his witnesses and other evidence, if any.

Saving as to section 358 (a)

361. Where the defendant adduces in his defence a new matter, which the prosecution could not foresee, the prosecution may, with the leave of the court, adduce evidence to rebut the new matter or evidence.

Evidence in reply

362. (1) In certain exceptional circumstances, where the evidence of a technical, professional or expert witness would not ordinarily be contentious as to require cross-examination, the court may grant leave for the evidence to be taken in writing or by electronic recording device, on oath or affirmation of the witness, and the deposition shall form part of the record of the court.

Power to take deposition in certain cases.

(2) Where it appears to the court that a person who is

seriously ill or hurt may not recover, but is able and willing to give material evidence relating to an offence and it is not practicable to take the evidence in accordance with the provisions of this Law, the Judge or Magistrate shall:

(a) take in writing the statement on oath or affirmation of the person and subscribe the statement and certify that it contains accurately the whole of the statement made by the person; and

(b) add a statement of his reason for taking the statement, the date and place when and where the statement was taken, and shall preserve the statement and file it for record.

(3) The court shall cause reasonable notice of the application to take the deposition in accordance with subsections (1) and (2) of this section and of the time and place where it is to be taken to be served on the prosecutor and defendant and if the defendant is in custody and his presence is required for the deposition, he shall be brought by the person in whose custody he is, to the place where the statement is to be taken, under an order in writing of the court.

363. (1) A statement taken under section 362 of this Law may afterwards be used in evidence on the trial of a defendant accused of an offence to which the statement relates in accordance with the provisions of section 46 of the Evidence Act.

When statement may be used in evidence.

(2) The signature and attestation of the Judge or Magistrate shall be sufficient prima facie proof of the content of the statement, and that the statement was taken in all respects according to law and the attestation and signature shall be admitted without further proof unless the court sees reason to doubt the genuineness.

364. (1) Without prejudice to section 348(2) of this Law, court proceedings may be recorded electronically and verbatim such that at the end of each day's proceeding a transcript of such recording shall be printed to enable certification or authentication by the Judge or Magistrate who conducted the proceedings.

Notes of evidence to be recorded electronically or in writing.

(2) Where court proceedings are not recorded as stated in sub-section (1), the court shall in every case take notes in writing of the oral evidence it considers material, in a book to be kept for that purpose and the book shall be signed by the court at the conclusion

of each day's proceedings.

- (3) The transcript of the recordings of the court shall be signed or otherwise authenticated by the presiding Judge at an adjournment of the case or at the conclusion in a manner authorised from time to time by the Chief Judge in accordance with such condition as may be imposed by rules of court, and the signed transcript shall be taken as part of the record of the proceedings.
- (4) A person is not entitled, as of right, to inspection of or to a copy of the record so kept except as may be expressly provided for by the rules of the court or by any other law.
- (5) The record so kept or a copy of it purporting to be signed and certified as a true copy by the court shall at all times, without further proof, be admitted as evidence of the proceedings as statement made by the witnesses.

- 365.** A court trying a case summarily shall make or cause to be made such local inspection as the circumstances of the case may require. Local inspection.
- 366.** Where a complaint is made by one or more parties against another party or parties and there is a cross-complaint by the defendant or defendants in the first named case, the court may, where it deems fit, hear and determine the complaints in the same proceeding. Cross complaints
- 367.** Where two or more complaints are made by one or more parties against another party or parties and the complaints refer to the same matter, the court may, where it deems fit, hear and determine the complaints in the same proceedings. Joinder of complaints
- 368.** On the conclusion of the hearing, the court shall either at the same or at an adjourned sitting give its decision on the case either by dismissing or convicting the defendant and may make such other orders as may seem just. Giving of decision upon conclusion of hearing.

- 369.** (1) In a summary trial, the court may, whether the complaint is dismissed or not, by order bind over either the complainant or defendant, or both, with or without a surety or sureties, to be of good behaviour. Power to bind parties to be of good behavior.
- (2) A person who breaches an order made, pursuant to subsection (1) of this section, may be imprisoned for a term not exceeding three months in addition to any other punishment to which the person is liable.
- (3) Before a binding order pursuant to subsection (1) of this section or an order for imprisonment or any other punishment under subsection (2) of this section is made, the person to be affected by the order shall be given an opportunity to be heard.
- 370.** (1) Where a charge is dismissed on merits, the dismissal has the same effect as an acquittal. Effect of judgment of dismissal "on merits", "not on merits" and "without prejudice".
- (2) Where a charge is dismissed but not on merits, or stated to be dismissal without prejudice, the dismissal does not have the same effect as an acquittal.
- 371.** Where a child is proceeded against before a court for an offence, the court shall have regard to the provisions of the Child Rights Law. Summary trial of a child by a Court.
- 372.** Without prejudice to any other power which a Magistrate may possess, he may, for the purposes of ascertaining whether it is expedient to deal with a case summarily, either before or during the hearing of the case, adjourn the case and remand the person charged for a period not exceeding 48 hours or release him on bail. Power to remand.
- 373.** (1) A law officer, in a case where a charge of an indictable offence is being proceeded with summarily by a Magistrate, may, at any time before judgment, request the Magistrate to deal with the case as one for trial on information. Law officer may require case to be adjourned or dealt with specially
- (2) On receipt of the request, the Magistrate shall adjourn the proceeding until such a time as information or charge is filed in the High court:
provided that the information shall be filed within a period of 30 days of the date of the order granting the request.

(3) The Magistrate shall make the case returnable for a period not exceeding 32 days from the date of the grant of the request.

(4) Where at the end of the period of 30 days provided in subsection (2) of this section, the information or charge against the defendant has not been filed at the High Court, the Magistrate shall proceed on the return date to try the charge summarily where he has jurisdiction, or may make an order releasing the defendant on bail pending his arraignment on the information or charge as requested by the law officer.

374. (1) Where a charge for an offence is being tried summarily by a Magistrate, he shall, at the request of a person in charge of the prosecution made at any time before judgment, adjourn the hearing of the charge for consultation with a law officer with a view to obtaining a request to proceed in accordance with section 373 of this Law.

Adjournment
for law officer's
decision.

(2) The request of the law officer so consulted shall be filed within 14 days of the date the Magistrate grants the request of the person prosecuting, failing which the Magistrate shall proceed to try and conclude the case summarily.

(3) Where the Magistrate grants an adjournment at a request under subsection (1) of this section, the adjournment shall not be for a period exceeding 15 days, and the Magistrate may accordingly grant the defendant bail.

375. (1) A defendant convicted of an offence tried summarily may, instead of, or in addition to any prescribed punishment, be ordered to enter into his own recognisance, with or without sureties, in such amount as the court thinks fit that he shall keep the peace and be of good behaviour for a reasonable period fixed by the court.

Security for
peace in cases
tried summarily.

(2) The convict may be ordered to be imprisoned until the recognisance is entered into, but the imprisonment shall not:

(a) extend for a term longer than 1 year; and

(b) together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine for the

offence which he was convicted.

- 376.** (1) Where an offence for which the magistrate court has no jurisdiction to try is preferred against a defendant, the police shall at the end of investigation submit the original case file to the office of the Attorney-General of the State.

Case files, legal advice, and related proceedings.

(2) The Attorney-General of the State shall, within 14 days of receipt of the police case file, issue and serve his legal advice indicating whether or not there is a prima facie case against the defendant for which he can be prosecuted.

(3) Where the Attorney-General of the State is of the opinion, as contained in the legal advice, that the suspect has no prima facie case to answer, he shall serve a copy of the legal advice on the:

(a) police or the head of the police legal unit through whom the police case file was sent to the Attorney-General of the State;

(b) court before whom the suspect was remanded in prison, where he is in remand custody, or before whom the suspect was granted bail, where he is on bail; and

(c) suspect in respect of whom legal advice is preferred through the prison authority, where the suspect is remanded in custody, or through his legal representative, if any.

(4) Where the offence is one for which a Magistrate Court has jurisdiction to try, the prosecutor shall file the charge at the magistrate court, accompanied with:

(a) the list of witnesses;

(b) the list of exhibits;

(c) statements of the witnesses and of the defendant; and

(d) any report, document or material constituting the case file but the prosecution may, with leave of the court, file and serve any additional document.

(5) The police or the officer in charge of the prison in which the suspect

is remanded in custody shall on receipt of the legal advice, release the suspect immediately from detention where there is no case to answer.

- (6) The court referred to in subsection (3) (b) of this section, shall, on receipt of the legal advice, dismiss the charge against the suspect and accordingly discharge the suspect.
- (7) The Attorney-General of the State shall send a Law Officer in his office to the court where the order of remand was made and ensure the discharge of the remand order and of the suspect.
- (8) Where the Attorney-General of the State is of the opinion, as contained in the legal advice, that the suspect has a prima facie case to answer, he shall file and serve the charge or information in accordance with the provisions of this Law.
- (9) A form as prescribed in the First Schedule to this Law, indicating a desire to be represented by legal practitioner of his choice or by a legal practitioner from the Legal Aid Council or any other organization providing free legal representation to defendants, shall be attached to each legal advice for the purpose of endorsement by the person in respect of whom legal advice is preferred and against whom the information is filed.
- (10) Where the defendant indicates in the form referred to in subsection (8) of this section that, he wishes to be represented by a legal practitioner of the Legal Aid Council or any other organization providing free legal representation, he shall forward the form to the Registrar of the court before whom the charge or information for his trial has been filed and the Registrar shall, within 14 days of receipt of the form, ensure that a legal practitioner of the Legal Aid Council as stipulated under this subsection or any other organization providing free legal representation for the defendant, and by notice in writing inform the defendant of the particulars of the legal representation arranged for him.
- (11) The Registrar shall, upon getting the form, forward same to the Director-General of the Legal Aid Council or to the nearest Legal Aid Council office where the court is located.

PART 36 - TRIALS BY WAY OF INFORMATION

377. An information shall be in the form set out in Form No. 11 in the First Schedule to this Law with such modifications as may be necessary to adapt it to the circumstances of each case.

*Form of
information*

378. (1) An information shall contain:

*Contents of
information.*

- (a) a description of the offence charged in the information or, where more than one offence is so charged, of each offence so charged, and each offence charged shall be set out in a separate paragraph known as count;
- (b) a count of an information shall commence with a statement of offence charged;
- (c) the statement of offence which shall, briefly describe the offence charged in ordinary language, avoiding where possible the use of technical terms and all the essential elements of the offence, and, where the offence charged is one created by a law, shall contain a reference to that law;
- (d) the particulars of offence, which shall be set out in ordinary language;
- (e) the law and section of the law against which the offence is alleged to have been committed; and
- (f) where the law that creates the offence does not give it any specific name, such definition of the offence may be made to give the defendant notice of the offence with which he is charged.

(2) A charge is presumed to have fulfilled every condition required by law to constitute an offence, however, where a law limits the particulars of an offence which are required to be given in an information, nothing in this subsection shall require any more particulars to be given than those so required.

(3) Where an information contains more than one count, the counts shall be numbered consecutively.

(4) The forms set out in the Third Schedule to this Law or forms conforming to them as nearly as possible may be used in the cases to which they

are applicable.

(5) In other cases, forms to the like effect or conforming to them as nearly as may be used, where applicable.

(6) A statement of offence and the particulars of the offence may be varied according to the circumstances of each case.

379. (1) An information shall be filed in the registry of the High Court before which the prosecution seeks to prosecute the offence, and shall include:

(a) the proof of evidence, consisting of:

- (i) the list of witnesses;
- (ii) the list of exhibits to be tendered;
- (iii) copies of statements of the witnesses;
- (iv) copies of statement of the defendant;
- (v) any other document, or material constituting the case file that the prosecution intends to use in support of its case at the trial;
- (vi) particulars of bail or any recognisance, bond or cash deposit, if defendant is on bail;
- (vii) particulars of place of custody, where the defendant is in custody;
- (viii) particulars of any plea bargain arranged with the defendant;
- (ix) particulars of any previous interlocutory proceedings, including proceedings for any application for remand, in respect of the charge; and
- (x) any other relevant document as may be directed by the court; and

(b) a copy of the form for information on legal representation as provided under section 376 (9) of this Law.

(2) The prosecution may, at any time before judgment, file and serve notice of additional evidence.

(3) The information and all accompanying processes shall be served on the defendant or his legal representative, if any.

380. The provisions relating to charges in this Law shall apply to the counts of an information.

*Application of
rules relating to
charges*

381. An information may be filed by:

Filing of
information.

(a) the Attorney-General of the State or officers in his office;

(b) a public officer acting in his official capacity;

(c) a private legal practitioner authorized by the Attorney-General of the State; or

(d) a private legal practitioner:

provided the information is endorsed by a law officer that he has seen such information and declined to prosecute at the public instance and the private person enters into a bond to prosecute diligently and to a logical conclusion.

382. (1) Where an information has been filed in the court, the Chief Judge or the Administrative Judge, as the case may be, shall take appropriate steps to ensure that the information filed is assigned to a court for trial within 10 working days of its filing.

Assignment of
information and
issuance of
notice of trial.

(2) On assigning the information, the court to which the information is assigned shall within 7 working days of the assignment issue notice of trial to the witnesses and defendants and a production warrant properly endorsed by the Judge in respect of the defendant charged, where he is in custody, for the purpose of ensuring his appearance on the date of arraignment, and the Registrar of the court concerned shall ensure the prompt service of the notice and information not more than 5 working days from the date they are issued.

(3) Where the defendant named in the information is in custody, the notice of trial and the information shall be delivered to him through the officer in charge of the prison in which he is detained, and the warrant for his production shall be served on the officer of the prison.

(4) Where the defendant is not in custody, the notice of trial and the information shall be served on him personally.

(5) Where it is impossible or impracticable to effect personal service of the notice of trial and information on the defendant, they may be served on him, with leave of court, through his legal practitioner, if

any, or on his surety or sureties, or on an adult in his household or in such other manner as the court shall deem fit and the service shall be deemed to be proper service on the defendant.

- (6) Nothing in this section shall prevent the defendant from being tried by reason only that the notice of trial and the information were served on him less than 5 working days before the date of trial, where he consents to being so tried.

383. (1) The Registrar shall receive an information from a private legal practitioner where:

Information by private legal practitioner.

- (a) the information is endorsed by the Attorney-General of the State or a law officer acting on his behalf stating that he has seen the information and has declined to prosecute the offence set out in the information; and

- (b) the private legal practitioner shall enter into a recognisance in:

- (i) such sum as may be fixed by the court, with a surety, to prosecute the information to conclusion from the time the defendant shall be required to appear; and
(ii) pay such costs as may be ordered by the court; or
(iii) deposit in the registry of the court, such sum of money as the court may fix.

- (2) Where an application for consent to prosecute is made to the Attorney-General of the State by a private legal practitioner and the Attorney-General declines to grant such consent, he shall give his reasons for doing so in writing within 15 working days from the date of the receipt of the application.

384. Where a private legal practitioner has complied with the provisions of section 383 of this Law, the information shall be signed by such private legal practitioner who shall be entitled to prosecute the information

Conditions for private prosecutors.

385. The place of trial shall be determined in accordance with the provisions of this Law.

Venue.

386. (1) Notwithstanding the provisions of section 385 of this Law:

Change of venue

- (a) where a cause is commenced in any other division than that in

which it ought to have been commenced, it may, notwithstanding, be tried in that division in which it was commenced, but where the defendant objects the court may, where it considers the objection reasonable, transfer the case to the proper division in which it ought to have been commenced; and

(b) the prosecutor or the defendant may, whenever he considers that the ends of justice so require in any case, apply to the court either to transfer the hearing from one division to another or from one part of the division to another part of the same division.

(2) No appeal shall lie from any order of transfer made under this section.

- 387.** Where a case is transferred from one place in a division to another place in the same division or to another division, the case shall be tried and determined at the place or in the division to which it has been transferred, and all recognisance, subpoenas, and proceedings in or relating to the case are deemed to be returnable at the latter place or division and all witnesses who are or summoned to attend the trial shall be informed accordingly and shall attend at such latter place or division.

Effect of change of venue.

- 388.** The Registrar or any other person directed by the court, shall endorse on, or annex to, every information delivered to the sheriff or proper officer, for service, a notice of trial and such notice shall specify the particular sessions at which the party is to be tried on the Information and shall be in the following form or as near to it as may be:

NOTICE OF TRIAL

A.B.. Take notice that you will be tried on the information of which this is a true copy, at the session to be held at on the day of 20.....Also find attached is the "Information on Legal Representation" Form which you must complete and return to the Registrar of this court within fourteen days of service on you of this notice of trial.

- 389.** The Registrar or other proper officer shall deliver, or cause to be delivered, to the Sheriff or proper officer serving the information, a copy, with the notice of trial endorsed on or annexed to it, and where there are more parties charged than one, then as many copies as there are parties, together with a similar notice for service on each witness

Copy of information and notice of trial to be delivered to Sheriff

bound to attend the trial.

