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# ADMINISTRATION OF CRIMINAL JUSTICE LAW 2016



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**A LAW TO MAKE PROVISIONS FOR THE ADMINISTRATION OF  
CRIMINAL JUSTICE IN EDO STATE AND  
FOR OTHER RELATED MATTERS**

ENACTMENT: Be it enacted by the Edo State House of Assembly by the authority of same as follows:

CITATION: This Law may be cited as the Edo State Administration of Criminal Justice Law 2016.

COMMENCEMENT: This Law shall come into force on the ..... day of ..... 2018.

**PART I-PRELIMINARY**

1. (1)The purpose of this Law is to ensure that the system of procedure and administration of criminal justice in Edo State promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim. *Purpose of this law*

(2) The courts, law enforcement agencies and other authorities or persons involved in criminal justice procedure and administration shall ensure compliance with the provisions of this Law for the realisation of its purposes.

2. (1)Without prejudice to section 86 of this Law, the provisions of this Law shall apply to criminal trials for offences established by a Law of the Edo State House of Assembly and other offences punishable in Edo State of Nigeria. *Application*

(2) The provisions of this Law shall not apply to a Court Martial .

(3) Where this Law is silent on any matter of procedure, a court shall adopt a procedure which in its opinion will result in substantial justice in the matter

## **PART 2 - ARREST, BAIL AND PREVENTIVE JUSTICE**

3. A suspect or a defendant alleged or charged with committing an offence established by a Law of Edo State House of Assembly shall be arrested, investigated, inquired into, tried or dealt with according to the provisions of this Law, except otherwise provided under 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, now made*
5. A suspect or defendant may not be handcuffed, bound or be subjected to restraint except: *No unnecessary restraint*
- (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.
6. (1) Except when the suspect is in the actual course of the commission of an 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 *Notification of cause of arrest and rights of suspect*
- (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 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; and
  - (c) free legal representation by the Legal Aid Council of Nigeria or other institutions offering like services in Nigeria where applicable;
- (3) The authority having custody of the suspect shall have the responsibility of notifying the next of kin or relative of the suspect of



the arrest at no cost to the suspect. **Provided that where the suspect refuses to disclose the name or address or other means of reaching his next of kin or relative, the Authority having custody of him shall be discharged from this responsibility.**

7. A person shall not be arrested in place of a suspect. *Arrest in lieu prohibited*
8. A suspect shall-
- (a) be accorded humane treatment, having regard to his right to the dignity of his person; and *Humane treatment of arrested suspect*
  - (b) not be subjected to any form of torture, cruel, inhuman or degrading treatment.
- (2) A suspect shall not be arrested merely for a civil wrong or breach of contract.
- (3) A suspect shall be brought before the court as prescribed by this Law or any other written 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.
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: *Search of arrested 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 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, in which case, the officer searching shall employ due diligence and decency in carrying out the search to avoid annoyance or breach of the right of the the suspect.

(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 a suspect, shall immediately record information about the arrested suspect and an inventory of all items or properties recovered from the suspect.

*Inventory of  
property of  
arrested 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 an arrested 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

arrested 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.

(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 that the property is neither connected to nor a proceed of any offence.

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 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 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 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 be taken immediately to a police station, or other place for the reception of suspect, and shall be promptly informed of the allegation against him in the language he understands.

*Arrested suspect 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 provisions 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.

15. (1) Where a suspect is arrested, whether with or without a warrant, and taken to a police station or any other agency effecting 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 twenty-four hours,

(3) Any further Action in respect of the suspect arrested pursuant to sub section (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 shall be recorded electronically on a retrievable video compLaw disc or such other audio visual means.

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

16. (1) There shall be established at the Nigeria Police Force a Central Criminal Records Registry.

*Central criminal  
records registry*

(2) For the purposes of subsection (1) of this Section, there shall be established at every state police command a Criminal Records Registry which shall keep and transmit all such records to the Central Criminal Records Registry.

(3) It shall be the duty of Edo State Police Command to ensure that the decisions of the court in all criminal trials are transmitted to the



Central Criminal Records Registry within thirty days of the judgment.

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.

*Recording of  
statement of  
suspects*

(2) Such statement may where the suspect so elects, 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 or such other person.

**(3) It shall be the responsibility of the officer recording the statement of the arrested suspect to bring to his notice his right under the foregoing subsection but it shall be the responsibility of the suspect to elect and decide on his legal practitioner or such other person to witness the recording of his statement provided that where the suspect does not so elect and decide, his statement may be taken without any such person.**

(4) Where a suspect does not understand or speak or write in 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.

(5) The interpreter shall endorse his name, address, occupation, designation or other particulars on the statement.

(6) The suspect referred to in subsection (1) of this section shall also endorse the statement with his full particulars.

18. (1) A police officer may, without an order of a court and without a warrant, arrest a suspect;

*Arrest by police  
officer without  
warrant*

(a) whom he suspects on reasonable grounds of having committed an

offence against a law in Nigeria or against the law of any other country, 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 a warrant of arrest 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) whose arrest 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 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**

(1) Required to appear by a public summons issued under this Law or any **Law of the House of Assembly of the State**.

(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 Law 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 Nigeria, a surety or sureties resident in Nigeria 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 a 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  
person*

*Arrest by owner of*



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 authorised by him. *property*

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

*Arrest by suspect  
doing damage to  
public properties*

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 reasonably believes 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 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*
25. (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 24 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.
26. 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 the peace.*
27. Every 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 authorised to arrest. *When public is bound to assist in arrest.*
28. A person authorised 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 Jurisdictions*
- 29 (1) The Commissioner of Police in Edo State and head of every agency authorised by law to make arrest within the State shall remit quarterly to the Attorney-General of the State a record of all arrest made with or *Quarterly report of arrest to the Attorney General*

without warrant in relation to State offences or arrest within the State.

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

(3) A register of arrest 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 arrest, and every arrest, whether made with or without warrant, within the local limits of the police station or agency, 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 arrest in the State.

30. (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 where 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  
a 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 may refer the matter to the Attorney-General for legal advice and cause the suspect to be taken before a court having jurisdiction with respect to the offence within a reasonable time.

31. (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 court or the place in which the police station named in the recognisance is situate.

32. (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 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 analyse the reports and advice the Attorney-General as to the trends of arrest, bail and related matters.

(4) The Attorney-General 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.

33. (1) An officer in charge of a police station or an official in charge of an agency authorised 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  
Magistrates*

34. (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  
and other places of  
detention every  
month.*

(2) During a visit, the Magistrate shall:

- (a) call for, and inspect the record of arrests;
- (b) direct the arraignment of a suspect if any;

(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 authorised 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) Where there is default by an officer in charge of a police station or official in charge of an agency authorised 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 Act, or pursuant to any other disciplinary procedure prescribed by any provision regulating the conduct of the officer or official of the agency.

### **PART3 – WARRANTS**

35. Where under a law, there is power to arrest a suspect without warrant, a warrant may be issued.

*General authority  
to issue warrant*

36 (1) A warrant of arrest issued under this Law, unless the contrary is expressly provided under any other law, shall

*Form and  
requisites of  
warrant of arrest*

- (a) bear the date of the day of issue;
- (b) contain all necessary particulars; and
- (c) be signed by the Judge or Magistrate by whom it is issued .

(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 be dealt with according to the circumstances of the case, and to be further dealt with according to law.



37. 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 complaint only if on oath*

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

*Warrant may be issued on any day*

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

*Warrants 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, 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.

40. (1) A court issuing warrant of arrest may, where 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.

41. 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*

42. (1) A public summons Shall be published in any or all 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 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.

43. (1) A warrant of arrest may be executed on any day, including a Sunday or public holiday.

*Execution of  
warrant and  
procedure.*

(2) A warrant of arrest may be executed by any police officer at any time and in any place in Nigeria 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 44 and 45 of this Law be brought before the court that issued the warrant of arrest.

44. A warrant of arrest may be executed notwithstanding that it is not in 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 but  
without the  
warrant.*

45. (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 on the request of the surety or suspect;

(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, conditioned 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 46 of this Law, the provisions of subsections (3) and (4) of this section shall not have effect with respect to a warrant executed outside Nigeria.

46. (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 45 of this law, be taken before the court within the division or district in which the arrest was made.

*Procedure on  
arrest of suspects  
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 the court within the division or district of which he was arrested; or

(b) where a direction had been endorsed under section 45 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 bailor security, as the case may be, and shall forward the recognizance, 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 30 of this Law.

47. (1) A warrant of arrest issued by any court other than a court of Edo State may be executed anywhere in Edo State.

*Warrant issued by the State High Court*

(2) A warrant issued under this section may be executed in accordance with section 44 of this Law.

48. 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.*

49. The provisions of sections 12 and 13 of this Law shall apply to arrests under section 48 of this Law, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

*Provisions of sections 12 and 13 to apply to arrest under section 48*

## **PART 4 - PREVENTION OF OFFENCES AND SECURITY FOR GOOD BEHAVIOUR**

50. (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 intervene 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 other mark used for navigation.

51. 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.*

52. 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 warrant, the suspect where it

*Arrest by police to prevent offences.*

appears to the officer that the commission of the offence cannot otherwise be prevented.