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| 390. | The Sheriff or other proper officer shall, on receipt of the information and notice of trial, serve the person named in the notice at least 7 working days before the date specified on the notice. | Time and mode of summoning parties on information. |
| 391. | Notice of trial at the same time shall be served on all the witnesses, and the service of the notice on the witnesses shall be in the like manner as service on a defendant who is not in custody. | Service of notice of trial on witnesses. |
| 392. | The Chief Judge may engage the services of a reputable courier company for the purpose of undertaking service of criminal processes, and such company shall serve processes in accordance with this Law. | Registered courier companies may serve processes. |
| 393. | The officer of such courier company serving the copy of information and notices shall immediately make to the Registrar or other proper officer a return of the mode of service with the necessary endorsement of service on the person named for service on the notice or information. | Return of service. |
| 394. | Where a defendant against whom an information has been duly preferred, and on whom the information and notice of trial have been duly served, does not appear to plead to the information, whether he is under recognisance, to appear or not, the court may issue a warrant for his arrest. | Warrant where defendant does not appear. |
| 395. | Where a defendant is accused of a capital offence or offence punishable by life imprisonment, the State shall be represented by a law officer, or a legal practitioner, and where the defendant is not defended by a legal practitioner, the court shall assign a legal practitioner for his defence. | Law officer or legal practitioner for State and defence in capital cases. |
| 396. | (1) The defendant to be tried on an information or charge shall be arraigned in accordance with the provisions of this Law relating to the taking of pleas and the procedure on it.

(2) After the plea has been taken, the defendant may raise any objection to the validity of the charge or the information at any time before | Time for raising certain objections, day-to-day trial and adjournments. |

judgment provided that any such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment.

(3) Upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial.

(4) where day-to-day trial is impracticable after arraignment, no party shall be entitled to more than five adjournments from arraignment to final judgment:

Provided always that the interval between each adjournment shall not exceed 14 working days.

(5) Where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days inclusive of weekends.

(6) In all circumstances, the Court may award reasonable costs in order to discourage frivolous adjournments.

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| 397. | A person who is summoned as a witness, whether for the prosecution or for the defence, shall be bound to attend the court on the day fixed for the trial of the case and on subsequent dates until the conclusion of the case or until he has been discharged by the court from further attendance. | Attendance of witness bound by recognisance to attend. |
| 398. | Where a person who has been summoned to attend as a witness, whether for the prosecution or for the defence, does not attend the court on the day fixed for the trial of the case or on any further adjourned date, and he offers no reasonable excuse for his absence, despite the fact that he was duly served with the notice of the trial, the court may issue a bench warrant that the person be arrested and be brought before the court, at a time to be mentioned in the warrant, in order to give evidence on behalf of the prosecution or of the defence, as the case may be. | Warrant for arrest of witness not attending on recognisance. |
| 399. | Where a person named on a summons or writ of subpoena willfully refused to accept service of the summons or writ of subpoena, the | Warrant for arrest of witness disobeying |

court shall issue a warrant for the person to be arrested and be brought before the court at a time to be mentioned in the warrant in accordance with the summons or writ of subpoena

summons.

400. A person who fails to attend as witness in either of the cases mentioned in sections 397 and 398 of this Law is liable, on the summary order of the court, to a fine in a reasonable sum to be fixed by the court, but not less than N5,000.00 and, in default of payment, to imprisonment for a term corresponding to the fixed sum, but the period of imprisonment shall not exceed a period of one month.

Fine for non-attendance of witness.

PART 37 - PROVISIONS RELATING TO SENTENCES

Construction of provisions relating to punishments.

401. (1) Subject to the provisions of a law relating to a specific offence or class of offences and to the jurisdiction conferred on any court or on a person presiding over the court, the provisions in this part shall apply to sentences of death, imprisonment, fine, and non-custodial sentences.

(2) In determining a sentence, the court shall have the following objectives in mind, and may decide in each case the objectives that are more appropriate or even possible:

- (a) prevention, that is, the objective of persuading the convict to give up committing offence in the future, because the consequences of crime is unpleasant;
- (b) restraint, that is, the objective of keeping the convict from committing more offence by isolating him from society;
- (c) rehabilitation, that is, the objective of providing the convict with treatment or training that will make him into a reformed citizen;
- (d) deterrence, that is, the objective of warning others not to commit offence by making an example of the convict;
- (e) education of the public, that is, the objective of making a clear distinction between good and bad conduct by punishing bad conduct;
- (f) retribution, that is, the objective of giving the convict the punishment he deserves, and giving the society or the victim revenge; and

(g) restitution, that is, the objective of compensating the victim or family of the victim of the offence.

- 402.** (1) Punishment of death is inflicted by hanging the convict by the neck till he is dead. Death.
- (2) Sentence of death shall be pronounced by the court in the following form:
- “The sentence of the court upon you is that you be hanged by the neck until you be dead and may the Lord have mercy on your soul.”
- 403.** Where sentence of death has been passed, the sentence shall only be carried out in accordance with the provisions of this Part. How death sentence is to be carried out.
- 404.** Where a woman found guilty of a capital offence is pregnant, the sentence of death shall not be passed on her but the Court shall have regards to the provisions of Section 213 of the Child Rights Law of Delta State in considering the appropriate sentence. Sentencing in the case of pregnancy.
- 405.** Where a convict who, in the opinion of the court, had not attained the age of 18 years at the time the offence was committed is found guilty of a capital offence, sentence of death shall not be pronounced or recorded but the Court shall have full regards to the provisions of Sections of 213 and 215 of the Child Rights Law of Delta State in considering the appropriate sentence. Sentencing in the case of a child offender.
- 406.** A certificate under the hand of the Registrar, or other officer of the court, that a sentence has been passed, and naming the convict against whom it has been passed, shall be sufficient authority for the detention of the convict. Authority for detention of convict.
- 407.** A Judge who pronounces a sentence of death shall issue, under his hand and the seal of the court, a certificate to the effect that sentence of death has been pronounced upon the convict named in the certificate, and the certificate shall be sufficient and full authority in law for the detention of the convict in safe custody until the sentence of death pronounced upon him can be carried into effect and for carrying the sentence of death into effect in accordance with and subject to the provisions of this Part. Judge’s certificate of death sentence to be sufficient and full authority for execution of convict, unless he is pardoned or relieved.

408. The Registrar of the Court by which the convict is sentenced to death shall, as soon as practicable after the sentence has been pronounced:

Steps to be taken by the Registrar.

(a) hand two copies of the certificate issued by the Judge under the provisions of section 407 of this Law to the Commissioner of Police, one copy of which shall be retained by the Commissioner of Police and the other handed to the Superintendent or other officer in charge of the prison in which the convict is to be confined;

(b) transmit to the Sheriff one copy of the certificate; and

(a) file one copy of the certificate with the record of the proceedings in the case

409. (1) Where a convict:

Convict may send request to committee on prerogative of mercy

(a) has been sentenced to death and has exercised his legal rights of appeal against the conviction and sentence, and the conviction and sentence have not been quashed or the sentence, has not been reduced, or has failed to exercise his legal rights of appeal or having filed an application for leave to appeal, or an appellant has failed to perfect or prosecute the application or appeal within the time prescribed by law; or

(b) desires to have his case considered by the Advisory Council on the Prerogative of Mercy, he shall forward his request through his legal practitioner or officer in charge of the Prison in which he is confined to the Advisory Council on the Prerogative of Mercy.

(2) The Advisory Council on the Prerogative of Mercy shall consider the request and make their report to the Governor of the State.

410. (1) The Governor shall, after considering the report made under section 409 of this Law, if any, and after obtaining the advice of the Advisory Council on the Prerogative of Mercy, decide whether or not to recommend that the sentence should be commuted to imprisonment for life, or that the sentence should be commuted to any specific period, or that the convict should be otherwise pardoned or reprieved.

State at which Governor is to consider report.

(2) Where, for the purposes of subsection (1) of this section, the Advisory Council on the Prerogative of Mercy is required to

advise the Governor in relation to any person sentenced to death, the Attorney-General of the State shall cause a record of the case to be prepared and submitted to the Advisory Council on the Prerogative of Mercy, and the Advisory Council on the Prerogative of Mercy shall, in giving its advice, have regard to the matters set out in that record.

411. (1) Where the Governor decides that the sentence should be commuted or that the convict should be otherwise pardoned or reprieved, he shall issue an order, one copy of which shall be sent to the Superintendent or other officer in charge of the prison in which the convict is confined, and another copy of which shall be sent to the Sheriff, directing that the execution shall not be carried out.

Where a pardon or reprieve is granted.

(2) The recommendation may be that the convict shall be imprisoned or be released, subject in either case to such conditions, if any, as may be specified.

(3) The Sheriff and the Superintendent or other officer in charge of the prison in which the convict is confined shall comply with and give effect to every order issued under the provisions of subsections (1) and (2) of this section.

412. The Attorney-General of the State shall communicate the decision referred to in section 411 (1) and (2) of this Law to the Judge who presided over the trial or to his successor in office sending to such Judge a copy of his order and such Judge shall cause the order to be entered in the record of the court.

Copy of order to be sent to Judge.

413. (1) Where the Governor decides that the sentence should not be commuted or that the convict should not be pardoned or reprieved, the order of the Governor shall be duly signed by him and sealed as in one of the forms set out in the Fourth Schedule of this Law or as near to it as circumstances permit.

Where pardon or reprieve is not granted

(2) The order of the Governor:

(a) shall state the place and time, where and when the execution is to be and give directions as to the place of burial of the body; or

(b) may direct that the execution shall take place at such time and such place and the body of the convict executed shall be buried

at such place as shall be appointed by some officer specified in the order.

- (3) When the place or time of execution or the place of burial is appointed by some person and is not stated in the order of the Governor, the specified officer shall endorse on the order over his signature the place and time of execution and place of burial.

414. A copy of the order issued by the Governor shall be forwarded to the official in charge of the prison in which the person sentenced is confined, and the official in charge of the prison shall give effect to the order of execution.

Copy of order to be sent to prison official.

PART 38 - PROCEDURE WHERE WOMAN CONVICTED OF CAPITAL OFFENCE IS ALLEGED TO BE PREGNANT

415. (1) Where a woman convicted of an offence punishable with death alleges that she is pregnant, the court shall before sentence is passed on her, determine the question whether or not she is pregnant.

Procedure where woman convicted of capital offence is alleged to be pregnant or who becomes pregnant.

(2) The question whether the woman is pregnant or not shall be determined by the court on such evidence as may be presented to the court by the woman or on her behalf or by the prosecutor.

(3) Where in proceedings under this section the court finds that the woman in question is not pregnant the court shall pronounce sentence of death upon her.

(4) Where in the proceedings under this section, the court finds the woman in question to be pregnant, the court shall sentence her subject to the provision of section 404 of this Law.

PART 39 - SENTENCING GENERALLY OTHER THAN CAPITAL SENTENCE

416 (1) On conviction, a court may sentence the convict to a term of imprisonment as prescribed by the law.

Court to determine term of imprisonment.

(2) In exercising its discretion of sentencing or review of sentence, the court shall take into consideration the following factors, in addition to the provisions of section 401 of this Law:

(a) each case shall be treated on its own merit;

- (b) the objectives of sentencing, including the principles of reformation, shall be borne in mind in sentencing a convict;
- (c) an appeal court may, in a proper case, reduce the sentence imposed by the trial court, especially where it is excessive or based on wrong principles, or an appeal court may increase the sentence imposed by the trial court especially where it is inadequate;
- (d) a trial court shall not pass the maximum sentence on a first offender;
- (e) the period spent in prison custody awaiting or undergoing trial shall be considered and computed in sentencing a convict;
- (f) trial court shall conduct an inquiry into the convict's antecedents before sentencing;
- (g) it may be desirable to adjourn for sentencing in order to have time to consider any evidence adduced at the sentencing hearing in accordance with section 311 of this Law;
- (h) where there is doubt as to whether the defendant or convict has attained the age of 18, the court should resolve the doubt in his favour;
- (i) a defendant may not be given consecutive sentences for two or more offences committed in the same transaction;
- (j) an appeal court may not increase the sentence of a lower court beyond the maximum number of years the lower court has power to impose; and
- (k) sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed or is likely to fail.

417. (1) Where the court has power to pass a sentence of imprisonment, it may, in lieu of passing sentence of imprisonment, order the convict to be detained within the precincts of the court or at a police station till such hour not later than eight in the evening on the day on which he is convicted, as the court may direct.

Power to order detention for one day in precincts of the court.

(2) The court shall, before making an order of detention under this section, take into consideration the distance between the place of detention and the convict's abode, where his abode is known to or ascertained by the court, the court shall not make an order of detention under this section as will deprive the convict of a reasonable opportunity of returning to his abode on the day on which the order of detention is made.

418. (1) Where a sentence of imprisonment is passed on a convict by a court,
it may order that the sentence shall commence at the expiration of any term of imprisonment to which that convict has been previously sentenced by a competent court in Nigeria.

Consecutive sentence of imprisonment

(2) Where two or more sentences passed by a magistrate court are ordered to run consecutively, the aggregate term of imprisonment shall not exceed 4 years of the limit of jurisdiction of the adjudicating Magistrate.

419. A sentence of imprisonment takes effect from and includes the whole of the day of the date on which it was pronounced.

Date from which sentence commences

420. (1) In the case of a conviction in the High Court, where no amount of fine is stipulated, the amount of the fine shall be at the discretion of the court, and any term of imprisonment imposed in default of payment of the fine shall not exceed 2 years.

Default in payment of fine.

(2) In the case of a conviction in a magistrate court:

(a) the amount of the fine shall be at the discretion of the court but shall not exceed the maximum fine authorized to be imposed by the Magistrate or under the law by virtue of which he was appointed a Magistrate; and

(b) a term of imprisonment imposed in default of payment of the fine shall not exceed the maximum fixed in relation to the amount of the fine by the scale specified in the Fourth Schedule of this Law.

(3) In no case shall any term of imprisonment imposed in default of payment of a fine which has been imposed by virtue of the power in that behalf contained in subsection (1) of this section, exceed the

maximum term authorized as a punishment for the offence by the law.

(4) The provisions of this section do not apply in a case where a law provides a minimum period of imprisonment to be imposed for the commission of an offence.

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| <p>422. A defendant convicted of an offence punishable by:</p> <p>(a) imprisonment as well as fine, and sentenced to pay a fine, whether with or without imprisonment; or</p> <p>(b) imprisonment or fine, and sentenced to pay a fine, may be ordered to serve imprisonment, in default of payment of the fine, for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced.</p> | <p>Fine in default of imprisonment</p> |
| <p>423. (1)The Chief Judge of the State High Court shall review, fromtime to time, the provisions for the amount of fines, compensation or other sums of money prescribed under this Law.</p> <p>(2) Such provisions as may be reviewed and effective date shall be published in the Gazette.</p> | <p>General provision on review of sums of amount.</p> |
| <p>424. Where by any law, the court is empowered to impose a penalty for a summary conviction offence, it may, in the absence of express provisions to the contrary in the same or any other law, order a defendant who is convicted of such offence, in default of payment of the sum of money adjudged to be paid under the order, either immediately or at the time specified in the order, as the case may be, to be imprisoned, in accordance with the scale set out in the Fourth Schedule of this Law.</p> | <p>General power of awarding imprisonment in default of payment of penalty.</p> |
| <p>425. Subject, in every case, to the provisions of the law on which the order is founded, the period of imprisonment, which is imposed by the court in respect of the non-payment of a sum of money ordered to be paid</p> <p>by an order, shall be such period as, in the opinion of the court, will satisfy the justice of the case but shall not exceed the maximum fixed in the scale set out in the Fourth Schedule of this Law.</p> | <p>Scale of imprisonment for non-payment of money ordered to be paid.</p> |
| <p>426. A commitment for non-payment of a fine shall not be for a longer period than two years, except where the law under which the conviction has taken place prescribes or allows a longer period.</p> | <p>Limitation of imprisonment in default of payment of fine.</p> |

427. (1) A court, in fixing the amount of a fine to be imposed on a convict, shall take into consideration, amongst other things, the means of the convict. Payment and allocation of fines and fees.

(2) Where a fine is imposed, the payment of the court fees and other legal expenses payable in the case, up to and including conviction, shall not be taken into consideration in fixing the amount of the fine or be imposed in addition to the fine, but the amount of the fine or of such part as may be paid or recovered, shall be applied as follows:

(a) in the first instance, in the payment to the informant or complainant of any court or other fees paid by him and ordered by the court to be repaid to him;

(b) in the second instance, the payment of any outstanding court fee not already paid by the informant or complainant which may be payable under rules of court; and

(c) the balance, if any, remaining after the above payments have been made shall be paid into general revenue of the State.

428. In a case where an order is made against a defendant for the payment of a sum of money and the defendant is in default of payment and liable to be imprisoned, the court may do any of the following: Power to commit defendant in certain cases.

(a) issue a warrant of commitment;

(b) allow time for the payment of the said sum; and

(c) direct that the defendant liable to pay the said sum shall be at liberty to give, to the satisfaction of the court, security, either with or without a surety or sureties, for the payment of the said sum or any installment.

429. (1) Where time has been allowed for the payment of a sum adjudged to be paid upon conviction or order, further time may, on an application by or on behalf of the convict liable to pay the sum, be allowed by a court having jurisdiction to issue a warrant of commitment in respect of the non-payment of that sum, the court may, subject as aforesaid, direct payment by instalments of the sum so adjudged to be paid. Allowance of further time and payment by instalments.

(2) Where a sum of money is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default has been made in the payment of all the instalments then remaining unpaid.

(3) Where before the expiration of the time allowed, the convict surrenders himself to the court having jurisdiction to issue a warrant of commitment in respect of the non-payment of the sum and states that he prefers immediate committal to awaiting the expiration of the time allowed, the court may, if it thinks fit, issue a warrant committing him to prison.