53. (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 authorised 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) Every 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 commission of an offence for which he is authorised 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, or other mark used for navigation.

54. (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 tranquility; or

(b) do any wrongful act that can occasion a breach of the peace or disturb public tranquility: 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 may deem fit.

*Power of  
Magistrate to  
Require Execution  
of Recognisance  
for keeping peace.*

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

(a) 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, is within the jurisdiction of the Magistrate.

***Security for good  
behaviour for  
suspected persons.***

55. 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 deems fit.

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

***Security for good  
behaviour for  
habitual offenders.***

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

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

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or

(d) habitually commits or attempts to commit, or aids or abets the commission of any offences relating to property;

(e) habitually commits or attempts to commit, or aids or abets in the commission of offence involving a breach of the peace; or

(f) is so desperate or dangerous as to render his being at large without security hazardous to the community:

such Magistrate may, in a 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 deems fit.

57. Where a Magistrate acting under sections 54, 55 or 56 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:

***Order to be made.***

(a) the substance of the information received;

- (b) the amount of the recognizance 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 .

58. 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.

*Procedure in respect of suspect present in court.*

59. (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.

*Summons or warrant in case of suspect not present.*

(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.

60. A summons or warrant of arrest issued under section 59 of this Law shall be accompanied by a copy of the order made under section 57 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.

*Copy of order under section 59 to accompany summons or warrant*

61. The Magistrate may, where he sees sufficient cause, dispense with the personal attendance of a suspect called on to show cause 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.

*Power to dispense with personal attendance.*

62. (1) Where an order under section 57 of this Law has been read or explained under section 58 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 59 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.

*Inquiry as to truth of information*

(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 57 of this Law has been made, to enter into a recognisance, with or without sureties, for keeping the peace or maintaining good behaviour 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 54 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 58 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.

(5) For the purposes of this section, the fact that a suspect comes within the provisions of section 55 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 deems fit.

63. (1) Where on inquiry, it is proved that it is necessary for keeping the peace or

*Order to give  
security*

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 57 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 164 of this Law.

(2) A suspect ordered to give security for good behaviour under this section may appeal to the High Court.

64. Where on inquiry under section 59 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:

*Discharge of  
suspect informed  
against*

(a) is in custody only for the purpose of the inquiry, release him; or

(b) is not in custody, discharge him.

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

65. (1) Where a suspect in respect of whom an order requiring security is made under section 57 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.

66. The recognisance to be entered into by a suspect under section 57 of this Law, shall bind him to keep the peace or be of good behaviour, as the case

*Conditions of  
recognizance*



may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counseling, 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 .

67. 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.

*Power to reject sureties*

68. (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.

*Procedure on failure of suspect to give security.*

69. 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.

*Power to release suspect imprisoned for failure to give security*

70. 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.

*Power of High Court to cancel recognizance*

71. (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.

*Discharge of sureties*

(2) On an application being made, the Magistrate shall, if satisfied that there is good reason for the application, issue such summons or warrant, as he deems fit, requiring the suspect for whom the surety is bound to appear or to be brought before him.

(3) where the suspect appears or is brought before a 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 65, 66, 67 and 68 of this Law, be deemed to be an order under Section 57 of this Law.

## **PART 6 - PUBLIC NUISANCE**

72. Where a court considers, on receiving a police report or other information and on taking such evidence, if any, as it deems 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 the manner hereinafter provided.

73. (1) An order made under Section 72 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.

74. A suspect against whom an order under Section 72 of this Law is made shall:

*Suspect to whom  
order is addressed  
to obey or appear  
before court.*

(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.

75. Where a suspect against whom an order under Section 72 of this Law is made does not perform the act specified in the order or appear and apply to have the

*Consequences of  
failure to obey  
order or to appear.*

order set aside or modified, he is liable, where the act:

(a) offends public safety, to a fine of not less than One Hundred Thousand Naira for individual and not less than 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 not less than Two Hundred Thousand Naira for individual and not less than Two Million Naira in case of a corporate body or imprisonment for a term of twelve months.

76. (1) Where a suspect against whom an order under Section 72 of this Law is made appears 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 deems fit; and

(b) not satisfied, it shall cancel the order.

77. Where the **acts** directed by an order under Section 72 of this Law which is made absolute under Section 75 or 76(2)(a) of this Law is not 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:

*Consequences 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 72 of this Law was made in the manner prescribed in this Law for the recovery of a fine.

78. (1) Where the court making an order under Section 72 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 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.

79. 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.

*Order pending inquiry*

## **PART 7 - ATTACHMENT WHERE A PERSON DISOBEYS SUMMONS OR WARRANT**

80. A Judge or a Magistrate may at any time after action has been taken under Section 41 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*

81. (1) An order under Section 80 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.

82. (1) Where within one year from the date of the attachment, a suspect, whose property is or has been at the disposal of the Court under Section 80 of this Law, appears voluntarily or being arrested, is brought before the Court and proves to its satisfaction that he:

*Restoration of attached property*

(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 there in, 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.

(2) Where after one year 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 Government.

83. (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 the reasons in writing, issue a warrant for his arrest in addition to or instead of the summons where:

*Issue of warrant in lieu of or in addition to summons*

(a) whether before or after the issue 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.

84. Where a suspect for whose appearance or arrest, a summons 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.

*Power to take bond for appearance*

85. 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.

*Provisions of this chapter generally applicable to summons and warrant.*

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

86. The provisions of this Part and Parts 9 to 30 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*

87. 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 Edo State of Nigeria, 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.*

88. (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.

89. (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 54 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 Law 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.

90. 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

*Form of documents in criminal proceedings*



particulars as may be necessary for giving reasonable information as to the nature of the charge.

*Rules as at  
statement of  
exception*

91. 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.

*Limitation of  
period for making  
a private  
complaint.*

92. 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.

## **PART 9 - PLACE OF TRIAL OR INQUIRY**

*Venue generally*

93. (1) An offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction:

(a) the offence was wholly or in part committed, or some Law 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 are posted to provide security during every criminal trial.

94. **An offence committed at sea or outside the territory of Edo State, may be tried or inquired into in Edo State in the manner provided for in**

*Offence at sea or  
outside of Edo  
State*

**Section 94 of the Administration of Criminal Justice Act 2015.**

95. An offence committed while the suspect is in the course of 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.

*Offence committed on a journey*

96. Where an offence:

*Offence commenced and completed in different State.*

(a) is commenced in Edo State and completed in another State: or

(b) is completed in Edo 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 Edo State

97. Where a question arises as to which of two or more courts of the State 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.*

98. (1) The Chief Judge of a High Court 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.*

(2) The power of the Chief Judge referred to in subsection (1) of this section shall not be exercised where the prosecution has called **any** witness.

(3) Where the Chief Judge is to exercise this power subsequent to a petition, the Chief Judge shall cause the petition to be investigated by an independent body of not more than three reputable legal practitioners within one week of receipt of such petition.

(4) The investigating body shall submit its report within two weeks of appointment except otherwise specified.

99. A court before which a person charged with having committed an offence is brought shall where:

*When case may be remitted to another court*

(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.

*Removal under  
warrant*

100. (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:

(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.

*Transfer of case  
where cause of  
complaint has  
arisen out of  
Jurisdiction of court*

101. 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.

*Court may assume  
jurisdiction under  
certain conditions.*

102. (1) Notwithstanding the provisions of Sections 93 and 98 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.

(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.

103. 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 101 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**

*Information by the Attorney General*

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

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

105. (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 House of Assembly.

*Issuance of legal advice and other directives to the 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 House of Assembly and the Police or other agency shall **immediately** send the case file as requested.

*Prosecution of offences*

106. 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 **Edo State** shall be undertaken by:

- (a) the Attorney-General of the State or a **State Counsel** in his Ministry or Department;
- (b) a legal practitioner authorised by the Attorney- General of the State **within the ambit of the authority granted by the Attorney-General;**
- (c) a legal practitioner authorized to prosecute by this Law or any other Law of the State House of Assembly.
- (d) a **Police Officer or other Officer authorised by any other Law of the State or Act of the National Assembly.**

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

*Discontinuance of criminal cases*

107 (1) In any criminal proceedings for an offence created by a Law of the State House of Assembly, 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 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 a 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 a 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.

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

108. (1) In any trial or proceedings before a court, a prosecutor, may, or on the instruction of the Attorney-General of the State, in case of offences against the Laws of the State House of Assembly, 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.

(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; and

(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**

109. Subject to the provisions of any other Law, Criminal proceedings may in accordance with the provisions of this Law be instituted:

*Different methods  
of instituting  
criminal  
proceedings*

- (a) in a Magistrates court, by a charge or complaint whether or not on oath or upon receiving a First Information Report;
- (b) in the High Court, by information of the Attorney-General of the State, subject to Section 104 of this Law;
- (c) by information or charge filed in the court after the defendant has been summarily committed for perjury by a court under the provisions of this Law;
- (d) by information or charge filed in the court by any other prosecuting authority; and
- (e) by information or charge filed by a private prosecutor subject to the provisions of this Law.

110. (1) Criminal proceedings instituted in a Magistrate court may be:

*Mode of instituting  
criminal  
proceedings in a  
Magistrate court*

- (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 106 of this Law; or
- (b) upon receiving a First Information Report for the commission of an offence for which the police are authorised to arrest without a warrant and which may be tried by the court within the jurisdiction where the police station is situate, the particulars in the report shall disclose the offence for which the complaint is brought and shall be signed by the police officer in charge of the case or
- (c) subject to the provisions of Section 89 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 seised 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 Law, shall have access to the returns on request to the Chief Judge.

*Returns by  
Comptroller-  
General of Prisons*

111. (1) The Comptroller-General of Prisons or other officer in charge of prisons in Edo State shall make returns every ninety days **to the Chief Judge of the State** and to the Attorney-General of the State of all persons awaiting trial held in custody in the Prisons in Edo State for a period beyond one hundred and eighty days from the date of arraignment.

(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 suspect held in custody or awaiting trial persons;
- (b) passport photograph of the suspect;
- (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 – FIRST INFORMATION REPORT**

*Procedure for  
receiving  
complaint and  
first information  
report*

112. (1) Where a complaint is brought before a police officer in charge of a police station concerning the commission of an offence and is:

- (a) one for which the police are authorized to arrest without a warrant, and
- (b) triable by a magistrate court within which jurisdiction the police station is situated, the police shall, if the complaint is made orally, reduce the complaint or cause it to be reduced into writing in the Police Diary.

(2) The complaint, whether given in writing or orally must be reduced in

writing into the Police Diary and read or caused to be read over to the complainant and every such complaint shall be signed by the officer receiving the complaint.

(3) where on any other ground the officer in charge of a police station has reason to suspect the commission of an offence referred to in subsection (1), he shall enter or cause to be entered the grounds of his suspicion in a Police Diary.

(4) Where the officer is satisfied that no public interest may be served by prosecuting, he may refuse to accept the complaint provided that he notifies the complainant of his right to complain to a court under Section 109 (a) of this Law.

(5) Notwithstanding the provision of subsection (2) of this Section, the officer in charge of a police station may, if in his opinion, the matter might more conveniently be inquired into by an officer in charge of another police station, refer the complaint to such other police station.

(6) After complying with the provisions of subsection (3) of this Section, the officer in charge of the police formation shall act as follows:

(a) he shall forthwith proceed to the scene and investigate the case and if the suspect is not in custody, take such steps as may be necessary for the discovery and arrest of the suspect or he may direct a police officer subordinate to him to do so and report to him;

(b) in cases involving death or serious injury to any person, the officer in charge of the police station shall arrange, if possible, for the person to be taken to the nearest hospital for such further examination as may be necessary;

(c) where the complaint is given against a person by name and the alleged offence is not of a serious nature, the officer in charge of a police formation need not make or direct investigation on the spot;

(d) in the cases mentioned in paragraph (c) of this subsection, the officer in charge of the police station shall record in the book referred to in subsection (2) and in the First Information Report to the court his reason

for not entering on an investigation or for not making or directing investigation on the spot or not investigating the case;

(e) where after the investigation, it appears that the complaints against the suspect are unfounded, the investigation shall be terminated and this fact shall be recorded in the Police Diary mentioned in subsection (2) of this Section; and

(f) where the officer considers that the prosecution of the alleged offence will serve the public interest, the officer shall reduce the complaint into the prescribed form called First Information Report and the officer shall take the alleged suspect with the First Information Report before a magistrate within whose jurisdiction the police station is situated.

(7) Where the suspect appears or is brought before the Magistrate Court, the particulars of the offence of which he is accused shall be read to him and he shall be asked if he has any cause to show why he should not be tried by the magistrate.

(8) Where upon hearing the information, the alleged suspect admits the commission of the offence contained in the First Information Report, his admission shall be recorded as near as possible in the words used by him and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly and in that case it shall not be necessary to frame a formal charge.

(9) Where the suspect denies the allegation against him and states that he intends to show cause why he should not be convicted, the Magistrate shall proceed to hear the complainant upon a charge framed against the Accused Person by the Police or other person prosecuting and take such evidence as may be produced in support of the prosecution. The suspect shall be at liberty to cross-examine the witnesses for the prosecution and if he so does, the prosecutor may re-examine the witnesses where necessary.

(10) In the course of the foregoing proceedings, the magistrate may consider granting bail to the suspect in accordance with the provisions of this Law and on such terms and conditions as he may think fit.

( 11) Where in the proceeding before a Magistrate Court, the court at any stage before judgment, is of the opinion that the case is one which ought to be tried by the High Court, he shall revoke the bail of the Accused Person if he has already been granted bail, transfer the case along with the suspect to a High Court for trial and make an order directing the Police to forward the case file to the Attorney-General for his advice in accordance with the provisions of this Law.

#### **PART14 - ENFORCING APPEARANCE OF SUSPECT**

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

*Compelling  
appearance of a  
suspect*

114. In every case, the court may proceed either by way of summons to the defendant or by way of warrant for his arrest in the first instance according to the nature and circumstances of the **case**.

*Summons and  
warrant*

115. (1) Subject to the provisions of Section 89 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 commission of the offence to a Magistrate who shall consider the allegations of the complainant and may:

*Making of  
complaint and  
issue of process  
thereon*

(a) in his discretion, refuse to issue process and shall record his reasons for such refusal; or

(b) issue a summons or warrant as he shall deem fit to compel the attendance of the defendant before a Magistrate Court in the district.

(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.

#### **PART 15 - ISSUE, FORM AND SERVICE OF SUMMONS**

*Issue and service*

116. A summons may be issued or served on any day, including a Sunday or



public holiday.

*Issue of summons  
and contents  
thereof*

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.

*Hearing by  
consent before  
return date of  
swummons*

118. The court may, if it deems fit and with the consent of the parties, hear and determine complaint notwithstanding that the time within which the defendant was required to appear may not have elapsed.

*Summons with  
immediate return  
date in special  
circumstances*

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.

*Discretion in  
exparte  
application*

120. 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*

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.

*Service of  
summons*

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.

*Normal methods  
effecting service*

123. The person effecting service of a summons shall effect it by delivering it on:

- (a) an individual, to him personally; or
- (b) a firm or corporation,
  - (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 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, to the Commissioner of Police of the State;
- (e) any Federal Government Ministry, Department or Agency, to the Attorney-General of the Federation or to the Legal Department of such Ministry, Department or Agency;
- (f) any Edo State Government Ministry, Department or Agency, to the Attorney-General of Edo State or to the Legal Department of such Ministry, Department or Agency; or
- (g) any arm of the armed forces, to the Director of Legal Services of the Service or Command concerned.

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 most conveniently so served.

*Service on public  
officers*

(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 out-side 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 may be 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.

*Proof of service.*

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 are deemed to be correct unless and until the contrary is proved.

*Summons disobeyed warrant may be issue.*

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.

*Issue of warrant  
for suspect in the  
first instance.*

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 .

*Application of  
sections 35 to 47  
to such warrant.*

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 35 to 47 of this Law shall apply to such warrant.

*Warrant may be  
issued before or  
after return date  
of summons*

134. Notwithstanding the issue of a summons as in section 177 of this Law, a warrant may be issued at any time before or after the time appointed for the appearance of the suspect.

*Power to dispense  
with personal  
attendance of  
defendant in  
certain cases.*

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,

(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 the 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.

## **PART 16 - MISCELLANEOUS PROVISIONS REGARDING PROCESS**

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.

*Irregularities  
which vitiate  
proceedings.*

137. Where a Court or Justice of the Peace, who is not empowered by law does any of the following things:

(a) attaches and sells property under section 80 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 72 of this Law as to a public nuisance;

(g) prohibits, under section 79 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.

*Variance between  
charge and  
complaint*

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 the validity of any proceedings.

*Process valid not  
with standing  
death or vacation  
of office of person  
issuing.*

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.

## **PART 17 - SAVING OF VALIDITY OF PROCESS**

*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.

(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.

*General address of  
process for  
issuance and  
execution.*

141. (1) In addition to the provisions of sections 36 and 40 of this Law in respect of warrants of arrest, all summonses, warrants of every description and processes of whatever description shall be sufficiently addressed for service or execution by being directed to the Sheriff.



(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.

## **PART 18 – SEARCH WARRANTS**

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 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.

*Certain provision applicable to all summonses and warrants in criminal matters.*

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:

*Cases in which search warrants may be issued.*

(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 authorising an officer of the court, member of the police force, or other person named to Law in accordance with subsection (2) of this section.

(2) A search warrant issued under subsection (1) of this section 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 proceeding 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 deems fit so to direct on the warrant.

***Discharge of suspected person.***

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.

***Search warrant to be signed by Magistrate or Justice of the Peace***

146, (1) A search warrant shall be under the hand of the Judge, Magistrate or Justice of the Peace issuing it.

(2) A warrant shall remain in force until it is executed or until it is cancelled by the court which issued it.

***Search warrant to whom directed***

147. A search warrant may be directed to one or more persons and where directed to more than one it may be executed by all or by anyone or directed, more of them.