(4) A warrant of commitment issued under the provisions of this section may be executed on any day, including a Sunday or a public holiday.

430. In all cases where a convict, against whom a warrant of commitment for non-payment of a sum of money adjudged to be paid by an order is issued, pays or tenders to the person having the execution of the warrant the sum or sums mentioned in the warrant together with the amount of the expenses of the warrant up to the time of the payment or tender, the person having the execution of the warrant shall not execute the warrant

Payment of penalty to person executing warrant

431. Where a convict is brought to a prison to be imprisoned by virtue of a warrant of commitment, there shall be endorsed on the warrant the day on which the convict was arrested by virtue of it and the imprisonment shall be computed from that day and inclusive

Commencement of imprisonment pursuant to a Warrant

432. Where a person has been committed to prison by the court for default in finding a surety or sureties, the court may, on application made to it by the person or by some person acting on his behalf, inquire into the case of the person, and if on new evidence produced to the court or proof of a change of circumstances the court deems fit, having regard to all the circumstances of the case that it is just to do so, the court may:

Varying or discharging order for sureties.

(a) reduce the amount for which it was ordered that the surety or sureties should be bound;

(b) dispense with the surety or sureties; or

(c) otherwise deal with the case as the court may think just.

433. (1) Where a person has been committed to prison by the court for non-payment of a sum of money adjudged to be paid by an order, the person may pay or cause to be paid to the officer in charge of the prison the sum mentioned in the warrant of commitment together with the amount of the costs, charges and expenses, if any, and the officer in charge of the prison shall receive the sums and remit same to the Registrar, who shall issue a treasury receipt acknowledging the sum paid and the officer in charge of the prison shall discharge the convict unless he is in custody for some other matter

Right of person imprisoned in default to be released on paying sum and effect of part payment.

(2) In a case where under subsection (1) of this section a sum has been received in part satisfaction of a sum due from a prisoner in consequence of the conviction of the court, the sum shall be applied:

(a) firstly, towards the payment in full or in part of any cost or damages or compensation which the court may have ordered to be paid to the complainant; and

(b) secondly, towards the payment of the fine, if any, imposed on the prisoner.

(3) Subject to the provisions of subsection (2) of this section, where an amount is paid towards a fine:

(a) the imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the person is committed as the sum so paid towards the fine bears to the amount of the fine for which the person is liable; and

(b) the Superintendent or other officer in charge of a prison in which a person who has made the part payment is confined shall, as soon as practicable thereafter, take the person before a court which shall:

(i) certify the amount by which the term of imprisonment originally awarded is reduced by such payment in part satisfaction; and
(ii) make such order as the circumstances require.

(4) Where, in the opinion of the Superintendent or other officer, the delay occasioned by taking the person before a court is such that the person will be detained beyond the date on which he should, by reason of the part payment, be released, the Superintendent or other officer may release the person on the day which appears to the Superintendent or other officer to be the correct day, endorse the warrant accordingly and shall, as soon as practicable thereafter, inform the court of the action taken and the court shall make such order or record as the court may consider to be required in the circumstances.

(5) In reckoning:

(a) the number of days by which a term of imprisonment would be reduced under this section, the first day of imprisonment shall not be taken into account; and

(b) the sum which will secure the reduction of a term of imprisonment, fractions of a naira shall be omitted.

434. Where, under the authority of a law, the court imposes a fine or a pecuniary penalty, whether or not that fine or penalty is accompanied by a power to impose imprisonment, and no special provision other than recovery by distress is made for the recovery of the fine or penalty, the court may:

Fines may be ordered to be recoverable by distress.

(a) order the fine or penalty to be recoverable by distress; and

(b) in default of the distress satisfying the amount of the fine or penalty, order that the convict be imprisoned, in accordance with the scale set out in the Fourth Schedule of this Law.

435. Where the court orders a sum to be recoverable by distress, it shall issue a warrant which shall be in writing and signed by the court authorizing the person charged with the execution of the warrant to take any money as well as any goods of the person against whom distress is levied, and any money so taken shall be treated as if it were the proceeds of sale of goods taken under the warrant.

Warrant of distress.

436. In the execution of a distress warrant the following provisions shall have effect:

Procedure on the execution of distress

(a) a warrant of distress shall be executed by or under the direction of the Sheriff;

(b) where the person charged with the execution of the warrant is prevented from executing the warrant by the fastening of doors or otherwise, the Magistrate may, by writing under his hand endorsed on the warrant, authorize him to use such force as may be necessary to enable him to execute the warrant;

(c) the wearing apparel and bedding of the person and of his family, and to the value of N20,000.00, the tools and implements of his trade, shall not be taken;

(d) except as provided in paragraph (e) of this section and so far as the person on whose movable property the distress is levied consents in writing to an earlier sale, the goods distrained on shall be sold at public auction not less than five days and not more than fourteen days after the making of the distress, but where consent in writing is so given, the sale may be in accordance with the consent;

(e) subject to paragraph (d) of this section, the goods distrained on shall be sold within the time fixed by the warrant, unless the sum or charges, if any, of taking and keeping the goods distrained, for which the warrant was issued are sooner paid;

(f) where a person charged with the execution of a warrant of distress:

(i) willfully retains from the proceeds any property sold to satisfy the distress; or

(ii) otherwise exacts any greater costs or charges than those to which he is, for the time being, entitled by law or makes any improper charge, he is liable, on summary conviction before a Magistrate, to a penalty not exceeding N20,000.00, but nothing in this paragraph shall affect the liability of the person to be prosecuted and punished for extortion, or for the return of the sum of money or value of the item extorted, by the person;

(g) a written account of the costs and charges incurred in respect of the execution of a warrant of distress shall, as soon as practicable, be delivered by the person charged with the execution of the warrant to the court, and the convict on whose movable property the distress was levied may, at any time within one month after the making of the

distress, inspect the account, without payment of any fee or reward, at any time during office hours, and to take a copy of the account;

(h) a person charged with the execution of a warrant of distress shall sell the distress or cause the distress to be sold, and may deduct out of the amount realized by the sale all costs and charges actually incurred in effecting the sale, and shall pay to the court or to some person specified by the court, the remainder of the amount, in order that:

(i) the amount may be applied in payment of the sum for which the warrant was issued, and of the proper costs and charges of the execution of the warrant; and

(ii) the surplus, if any, may be rendered to the person on whose movable property the distress was levied.

- 437.** Where a part only of the amount ordered to be recovered by distress is so recovered, the period of imprisonment ordered to be suffered in default of recovery of the amount imposed shall be reduced accordingly and shall bear the same proportion to the full period as the amount recovered bears to the total amount ordered to be recovered, and the warrant of commitment under the provisions of section 428 of this Law, shall apply.

Part payment to reduce period of imprisonment in proportion.

PART 40 - DETENTION IN A SAFE CUSTODY OR SUITABLE PLACE OTHER THAN PRISON OR MENTAL HEALTH ASYLUM

- 438.** (1) Where a person is ordered to be detained in a safe custody or suitable place other than prison or mental health asylum, he is, notwithstanding anything in this Law or in any other law, liable to be detained in a prison or asylum or such other place as provided under this Law or any law as the Attorney-General of the State may direct and whilst so detained shall be deemed to be in legal custody.

Conditions attached to detention in a safe custody or suitable place other than prison or mental asylum.

(2) A person detained in a safe custody or suitable place other than prison or mental health asylum may at any time be discharged by the Attorney-General of the State on licence.

(3) The Attorney-General of the State may at any time revoke or vary a licence and where a licence has been revoked, the person to whom the licence relates shall proceed to such place as

the Attorney-General of the State may direct and if he fails to do so may be arrested without warrant and taken to the place.

PART 41- DEPORTATION

- 439.** In this Part, “deport” with its grammatical variations and cognate expressions, means the legal expulsion or removal from Nigeria of a person not being a citizen, to his country. Meaning of “deport”.
- 440.** Where a defendant is convicted of an offence punishable by imprisonment without the option of a fine, the court may, in addition to, or instead of any other punishment, make a recommendation to the Minister of Interior that the convict be deported, where it appears to the court to be in the interest of peace, order and good governance. Court may recommend deportation for offences punishable by imprisonment without option.
- 441.** Where, on a sworn information, it appears to a court that there is reason to believe that a person in the State who is not a citizen of Nigeria is about to commit a breach of the peace, or that his conduct is likely to produce or excite a breach of the peace, the court, after due inquiry at which the defendant concerned shall be present, may order him to give security in two or more sureties for peace and good behaviour, and in default, may recommend to the Minister of Interior that the defendant be deported. Deportation in default of security for the peace.
- 442.** Where it is shown by evidence on oath to the satisfaction of a court that a defendant in the State who is not a citizen of Nigeria: Deportation in case of dangerous conduct.
- (a) is conducting or has conducted himself so as to be dangerous to peace and good order; or
- (b) is endeavouring or has endeavoured to excite enmity between any section of the people of the State; or
- (c) is intriguing or has intrigued against constituted power and authority
- in the State, the court may recommend to the Minister of Interior that he be deported
- 443.** (1) Where a defendant required to give security under sections 441 and 442 of this Law, default in so doing and the court contemplates on recommending to the Minister of Interior, the deportation of a Procedure prior to court recommending deportation

defendant to whom section 442 of this Law relates, before making any such recommendation, the court shall require the defendant concerned to attend before the court and being informed of the allegations made against him, be given an opportunity to show cause why he should not be deported.

under sections 441 and 442.

(2) After considering the representation, if any, of the person concerned and the facts on which the proceedings are founded, the court shall decide whether or not to recommend to the Minister of Interior that the person concerned be deported.

444. Where the court decides to recommend to the Minister of Interior the deportation of any defendant under sections 441, 442 and 443 of this Law, the court shall forward to the Minister of Interior the recommendation together with a report setting out the reasons why the court considers it necessary to make the recommendation and a certified true copy of any proceedings relating to it.

Procedure for recommendation of deportation under sections 441, 442 and 443.

445. Where a recommendation for deportation has been made in respect of a defendant to whom sections 441 to 443 of this Law relates, such defendant may be detained in custody pending the decision of the Minister of Interior and during such time shall be deemed to be in lawful custody.

Detention of person concerned.

446. Where the Minister of Interior decides that no order of deportation shall be made, he shall inform the Court, and the Court shall then proceed to make such order of imprisonment or other punishment as may be authorized by law.

Minister of Interior may withhold Order and remit case to court.

PART 42 - CHILD OFFENDERS

447. (1) Where a child is alleged to have committed an offence, the provisions of the Child Rights Law of Delta State shall apply.

(2) Notwithstanding subsection (1) of this section, the provisions of this Law relating to bail shall apply to bail proceedings of a child offender.

Procedure for trying child offenders.

PART 43 - PROBATION AND NON-CUSTODIAL ALTERNATIVES

448. In this Part, “probation order” means an order containing a condition specified in section 450 of this Law.

Meaning of probation order.

449. (1) Where a defendant is charged before a court with an offence punishable by law and the court thinks that the charge is proved but is of opinion that having regard to:

Conditional release of defendant and payment of compensation for loss or injury and of costs.

(a) the character, antecedents, age, health, or mental condition of the defendant charged; or

(b) the trivial nature of the offence; or

(a) the extenuating circumstances under which the offence was committed,

it is inexpedient to inflict a punishment other than a nominal punishment, or that it is expedient to release the defendant on probation, the court may, without proceeding to conviction, make an order specified in subsection (2) of this section.

(2) The court may make an order under subsection (1) of this section:

(a) dismissing the charge; or

(b) discharging the defendant conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding 3 years as may be specified in the order.

(3) The court may, in addition to an order under subsection (2) of this section, order:

(a) the defendant to pay such damages for injury or compensation for any loss suffered by a person by reason of the conduct or omission of the defendant, and to pay such costs of the proceedings as the court thinks reasonable; and

(b) the parent or guardian of the defendant to pay the damages and costs specified in paragraph (a) of this subsection, where the defendant has not attained the age of 18 years and it appears to the court that the parent or guardian of the defendant has conduced to the commission of the offence.

(4) Where an order is made under this section, the order shall be:

(a) for the purpose of reinvesting or restoring stolen property and of enabling the court to make orders as to the restitution or delivery of property to the owner;

(b) as to the payment of money upon, or in connection with, such restitution or delivery; and

(c) in like effect as a conviction.

450. (1) A recognisance ordered to be entered into under this Part shall, where the court so orders, contain a condition that the defendant be under the supervision of such person or persons of the same sex, called a probation officer, as may, with the consent of the probation officer, be named in the order during the period specified in the order.

Probation orders and conditions of recognisance.

(2) A recognisance under this Part may contain such additional conditions with respect to residence, abstention from intoxicating substance and any matters as the court may, having regard to the particular circumstances of the case, consider necessary for preventing repetition of the same offence or the commission of other offences.

(3) The court by which a probation order is made shall furnish to the defendant a notice in writing stating in simple terms the conditions he is required to observe.

451. A probation officer may at any time be relieved of his duties or in case of the death of the probation officer named, another person may by consent be substituted by the court before which the defendant is bound by his recognisance to appear for conviction or sentence.

Relieving probation officer of his duties.

452. (1) A probation officer shall, subject to the directions of the court:

Duties of probation officers.

(a) where the person on probation is not actually with the probation officer, visit or receive reports on the person under supervision at such reasonable intervals as may be specified in the

probation order or subject as the probation officer may think fit;

(b) see that he observes the conditions of his recognisance;

(c) report to the court as to his behaviour; and

(d) advise, assist, and befriend him and when necessary to endeavour to find him suitable employment.

(2) The Chief Judge of the State High Court, shall make regulations with respect to the appointment of probation officers, including designation of persons of good character as probation officers from which list a court within the district or division where the probation officer resides may make its appointment under section 450 of this Law.

453. The court before which a defendant is bound by a recognisance under this Part to appear for conviction and sentence or for sentence may:

Variation of terms and conditions of probation.

(a) at any time where it appears to it on the application of the probation officer that it is expedient that the terms or conditions of the recognisance should be varied, summon the defendant bound by the recognisance to appear before it and if he fails to show cause why the variation should not be made:

(i) vary the terms of the recognisance by extending or reducing the duration, which shall not exceed 3 years from the date of the original order; or

(ii) alter the conditions or insert additional conditions; or

(b) on application being made by the probation officer, and on being satisfied that the conduct of the defendant bound by the recognisance has been such as to make it unnecessary for him to be under supervision, discharge the recognisance.

454. (1) Where the court before which a defendant is bound by Hisrecognisance under this Part to appear for conviction or sentence is satisfied by information on oath that the defendant has failed to observe any of the conditions of his recognisance, it may issue a warrant for his arrest or may, where it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the defendant and his sureties, if any, requiring him or them to appear

Provisions in case of convict failing to observe conditions of release.

in court at such time as may be specified in the summons.

- (2) The defendant where arrested shall, if not brought before the court before which he is bound by his recognisance to appear for conviction or sentence, be brought before another court.
- (3) The court before which a defendant on arrest is brought or before which he appears in pursuance of the summons may, where it is not the court before which he is bound by his recognisance to appear for conviction or sentence, remand him to custody or release him on bail until he can be brought before the last-mentioned court.
- (4) A defendant so remanded in custody may be committed during remand to a prison to which the court having power to convict or sentence him has power to commit prisoners.
- (5) A court before which a defendant is bound by his recognisance to appear for conviction and sentence on being satisfied that he has failed to observe a condition of his recognisance may, without further proof of his guilt, convict and sentence him for the original offence.

455. (1) Notwithstanding the provision of any other law creating an offence, where the court sees reason, the court may order that the sentence it imposed on the convict be, with or without conditions, suspended, in which case, the convict shall not be required to serve the sentence in accordance with the conditions of the suspension.

Suspended sentence and community service.

(2) The court may, with or without conditions, sentence the convict, in lieu of sentence or fine, to perform specified service in his community or such community or place as the court may direct, and such order shall be known as community service order.

(3) The Community Service Order shall contain such requirements as the Court may consider necessary for effective supervision and rehabilitation of the offender.

(4) A Community Service Order shall be in the nature of:

- a) environmental sanitation; or
- b) assisting in the care of children and the elderly in government approved homes; or

- c) any other type of service which in the opinion of the Court would have a beneficial and salutary effect on the character of the offender.

- (5)
 - (i) The Community Service Officer and the person against whom the order is made shall enter into a written agreement specifying the number of hours of service that would be rendered on a daily or weekly basis.
 - (ii) The written agreement referred to in this subsection shall be filed in the Court's Registry by the Community Service Officer.
 - (iii) Where the person against whom the order is made refuses or defaults to enter into the written agreement or where he breaches the terms of the agreement on more than three (3) occasions without any lawful justification or excuse, the Court on the application of the Community Service Officer, shall issue a bench warrant for his arrest.
 - (iv) The person against whom the order was made shall bear the burden of showing any lawful or valid excuse justifying or excusing the breach of the written agreement in which case the Court may permit the continuation of the Community Service Order.
 - (v) The Court, if satisfied, that the person against whom the order was made has no lawful or valid excuse, shall impose custodial sentence or fine having regard to the punishment prescribed for the offence to which he was charged and the length of community service already performed.

A Community Service Officer shall be appointed in each magisterial district in the State by the Attorney General of the State after consultation with the Commissioner responsible for Social Development.