148. A search warrant may be executed at any time on any day, Sunday or public holiday.

***Time when search warrant may be issued 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 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 presence.*

153. (1) Where 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) 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 section 153 of this Law, 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 has powers and protection as are given by a law for the time being in force to a person lawfully authorised to search for the thing, the thing shall be disposed of in the same manner as directed by the law, or in the absence of the 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

*Disposal of  
counterfeit  
currency and  
certain other  
thing.*

currency, 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 destroyed.

*Transmission to court of other State.*

157. Where a search warrant is issued in respect of an offence against the law of the state and a summons has been issued for that offence by, or any person has been charged with that offence before a Court of the State, the Court 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 by this Law shall be exercised and performed by that court instead of the Magistrate who issued the search warrant.

## **PART 19 - BAIL AND RECOGNISANCES: GENERALLY**

158. 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.

*General entitlement to bail*

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

*Power to 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.

*Recognisance by parent or guardian of a child*

160. (1) Where a child is arrested with or without warrant and 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 parent or guardian, with or without sureties.

(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.

*Bail where a suspect is charged with capital offence*

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.

(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 or advice of the Attorney-General for a period exceeding one year; or

(c) any other circumstances that the Judge may, in the particular facts of the case, consider exceptional.

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

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

(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.

*Where a defendant is charged with offence not exceeding three years imprisonment*

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.

*Bail in respect of matters in other offences*

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.

*Conditions for bail*

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.

(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.

*Recognisance in respect of a child*

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.

*Sureties*

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.

(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.

*Judge may vary  
bail fixed by  
Magistrate or  
police*

168. A Judge of a High Court may direct that the:

(a) bail conditions required by a Magistrate's court or police officer be reviewed; or

(b) defendant in custody in a state or in the State be admitted to bail.

*Reconsideration of  
bail*

169. Where a 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 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.

*Before whom  
recognisance may  
be executed.*

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

(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 prescribed in subsection (2) of this section shall have the same effect as if they have been entered into before that court

*Release on  
exemption of  
recognizance*

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 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.

*Mode of entering  
into recognizance*

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.

*Continuous bail*

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.

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

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

(b) at any subsequent stage of any proceeding, 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 record the reason for the variation of the order or committal of the defendant.

(4) 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.

*Defendant bound  
by recognisance  
appear before a  
court or police  
may be committed  
to prison.*

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 a court or police officer:

(a) is about to leave Nigeria; 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:

(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 deem just.

*Variation of a recognisance if surety is unsuitable*

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:

(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.

*Discharge of sureties*

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.

(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.

*Order of fresh security upon original order*

178. Where a surety to a recognisance becomes insolvent or dies or where a recognisance is forfeited, the court may order the defendant 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.

*Forfeiture of  
recognisance*

179. (1) Where it is proved to the satisfaction of the court by which a recognisance has been taken or, when the recognizance 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.

(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 recognizance is forfeited.

(4) When the penalty is not paid and cannot be recovered in a 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.

*Mitigation of  
forfeiture*

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.

*Where defendant  
fails to find surety*

181. Where a defendant required by a court to find sufficient 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:

(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.

*Forfeiture on conviction.*

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:

(a) recognizance 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.

*Where recognisance for feited warrant may issue.*

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 committment 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.

*Arrest on failure to appear*

184. Where a defendant who is bound by a recognizance or bond to appear before a court or police station does not so appear, the court may issue a warrant for his arrest.

*Payment on recognizance*

185. All sums paid or recovered in respect of a recognisance ordered 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 court as evidence of payment.

*Appeal*

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

*Registration of bonds person.*

187. (1) The Chief Judge of the State High Court may make regulations for the registration and licensing of corporate bodies or persons to act as bonds



persons within the jurisdiction of the court in which they are registered.

(2) A person shall not engage in the business of bail bond services without being duly registered and licensed in accordance with the subsection (1) of this section.

(3) A person who engages in bail bond services without registration and licence or in contravention of the regulation or terms of his licence is liable to a fine of five hundred thousand naira or imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

(4) 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.

(5) A bonds person 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 a defendant granted bail by the court within the division or district in which the bondsman is registered.

(6) A person or organisation shall not be registered as a bonds person 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 bondsman's recognizance.

(7) A 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 bond or recognisance to which his licence permits him to undertake.

(8) The Chief Judge may withdraw the registration of a bonds person who contravenes the terms of his licence.

*Bonds person may  
arrest absconding  
defendant or  
suspect*

188. Where a bonds person arrests a defendant or suspect who is absconding or who he believes 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.

## PART 20 - PROPERTY AND PERSONS

*Methods of stating  
multiple  
ownership of  
property*

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 anyone of those persons and another or persons;

(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 (or of the State), as the case may be;

(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, 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, a public officer, be stated to be the money or property of the State (or of the State), as the case may be;

(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 whatsoever, whether movable or immovable, as aforesaid, be sufficient to state as the property of the State or 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 Law or a marriage recognised as a valid marriage under any law in force in Nigeria, be stated as belonging to the married woman.

*Description of  
persons in  
criminal process*

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.

(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 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 section 191 of this Law, the husband and wife shall be competent and compellable witnesses in accordance with the provisions of the Evidence Law, 2011.

*Husband and wife competent as witnesses*

## **PART21- 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 law against which the offence is said to have been committed, shall be set out in the charge.

*Legal presumption of 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.

*Particulars in 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 offence with which he is charged.

(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 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 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.

*Description of property and joint owners*

(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.

*Description of  
bank or currency  
notes.*

202. (1) Any 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 bank or currency note, although the particular species of currency of which the amount was composed or the particular nature of the bank or currency note need not be proved.

(2) In a case of stealing and defrauding by false pretence, the bank or currency note may be described by proof that the defendant dishonestly appropriated or obtained any bank or currency note, or any portion of its value, although the 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.

*Provisions as to  
statutory offence.*

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

(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.

*Description of  
persons*

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 document*

205. Where it is necessary to refer to a document or an instrument in a charge, it is 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.

206. Subject to any other provisions of this Law, it is sufficient to describe any place, time, thing, matter, Law, 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, Law or omission referred to.

*General rule as 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, defendant 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.

*Separate charge  
for distinct  
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:

(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.

*Attempt same as  
substantive  
offences*

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.

211. Where in one series of Laws 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 defendant, charges for the offences may be joined and the defendant accused tried for the offences at one trial,

*Trial for more  
than one offence*

212. Where the Laws 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, constituted 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 anyone or more of those

*Acts constituting  
one offence but  
constituting a  
different offence  
when combined*

acts,

*Where it is doubtful which offence has been committed*

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.

*Incidental offences in the same transaction*

215. Where a single Law 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.

## **PART 22 - ALTERATION OR AMENDMENT OF CHARGES**

*Alteration and amendment of charge by permission of court.*

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, or delivered

(2) An alteration or amendment of a new charge shall be read and explained to the defendant and his plea to the 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.

(4) Where any defendant is committed for trial without a charge or with an imperfect or erroneous charge, **the court may allow framing of the charge or addition or alteration** of the charge as the case may be having regard to the provisions of this Law.

*Procedure on alteration of charge*

217. (1) Where a new charge is framed 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 or altered charge as if he has been arraigned for the first time.

(2) The court shall proceed with the trial as if the new or altered charge had been the original charge.

*When court may*

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.

*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.

*Recall of witnesses when charge is revised*

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.

*Effect of error*

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.

*Objection to a charge*

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

*Effect of material error*

222. (1) Where an appellate court is of the 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.

(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 23 - 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

*Where defendant charged with one offence may be*

- 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. *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 is 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 higher 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.

(2) Where a charge is brought for the higher offence pursuant to this section, the defendant shall be tried before another court.

*Conviction of  
kindred offences  
relating to  
property.*

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.

*Defendant  
charged with  
burglary may be  
convicted of  
kindred offence.*

230. Where on trial for burglary, housebreaking or related offences, the facts proved in evidence justify a conviction of 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.

*On charge of rape  
conviction under  
defilement incest,  
unnatural or  
indecent assault  
may follow*

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.

*Procedure for trial  
on charge for  
certain offences*

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.

(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 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) Trafficking in Persons and related offences; **provisions under the criminal code or Act**

(c) any other offence in respect 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.

*On charge of defilement conviction of indecent assault may follow.*

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.

*Where murder or infanticide is charged and concealment of birth is proved*

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 is charged and infanticide 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.

(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 an applicable law he was not criminally responsible, and dealt with accordingly or in accordance with this Law or any other law.

*Where offence proved is not included in offence charged*

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.

(2) Where a defendant is charged with an offence and facts are proved

*Withdrawal of remaining charges*

which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it.

*on conviction on one of several charges.*

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.

(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.

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

## **PART 24 - 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.

(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.

*A defendant may be tried again on separate charge in certain case*

239. A 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.

*Consequences supervening or not known at previous trial.*

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 at previous for which he was

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.

*Issue of summons  
for witness*

## **PART 25 - 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.

(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.

*Service of  
summons and  
other processes on  
witnesses*

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

(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, recognised and authorised 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.

*Warrant for  
witness after  
summons*

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:

thereafter proof that the summons was duly served on him, or that the person to be served wilfully avoids service, the court may issue a warrant to arrest and bring him before the court.

*Issue of warrant  
for witness*

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.

*Mode of dealing  
with witness  
arrested under  
warrant*

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.

*Penalty on  
witnesses refusing  
to attend*

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 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.

*Non-attendance of witness on adjourned hearing*

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.

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

248. A person present in court and compellable 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.

*Manner of taking oath or affirmation*

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

*Witness refusing to be sworn, or produce documents.*

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.

(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.

*Expenses of witnesses for the prosecution*

## **PART26- WITNESSES: EXPENSES**

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.

*Expenses of witnesses for the defence*

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.

*Adjournment may be granted subject to witnesses costs*

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.

*Ascertainment of witnesses expenses*

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.

*Application of the Evidence Act*

## **PART 27 - EXAMINATION OF WITNESSES**

*Power to call or recall witness*

255. Subject to the provisions of any other law, the examination of witnesses shall be in accordance with the provisions of the Evidence Law.

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.

*Certificate of certain Government technical officers*

257. A certificate signed by any of the officers named in section 55 of the Evidence Law, shall be admissible in evidence in accordance with the

*Right of reply*



provisions of that Law

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 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.

*Public to have  
access to hearing*

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.

(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.

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

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.

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

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 bonafide 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.

*Prohibition on children being present in court during the trial of other persons*

(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:

(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.

*Visit by court to locus.*

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.

(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.

*Determination of age*

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:

(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 Law, 2011, 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.

*Age in relation to offences*

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 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.

*Presence of defendant at trial*

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; or

(b) At the hearing of an interlocutory application;

*Conduct of cases by legal practitioner for complainant or for defendant.*

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.

(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 a 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.

*General control of prosecution by the Attorney-General*

268. (1) Where a private legal practitioner prosecutes 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.

(2) Where proceedings in respect of an offence is instituted by a police officer, it shall be in the name of the Commissioner of Police.

*Position in court of person summoned*

**(3) 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.**

269. Where a defendant appears before a court on a summons, he shall 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.

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

## **PART 28 - PLEA BARGAIN AND PLEA GENERALLY**

270. (1) **Subject to the provisions of this 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 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) The defendant has agreed to return the proceeds of the crime

or make restitution to the victim or his representative, or

(c) 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 (3) 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 and 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 (3) shall be reduced to writing and shall:
- (a) state that, before 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; and

(c) be signed by the prosecutor, the defendant, the legal practitioner and the interpreter, as the case may be; and

(d) A copy of the agreement 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 (3) 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 terms 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 term 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 (6) 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 in terms of subsection (9) of this section 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 liable to imprisonment for 7 years without an option of fine.

(15) 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.

(16) 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.

**(17)(a) In all cases where plea bargain is entered into between the Prosecution and the defendant as provided for in this section the prior consent of the Attorney-General shall be sought and obtained**

**(b) the Attorney General shall give directives either of a general or specific nature on the procedure for obtaining his consent pursuant to paragraph (a) of this subsection and such directives shall be published in a gazette.**

*Plea to  
information or  
charge.*

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.

(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;

(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 and

(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.

*Proof of previous  
conviction*

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.

*Effect of plea of  
not guilty.*

273. A defendant who pleads not guilty shall be deemed to have **set himself upon his trial.**

*Effect of plea of  
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; or
- (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.

*Amending charge where defendant pleads guilty to offence not charged.*

(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 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.

*Failure to plead due to malice or otherwise*

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.

(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.

*Pleas: autrefois acquit or convict, pardon.*

(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;

(b) he has obtained a pardon for his offence.

(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.

*Procedure when  
defendant is  
suspected to be of  
unsound mind*

## **PART 29 – 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 interests 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 one 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 three 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 State Counsel 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.

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

*Report from  
medical officer*

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 subsections (4) and (7) of section 278 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.

*Certificate of  
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 sound 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.

(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.

*Release of  
defendant of  
unsound mind  
pending  
investigation or  
trial.*

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:

- (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 High 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 two 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.

*Resumption of proceedings or trial*

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 after release under section 281*

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

*Where defendant appears to have been of unsound mind*

making his defence, if the offence charged is bailable by the court, it may in its discretion, release him on sufficient security being given:

(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 High 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 two 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.

*Resumption of proceedings or trial*

*Resumption of proceedings after release under section 281*

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.

*Where defendant appears to have been of unsound mind*

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

case may be, and the certificate shall be receivable as evidence.

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 section 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 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 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.

*Transfer from one place of custody to another*

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.

*Delivery of defendant of unsound mind to care of relative*

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:

(a) properly taken care of; and

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

*Removal to  
another State*

(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 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 State

*Applications for  
remand or other  
interlocutory  
proceedings*

### **PART 30 - DETENTION TIME LIMITS**

293. (1) A suspect arrested for an offence which a Magistrate court has no jurisdiction to try shall within a reasonable time of arrest be brought before a High Court for remand.

(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; and

*A court may  
remand in prison  
custody*

(b) be verified on oath and contain reasons for the remand request.

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.

(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 circumstances of the case that justifies the request for remand.

*Court may grant  
bail in remand  
proceedings*

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.

*Time protocol for  
remand orders*

296. (1) Where an order of remand of the suspect is made pursuant to section 293 of this Law, the order shall be for a period not exceeding fourteen 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 fourteen 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** 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 fourteen 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 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 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 fourteen 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 fourteen days from the date the hearing notice was issued pursuant to subsection (4) of this section.

(6) Where good cause is not shown for the continued remand of the suspect pursuant to subsection (4) of this section, or where he 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.

*When court may  
exercise power of  
remand*

(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 may be exercised by the court:

(a) whether the suspect 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.

*Court may bring  
up person  
remanded to make  
any order during  
remand*

298. (1) During remand, the court may nevertheless order the suspect remanded to be brought before it.

*Place of remand*



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.

*Power of court  
when convict is  
sentenced to only  
fine*

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

- (a) allow time for payment of the fine;
- (b) direct that the fine be paid by installments;
- (c) postpone the issue of a warrant under section 326 of this Law;
- (d) without postponing the issue of a warrant under section 326 of this Law, postpone the sale of any property seized under the warrant;
- (e) 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

*Wrongful  
conversion or  
detention of  
property and*

default of payment of the fine.

*award of damage*

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.

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

*Meaning of  
"property"*

### **PART 33 – CUSTODY, DISPOSAL, RESTORATION OF PROPERTY**

329. In this Part, “property” is 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.

*Order for custody  
and disposal of  
property pending  
trial*

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:

- a) may make such orders 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.

*Order for custody  
and disposal of  
property after  
trial.*

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.

(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.

*Custody or sale of  
property*

(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 if the property is sold, the proceeds of sale be held as it directs until some person establishes to the satisfaction of the court, a right to the 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 Internally Generated 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 in 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.

*Seizure of things  
intended to be  
used in  
commission of  
crime*

## **PART 34 - 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 are provided or prepared, or being prepared, with a view to the commission of an offence triable by the court; and

(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.

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

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.

(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,

*Search warrant  
may be used to  
search for things  
subject to sections*

drink or drug, including such other adulterated or unfit items in the possession or power of the defendant.

*333 or 334*

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 of 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.

*Restoration of possession of immovable property*

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.

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

(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 shall make an order in respect of 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.

(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.

*Procedure where owner of property seized is unknown.*

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 the proceeds forfeited to the Edo State Government.

(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.

*Power to sell perishable property*

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 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.

*Payment to innocent person of money found on defendant*

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:

(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.

*Restitution and disposition of property found on defendant.*

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:

(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.

*Restitution of stolen property*

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.

(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 just and valuable consideration without notice or without any reasonable cause to suspect that it had been stolen.

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

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 no 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 any 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:

(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 Central Bank of Nigeria, police officer of the State Government in respect of the coin or thing so destroyed.

*Detention and  
destruction of  
counterfeit  
currency, etc.*

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.

(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

*Mode of dealing  
with forfeiture not  
pecuniary*

(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.

*Summary  
procedure in  
perjury*

### **PART 35 – SUMMARY PROCEDURE IN PERJURY**

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

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

(b) try him summarily for contempt of court and where he is found guilty, omit him to prison for a period not exceeding six 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 recognizance with or without sureties, to come 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 proceeding 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.

*Trials*

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

#### PART 36 – TRIALS AND SUMMARY TRIALS GENERALLY

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

(a) by the Attorney-General of the State or a state counsel in his office;

(b) by a Legal Officer of any prosecuting agency authorised by law to prosecute;

(c) by a private prosecutor; or

(d) summarily, in accordance with the provisions of this Law.

*Non-appearance  
and non-  
representation of  
legal practitioner.*

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.

(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.

*When summary trials shall be held.*

(8) Where a legal practitioner intends to disengage from a matter, he shall notify the Court, not less than three 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 Law of the State House of Assembly is triable summarily; and

(c) in respect of a trial for an offence punishable with less

*Non-appearance of*

than three years imprisonment in the Magistrates court or tribunal.

*complainant.*

(2) In trial in the Magistrate's 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 authorised by a written law, the court may dismiss the complaint.