- (6) A convict shall not be sentenced to suspended sentence or to community service for an offence involving the use of arms, offensive weapon, sexual offences or for an offence which the punishment exceeds imprisonment for a term of 3 years.
- (7) The court, in exercising its power under subsection (1) or (2) of this section shall have regard to the need to:
 - (a) reduce congestion in prisons;
 - (b) rehabilitate prisoners by making them to undertake productive work; and
 - (c) prevent convicts who commit simple offences from

mixing with hardened criminals.

- 456.** (1) There shall be established by the Chief Judge in every Judicial Division, a Community Service Centre to be headed by a Registrar who shall be responsible for overseeing the execution of Community Service Orders in that Division.

Arrangements
for community
service.

- (2) The Registrar shall be assisted by suitable personnel who shall supervise the implementation of Community Service Orders that may be handed down by the courts.

- (3) The functions of the Community Service Centre include:

- (a) documenting and keeping detailed information about convicts sentenced to Community Service including the:

- (i) name of the convict;
- (ii) sentence and the date of the sentence;
- (iii) nature, duration and location of the Community Service;
- (iv) residential address of the convict;
- (v) height, photograph, full fingerprint impressions; and
- (vi) other means of identification as may be appropriate;

- (b) providing assistance to the court in arriving at appropriate Community Service Order in each case;

- (c) monitoring the operation of community service in all its aspects;

- (d) counselling of offenders with a view to bringing about their reformation;

- (e) recommending to the court a review of the sentence of offenders on community service who have shown remorse;

- (f) proposing to the Chief Judge measures for effective operation of Community Service Orders;

- (g) ensuring that supervising officers perform their duties in accordance with the law; and

- (h) performing such other functions as may be necessary for the smooth administration of Community Service Orders.

(4) Where the court has made an order committing the convict to render community service, the community service shall be in the nature of:

(a) environmental sanitation, including cutting grasses, washing drainages, cleaning the environment and washing public places;

(b) assisting in the production of agricultural produce, construction, or mining; and

(c) any other type of service which in the opinion of the court would have a beneficial and reformative effect on the character of the convict.

(5) The community service sentence shall be performed as close as possible to the place where the convict ordinarily resides to ensure that the community can monitor his movement.

(6) Before passing a community service order, the court shall consider the circumstances, character, antecedents of the convict and other factors that may be brought to its attention by the Registrar of the Community Service Centre.

(7) A convict sentenced to community service shall not at the same time be sentenced to a term of imprisonment for the same offence, but may, in default of performing his community service diligently and to the satisfaction of the court, be sentenced to a term of imprisonment for the remaining part of his community service to which he is in default or neglect.

(8) Upon sentence to community service, a convict shall be required to produce a guarantor who shall undertake to produce the convict if he absconds from community service.

(9) The guarantor shall be a relation of the convict or any other responsible person of adequate means or substance who shall produce the convict when required by the court, failing which the guarantor shall be liable to a fine of N100,000.00 or more as the circumstances of each case may require.

457. (1) The community service order shall be performed for a period of not more than 6 months and the convict shall not work for more than 5 hours a day.

Performance of community service order.

(2) The convict shall be under the supervision of a supervising officer or officers or Non-Governmental Organizations as may be designated by the Community Service Centre.

(3) The community service order shall contain such directives as the court may consider necessary for the supervision of the convict.

(4) The Registrar of the court making the community service order shall forward to the Registrar of the Community Service Centre a copy of the order together with any other document and information relating to the case.

458. (1) Where at any time during the community service period, the Registrar of the Community Service Centre informs the court of the default of the convict in complying with the directives of the community service order, the court may issue a summons requiring the convict to appear before it.

Default of
convict in
complying with
community
service order.

(2) Where the convict fails, refuses or neglects to appear in obedience to the summons, the court may issue a warrant of arrest.

(3) Where it is proved to the satisfaction of the court that the convict has failed to comply with any of the requirements of the community service order, the court may:

(a) vary the order to suit the circumstances of the case; or

(b) impose on him a fine not exceeding N100,000.00 or cancel the order and sentence the convict to any punishment which could have been imposed in respect of the offence, but the period of community service already performed may count in the reduction of the sentence.

(4) A supervising officer shall not employ the convict for his or her personal benefit.

(5) Where a supervising officer employs the convict for his or her personal benefit, the officer is liable to a fine of N100,000.00 or more, or such other punishment as the court considers fit.

459 Where a convict has been ordered to undergo community service on conviction by an original court but has committed another offence during the period of community service, the following rules shall apply:

Commission of
further offence.

- (a) the subsequent court may add to the sentence or impose a term of imprisonment which might have been passed by the original court and cancel the order of community service;
- (b) the subsequent court may take into account the period of community service served in reduction of the term of imprisonment;
- (c) where the original court is a High Court and the subsequent court is a subordinate court, the subordinate court shall send the copy of the proceedings to the High Court and, on receipt of the proceedings from the subordinate court, the High Court shall proceed under paragraphs (a) and (b) of this section; and
- (d) where the original court is a subordinate court and the subsequent court is a High Court dealing with the matter at first instance or on appeal, the High Court shall proceed under paragraphs (a) and (b) of this section.

- 460.** (1) A convict undergoing community service who intends to change his place of residence shall inform the supervising officer of his intention to do so.
- (2) On receipt of the information, the supervising officer shall furnish the Registrar of the Community Service Centre with the information giving the details of the case.
- (3) On application by the Registrar of the Community Service Centre, the court shall make appropriate amendment in the community service order and inform the court having jurisdiction for the area where the convict intends to reside.
- (4) The court shall give the convict a copy of the amended community service order which the convict shall present to the subsequent Community Service Centre.

Amendment, review and discharge of community service orders.

- 461.** (1) Where a convict has been ordered to undergo community service for a period of more than 4 months, the supervising officer shall, from time to time, give a report to the Registrar on the convict's performance and general conduct.

Discharge of community service order.

- (2) The supervising court based on the report made by the Registrar,

may reduce the period of the community service specified in the community service order by not more than one-third where the convict is of good conduct.

- (3) The Registrar shall make a report to the supervising court on the termination of a community service order.
- (4) The supervising officer who is to be responsible for the supervision of a convict shall be the officer designated by the Registrar of the Community Service Centre and if that supervising officer dies or is unable for any reason to carry out his duties, another supervising officer shall be appointed by the Registrar of the Community Service Centre.
- (5) Where the convict is a female, the supervising officer shall be a female.

462. (1) A defendant convicted of an offence triable summarily may be sentenced and ordered to serve the sentence at a Rehabilitation and Correctional Centre established by the State Government in lieu of imprisonment.

Confinement in Rehabilitation and Correctional Centre.

- (2) A court in making an order of confinement at a Rehabilitation and Correctional Centre shall have regard to the following:

- (a) the age of the convict;
 - (b) the fact that the convict is a first offender; and
 - (c) any other relevant circumstance necessitating an order of confinement at a Rehabilitation and Correctional Centre.
- (3) A court may make an order directing that a child standing criminal trial be remanded at a Rehabilitation and Correctional Centre:
provided that the remand shall be in line with the provisions for remand of a child as provided for in the Child Rights Law of Delta State.

PART 45 – PAROLE

463. Where the State Comptroller of Prisons makes a report to the court recommending that a prisoner:

Court may direct release of prisoner before

completion of sentence.

(a) sentenced and serving his sentence in prison is of good behaviour; and

(a) has served at least one-third of his prison term, where he is sentenced to imprisonment for a term of at least 15 years or where he is sentenced to life imprisonment, the court may, after hearing the prosecution and the prisoner or his legal representative, order that the remaining term of his imprisonment be suspended, with or without conditions, as the court considers fit, and the prisoner shall be released from prison on the order.

(2) A prisoner released under subsection (1) of this section shall undergo a rehabilitation programme in a government facility or any other appropriate facility to enable him to be properly reintegrated to the society.

(3) The State Comptroller of Prisons shall make adequate arrangement, including budgetary provision, for the facility.

PART 45 - THE ADMINISTRATION OF CRIMINAL JUSTICE MONITORING COMMITTEE

464. (1) There is hereby established a body to be known as Administration of Criminal Justice Monitoring Committee (in this Law referred to as “the Committee”).

Establishment of the Administration of Criminal Justice Monitoring Committee.

(2) The Committee shall consist of:

(a) the Chief Judge or his representative, who shall be the Chairman;

(b) the Attorney-General of the State or his representative who shall not be below the rank of a Director in the Ministry of Justice and shall act as alternate chairman;

(c) the State Commissioner of Police or his representative who shall not be below the rank of an Assistant Commissioner of Police;

(d) the State Comptroller of the Nigeria Prisons Service or his representative who shall not be below the rank of an Assistant Comptroller of Prisons;

(e) the State Director of State Security Services or his representative

who shall not be below the rank of an Assistant State Director;

(f) a representative of the Nigeria Bar Association nominated by the Nigeria Bar Association branches in the State to serve for two years only;

(g) the Head of the Legal Aid Council of Nigeria in the State or his representative not below the rank of Director; and

(h) a representative of the Civil Society working on human rights and access to justice or women rights to be appointed by the Committee to serve for a period of two years only.

(3) A member not being a public officer may resign his appointment by a letter to the Chairman.

(4) Members of the Committee not being public officers shall be paid such allowances as are applicable to State Boards, Commissions and Agencies.

465. (1) The Committee shall be charged with the responsibility of ensuring effective and efficient application of this law by the relevant agencies.

Functions of the committee

(2) Without prejudice to the generality of subsection (1) of this section, the Committee shall ensure that:

(a) criminal matters are speedily dealt with;

(b) congestion of criminal cases in courts is drastically reduced;

(c) congestion in prisons is reduced to the barest minimum;

(d) persons awaiting trial are, as far as possible, not detained in prison custody;

(e) the relationship between the organs charged with the responsibility for all aspects of the administration of justice is cordial and there exists maximum co-operation amongst the organs in the administration of justice in the State;

(f) collate, analyse and publish information in relation to the administration of criminal justice sector in the State;

- (g) submit quarterly report to the Chief Judge of the State to keep him abreast of developments towards improved criminal justice delivery and for necessary action; and
- (h) carry out such other activities as are necessary for the effective and efficient administration of criminal justice.

466. (1) The Committee shall establish and maintain a secretariat with such number of staff as it considers necessary for the efficient running of its affairs.

Secretariat of the Committee.

- (2) The Secretariat shall be headed by a Secretary who shall be appointed by the Attorney-General of the State on the recommendation of the Committee.
- (3) The Secretary shall be a legal practitioner of not less than 10 years post call experience and shall possess sound knowledge of the practical functioning of the criminal justice system and adequate experience in justice system administration.
- (4) The Secretary shall be responsible for the execution of the policy of the Committee and the day-to-day running of the affairs of the Committee.
- (5) The Secretary shall hold office for a term of 4 years and may, subject to satisfactory performance of his functions, be re-appointed for another term of 4 years and no more.
- (6) Subject to this section, the Secretary shall hold office on such terms as to emoluments and otherwise as may be specified in his letter of appointment.

467. (1) There is hereby established for the Committee a fund into which shall be paid:

Fund of the Committee.

- (a) budgetary allocation to it through the Office of the Attorney-General of the State;
- (b) such monies as may, from time to time, be provided the Committee by any public, private or international organization by way of a

grant, support or assistance on such terms as are consistent with its functions; and

(c) such monies as may be received by the Committee in relation to the exercise of its functions under this Law.

(2) The Secretary of the Committee shall be the accounting officer for the purpose of controlling and disbursing monies from the Fund established under this section.

468. (1) The Secretary shall submit to the Attorney-General of the State not later than 30th September in each financial year, an estimate of its expenditure and income during the next financial year.

Annual estimates and accounts.

(2) The Committee shall keep proper accounts and records in respect of each financial year and shall cause its accounts to be audited not later than 2 months from the end of each financial year.

469. The Committee shall prepare and publish an Annual Report of its activities.

Annual report.

470. (1) For the purpose of carrying out the functions conferred on the Committee under this Law, it:

Power to obtain information.

(a) shall have a right of access to all the records of any of the organs in the administration of justice sector to which this Law applies; and

(b) may by notice in writing served on any person in charge of any such organs require that person to furnish information on such matters as may be specified in the notice.

(2) A person required to furnish information pursuant to subsection (1) of this section shall comply with the notice within a stipulated time.

471. (1) The Committee may make standing orders regulating its proceedings.

Proceedings and quorum of the Committee.

(2) The quorum at a meeting of the Committee shall consist of the Chairman or the alternate Chairman and two other members of

the Committee.

- (3) Subject to the provisions of the applicable standing order, the Committee shall meet at least once a quarter.
- (4) At a meeting of the Committee, the Chairman, or in his absence, the alternate chairman shall preside at the meeting.
- (5) The validity of proceedings of the Committee is not affected by:
 - (a) a vacancy in the membership of the Committee; or
 - (b) a defect in the appointment of a member of the Committee.
- (6) A member of the Committee who has a personal interest in any arrangement entered into or proposed to be considered by the Committee shall disclose his interest to the Committee and shall not vote on any question relating to the arrangement.

PART 46 - TRIAL OF CORPORATION

- 472.** (1) In this Part "corporation" means anybody corporate, incorporated in Nigeria or elsewhere.
- (2) In this Part "representative" in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this Part authorized to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before any court for any other purpose.
- (3) A representative for the purposes of this Part need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this Part, shall be admissible without further proof as prima facie evidence that the person has been so appointed.

Interpretation
under this Part.

- | | |
|--|---|
| <p>473. Where a corporation is called upon to plead to any charge or information including a new charge or information framed under the provisions of this Law or charge or information added to or altered under the provisions of this Law, it may enter in writing by its representative a plea of guilty or not guilty or any plea which may be entered under this Law and if either the corporation does not appear by a representative or, though it does so appear, fails to enter as aforesaid any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty.</p> | <p>Plea by corporation</p> |
| <p>474 . An information may be preferred against a corporation after the preparation of the proofs of evidence relating to the charge</p> | <p>Information against a corporation.</p> |
| <p>475. An information under section 474 may include, either in substitution for or in addition to counts charging the offence for which proofs of evidence have been prepared, counts which may be lawfully joined in the same information and are founded on facts or evidence disclosed in the proofs of evidence.</p> | <p>Joinder of counts in same information.</p> |
| <p>476. A representative may, on behalf of a corporation:</p> <p style="margin-left: 40px;">(a) state, whether the corporation is ready to be tried on a charge or information or altered charge or, information to which the corporation has been called on to plead;</p> <p style="margin-left: 40px;">(b) consent to the hearing and determination of a complaint before the return date of a summons;</p> <p style="margin-left: 40px;">(c) express assent to the trial of the corporation on information, notwithstanding that a copy of the information and notice of trial has not been served on (the corporation 3 days or more before the date on which the corporation is to be tried.</p> | <p>Power of representative.</p> |
| <p>477. Where a representative appears, any requirement of this Law that anything shall be done in the presence of the defendant, or shall be read or said or explained to the defendant, shall be construed as a requirement that, that thing shall be done in the presence of the representative or read or said or explained to the representative.</p> | <p>Matters to be read, said or explained to representative.</p> |
| <p>478. Where a representative does not appear, any such requirement as is</p> | <p>Non-appearance of</p> |

referred to in section 473 of this Law, shall not apply.

representative.

479. (1) Subject to the preceding provisions of this part, the provisions of this Law relating to the inquiry into and trial of offences shall apply to corporation as they apply to an adult.

a Saving under this Part and joint charge against corporation and individual.

(2) A corporation may be charged jointly and tried with an individual for any offence.

PART 47 - APPEALS FROM LOWER COURTS TO HIGH COURT

Procedures in appeals from lower court to high court

480 (1) Notwithstanding anything to the contrary in any other law providing for the procedure for appeals in criminal matters from a lower court to the High court, the provisions of this Part shall apply to all appeals in criminal matters from a lower court to the High court.

(2) Where a defendant has been acquitted or an order of dismissal made by a lower court, the prosecutor may appeal to the High Court from such acquittal or dismissal.

(3) An appeal shall be commenced by the appellant giving to the Registrar of the court below notice of such appeal which may be verbal or in writing, and if verbal shall be forthwith reduced to writing by the Registrar and signed by the appellant, or a legal practitioner who is representing him.

(4) Limitation of time – The notice of appeal shall be given in every case before the expiration of the thirtieth day after the day on which the court has made the decision appealed against.

(5) Where an appellant gives verbal notice of appeal at the time of the pronouncement of the decision and before the opposite party or the legal practitioner representing him has left the court, such verbal notice of appeal shall be recorded by the court with a notice of the presence of the respondent or the legal practitioner representing him and written notice of appeal shall not thereafter be necessary.

(6) Where the notice of appeal is in writing, an appellant shall file as many copies of his notice of appeal as there are parties to be served, in addition to the copies for the court.

481. (1) When notice of appeal, whether verbal or written, has been given and the appellant, before the expiration of the fourteenth day after the day on which the notice of appeal has been given, deposited such sum as the court may estimate to be necessary for the cost of the required number of certified copies of the

Copy of proceedings and judgment to be furnished on payment

proceedings and judgment, the court shall furnish the appellant with such copies.

or in certain cases free.

- (2) Where the court is satisfied that owing to poverty the appellant is unable to deposit the full or any of the amount required for the necessary copies of the proceedings and judgment, the court may direct the acceptance of a specified lesser sum or that the necessary copies of the proceedings and judgment be supplied to the appellant free of charge as the case may be. Where the court directs that the necessary documents be supplied free the date upon which such direction is given shall, for the purposes of subsection (1) be deemed to be the date of deposit of the sum referred to therein.
- (3) Such notice shall be in the form prescribed

482. (1) An appellant, in an appeal brought in accordance with the provisions of this Part, shall, within 30 days of the pronouncing of the decision appealed against, file with the Registrar of the court from which the appeal is brought a brief setting forth the grounds of his appeal which shall be signed by the appellant or the legal practitioner representing him.