*Non-appearance of defendant.*

(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:

(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 afterward, arrested on a bench warrant, he shall be brought before the court immediately 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 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 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.

*Non-appearance of both parties.*

(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.

*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 recovered as if it were a fine.

*Withdrawal of complaint.*

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

*Manner of hearing.*

355. Where a complainant at any time before a final order is made in a case, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the complaint and shall thereupon acquit the defendant.

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 of the court, the provisions of section 212 of the Evidence Act, 2011 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.

(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 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 questions to that witness, and shall record the defendant's answer.

*Discharge of  
defendant when no  
case to answer.*

(8) The defendant shall take his plea in the dock, except the Judge directs otherwise.

*Defence*

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.

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 where the defendant:

(a) 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 may call any witness or adduce any other evidence in his defence;

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

*Process for compelling production of evidence at instance of defendant.*

359. (1) The defendant may apply to the court to issue a process for compelling the attendance of a witness for the purpose of examination or the production of a document or any other thing.

*Saving as to section 358 (a)*

(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 where the court:

*Evidence in reply.*

- (a) called on the defendant for his defence;
- (b) asked the defendant if he had any witness; and
- (c) heard the defendant and his witnesses and other evidence, if any.

*Power to take deposition in certain cases.*

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.

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.

(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.

***When statement  
may be used in  
evidence***

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.

***Notes of evidence  
to be recorded  
electronically or in  
writing.***

(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.

(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 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 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 by the rules of the court or by any other law.

*Local inspection.*

(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.

*Cross complaints.*

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.

*Joinder of complaints.*

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.

*Giving of decision upon conclusion of hearing.*

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.

*Power bind parties to be of good behaviour.*

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.

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.

(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.

*Effect of Judgment of dismissal "on merits" and "without prejudice".*

(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.

*Summary trial of  
child by  
Magistrate.*

370. (1) Where a charge is dismissed on merits, the dismissal has same effect as an acquittal. *Power to remand.*

(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. *State Counsel may  
require case to be  
adjourned or dealt  
with specially.*

372. Without prejudice to any other power which a Magistrate may possess, he may, for the purpose 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 forty-eight hours or release him on bail.

373. (1) A law officer or state counsel, 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.

(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 thirty-two days of the date of the order granting the request.

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

(4) Where at the end of the period of thirty 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.

*Adjournment for  
law officer's  
decision.*

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 make 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.

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

*Security for peace  
in cases tried  
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 fifteen 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.

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

*Case files, legal  
advice, and related  
proceedings.*

- (a) extend for a term longer than one 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.

(2) The Attorney-General of the State shall, within thirty (30) 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:



- (a) the 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) the 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) the 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 no jurisdiction to try, the prosecutor shall file the charge at the High 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 that the prosecution intends to rely on at the trial of the offence, 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 (4) (b) of this section, shall on receipt of the legal advice, dismiss the charge against the suspect and accordingly discharge the suspect.
- (7) 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.
- (8) 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 organisation providing free legal representation to the defendants shall be attached to each legal advice is preferred and against whom the information is filed.

(9) 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 organisation providing free legal representation, he shall forward the form to the Chief Registrar of the court before whom the charge or information for his trial has been filed and the Chief Registrar shall, within fourteen days of receipt of the form, ensure that a legal practitioner of the Legal Aid Council as stipulated under subsection (10) or any other organisation providing free legal representation for the defendant, and by notice in writing inform.

*Form of  
information.*

(11) The Chief 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.

*Contents of  
information.*

### **PART 37 – 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.

378. (1) An information shall contain:

- (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;
- (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; and

(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.

*Content of  
information, proof  
of evidence, etc*

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) summary of statements of the witnesses;
  - (iv) copies of statement of the defendant;
  - (v) any other document, report, or material that the prosecution intends to use in support of its case at the trial;
  - (vi) particulars of bail or any recognizance, 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 remand proceedings, in respect of the charge;
  - (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.

*Application of  
rules relating to  
charges.*

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

*Filing of  
information.*

(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.

381. An information may be filed by:

(a) the Attorney-General of the State or officers in his office or **subject to the powers and directives of the Attorney General,**

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

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

(d) a private person, 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.

*Assignment of  
information and  
issuance of notice  
of trial.*

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

(2) On assigning the information, the court to which the information is assigned shall within ten 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 charge, where he is in custody, for the purpose of ensuring his appearance on the date of arraignment, and the Chief Registrar shall ensure the prompt service of the notice and information not more than three 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 duly served on the defendant.

*Information by  
private person.*

(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 three 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:

(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 recognizance 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,

(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.

*Conditions for  
private  
prosecutors.*

(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 reason(s) for doing so in writing within fifteen days from the date of the receipt of the application.

*Venue*

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.

*Change of venue*

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

386. Notwithstanding the provisions of section 385 of this Law

(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.

(c) no appeal shall lie from any order of transfer made under this section.

*Effect of change of venue.*

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 recognizance, 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 much latter place or division.

*Form of notice of trial.*

388. The Registrar or any other person directed by 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:

*Copy of information and notice of trial to be delivered to Sheriff.*

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 bound to attend the trial.

*Time and mode of summoning parties on information.*

*Service of notice of trial on witness.*

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 seven working days before the date specified on the notice.

*Registered courier companies may serve processes.*

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.

*Return of service.*

392. The Chief Judge may engage the services of a reputable courier

*Warrant where*



company for the purpose of undertaking service of criminal processes, and such company shall serve processes in accordance with this Law. *defendant does not appear.*

393. The officer of such courier company serving the copy of information and notices shall immediately take 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. *Law officer or legal practitioner for State and defence in capital cases.*

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 lead to the information, whether he is under recognizance, to appear or not, the court may issue a warrant for his arrest. *Time for raising certain objections, day-to-day trial and adjournments.*

395. Where a defendant is accused of a capital offence or offence punishable with 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.

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 judgment provided that any such objection shall only be considered along with the substantive issues and a ruling then 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) **Subject to subsection (5) of this section** 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 adjournments shall not exceed fourteen 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;

(7) Notwithstanding the provision of any other law to the contrary, a Judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit as a High Court Judge only for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude the same within reasonable time:

*Attendance of witness bound by recognizance to attend.*

Provided that this subsection shall not prevent him from assuming duty as a Justice of the Court of Appeal.

*Warrant for arrest of witness not attending on recognizance.*

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.

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 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 disobeying summons.*

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 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.

*Fine for non-attendance of witness.*

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 five thousand naira 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.

*Construction of provisions relating to punishments.*

## **PART 38 – PROVISIONS RELATING TO SENTENCES**

401. (1) Subject to the provisions of **any** 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.

*Death*

402. (1) Punishment of death is inflicted by hanging the convict by the neck till he is dead or by lethal injection.

*How death sentence is to be carried out.*

(2) Sentence of death shall be pronounced by the court in the following form:

*Sentencing in the case of pregnancy*

"The sentence of the court upon you is that you be hanged by the neck **or be injected with a lethal substance** until you are dead.

*Sentencing in the case of a child offender*

403. Where sentence of death has been passed the sentence shall only be carried out in accordance with the provisions of this Part.

404. Where a woman found guilty of a capital offence is pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned.

*Authority for detention of convict.*

405. Where a convict who in the opinion of the court had not attained the age of eighteen 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 in lieu of it, the court shall sentence the child to life imprisonment or to such other term as the court may deem appropriate in consideration of the principles in section 401 of this Law.

*Judge's certificate of death sentence to be sufficient and full authority for execution of convict, unless he is pardoned or reprieved.*

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.

*Steps to be taken by the Registrar.*

407. A judge who pronounces a sentence of death shall issue, under the 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.

408. The Registrar of the court by which the convict is sentenced to death shall, as soon as practicable after sentence has been pronounced:

(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;

*Convict may send request to committee on prerogative of mercy.*

(b) transmit to the sheriff one copy of the certificate; and

(c) file one copy of the certificate with the record of the proceedings in the case.

409. (1) Where a convict 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

(2) Where the convict desires to have his case considered by the Committee on 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 Committee on Prerogative of Mercy:

*State at which Governor is to consider report.*

The Committee on Prerogative of Mercy shall consider the request and make their report to the **Executive** Council which shall advise the **Governor of the State**.

*Where a pardon or reprieved is granted.*

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 Council of State, 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.

(2) Where, for the purposes of subsection (1) of this section, the **Executive** Council of **the State** is required to advise the Government 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 **Executive** Council of **the State**, and the Council shall, in giving its advice, have regard to the matters set out in that record.

*Copy of order to be sent to Judge.*

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 copy of which shall be sent to the Sheriff, directing that the execution shall not be carried out.

(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.

*Copy of order to be sent to Judge*

(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.

*Where pardon or reprieve is not granted.*

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.

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 its as circumstances permit.



(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.

*Copy of order to be sent to prison.*

(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 specific 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 execution.

*Procedure where woman convicted of capital offence is alleged to be pregnant or who becomes pregnant.*

#### **PART 39- 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.

(2) the question whether the woman is pregnant or not shall be determined by 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 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 to death subject to the provision of section 404 of this law.