Content of a Memorandum of grounds of appeal.

(2) In his brief of grounds of appeal the appellant shall set forth in separate ground of appeal each error, omission, irregularity or other matter on which he relies or of which he complains with particulars sufficient to give the respondent due notice thereof.

(3) Without prejudice to the generality of subsection (1) of this section, the brief of ground of appeal may set forth all or any of the following grounds:

- (a) that the lower court has no jurisdiction in the case; or
- (b) that the lower court has exceeded its jurisdiction in the case; or
- (c) that the decision has been obtained by fraud; or
- (d) that the case has already been heard or tried and decided by or forms the subject of a hearing or trial pending before a competent court; or
- (e) that admissible evidence has been rejected, or inadmissible evidence has been admitted by the lower court and that in the latter case there is no sufficient admissible evidence to sustain the decision after rejecting such inadmissible evidence; or
- (f) that the decision is unreasonable or cannot be supported having regard to the evidence; or
- (g) that the decision is erroneous in point of law; or
- (h) that some other specific illegality, not herein before mentioned and substantially affecting the merits of the case, has been committed in the course of the proceedings in the case; or
- (i) that the sentence passed on conviction is excessive or in-adequate,

unless the sentence is one fixed by law.

- (4) Where the appellant relies upon the grounds of appeal mentioned in paragraph (d) of subsection (3), the name of the court shall be stated and, if it is alleged that a decision has been made, date of such decision.
- (5) Where the appellant relies upon the ground of appeal mentioned in paragraph (g) of subsection (3), the nature of the error shall be stated and, where he relies upon the ground of appeal mentioned in paragraph (h) of that subsection the illegality complained of shall be clearly specified.

- 483.** A sentence by a lower court shall take effect notwithstanding an appeal unless:
- (a) a warrant has been issued under section 326 of this Law when no sale of property shall take place until the sentence has been confirmed or the appeal decided; or
 - (b) an order for release on bail pending any further proceeding has been made by a competent court when the time during which the convicted person had been so released shall be excluded in computing the period of any sentence which he has ultimately to undergo.

Appeal not to affect sentence in certain circumstances.

- 484.** A High Court exercising appellate jurisdiction shall not, in the exercise of such jurisdiction, interfere with the finding or sentence or other order of the lower court on the ground only that evidence has been wrongly admitted or that there has been a technical irregularity in procedure, unless it is satisfied that a failure of justice has been occasioned by such admission or irregularity.

Appellate Court not to interfere with sentence in certain circumstances.

- 485.** (1) Within thirty days after the pronouncing of the decision the appellant shall, unless he remains in custody under the provisions of section 487 of this Law, enter into a recognisance in the prescribed form, with or without a surety as the lower court may require, in such sum as the lower court may specify, in lieu of furnishing a surety or sureties, as the case may be, he may deposit with the lower court the sum required.
- (2) The condition of the recognisance shall be for the due prosecution of the appeal and for abiding the result thereof, including all cost of the appeal or otherwise.
- (3) In estimating the sum aforesaid the lower court shall take into consideration the amount of any fine imposed and the sum, if any, awarded to the respondent and the cost of the trial in the lower court or if the appellant has been sentenced to imprisonment without the

Giving security to prosecute appeal.

option of a fine, the period of his sentence of imprisonment and in each case a sum not exceeding N100, 000.00 to cover the cost of the appeal in the Appeal Court.

- (4) If there shall be any breach of the recognisance, the deposit, if any, shall be forfeited and shall be applied to discharging the condition of the recognisance.
- (5) (a) Where the appellant has been sentenced to imprisonment the lower court shall release him from his custody on bail on his complying with the provisions of this section as to security for prosecuting the appeal and abiding the result thereof:
Provided that if any offence in respect of which the appellant has been sentenced to imprisonment is a felony, the lower court shall have a discretion whether to release the appellant from custody or not;
- (b) If the lower court refuses to grant an application for the release of the appellant from custody, the appellant may apply to the High Court for such release and the High Court may either refuse to grant the application or make an order for the release of the appellant on such conditions as it thinks fit;
- (c) In this subsection “felony” has the meaning assigned to it in this Law.
- (6) If the appellant who is in custody is not within the district of the lower court from whose decision the appeal is made, any lower court of the district in which such appellant is residing shall have the powers and functions given and assigned, to the lower court by this section.

486. (1) If the appellant makes default in duly prosecuting his appeal, the lower court shall thereupon either treat the recognisance as forfeited and deal with the same in accordance with the provisions of this Law relating to forfeited recognisances, or make such order as may be just with respect to the amount lodged by the appellant as the case may be.

Procedure when appellant defaults in prosecuting appeal.

- (2) If the appellant making such default has been released from custody under the provisions of the last preceding section and if he remains or becomes liable to be kept in custody, the lower court or the Appeal Court shall forthwith issue a warrant for his apprehension, in order that he may be returned to prison accordingly.

487. (1) A person sentenced to imprisonment without the option of a fine who gives notice of appeal and is unable to find the necessary surety or sureties, if any, or to deposit money in lieu of a surety or sureties may nevertheless prosecute his appeal by entering into a recognisance without a surety conditioned for payment of the costs of the appeal provided that he remains in custody pending the

When surety not found or money not deposited.

hearing of the appeal and in such case the lower court shall, by warrant under his hand, direct the appellant to be detained in custody, and shall, in such warrant intimate to the officer in charge of the prison that notice of appeal has been given.

- (2) The appellant shall in such case be detained in custody pending the determination of his appeal and may be taken without any fresh order or warrant in custody of a police officer to the appeal court to attend the hearing of the appeal.
- (3) Notwithstanding anything in this section contained, an appellant may, at any time before his appeal is heard, enter into a recognisance in the form and subject to the conditions in section 486 set forth, and thereupon, he shall be liberated unless he is in custody in respect of any other charge or matter.
- (4) Where a conviction is confirmed on appeal and the appellant has been in custody pending the hearing of the appeal, the Appeal Court shall direct that all of such period of custody shall count as imprisonment towards the term to which the appellant has been sentenced.

488. Every criminal appeal shall finally abate on the death of the appellant.

*Abatement
of appeal*

PART 47 - FEES AND MISCELLANEOUS PROVISIONS

489. Subject to the provisions of this Law, such fees as may be prescribed under this Law shall be paid in any proceeding before a court.

Payment of
fees.

490. A court may, in any proceeding in which good cause appears to the court for so doing, suspend payment of any fee payable until the conclusion of the proceedings and the court may then direct the fees to be paid as costs by a party to the proceedings by whom the court has power to order costs to be paid or remit the payment of the fees.

Suspension of
payment of
fees.

491. The provisions of this Law relating to fees and to the giving of security shall not apply to the State or to a public officer acting in his official capacity.

State not
required to pay
fees.

492. Subject to the express provisions, if any, of the Rules of Court, the forms and precedents contained in the Schedules to this Law may, in accordance with any instructions contained in the forms, and with such variations as the circumstances of the particular case may require, be used in the cases to which they apply.

Use of forms in
Schedules.

493. The Chief Judge of the State may make rules in respect of any or all of the following matters: (a) fees, costs or compensations to be paid under this Law and periodic review of the same; (b) forms to be used for the process and procedure of the courts; (c) accounts to be rendered of monies received by any person under this Law; (d) the method of issue of process under this Law, and the manner of receipt of and accounting for fees in respect of such process; (e) prescribing anything or any person required to be prescribed under the provisions of this Law; (f) regulation and management of non-custodial punishments provided under this Law; and (g) generally carrying into effect the purposes of this Law.	Power to make Rules of Court.
494. Where no other sanction is provided for in this Law, failure on the part of a person to discharge his responsibility under this Law without reasonable cause shall be treated as misconduct by the appropriate authority.	Non-compliance.
495. (1) Nothing in this Law shall affect the use or validity of any form in respect of a procedure or an offence specified under the provisions of a written law or the validity of any other procedure provided by any other written law. (2) Nothing in this Law shall affect the validity of any charge, information or proceeding initiated or commenced under any other law in so far as the proceeding was initiated or commenced before this Law came into force. (3) Where there are no express provisions in this Law, the Court may apply any procedure that will meet the justice of the case.	Saving as to other forms and procedure.
496. The Criminal Procedure Law CAP. C22 Laws of Delta State of Nigeria, 2006, is repealed.	Repeals.
497. This Law may be cited as the Administration of Criminal Justice Law, 2016.	Citation.

EXPLANATORY NOTE

This Law repeals the Criminal Procedure Law Cap. C22 Laws of Delta State of Nigeria 2006 and enact the Administration of Criminal Justice Law, 2016, with a view to re-organizing the management and administration of Criminal

Justice in Delta State for improved Criminal Justice administration.

FIRST SCHEDULE

FORMS

FORM NO. I - GENERAL FORM OF TITLE OF PROCEEDINGS

(For use in the High Court)

In the High Court of

In the Judicial Division

Holden at

Charge No.....20.....

Between

.....Complainant,

and

.....Defendant.

Complaint

(For use in Magistrates' Court or other Courts)

IN THE MAGISTRATE'S COURT

In the Magistrate's Court of

In the Magisterial District

Holden at

Charge No.....20.....,

Between

.....Complainant,

and

.....Defendant.

Complaint

FORM NO. 2 - ORDER OF RECOGNISANCE TO KEEP THE PEACE, AND BE OF GOOD BEHAVIOUR(Section 55)

(General Title-Form No. 1)

Before the..... High/Magistrate Court of the.....
In the Judicial Division/Magisterial District sitting at.....
The.....day of..... 20.... ..

A.B., having made a complaint that C.D., hereinafter called the defendant, on
the.....day of 20.....at, ... in the above-mentioned, did
.....

.....It is ordered that the
defendant do forthwith to the satisfaction of.....enter into a recognisance
in the sum of.....with.....surety.....in the sum of.....[each] to
keep the peace and be of good behaviour towards the State and all persons, and especially
towards the complainant, for the term of.....now next ensuing:

And it is ordered that if the defendant fails to comply with this order he shall be imprisoned
in the prison at.....for the space of unless he
complies with the order.

If costs are ordered, add-

And it is ordered that the defendant pay to the said..... the sum of.....for costs
[by instalments of..... for every.....days, the first instalment to be paid] forthwith [or
on the.....day of 20....]:

And in default of payment it is ordered that the sum due be levied by distress and sale of the
defendant's goods, and in default of sufficient distress that the defendant be imprisoned in
the said prison for the space of.....commencing at the termination of the
imprisonment before ordered, unless the said sum [and all costs and charges of the (said
distress and) commitment] be sooner paid.

.....
Judge [or Magistrate]

FORM NO 3

(Section 90)

COMPLAINT

(General Title-Form NO. 1)

The complaint of C.D (*address and description*), who upon oath (*or* affirmation) states that A. B of (*address and description*) on the..... day of....., 20.....at..... in the.....*above-mentioned*, did*.....
..... taken before me
this.....day of.....

.....
Judge [or Magistrate]

FORM 4

(Section 117)

SUMMONS TO DEFENDANT

(General Title-Form NO. 1)

To A.B of.....

Complaint has been made this day by..... that you on the.....day of 20..... at.....in the above-mentioned did*

.....

*State concisely the substance of the complaint

You are hereby summoned to appear before the..... High/magistrate's court sitting at.....on the day of..... 20..., at the hour of..... in the.....noon to answer to the said complaint.

Dated this.....day of..... 20.....

.....
Judge [*or Magistrate*]

FORM 5

(Section 131)

WARRANT FOR ARREST OF DEFENDANT WHO HAS DISOBEYED SUMMONS

(General Title-Form NO. 1)

To.....Police Officer or To each and all Police Officers.

Complaint has been made on the.....day of.....20..... that A.B hereinafter called the defendant on the.....day of.....20.....in the *above-mentioned* did*

.....
.....

*State concisely the substance of the complaint

And the defendant was thereupon summoned to appear before the High/Magistrate's Court of the in the Judicial Division/Magistrate District sitting at.....on the.....day of.....at the hour of.....in the.....noon, to answer to the said charge:

An oath has been made that the defendant was duly served with the summons, but did not appear, and that such complaint is true.

You are hereby commanded to bring the defendant before High/Magistrate's Court of the.....in the Judicial Division/Magisterial District sitting at.....forthwith to answer to the said complaint or be further dealt with according to law

Dated the.....day of.....20.....

.....
Judge [or Magistrate]

FORM NO. 6

(Section 132)

WARRANT FOR ARREST OF DEFENDANT IN FIRST INSTANCE

(General Title-Form No. 1)

To.....Police Officer

Complaint on oath has been made on the.....day of....., by.....that A.B., hereinafter called the defendant on the.....day of..... at.....in the.....above-mentioned did*

.....

*State concisely the substance of the complaint

You are hereby commanded to bring the defendant before High/Magistrate Court of the in the Judicial Division/ Magisterial Division sitting at to forthwith answer the said complaint and be dealt with according to law.

Dated the.....day of..... 20.....

.....
Judge [*or Magistrate*]

FORM NO. 7

(Section 144)

FORM D

SEARCH WARRANT

(TITLE OF PROCEEDING)

In the Magistrate Court of Magistrate District

To and

Whereas information on oath and in writing this day has been made that there is reasonable ground for believing that there is in (state the place to be searched and state what is to be searched for in the terms of (a), (b) or (c) of 144(1) of this Law.)

You are hereby commanded in the name of the Delta State, with proper assistance, to enter the above-named (state the place to be searched) and there diligently search for the things aforesaid and where the same or any part thereof found on search, to bring the things found, and also the said (name the occupier of the place to be searched) before this Court to be dealt with according to law.

This warrant may be executed at any time on any day, including a Sunday or public holiday and may also be executed at any hour during day or night.

Issued at this day of 20.....

.....
Magistrate

INVENTORY OF ITEMS RECOVERED DURING EXECUTION OF SEARCH WARRANT IN TERMS OF

SECTION 144

A. LIST OF ITEMS DETAINED AND PLACE OF SUCH DETENTION

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

B. LIST OF ITEMS RELEASED TO THE OWNER(S)

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

WITNESSES

.....
NAME/RANK/FORCE No. OF OFFICER
EXECUTING THE WARRANT.

.....
NAME/TITLE OF THE OCCUPIER
OF THE PLACE SEARCHED

.....
NAME/RANK.FORCE No OF
ACCOUNTING OFFICER

.....
NAME.TITLE OF AN
INDEPENDENT WITNESS

Dated the day of..... 20.... ..

FORMS FOR REMAND PROCEEDINGS

(General Title Form No.1)

Form No. 8

(Section 293)

REPORT AND REQUEST FORM FOR REMAND

BETWEEN

COMMISSIONER OF POLICE
DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

AND

XYZ

Respondent

To: The Registrar of the Court

The Court is hereby informed that there is a probable cause to order the remand of XYZ (state particulars of the Respondent, namely age, sex, occupation) of (state details of the Respondent's street address or where there is no precise street address, as near and close description as possible of the location of the Respondent's last known place of abode) in remand custody in _____ (state the exact place of custody in which the applicant proposes to remand the Respondent such as the name and location of the prison or other detention place) who is reasonably suspected to have committed the offence of _____ contrary _____ to _____ section _____ of the _____ within _____ - _____ High Division/Magisterial District on or about _____ (state the date or approximate date or the period of commission of the alleged offence) on _____ grounds stated below: _____

Dated this _____ day of _____ 20__ __

GROUND(S) FOR THE REQUEST FOR REMAND

1. Place, time and circumstance of arrest: _____

2. Arrested with Exhibit(s) _____ Yes _____ No (Tick appropriately)
(disregard (3) and (4) below if the Respondent was not arrested with Exhibit(s))

3. If arrested with Exhibit(s), state clearly the particulars of the Exhibit(s) _____

4. If arrested with Exhibit(s), state clearly how the items are related to or linked with the
committal of the alleged offence: _____

5. State particulars of other evidence or report linking the Respondent to the committing of
the offence such as forensic evidence, marks or finger prints, etc.

6. Confessional statement _____ Yes _____ No

7. Any previous conviction for the same or similar offence _____ Yes _____ No

8. If (7) above is Yes, state the particulars of previous conviction(s)

Found in custody or possession of offensive weapon, object or substance: _____ Yes
_____ No

9. Identification by victim(s) or witness(es) _____ Yes _____ No

(State the particulars of such victim(s) or witness(es))

(i) Name:
Age
Sex
Address:
Occupation:

(ii) Name:
Age
Sex
Address:
Occupation:

(iii) Name:
Age
Sex
Address:
Occupation:

(iv) Name:
Age
Sex

- Address:
Occupation:
(v) Name:
Age
Sex
Address:
Occupation:
(vi) Name:
Age
Sex
Address:
Occupation:

10. Need for further investigation _____ Yes _____ No

11. Period/duration required for further investigation _____ (state approximate days/weeks/months required to complete investigation)

12. Any further relevant information _____

Signed.....
(Commissioner of Police/ Director of Public Prosecution /
Law officer/Police officer)

FORM NO. 9

(Section 376 (9))

INFORMATION ON LEGAL REPRESENTATION

The office of the Director of Public Prosecutions has determined that proceeding shall continue against you as per the attached legal advice.

Indicate whether you wish to be represented by a legal practitioner arranged by you or by the Legal Aid Council or any organisation providing free legal representation.

(1) If you wish to be represented by a legal practitioner arranged by you, please indicate below the particulars of such legal practitioner:

Name of Legal Practitioner: _____

Address of Legal Practitioner: _____

Telephone Number of Legal Practitioner: _____

E-mail of Legal Practitioner: _____

Signature of the Defendant: _____

Signature of the Prison official or police official in charge of place of custody of Defendant:

(2) If you wish to be represented by a legal practitioner arranged by way of legal aid, please provide the relevant information below. If you do not know any organisation you wish to apply to provide legal practitioner to represent you, kindly enter the "Legal Aid Council" as the name of the organisation:

Name of the Organisation: _____

Address of the Defendant or Place of custody if on remand _____

Signature of the Defendant: _____

Signature of the Prison official or police officer in charge of place of custody of Defendant:

FORM NO. 10

(Section 241)

SUMMONS TO WITNESS (General Title-Form No. 1)

To E.F.....

A.B has been charged by for that he on
the.....day of.....20....., at.....in the
above-mentioned, ... did*

.....
*State concisely the substance of the complaint.

and it appears to me by the oath of..... that you are likely to give material
evidence therein on behalf of the informant [or complainant or defendant], and will not
voluntarily appear for that purpose.

You are therefore hereby summoned to appear before the High/Magistrate's Court of
the.....in the Judicial Division/Magisterial Division
sitting at....., on day of..... 20....., at the hour
of.....in the.....noon, to testify what you know in such matter.

Dated the.....day of.....20.....

.....
Judge [or Magistrate]

FORM OF INFORMATION

FORM NO. 11

(Section 377)

The State v C.D

In the High Court of
In the Judicial Division of
The State v. C D

The day of 20....
At the sessions holding at
On the day of 20....., the court is informed
by the Attorney- General of the State on behalf of the State that C.D Is charged with the
following offence.[or offences]. (and statement of offence [offences]).

FORM No. 12

(Section 182)

FORFEITURE ON CONVICTION

(General Title-Form No. 1)

Before the.....High/Magistrates Court of the
in the Judicial Division/ Magistrate District sitting on the.....day
of.....20.....

A.B., hereinafter called the defendant, was by his recognisance entered into
the.....day of....., bound in the sum of....., and his sureties C.D and
F.F. in the sum of each, the condition of the recognisance being that the said
defendant
should.....

And it being now proved that the defendant was on the..... day
of.....convicted of the offence of having
.....the same being a breach of the said condition:

It is therefore adjudged that the said recognisance be forfeited, and that the said.....pay to.....the sum of.....and the further sum of.....for costs [by instalments of.....for every.....days, the first instalment to be paid] forthwith [or on the.....day of.....]:

And in default of payment it is ordered that the sum due from the said under this order be levied by distress and sale of his goods, and in default of sufficient distress that he be imprisoned in the prison at.....for the place of.....unless the said sums [and all costs and charges of the (said distress and) committed] be sooner paid.

.....
Judge [or Magistrate]

FORM NO. 13

(Section 241)

WARRANT FOR APPREHENSION OF A WITNESS

(General Title-Form No.1)

To.....Police officers or other officials Complaint E.F. was duly summoned to appear before the High/Magistrate's Court of the.....Judicial Division/Magisterial District sitting at..... on.....day of.....at the hour of.....in the.....noon, to testify what he should know concerning a certain complaint against A.B.

And he has neither appeared thereto, nor offered any just excuse for his neglect.

And it has been proved on oath that summons has been duly served on him [and that a reasonable sum has been paid (*or tendered*) to him for his costs and expenses in that behalf].

You are hereby commanded to bring him before the High Court/Magistrate Court of in the Judicial Division/Magisterial District sitting at.....forthwith to testify what he knows concerning the said matter.

Dated the.....day of..... 20.....

.....
Judge [or Magistrate]

FORM NO.14

(Section 244)

WARRANT FOR ARREST OF WITNESS IN FIRST INSTANCE

(General Title-Form No.1)

To.....
A.B has been charged by.....for on
the.....day of.....at.....in the
.....aforesaid, did*

*State concisely the substance of the complaint

.....
And it appearing to me by oath of..... that E.F. is likely to give
material evidence concerning the said matter, and that it is probable he will not attend to
give evidence unless compelled so to do:

You are hereby commanded to bring him before the High Court/Magistrate of the
.....in the Judicial Division/Magisterial District
sitting at.....forthwith to testify what he knows
concerning the said matter.

Dated the.....day of.....20....

.....
Judge [or Magistrate]

FORM NO. 15

(Section 250)

WARRANT TO COMMIT A WITNESS

(General Title-Form No. 1)

To.....and to the Superintendentt of Prison. E.F..... having
appeared or being brought before the High /Magistrate Court of the
.....in the Judicial Division/Magisterial District sitting
at.....on day the.....day of, to
testify what he should know concerning a certain case against A.B., refused to take an oath
[or having taken an oath] refused to answer any [or a certain] question put to him concerning

the case and did not offer any just excuse for his refusal.

You, the said Police Officer are hereby commanded to convey the said E.F safely to the said Prison, and there deliver him to the Superintendentt thereof, together with this Warrant, and you, the Superintendentt of the said Prison, to receive him into your custody, and keep him for the space of....., unless he in the meantime consents to be examined and to answer questions concerning the case.

Dated the.....day of..... 20.....

.....
Judge [or Magistrate]

FORM NO 16

(Section 316)

CONVICTION (IMPRISONMENT)
(General Title- Form No. 1)

Before the High/ Magistrate Court of the in the
Judicial Division/ Magisterial District sitting at..... on the..... Day of
..... 20.....

B. B hereinafter called the defendant, is this day convicted for..... that he,
on the day of 20..... at within the *above-
mentioned*, did.....

And it is ordered that the defendant, for his said offence, be imprisoned in the prison
at.....and kept for the period
of.....

If costs are ordered, add-

And it is ordered that the defendant pay to the said..... sum
of.....for costs [by instalments of.....for every days, the
first instalment to be paid] forthwith [or on the day of.....]:

And in default of payment it is ordered that sum due be levied by distress and sale of the
defendants' goods, and in default of sufficient distress that the defendant be imprisoned in
the prison at..... For the space of..... Commencing at the termination of the
imprisonment before ordered, unless the said sum [and all costs and charges of the (said
distress and) commitment be paid]

.....
Judge [or Magistrate]

FORM NO. 17

(Sections 319, 322 and 326)

ORDER FOR MONEY (NOT A CIVIL DEBT)

(General Title- Form No. 1)

Before the High/Magistrates' Court of the in the

Judicial Division/Magisterial District sitting at.....the
.....day of..... 20....

A. B having made a compliant that C.D hereinafter called the defendant, on
the.....day of.....at..... within
the.....above-mentioned, did.....

On hearing the said compliant, it is ordered that the defendant pay to said..... the
sum of.....and also the sum of.....for costs
[by instalments of.....for every days, the first instalment to be paid] forthwith
[or on the day of.....]:

And in default of payment it is ordered that the said sum due be levied by distress and sale of
the defendant's goods, and in default of sufficient distress that the defendant be remanded
in the prison at..... for the space of
unless the said sums and all costs and charges of the said distress and commitment be paid.

.....
Judge [or Magistrate]

FORM NO. 18

(Section 449)

ORDER OF DISMISSAL WITH DAMAGES

(General Title- Form No. 1)

Before the High/Magistrate's Court of the in the Judicial Division/Magisterial District
sitting at.....

The.....day of.....20.....Complaint having been made by A.B
that C.D hereinafter called the defendant, on the.....day
of..... 20..... , at.....in the.....above-mentioned,
did.....

And the Court being of opinion that though the said charge is proved, the offence is of trivial
nature that it is inexpedient to impose any punishment, hereby dismiss the said information.

But order that the defendant do pay the complainant for damages and.....for costs [by instalments of..... for every days, the first instalment to be paid] forthwith [or on the day of..... 20.....]:

And in default of payment it is ordered that the said sums levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be remanded in the prison at..... for the space of..... unless the said sums [and all costs and charges of the (said distress and) commitment be paid]

.....
Judge [or Magistrate]

FORM NO.19

ORDER FOR OTHER MATTERS

(General Title- Form No. 1)

Before the High/ Magistrate's Court of the in the Judicial Division/Magisterial District sitting at..... on the.....day of..... 20.....

A. B., having made a compliant that C.D hereinafter called the defendant, on the.....day of..... at.....in the.....abovementioned, did.....

On hearing the said compliant, it is ordered that the defendant.....

If imprisonment is ordered, add-

And it is adjudged that if the defendant neglect or refuse to obey this order, he be imprisoned in the prison at..... for the space of.....days [or unless the said order be sooner obeyed].

If costs are ordered, add-

And it is ordered that the defendant pay to the said.....sum of for costs [by instalments of.....for every days, the first instalment to be paid] forthwith [or on the day of.....]:

And in default of payment it is ordered that the sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in

the said prison for the space of..... commencing at the termination of the imprisonment before ordered, unless the said sum [and all costs and charges of the (said distress and) commitment] be paid.

.....
Judge [or Magistrate]

FORM NO.20

(Section 370)

ORDER OF DISMISSAL

(General Title- Form No. 1)

Before the High/ Magistrate's Court of the in the Judicial Division/ Magisterial District sitting at..... The.....day of.....2012 Complaint having *been* made by that A.B hereinafter called the defendant, on the.....day of.....,at.....in the.....*above-mentioned*, did.

This Court having heard and determined the said complaint do dismiss same:*

*on its merits or without prejudice to its being brought again

If costs are ordered, add-

And it is ordered that the complainant pay to the defendant the sum of.....for costs [by instalments of.....for every days, the first instalment to be paid] forthwith [or on the day of.....]:

And in default of payment it is ordered that sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in the prison at..... for the space of..... , unless the said sum [and all costs and charges of the (said distress and) commitment be paid]

.....
Judge [or Magistrate]

FORM NO. 21

(Section 435)

WARRANT OF DISTRESS (FOR PENALTY)

(General Title- Form No. 1)

To.....

A.B., hereinafter called the defendant, was on the day of.....convicted before the High/Magistrate's Court sitting at.....for that he on the.....day of.....at..... in the above-mentioned, did.....

And it was adjudged that the defendant for the said offence should be imprisoned [or forfeit and pay the sum of.....] and should also pay the sum of.....[for compensation and] for costs [by instalments of..... for every.....days, the first instalment to be paid] forthwith [or on the.....day of.....], and that in default the said sum [or sums] should be levied by distress,.....and default having been made in payment.

You are hereby commanded forthwith to make distress of the goods of the defendant (except the wearing apparel and bedding of him and his family, and, the tools and implements of his trade) and if within the space of five clear days next after the making of such distress, unless he consents in writing to an earlier sale, the sum stated at the foot of this warrant, together with the reasonable costs and charges of the making and keeping of the said distress, be not paid, then to sell the said goods, and pay the money arising therefrom to the Registrar of that court, and if no such distress can be found, to certify the same to that court.

Dated the.....day of..... 20.....

.....
Judge [or Magistrate]

₹ K

Amount ordered.....

Paid.....

Remaining due.....

Cost of issuing this warrant.....

Total amount to be levied.....

NOTICE OF TRIAL

A. B. Take notice that you will be tried on the information of which this is a true copy, at the session to be held at.....on the day of..... 20.....

Also find attached is the "Information on Legal Representation" Form which you must complete and return to the Registry of this court within 14 days of service on you of this notice of trial.

SECOND SCHEDULE

FORMS OF CHARGES UNDER CRIMINAL CODE LAW CHARGE WITH ONE HEAD

Criminal Code Law section 118

That you.....on the.....day of.....
.....at being a witness upon the trial of a case in the Magistrate's
Court of the.....Magisterial District sitting
at.....in which one
.....was complainant and one
.....was defendant, knowingly falsely swore that you saw one M.N.
snatched a wallet from one Y. Z. in the.....on the day of
....., and thereby committed an offence punishable under section
118 of the Criminal Code Law

Criminal Code Law Section 120(1)

2. That you, on the.....day of.....at..... with intent to mislead the
court in the course of the trial of.....fabricated evidence by means other than perjury to
wit:
and thereby committed an offence against section 120(1) of the Criminal Code Law.

Criminal Code Law Section 249(a)(i)

3. That you, being a prostitute, on the.....day
of.....,at.....behaved in an indecent manner by
exposing your naked person in Broad Street and thereby committed an offence punishable
under section 249(a)(i) of the Criminal Code Law.

Criminal Code Law Section 325

4. That you on the.....day of.....,
at.....unlawfully killed C.D and thereby committed an offence punishable under
section 325 of the Criminal Code Law *Section 326(3)*

5. That you on the.....day of.....at.....aided A.B in killing himself
and thereby committed an offence punishable under section 326(3) of the Criminal Code Law
Section 332(1)

6. That you on the.....day of.....
at.....unlawfully wounded C.D with intent to maim, disfigure or disable or to do some
grievous harm or to resist the lawful arrest of yourself and thereby committed an offence
punishable under section 332(1) of the Criminal Code Law
Section 338(1)

7. That you on the.....day of..... at unlawfully wounded C.D and thereby committed an offence punishable under section 338(1) of the Criminal Code Law
Section 360

8. That you, on the.....day of..... at....unlawfully and indecently assaulted M.S and thereby committed an offence punishable under section 360 of the Criminal Code Law

Section 402

9. That you, on the.....day of..... at.....robbed C.D of (state the thing and thereby committed an offence punishable under section 402 of the Criminal Code Law

Section 419

10. That you, on the day of..... at.....with intent to defraud, obtained from S.P five yards of cloth by falsely pretending that you were a servant to J.S and that you had then been sent by the said J.S to S.P for the said cloth, and that you were then authorised by the said J.S to receive the cloth on behalf of the said J.S and thereby committed an offence punishable under section 419 of the Criminal Code Law

11. That you, on the.....day of 20..... at....., with intent to defraud, obtained from A.B by falsely pretending that you were able to double money.

Section 430(1)

12. That you.....on the.....day of, at....., had in your possession one gold watch reasonably suspected of having been stolen or unlawfully obtained and thereby committed an offence punishable under section 430(1) of the Criminal Code Law

Section 443

13. That you, on the.....day of....., at....., wilfully and unlawfully set fire to a house and thereby committed an offence punishable under section 443 of the Criminal Code Law

Section 467(2)(i)

14 That you, on the.....day of..... at....., forged an accountable receipt purporting to be the receipt of C.D., and thereby committed an offence contrary to section 467 (2) (i) of the Criminal Code Law

CHARGES WITH TWO OR MORE HEADS

15. First-That you, on the.....day of.....,.....
at.....unlawfully supplied to C.D (state thing supplied) knowing that it was
intended to be unlawfully used to procure the miscarriage of a woman and thereby
committed an offence punishable under section 230 of the Criminal Code Law.

Secondly -That you, on or about the.....day of.....,
at.....unlawfully procured for C.D
(state thing procured) knowing that it was intended to be unlawfully used to procure the
miscarriage of a woman and thereby committed an offence punishable under section 230 of
the Criminal Code Law *Section 248*

16. *First* - That you, on the.....day of....., at....., sold
matches made with white (yellow) phosphorus and thereby committed an offence
punishable under section 248(a) of the Criminal Code Law

Secondly - That you, on the.....day of.....
....., at.....had in your possession for the purposes of
sale of matches made with white (yellow) phosphorus and thereby committed an offence
punishable under section 248(a) of the Criminal Code Law

Section 390

17. *First* - That you, on the.....day of.....at.....stole
(state the thing stolen) the property of C.D and thereby committed an offence punishable
under section 390 of the Criminal Code Law

Secondly - That you, on the.....day of.....
.....at.....stole (state the thing stolen) which had been entrusted to you by
C.D for you to retain in safe custody and thereby committed an offence punishable under
section 390(8) (b) of the Criminal Code Law.

Thirdly - That you, on the.....day of.....
at.....stole (state the thing stolen) which had been received by you for and on
account of C.D and thereby committed an offence punishable under section(8) (c) of the
Criminal Code Law.

THIRD SCHEDULE

INFORMATION PRECEDENT

(Section 378)

STATEMENT OF OFFENCE

Perjury, contrary to section 118 of the Criminal Code Law Section

PARTICULARS OF OFFENCE

A.B., on the day of 20 , in the division of , being a witness upon the trial of an action in the High Court in which one was plaintiff, and one was defendant, knowingly gave false testimony that he saw one M.W in the street called the Marina, Lagos, on the day of , 20.....

2

STATEMENT OF OFFENCE

Uttering counterfeit coin, contrary to section 151 of the Criminal Code Law

PARTICULAR OF OFFENCE

A.B., on the day of 20 , at market in the division of uttered a counterfeit Naira coins/notes, knowing the same to be counterfeit.

3

STATEMENT OF OFFENCE

Murder, contrary to section 319 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of 20 in the division of murdered J.S.

4

STATEMENT OF OFFENCE

Accessory after the fact to murder, contrary to section 322 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., well knowing that one, H.C, did on the day of, 20, in the *division* of
,
..... murdered C.C., did on the day of..... 20' and on other days
thereafter receive, comfort, harbour, assist and maintain the said H.C.