*Court to determine term of imprisonment.*

#### **PART 40 – SENTENCING GENERALLY OTHER THAN FOR CAPITAL SENTENCE.**

416 (1) On conviction, a court may sentence the convict to a term of imprisonment as prescribed by the law.

(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 should be treated on its own merit;
- (b) the objectives of sentencing, including the principles of reformation, should 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; Court to determine term of imprisonment.
- (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 Act;
- (h) where there is doubt as to whether the defendant or convict has attained the age of **eighteen**, 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.

*Power to order detention for one day in precincts of the court.*

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.

(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.

*Consecutive sentence of imprisonment.*

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.

*Date from which sentence commences.*

(2) Where two or more sentences passed by a Magistrate court are ordered to run consecutively, the aggregate term of imprisonment shall not exceed four years of the limit of jurisdiction of the adjudicating Magistrate.

*Power to impose fine in lieu of imprisonment.*

419. A sentence of imprisonment takes effect from and includes the whole of the day of the date on which it was pronounced.

420. (1) Subject to the other provisions of this section, where a court has authority under a law to impose fine in lieu of imprisonment for an offence, the court may, in its discretion impose a fine in lieu of imprisonment.

(2) In the case of a conviction in the High Court, 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 two years.

(3) 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 authorised 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.

(4) 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 authorised as a punishment for the offence by the law.

*Execution of sentence on escaped convict.*

(5) 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.

*Fine in default of imprisonment*

421. Where sentence of imprisonment is passed on an escaped convict, the sentence shall take effect after he has served imprisonment for a further period equal to that which at the time of his escape remained unexpired of his former sentence.

422. A defendant convicted of an offence punishable by:

(a) imprisonment as well as fine, and sentenced to pay a fine, whether with or without imprisonment; or

*General provision on review of sums of amount.*

(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.

423.(1) The Chief Judge of the State shall review from time to time, the provisions for the amount of fines, compensation or other sums of money prescribed under this Law.

*General power of awarding imprisonment in default of payment of penalty.*

(2) Such provisions as may be reviewed and effective date shall be published in the Gazette.

424. Where by a 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

*Scale of imprisonment for non-payment of money ordered to be paid.*

specified in the order, as the case may be, to be imprisoned, in accordance with the scale set out in the Fourth Schedule to this Law.

*Limitation of imprisonment in default of payment of fine.*

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 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 to this Law.

*Payment and allocation of fines and fees.*

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 prescribed or allows a longer period.

427. (1) A court in fixing the amount of fine to be imposed on a convict shall take into consideration, amongst other things, the means of the convict.

(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;

*Power to commit defendant in certain cases.*

(b) in the second instance, the payment of any outstanding court fees 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 Edo 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:

*Allowance of further time and payment by installment.*

(a) issue a warrant of commitment;

(b) allow time for the payment of the said sum;

(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 instalment.

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 installments of the sum so adjudged to be paid.

(2) Where a sum of money is directed to be paid by installments and default is made in the payment of any one installment, the same proceedings may be taken as if default has been made in the payment of all the installments 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.

*Payment of  
penalty to person  
executing  
warrant.*

(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.

*Commencement  
of imprisonment  
pursuant to a  
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.

*Varying or  
discharging order  
for sureties.*

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 thinks, having regard to all the circumstances of the case that it is just so to do, the court may:

*Right of person imprisoned in default to be released on paying sum and effect of part payment.*

- (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 discharge the person, unless he is in custody for some other matter.

(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 costs 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

*Fines may be ordered to be recoverable by distress.*

(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:

(a) order the fine or penalty to be recoverable by distress; and

*Warrant of distress.*

(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 to 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 authorising the person charged with the execution of the warrant to take any money as

*Procedure on the execution of distress warrant.*

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.

436. In the execution of a distress warrant the following provisions shall have effect:

(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 twenty thousand naira, the tools and implements of his trade, shall not be taken;

(d) except as provided in paragraph (e) of this subsection 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 on, 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 twenty thousand naira, 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 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

*Part payment to reduce period of imprisonment in proportion.*

(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.

*Conditions attached to detention in a safe custody or suitable place other than prison or mental asylum*

#### **PART 41 - 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.

(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 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 may direct and if he fails to do so may be arrested without warrant and taken to the place.

*Meaning of  
"deported"*

## **PART 42- DEPORTATION**

*Court may  
recommend  
deportation for  
offences  
punishable by  
imprisonment  
without option.*

439. In this Part of this Law, "deported" 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.

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.

*Deportation in  
default of security  
for the peace.*

441. Where, on a sworn information, it appears to a court that there is reason to believe that a person in Nigeria 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  
case of dangerous  
conduct.*

442. Where it is shown by evidence on oath to the satisfaction of a court that a defendant in Nigeria who is not a citizen:

(a) is conducting or has conducted himself so as to be dangerous to peace and good order;

(b) is endeavouring or has endeavoured to excite enmity between any section of the people of the Federal Republic of Nigeria; or

*Procedure prior  
to court  
recommending  
deportation*

(c) is intriguing or has intrigued against constituted power and authority in Nigeria, the court may recommend to the Minister of Interior that he be deported. *under sections 441 and 442.*

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 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.

*Procedure for Recommendation of Deportation under sections 441, 442 and 443.*

(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 of the proceedings relating to it.

*Detention of person concerned*

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.

*Order of deportation*

446. Subject to sections 440, 444, 445, the Minister of Interior shall in the interest of peace, order and good governance make an order of deportation and issue a written order directing that the defendant be deported to his country.

*Minister of Interior may withhold Order and remit case to Court.*

447. Where the Minister of Interior decides that no order of deportation shall be made, he shall inform the Court, the Court shall then proceed to make such order of imprisonment or other punishment as may be authorised by law.

*Citizens of Nigeria shall not be deported.*

*Provisions as to sentence of deportation*

448. Nothing in the provisions of this part shall authorise a person or

*Deportation order may be limited*



authority to deport a citizen of Nigeria to a place outside Nigeria.

449. Where a defendant ordered to be deported is sentenced to a term of imprisonment, the sentence of imprisonment shall be served before the order of deportation is carried into effect.

*Execution of  
deportation order*

450. An order of deportation may be expressed to be in force for a limited time or for an unlimited time or may require the defendant to report himself to the nearest Immigration office or police station at intervals of not less than thirty days.

451. (1) An order of deportation shall be sufficient authority to all persons to whom it is directed or delivered for execution to receive and detain the defendant named in the order and to take him to the place named in the order.

(2) Where a defendant leaves or attempts to leave the district or place to which he has been confined prior to deportation while the order of deportation is still in force, without the written consent of the Minister of Interior which consent shall be given subject to any term as to security for good behaviour or otherwise as the Minister of Interior shall deem fit, or wilfully neglects or refuses to report himself as ordered, such person is liable to imprisonment for six months and to be again deported on a fresh warrant under the original order or under a new order.

*Procedure for  
trying child  
offenders*

## **PART 43 - CHILD OFFENDERS**

452. (1) Where a child is alleged to have committed an offence, the provisions of the Child Rights Law shall apply.

*Meaning of  
probation order*

(2) Notwithstanding subsection (1) of this section, the provisions of this Law relating to bail shall apply to bail proceedings of a child offender.

*Conditional  
release of  
compensation for  
loss or injury and  
of costs.*

## **PART 44 - PROBATION AND NONCUSTODIAL ALTERNATIVES**

453. In this Part, "probation order" means an order containing a condition specified in section 455 of this Law.

454. (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:

- (a) the character, antecedents, age, health, or mental condition, of the defendant charged; -
- (b) the trivial nature of the offence; or
- (c) the extenuating circumstances under which the offence was committed:

it is inexpedient to inflict a punishment or any order 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 recognizance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding three 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) where the defendant has not attained the age of eighteen years and it appears to the court that the parent or guardian of the defendant has conduced to the commission of the offence, the parent or guardian of the defendant to pay the damages and costs specified in paragraph (a) of this section.

(4) Where an order under this section is made, the order shall:

- (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; and

*Probation orders  
and conditions of  
recognizance*

(b) as to the payment of money upon or in connection with such restitution or delivery;

(c) the order of the court made in this section shall have the like effect as a conviction.

455. (1) A recognizance 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.

(2) A recognizance under this Part of this Act may contain such additional conditions with respect to residence, abstention from intoxicating substance and any other matters as the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences.

*Relieving  
probation officer  
of his duties.*

(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.

*Duties of probation  
officers*

456. 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 recognizance to appear for conviction or sentence.

457. (1) A probation officer shall, subject to the directions of the court:

(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 recognizance;

(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.

*Variation of terms  
and conditions of  
probation.*

(2) The Chief Judge of the State 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 of the probation officer resides may make its appointment under section 455 of this Law.

458. The court before which a defendant is bound by a recognizance under this Part to appear for conviction and sentence or for sentence may:

(a) at any time if it appears to it on the application of the probation officer that it is expedient that the terms or conditions of the recognizance should be varied, summon the defendant bound by the recognizance to appear before it and if he fails to show cause why the variation should not be made:

(i) vary the terms of the recognizance by extending or diminishing the duration, which shall not exceed three 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 recognizance has been such as to make it unnecessary for him to be under supervision, discharge the recognizance.