5

STATEMENT OF OFFENCE

Manslaughter, contrary to section 325 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20 in the *division* of.....,
unlawfully killed J.S.

6

STATEMENT OF OFFENCE-FIRST COUNT

Wounded with intent, contrary to section 332, subsection (1) of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the.....day of..... 20 in the division of
wounded C.D., with intent to maim, disfigure or disable, or to do some grievous harm, or to
resist the lawful arrest of him the said A.B

STATEMENT OF OFFENCE-SECOND COUNT

Wounding, contrary to section 338, subsection (1), of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20 in the *division* of,
unlawfully wounded C.D.

7

STATEMENT OF OFFENCE

Rape, contrary to section 358 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20 in the division of, had carnal knowledge of E.F without her consent.

8

STATEMENT OF OFFENCE

Publishing defamatory matter,, contrary to section 375, of the Criminal Code Law

Particulars of offence

A.B., on the day of, 20..... in the division of..... published defamatory matter affecting E.F., in the form of a letter [book, pamphlet, picture, *or as the case may be*]
[*Innuendo should be stated where necessary*]

9

STATEMENT OF OFFENCE-FIRST COUNT

Stealing contrary to section 390, Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....in the division of, stole a bag, the property of the C.D.

STATEMENT OF OFFENCE-SECOND COUNT

Receiving stolen goods, contrary to section 427 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20..... in the division of, did receive a bag, the property of C.D., knowing the same to have been stolen.

10

STATEMENT OF OFFENCE-FIRST COUNT

Stealing by clerks contrary to section 390(6) of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the.....day of....., 20..... in the division of, stole N200.00 which had been entrusted to him by H.S., for him, the said A.B., to retain in safe custody.

STATEMENT OF OFFENCE-SECOND COUNT

Stealing by agents and others, contrary to section 390(8)(b) of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....in the division of, stole N200.00 which had been received by him for and on account of L.M.

11

STATEMENT OF OFFENCE

Robbery with violence, contrary to section 402 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....in the division of, robbed C.D of a watch, and at, or immediately before or immediately after, the time of such robbery did use violence to the said C.D.

12

STATEMENT OF OFFENCE

Demanding property by written threats, contrary to section 402 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....in the *division* of, with intent to extort money from C.D., caused the said C.D. to receive a letter containing threats of injury or detriment to be caused to E.F.

13

STATEMENT OF OFFENCE

Attempt to extort by threats contrary to section 408, of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20..... in the division of
with intent to extort money from C.C., accused or threatened to accuse the said C.D of an
unnatural offence.

14

STATEMENT OF OFFENCE

Obtaining goods by false pretences, contrary to section 419, of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20..... *in the division of*, with
intent to defraud, obtained from S.P. five yards of cloth by falsely pretending that he, the
said A.B., was a servant to J.S., and that he, the said A.B., had then been sent by the said J.S.
to S.P. for the said cloth, and that he, the said A.B., was then authorised by the said J.S. to
receive the said cloth on behalf of the said J.S.

15

STATEMENT OF OFFENCE

Burglary, contrary to section 411, and stealing, contrary to 390(4)(b) of the Criminal Code
Law

PARTICULARS OF OFFENCE

A.B., on the..... day of.....20....., in the division of,did break and
enter the dwelling-house of C.D., with intent to commit a felony therein, namely to steal
therein, and did steal therein one watch, the property of S.T.

16

STATEMENT OF OFFENCE

Conspiracy to defraud, contrary to section 422 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the.....day of....., 20....., and on different days between that day and the
..... day of....., 20....., in the division of.....conspired together
with intent to defraud by means of an advertisement inserted by them, the said A.B. and
C.D., in the H.S. newspaper, falsely representing that A.B. and C.D were then carrying on a
genuine business as jewellers at , in the division of and that they were then
able to supply certain articles of jewelry to whomsoever would remit to them the sum of
.....

17

STATEMENT OF OFFENCE FIRST COUNT

Fraudulent false accounting, contrary to section 438 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the.....day of....., 20..... in the division of, and on different days between that day and the day of 20....., being clerk or servant to C.D., with intent to defraud, made, or was privy to making a false entry in a cash book belonging to the said C.D., his employer, purporting to show that on the said day two N200.00 had been paid to L.M

STATEMENT OF OFFENCE-SECOND COUNT

Fraudulent false accounting, contrary to section 438 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20..... in the division of, being clerk or servant to C.D., with intent to defraud, omitted or was privy to omitting from a cash book belonging to the said C.D., his employer, a material particular, that is to say, the receipt on the said day of N100.00 from H.S.

18

STATEMENT OF OFFENCE

Arson, contrary to section 443, of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20.....in the division of, wilfully and unlawfully set fire to a house.

19

STATEMENT OF OFFENCE-

A.B., arson, contrary to section 443, of the Criminal Code Law.C.D., accessory before the fact to same offence.

PARTICULARS OF OFFENCE

A.B., on the..... day of, 20..... in the *division* of, wilfully and unlawfully set fire to a house. C.D., on the same day, in the *division* of, did counsel or procure the said A.B. to commit the said offence.

STATEMENT OF OFFENCE-FIRST COUNT

Offence under section 449, subsection (1), of the Criminal Code Law

Particulars of offence

A.B., on the day of....., 20..... in the *division* of, with intent to obstruct the use of the Nigerian Railway, displaced a sleeper belonging to the said railway.

STATEMENT OF OFFENCE-SECOND COUNT

Obstructing railway, contrary to section 459, of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the..... day of....., 20 in the *division* of....., by unlawfully displacing a sleeper belonging to the Nigerian Railway, caused an engine or vehicle in use upon the said railway to be obstructed in its passage.

21

STATEMENT OF OFFENCE

Damaging trees, contrary to section 451 of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of 20 in the *division* of..... wilfully and unlawfully damaged a cocoa tree from growing.

22

STATEMENT OF OFFENCE-FIRST COUNT

Forgery, contrary to section 467(2), of the Criminal Code Law

PARTICULARS OF OFFENCE

A.B., on the day of, 20 in the *division* of..... , forged a certain will purporting to be the will of C.D.

STATEMENT OF OFFENCE-SECOND COUNT

Uttering a false document, contrary to section 468 of the Criminal Code Law

Particulars of offence

A.B., on the day of, 20.....in the division of..... , knowingly and fraudulently uttered a certain forged will purporting to be the will of C.D.

23

STATEMENT OF PREVIOUS CONVICTION*

Prior to the commission of the said offence, the said A.B. has been previously convicted of burglary on the day of 20....., at the Sessions held at.....

FOURTH SCHEDULE

Section 420 (2) (b), 347 (1) (b), 413 (1), 425 and 434 (b)

Item 1

SCALE OF IMPRISONMENT FOR NON-PAYMENT OF MONEY ORDERED TO BE PAID

(Section 425)

Where the fine does not;	The period of imprisonment shall not exceed
exceed N2,000.00	7 days
exceed N2,000.00 and does not exceed N5,000.00	14 days;
exceed N5,000.00 and does not exceed N20,000.00	1 month;
exceed N20,000.00 and does not exceed N60,000.00	2 months;
exceed N60,000.00 and does not exceed N100,000.00	3 months;
exceed N100,000.00 and does not exceed N200,000.00	4 months;

exceedN200,000.00 and does not exceeds N400,000.00	5 months;
exceed N400,000.00 but does not exceed N600,000.00	6 months
exceedN600,000.00 and does not exceed N1,000,000.00	7 months
exceedN1,000,000.00 and does not exceed N2,000,000.00	8 months
exceeds N2,000,000.00and does not exceed N5,000,000.00	9 months
exceedN5,000,000.00 and does not exceed N10,000,000.00	10 months
exceedN10,000,000.00	To the discretion of the Judge from 18 months and above

FIFTH SCHEDULE

ORDERS OF THE GOVERNOR

(Section 413)

Order for Sentence of Death to be Carried Out

ORDER FOR EXECUTION

WHEREAS at the..... holding at.....on
the.....day.....of.....20....., one
.....was duly convicted of a capital offence and was
sentenced to death:

AND WHEREAS information derived from the record of the case or elsewhere, having been
duly taken into consideration at a meeting of the council of State designated for the purpose
in his own deliberate judgment thereafter has decided to recommend to me that I should
exercise my powers in relation to the person so convicted:

AND WHEREAS I have decided in accordance with the advice of the said Attorney-General of
the State to confirm the sentence:

NOW THEREFORE I hereby order that the sentence be carried out according to the law and
that the said.....be executed at..... at a time
and by the person appointed by you and that the body of the
said.....be buried in the usual place for internment
for condemned criminals executed at the place of execution.

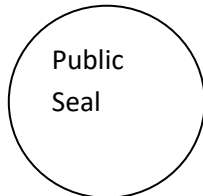
AND FOR SO DOING this shall be your Warrant.

GIVEN under my hand and the Public Seal of Delta State this.....day of.....20.....

.....

Governor

To the Sheriff at.....



Section 411

ORDER FOR COMMUTATION OF SENTENCE

WHEREAS on the.....day of.....20.....,
one..... was duly convicted of a capital offence and
was sentenced to death by the.....holding at.....

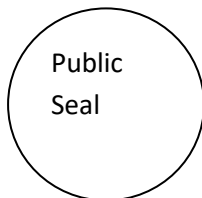
AND WHEREAS information derived from the record of the case or elsewhere, having been
duly taken into consideration at a meeting of the Council of State thereafter has decided to
recommend to me that I should exercise my powers in relation to the person so convicted:
AND WHEREAS I have decided in accordance with the advice of the appropriate authority to
commute the sentence:

NOW THEREFORE I do hereby commute the sentence and direct that the said sentence be
not carried out, and that in lieu thereof the said.....
.....be imprisoned for.....

GIVEN under my hand and the Public Seal of the Governor this.....day
of.....20.....

.....

Governor



To the Sheriff at.....

(for transmission to the appropriate prisons authority).

SIXTH SCHEDULE

(Section 36)

ENDORSEMENT ON WARRANT OF ARREST

Whereas proof has this day been made before me that the name subscribed to the within warrant is in the handwriting of the within mentioned.....

I hereby authorise..... who brings me this warrant and all other persons to whom this warrant was originally directed and also all police officers of the to execute this warrant within..... and to within..... and to bring the said if arrested within before me or before some Magistrate of the..... to be dealt with according to law.

GIVEN under my hand this.....20.....

.....

Magistrate

ENDORSEMENT ON WARRANT OF DISTRESS

(Section 435)

Whereas proof has this day been made before me that the name of subscribed to the within warrant is in the handwriting of the within mentioned.....you.....

.....are hereby ordered forthwith to make distress of the goods of the defendant (except the wearing apparel and bedding of him and his family, and, to the value of Naira the tools and implements of his trade); and if within the space of the 5 clear days next after making of such distress unless he consents in writing to an earlier sale, the sum stated in the within warrant, together with the reasonable cost and charges of making and keeping of the said distress, be not paid, then to sell the said goods, and pay the money arising therefrom to the Registrar of this court, and if no such distress can be found, to certify the same to this court.

Dated the....., 20.....

.....

Judge [or Magistrate].

FORM E

(Section 184)

WARRANT TO ARREST A PERSON FAILING TO APPEAR PURSUANT TO RECOGNISANCE

(TITLE OF PROCEEDINGS)

To.....

and.....

Whereas.....of..... is bound by recognisance to appear before this court on.....(state when) but has failed so to appear:

You are hereby commanded to arrest the said.....
.....and bring him before me at
.....without delay.

.....

Judge (or Magistrate)

FORM F

(Section 317)

WARRANT TO CARRY OUT SENTENCE

(TITLE OF PROCEEDINGS)

To.....and to the Superintendentt of Prison:
The defendant.....was on the..... day
of....., 20....., sentenced as follows-

No	Offence	<i>Term, Fine, Compensation, Costs, or Strokes</i>	Term in default

The defendant has made default in payment of the above sum (or sums, or 1st and 2nd above-named sums, or as the case may be.)

The imprisonment is to commence forthwith [upon the expiration of any other term of imprisonment which the defendant may be now serving]

The terms are to run concurrent [*or consecutive, or concurrent as to the and....., and consecutive as to, or as the case may be.*]

You are hereby commanded to take the said defendant and imprison him in accordance with the above sentence and the Law.

Dated the.....day of.....,20.....

.....
Judge (or Magistrate)

FORM G

(Section 245)

RECOGNISANCE OF WITNESS

In the Magistrate's Court of..... C.D.
of.....(*address and occupation or
profession*) acknowledges that he/she owes to the State Government the sum of
.....payment thereof to be enforced against him/her by due process of law if
he/she fails to comply with the conditions endorsed hereon.

Signature of C.D.....

Taken before me this.....day of....., 20.....

.....

Magistrate (Judge)

(Endorsement)

Conditions

The condition of this recognisance is that whereas A.B (hereinafter called the
accused) was this day charged before me (name of Magistrate), the above-mentioned
Magistrate, with (state shortly particulars of offence):

If therefore the said C.D. appears at the High Court of the State on a date to be
notified to him later and there gives evidence upon the trial of any information
against the accused and in all respects compiles with the requirements of any notice
which he/she may subsequently receive relating to this recognisance, then this
recognisance shall be void but otherwise shall remain in full force.

FORM GI

RECOGNISANCE OF WITNESS CONDITIONALLY BOUND OVER

In the Magistrate's Court of.....C.D.
.....
(*address and occupation or profession*)

Signature of C.D.....

Taken before me this.....day of....., 20.....

.....

Magistrate

(Endorsement)

Conditions

Whereas A.B (hereinafter called the defendant) was this day charged before me (name of Magistrate), the above-mentioned Magistrate, with (state shortly particulars of offence): and

Whereas C.D has been informed that he/she is only conditionally bound over to give evidence at the trial of A.B but that, after receiving a notice that he/she will be required to give evidence at the said trial, he/she will then be firmly bound by the following conditions:

If therefore the said C.D. appears at the High Court of State on a date to be notified to him/her later and there gives evidence upon the trial of any information against the defendant and in all respects compiles with the requirements of any notice which he may subsequently receive relating to this recognisance, then this recognisance shall be void but otherwise shall remain in full force.

FORM H

Notice to Witness that Defendant has not been Committed for Trial

In the Magistrate' court of.....

Whereas you C.D of..... were on the.....day of....., 20....., bound by a recognisance in the sum of..... to appear on a date to be notified to you at the High Court of..... State and give evidence upon the trial of A.B:

This is to give you notice that the Magistrate has determined not to commit the said A.B for trial and that consequently you will not be required to appear at the High Court for the purpose above-mentioned.

Dated the.....day of.....,20.....

.....
Judge (or Magistrate)

FORM J

Notice to Witness bound over that he is to be treated as having been bound over conditionally

In the Magistrate' court of.....
.....

Whereas you, C.D of..... were on the.....day of....., 20....., bound by a recognisance in the sum of..... to appear at the High Court of..... State on a date to be notified to you and there give evidence upon the trial of A.B:

And whereas the Magistrate has since committed the said A.B for trial at the High Court of..... State and has directed that you are to be treated as having been bound over to attend the trial conditionally upon notice being given to you:

This is to give you notice that you are not bound by the recognisance entered into by you until and unless you subsequently receive notice that you will be required to give evidence at the trial of the accused A.B.

Dated the.....day of.....,20.....

.....
Judge (or Magistrate)

FORM K

NOTICE TO WITNESS BOUND OVER OR TREATED AS BOUND OVER CONDITIONALLY

In the High/Magistrate' court of.....

Whereas you C.D of..... were on the.....day of....., 20....., bound over conditionally in the sum of..... to appear upon being given to you to give evidence upon the trial of A.B (or, whereas you C.D were given notice, after entering into a recognisance to give evidence upon the trial of A.B., that you would not be bound by such recognisance until and unless you subsequently receive notice

that you will be required to give at the trial of A.B):

This is to give you notice that you are required to appear and give evidence at the High Court of..... at the trial of A.B on the.....(or on a date to be subsequently notified) and that unless you do so the said recognisance will be forthwith enforced against you.

Dated the.....day of.....,20.....

.....
Registrar of High/Magistrate's Court

FORM L

SECTION 111

STATE COMPTROLLER OF PRISONS RETURNS OF PERSON(S) AWAITING TRIAL

(Complete form in triplicate per individual)

To the: The Chief Judge of and to the
Attorney-General of the State.

The Chief Judge of and the
Attorney-General of the State are hereby informed that these
are the records of all persons awaiting trial held in custody within
the State for a period beyond 180 days from the date of arraignment.

Insert Passport
Photograph of
Individual
Awaiting Trial
Person (ATP)

1. Name of person in custody:

2. Date of Arraignment.....

3. Court where arraigned:.....

3. Particulars of the offence charged with:
4. Date of his Admission to custody:
5. Name of the Prosecuting Agency:.....
6. Any other relevant information.....

.....
State Comptroller of Prisons

BONDSPERSON REGULATIONS 2016

Pursuant to Section 187 of the Administration of Criminal Justice Law 2016

1. (1) The Chief Judge of Delta State may consider and if deem fit, register an individual or corporate body to render the service of a bondsperson under the provisions of these Regulations. *Registration of Bondsperson.*
 - (2) An application for registration by any individual or corporate body to render the service of a bondsperson within the State shall be made to the Chief Judge.
2. (1) (a) An application for registration under these Regulations shall be in writing and shall contain such information as specified in the Forms contained in Schedule 1 to these Regulations. *Mode of Application.*
 - (b) The Forms contained in Schedule 1 may be modified as required from time to time.
 - (2) An application for registration shall be supported by the following documents:
 - (a) certificate of Registration of Business Name, a certificate of Incorporation or a Certificate of Registration of Partnership;
 - (b) three (3) years Tax Clearance Certificate of the individual applicant or of the Directors in the case of a corporate body;
 - (c) criminal history record obtained from the Nigeria Police;
 - (d) detailed financial statement under oath; and
 - (e) any other document required by the Chief Judge.
3. (1)(a) Any individual applying for registration under this Regulations shall be a person who has not been convicted of any offence. *Conditions for Registration*
 - (b) In the case of a corporate entity or partnership the Directors or partners shall be persons who have not been convicted of any offence involving dishonesty.
 - (c) Serving Police Officers, Magistrates, Judges, Justices of the Peace and other officers of the Delta State Judiciary shall not be registered as bondspersons.
 - (2) An applicant for registration under this Regulations shall provide satisfactory evidence of maintaining an office in the State from which he conducts business.
4. (1) The Chief Judge may, if satisfied that an applicant has complied with the provisions of this Regulations register the applicant and *Insurance for Licence.*

issue a licence to render service as bondsperson in the State.

- (2) The licence shall be for an initial period of one (1) year and may be renewed yearly.

5. There shall be three (3) categories of licence:

Categories of Licence.

- (a) Category "A" Licence shall enable licensee undertake recognisance up to the sum of Ten Million Naira (N10,000,000.00);

- (b) Category "B" Licence shall enable licensee undertake recognisance up to the sum of Five Million Naira (N5,000,000.00);

- (c) Category "C" Licence shall enable licensee to undertake recognisance up to the sum of One Million Naira (N1,000,000.00).

6. The limit of the amount of bond or recognisance to which a bondsman licence permits him to undertake security shall be fully paid up as deposit with a bank or an insurance company.

Paid Up Deposit.

7. The bondsperson shall provide quarterly statements certified by the bank or insurance company confirming that he is in compliance with the requirement of Regulation 6 of this Regulations.

Quarterly Statement of Account.

8. (1) Subject to an Order of court, where a bondsperson fails to produce a defendant to stand trial he shall forfeit the recognisance.

Forfeiture of recognisance.

- (2) Where a bondsperson fails to pay the sum stated in the recognisance after forfeiture in sub-paragraph (1) above, the same shall be satisfied from the paid up deposit with the bank or the insurance company.

9. (1) Whenever any recognisance is forfeited, the licence shall be suspended and the bondsperson shall not post any additional bail until the amount of the forfeiture has been paid in full.

Suspension of Licence.

- (2) Where any recognisance due is satisfied from the paid up deposit subject to the provisions of Regulation 8 above, the bondsperson shall be prohibited from posting additional bail until such time as the full amount of the paid up deposit with the bank or the insurance is made up.

10. A bondsperson may demand security in the form of property or other assets from a defendant before rendering service under this Regulations.

Security for Bondsperson.

11. A bondsperson shall -

- (a) undertake recognisance, act as surety or guarantee the deposit

Duties and Services of a Bondsperson.

of money as required by the bail conditions of any person granted bail by a Court;

- (b) verify the particulars of any defendant or suspect granted bail to ensure that such persons appear to stand trial;
- (c) verify the particulars of sureties or other guarantors that the bondsperson may require before rendering service to any defendant or suspect.

12. Where a corporate body is licensed as a bondsperson, it shall be the duty of the corporate body to – *Licence as a Bondsperson.*
- (a) certify to the Chief Judge the agents authorized to act on its behalf; and
 - (b) ensure that only its authorised agents shall post bail for a defendant under the licence and in the name of the corporate body as it appears on the licence.
13. (1) Any individual licensed as a bondsperson under this Regulations who is arrested or charged for any offence shall notify the Chief Judge in writing within five (5) days of his or her arrest or charge. *Notification of Arrest.*
- (2) A corporate body licensed as a Bondsperson under this Regulations shall notify the Chief Judge in writing of the arrest or charge of any of its directors or agents within five (5) days of coming into the knowledge of such arrest or charge.
14. (1) A bondsperson shall keep records of all services rendered under his licence, including but not limited to such records of bail bonds executed or countersigned and such records shall contain all necessary information particularly the details of all defendants and suspects secured on bail including those who subsequently appeared or failed to appear to stand trial. *Records of Services Rendered.*
- (2) Such records shall be open at all times to examination and inspection by the Chief Judge or his representative and the Chief Judge may at anytime require the bondsperson to furnish, in such manner of form as is specified, any information concerning bail bond business carried out under his licence.
- (3) A report of the activities of a bondsperson shall be submitted to the Chief Judge on a quarterly basis.
15. The Chief Judge shall revoke a licence given to a bondsperson in any of the following circumstances – *Grounds for Revocation of Licence.*
- (a) where the bondsperson has consistently violated any of the provisions of this Regulations or the licence;

- (b) where the licence was obtained by supplying false information or on the basis of misrepresentation of facts;
- (c) where the bondsperson become incapable of performing his obligations under the licence;
- (d) where an individual or in the case of a body corporate licensed as a bondsperson, any of its directors is convicted of an offence, or
- (e) for any other misconduct inimical to the proper administration of criminal justice.

16. The administrative fees for Registration and licensing of Bondsperson shall be as stipulated in Schedule 2 to this Regulations and may be reviewed from time to time by the Chief Judge. *Fees.*

17. "Bondsperson" means an individual or corporate body who has been licensed by the Chief Judge to carry on the business of standing surety for a defendant(s) under a legal bond; *Interpretation.*
 "Chief Judge" means the Chief Judge of Delta State.
 "Recognisance" means a bond entered into before a Judge or Magistrate by which one undertakes to produce a defendant before a court on a particular date or perform any obligation on the order of the Court.
 "State" means Delta State.

18. These Regulations may be cited as the Bondsperson Regulations 2016 and shall come into force on the of 2016. *Citation and Commencement.*

SCHEDULE 1

REGULATION 2(1)

APPLICATION FOR LICENCE AS A BAIL BONDSPERSON BY AN INDIVIDUAL

1. Full name of applicant.....

FIRST MIDDLE LAST

Home address.....

STREET/P.O. BOX CITY STATE

Home address in the last six (6) months.....

STREET/P.O. BOX CITY STATE

Occupation:

Business address:

STREET/P.O. BOX CITY STATE

Date of Birth:

(FOR ID PURPOSES ONLY)

Home Phone: Business Phone:

E-mail Address:

2. Nationality:

3. How long have you been resident in Delta State?

4. Have you at any time been a licensed bail bondsperson in Delta State?
.....Yes.....No. If yes, give details:

.....
5. Have you ever been denied a bail bondsperson licence, or has your
licence been/ever been suspended or revoked? Yes No. If
yes, give details:

.....
6. Have you ever surrendered your licence, whether voluntary or
involuntary? Yes.....No.

If yes, give details:

7. Have you ever been or are you currently the subject of any
investigation or administrative action by any State agency? Yes
.....No. If yes, give details. Use a separate sheet of paper if
required.

8. Have you ever been convicted of, or are you currently charged for
committing a crime, ("Crime" includes a simple offence, misdemeanour,
or felony, excluding minor traffic violations)?

If your answer is "yes", you must attach to this application:

(a) a written statement explaining the circumstances of each
incident:

(b) a certified copy of the charging document; and

(c) a certified copy of the official document which demonstrates
the resolution of the charges or any final judgment.

9. Have you read and do you understand the provisions of section 187
of the Administration of Criminal Justice Law 2016 and the Bail
Bondsperson Regulations 2016. ____Yes ____No.

10. This application is to be licenced as: (check one)

☐
☐
☐

Category A Licence

Category B Licence

Category C Licence

I, ..., attest and swear/affirm that the above information is true and correct and understand that if I willfully withhold or misrepresent any vital information required in the application form, such shall constitute grounds for revocation of my bail bondsperson licence.

Date:

.....

.....

SIGNATURE OF APPLICANT

Sworn to this day of

At the High Court Registry,

Asaba, Delta State.

BEFORE ME

COMMISSIONER FOR OATHS

SCHEDULE 1

REGULATION 2(1)

**APPLICATION FOR LICENCE AS A BAIL BONDSPERSON BY A
CORPORATE ENTITY OR PARTNERSHIP**

1. Name of Company or Partnership:
Registered Office:
Any other Business Address:
RC No.:
Name of Director or Partner:
Nationality:
Residential Address of Director or Partner:
Telephone Number of Director or Partner:
E-mail Address:
Name of Director or Partner:
Nationality:
Residential Address of Director or Partner:
Telephone Number of Director or Partner:
E-mail Address:
Name of Director or Partner:
Residential Address of Director or Partner:
Telephone Number of Director or Partner:
E-mail Address:

2. Has the company or any of its Directors or Partners been licensed bail bondsman in Delta State? Yes No. If yes, give details:

3. Has the Company or any of its Directors or Partners ever been denied a bail bondsman licence?

4. Has your licence ever been suspended or revoked? Yes No. If yes, give details:

5. Has the Company or any of its Directors or Partners ever surrendered licence, whether voluntary or involuntary? Yes No. If yes, give details:

6. Has the Company or any of its Directors or Partners ever been or is currently the subject of any investigation or administrative action by any State agency? Yes.....No. If yes, give details. (Use a separate sheet of paper if required).

7. Has the Company or any of its Directors or Partners ever been convicted of, or is currently charged with, committing a crime ("Crime" includes a simple offence, misdemeanour, or felony, excluding minor traffic violations)?

If your answer is "yes", you must attach to this application:

(a) a written statement explaining the circumstances of each incident;

(b) a certified copy of the charging document; and

(c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

8. Have you read and do you understand the provisions of section 187 of the Administration of Criminal Justice Law 2016 and the Bail Bondsperson Regulations 2016 ____ Yes ____ No.

9. This application is to be licenced as: (check one)

☐

Category A Licence

☐

Category B Licence

☐

Category C Licence

I, ..., attest and swear/affirm that the above information is true and correct and understand that if I willfully withhold or misrepresent any vital information required in the application form, such shall constitute grounds for revocation of my bail bondsperson licence.

Date:

.....

.....

SIGNATURE OF APPLICANT

Sworn to this day of

At the High Court Registry,

Asaba, Delta State.

BEFORE ME

COMMISSIONERFOR OATHS

SCHEDULE 2

REGULATION 16

FEES

Application Fees: N10,000.00

<i>Licensing Fees:</i>	<i>First Registration</i>	<i>Annual Renewal</i>
Category "A" :	N300,000.00	N150,000.00
Category "B" :	N200,000.00	N100,000.00
Category "C" :	N100,000.00	N50,000.00

**RULES OF COURT FOR COMMUNITY SERVICE ORDERS MADE PURSUANT TO
SECTIONS 455 AND 493 OF THE ADMINISTRATION OF CRIMINAL JUSTICE LAW
DELTA STATE, 2016**

1. Number of hours of service

The number of hours for which an offender is sentenced by a court to render
Community Service shall be:

(a) specified in the order of the Court; and

(b) in the aggregate not less than twenty –eight (28) hours and not more than four hundred and twenty (420) hours.

2. Written Agreement

(1) The Community Service Officer and the offender shall enter into the written agreement required by section 455 (5) (i) of the Administration of Criminal Justice Law within thirty-six (36) hours after the making of the Community Service Order and the same shall be filed pursuant to section 455 (5) (ii) of the Administration of Criminal Justice Law within twenty-four (24) hours of its being entered into.

(2) Where an offender is unable to enter into a written agreement with the Community Service Officer immediately after the Order committing the offender to render Community Service has been made, and the offender is not able to provide a surety to guarantee his entering into the written agreement within the period specified in sub-paragraph (1) of this paragraph, the Court shall make an Order committing him to prison until he is able to enter into a written agreement with the Community Service Officer.

(3) Where the Court accepts the terms of the written agreement, it shall make an endorsement to that effect on the agreement and return an endorsed copy of the agreement to the Community Service Officer.

(4) The Court may accept the terms of the agreement wholly or subject to any amendments considered appropriate by the Court pursuant to paragraph 11 of these Rules.

(5) A Court may reject the terms of a written agreement and direct the offender and the Community Service Officer to enter into another agreement and provide a guide as to the nature of the agreement that would be acceptable to the court having regard to the provisions of Paragraph 11 of these Rules.

3. Period of Service

The work required to be done under a Community Service Order shall be carried out during the period of twelve (12) months beginning with the date of the Order and unless revoked, shall remain in force until the offender has worked under it for the number of hours specified.

4. Guiding principles

(1) The Court shall not pass a Community Service Order on an offender unless it is of the opinion that the offence or the combination of offences committed by the offender is serious enough to warrant a sentence of imprisonment and that extenuating circumstances exist to make it expedient to use imprisonment.

(2) In forming such opinion as is mentioned in section (1) above, a court shall take into account any information as may be available to it on the suitability of the offender to perform work under such an Order and the circumstances of the offence including any aggravating or mitigating factors.

(3) Where a Court is able to form an opinion as to the suitability of the offender to perform community service it may proceed to make a Community Service Order without a written pre-sentence report.

(4) The court where it is considered necessary may obtain and consider a written pre-sentence report from the Community Service Officer before forming an opinion as to the suitability of Community Service Order for the offender.

(5) It shall not be necessary for the Community Service Officer to prepare a new pre-sentence report where there exists a previous pre-sentence report obtained within the last twelve (12) months preceding by a court in respect of the offender provided that the court in forming an opinion as to the suitability of community service Order shall have regard to the information contained in that report, or where there exists more than one such report, to the most recent report.

(6) where a court is to rely on a previous pre-sentence report, it shall inform the offender and invite him to inform it of any changes in his circumstances not reflected in the previous pre-sentence report.

5. Availability of Work

A court shall not make a Community Service Order in respect of an offender unless it is satisfied that provision for him to perform work under such an Order can be made under the arrangements existing in the magisterial district in which he committed the offence, resides, works or schools.

6. Concurrent and Consecutive Orders

Where a court makes Community Service Orders in respect of two or more offences which have been proved against the offender before the court, the court may direct that the hours specified in any of Orders shall be concurrent or in addition to those specified in any of other Orders provided that the number of Orders which are not concurrent shall not exceed the maximum specified in section 1 of this Order.

7. Order to specify area of community service

A Community Service Order shall specify the magisterial district in which the offender is to render the service.

8. Change of address

Where a court is satisfied that an offender has reasonable grounds for changing residence or place of work or school outside of the magisterial district in which he is carrying out a community service order, it may order the transfer of the outstanding hours of work to another magisterial district where it is satisfied that the community service officer in the other magisterial district is able to assume supervision of the offender and where provision for him to perform community service work can be made under the arrangement existing in the magisterial district.

9. Explaining the Order to the offender

Before making a Community Service Order, the court shall explain to the offender in ordinary language the:

- (a) The purpose, effect and requirement of the Order;
- (b) Consequences which may follow if he fails to comply with any of those requirements; and
- (c) Powers of the court to review the Order on application of the Community Service Officer or the offender.

10. Re-sentencing for original offence

In re-sentencing for the original offence pursuant to its powers under section 455 (5) (v) of the Administration of Criminal Justice Law, the court shall take into account the hours of community service already rendered if any.

11. Judicial supervision of work placements

Although it is the duty of the community service officer to work out with the offender the details of work placement, the court shall have the power to consider whether an agreement is demanding enough in the sense of being physically, emotionally or intellectually tasking in order to preserve its punitive essence or whether it is unnecessarily lenient.

12. Responsibilities of the Community Service Officer

The responsibilities of the Community Service Officer shall include to:

- (a) Supervise and assist in identifying agencies for community service and work placements in his assigned district;
- (b) Provide instructions to agencies on the procedures and regulations of the scheme;
- (c) Supervise offenders ordered to do community service;
- (d) Explain the conditions of the Order and offender's responsibilities in the program and consults with the approved agencies or work placement institutions to arrange for suitable work;

- (e) Provide reports to the court to assist in the ordering of community service;
- (f) Investigate complaints about the Community Service Order Scheme;
- (g) Provide information and consultation to the community and members of the criminal justice system regarding the Community Service Order Scheme; and
- (h) Identify the needs of a community or Magisterial District for purpose of work placement in order to ensure that the Community Service scheme meets the need of the community.

13. Obligations of offender subject to Community Service Order

An offender in respect of which a Community Service Order has been made shall:

- (a) Keep in touch with the Community Service Officer in accordance with such instructions as he may from time to time be given by that officer and notify him of any change of address or circumstances; and
- (b) Perform for the number of hours specified such work and at such times as may have been agreed in writing with the Community Service Officer.

14. Limit on nature and timing of work

The instruction given by a Community Service Officer under the Administration of Criminal Justice Law shall, as far as is practicable, be such as to avoid any conflict:

- (a) With the offender's religious beliefs and health conditions; and
- (b) Or interference with the times, if any, at which he normally works or attends school or any educational establishment.

15. Uniform for offender

An offender rendering community service shall wear such uniforms bearing any inscription as may be determined by the officer responsible in Delta State for matters pertaining to social welfare.

16. Citation and Commencement

These Rules may be cited as Rules of Court for Community Service Order and shall come into force on the.....day of 2016

This printed impression has been compared by me with the Bill which has been passed by the Delta State House of Assembly and found by me to be a true and correctly printed copy of the said Bill.

L. A. OCHOLOR (MRS)
Clerk of the House of Assembly