*Provisions in case  
of convict failing  
to observe  
conditions of  
release.*

459. (1) Where the court before which a defendant is bound by his recognizance 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 recognizance, it may issue a warrant for his arrest or may, if 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 attend at the court and 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 recognizance 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 recognizance to appear for conviction or sentence, remand him to custody or 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.

*Suspended  
sentence and  
community  
service.*

(5) A court before which a defendant is bound by his recognizance to appear for conviction and sentence on being satisfied that he has failed to observe a condition of his recognizance may, without further proof of his guilt, convict and sentence him for the original offence.

460. (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.

(2) The court may, with or without conditions, sentence the convict to perform specified service in his community or such community or place as the court may direct.

(3) A convict shall not be sentenced to suspended sentence or to community service for an offence involving the use of arms or offensive weapon, or for an offence which the punishment exceeds imprisonment for a term of three years.

(4) 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

*Arrangements for  
community service*

(c) prevent convict who commit simple offences from mixing with hardened criminals.

461. (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.

(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 shall include:

(a) document and keep 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 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 reformatory 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.

*Performance of  
community service*



(9) The guarantor shall be a relation of the convict or any other *orders* 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 one hundred thousand naira or more as the circumstances of each case may require.

462. (1) The Community Service Order shall be performed for a period of not more than six months and the convict shall not work for more than five hours a day.

(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 documents and information relating to the case.

*Default of convict  
in complying with  
community  
service order.*

463. (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.

(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 one hundred thousand naira 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 shall count in the reduction of the sentence.

(4) A supervising officer shall not employ the convict for his or her personal benefit.

*Commission of further offence.*

(5) Where a supervising officer employs the convict for his or her personal benefit, the officer is liable to a fine of one hundred thousand naira or more, or such other punishment as the court considers fit.

464. 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:

(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

*Amendment, review and discharge of community service orders.*

(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.

465. (1) A convict undergoing community service who intends to change his or her 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.

*Discharge of  
community  
service order*

(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.

466. (1) Where a convict has been ordered to undergo community service for a period of more than four months, the supervising officer shall, from time to time, give a report to the Registrar on the convict's performance and general conduct.

(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.

*Confinement in  
rehabilitation and  
correctional  
centre.*

(5) Where the convict is a female, the supervising officer shall be a female.

467. (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.

(2) A court in making an order of confinement at a Rehabilitation and Correctional Centre shall have regard to the following: the age of the convict; the fact that the convict is a first offender; and any other relevant circumstances necessitating an order of confinement at a

*Court may direct*

Rehabilitation and Correctional Centre.

*release of prisoner  
before  
completion of  
sentence.*

(3) A court may make an order directing that a child standing criminal trial be remanded at a Rehabilitation and Correctional Centre.

## **PART 45 – PAROLE**

**468.** Where the Comptroller-General of Prisons makes a report to the court recommending that a prisoner:

(a) sentenced and serving his sentence in prison is of good behaviour; and

(b) has served at least one third of his prison term, if he is sentenced to imprisonment for a term of at least fifteen 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 Comptroller-General of Prisons shall make adequate arrangement, including budgetary provision, for the facility.

*Establishment of  
the administration  
of criminal justice  
monitoring  
committee*

## **PART 46 - THE ADMINISTRATION OF CRIMINAL JUSTICE MONITORING COMMITTEE**

**469.** (1) There is hereby established **in the State** a body to be known as the Administration of Criminal Justice Monitoring Committee (in this Law referred to as “the Committee”).

(2) The Committee shall consist of:

- (a) the Chief Judge of the State who shall be the Chairman;
- (b) Attorney-General of the State or his representative who shall not be below the rank of a Director in the Ministry of Justice;
- (c) a Judge of the State High Court;
- (d) the **Commissioner of Police of the State** or his representative who shall not be below the rank of a **Superintendent of Police**;
- (e) the Comptroller-General of the Nigeria Prisons Service or his representative who shall not be below the rank of Comptroller of Prisons;
- (f) **a representative of the** Executive Secretary of the National Human Rights Commission not below the rank of Director.
- (g) the Chairman of any of the local branches of the Nigeria Bar Association in Edo State to serve for two years only.
- (h) the Director-General of the Legal Aid Council of Nigeria or representative not below the rank of Director.
- (i) **The Executive Director of the Office of the Public Defender in Edo State or his representative not below the rank of Director**
- (j) a representative of the Civil Society 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.

*Functions of the committee.*

(4) Members of the Committee except the ex-officio members shall be paid such allowances similar to allowances as applicable to State Boards, Commissions and Agencies.

470. (1) The Committee shall be charged with the responsibility of ensuring effective and efficient application of this Act by the relevant agencies.

(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 cooperation amongst the organs in the administration of justice in Nigeria;
- (f) collate, analyse and publish information in relation to the administration of criminal justice sector in Nigeria; and
- (g) submit report quarterly to the Chief **Judge** of Edo State to keep him abreast of developments towards improved criminal justice delivery and for necessary action;
- (h) carry out such other activities as are necessary for the effective and efficient administration of criminal justice.

*Secretariat of the committee.*

471. (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.

(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 ten 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 Secretariat 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 four years and may, subject to satisfactory performance of his functions, be re-appointed for another term of four years and no more.

*Fund of the committee*

(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.

472. (1) There is hereby established for the Committee a fund into which shall be paid:

(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 organisation 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.

*Annual estimates and accounts.*

(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.

473. (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 **and the Attorney-General shall forward same to the Executive Council for deliberation and approval.**

*Annual report*

(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 two months from the end of each financial year.

*Power to obtain information*

474. The Committee shall prepare and publish an annual report of its

activities.

475. (1) For the purpose of carrying out the functions conferred on the Committee under this Law, it:

(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 requiring that person to furnish information on such matters as may be specified in the notice.

*Proceedings and  
quorum of the  
committee*

(2) A person required to furnish information pursuant to subsection (1) of this section shall comply with the notice within a stipulated time.

476. (1) The Committee may make standing orders regulating its proceedings.

(2) The quorum at a meeting of the committee shall consist of the Chairman or his representative 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 his representative shall preside at that meeting.

(5) The validity of proceedings of the Committee shall not be 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.

*Interpretation  
under this part*

## **PART 47 - TRIAL OF CORPORATION**

477. (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 authorised 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.

*Plea by  
corporation*

478. 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.

*Information  
against a  
corporation.*

*Joinder of counts  
in same inform*

479. An information may be preferred against a corporation after the preparation of the proofs of evidence relating to the charge.

480. An information under section 479 of this Law 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.

*Power of  
representative.*

481. A representative may on behalf of a corporation:

(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;

(b) consent to the hearing and determination of a complaint before the return date of a summons;

(c) express assent to the trial of the corporation on information, notwithstanding that a copy of the information and notice of trial have not been served on (the corporation three days or more before the date on which the corporation is to be tried.

*Matters to be read or said or explained to representative*

*Non-appearance of representative*

482. 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.

*saving under this part and joint charge against corporation and individual*

483. Where a representative does not appear, any such requirement as is referred to in section 478, shall not apply.

484. 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 a corporation as they apply to an adult.

*Appeals from Magistrates Court*

(2) A corporation may be charged jointly and tried with an individual for any offence.

485. (1) Appeals from a Magistrate Court to the High Court of the Federal Capital Territory in Criminal matters shall be in accordance with the High Court Law of the State or any rules made under any such Law

(2) Where a defendant has been acquitted or an order of dismissal made by a magistrate court the prosecutor may appeal to the High Court from such acquittal or dismissal on the ground that it is erroneous in law or that the proceedings or any part thereof were in excess of the jurisdiction of the magistrate court.

(3) An appeal in accordance with the provisions of this Part shall be commenced by the appellant by giving notice to the registrar of the court from which the appeal is brought; such notice of appeal shall be signed by the appellant.

(4) 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) An appellant shall file many copies of his notice of appeal as there are parties to be served, in addition to the copies for the court.

(6) An appellant in an appeal brought in accordance with the provisions of this Part shall within thirty 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.

(7) An appellant shall file as many copies of his brief of grounds of appeal, as there are parties to be served, in addition to the copies for the court.

(8) (i) 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.

(ii) Without prejudice to the generality of subsection (8)(i), 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 not 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 inadequate, unless the sentence is one fixed by law.

(iii) Where the appellant relies upon the grounds of appeal mentioned in paragraph (d) of subsection (ii) the name of the court shall be stated and, if it is alleged that a decision has been made, date of such decision.

(iv) Where the appellant relies upon the ground of appeal mentioned in paragraph

(g) of subsection (ii) 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.

(9) A sentence by a magistrate 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 proceedings 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.

(10) 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.

*Payment of fees*

*Suspension of  
payment of fees*

## **PART 48 - FEES AND MISCELLANEOUS PROVISIONS**

486. Subject to the provisions of this Law, such fees as may be prescribed under this Law shall be paid in any proceedings before a court.

*State not required  
to pay fees*

487. A court may in any proceeding in which good cause appears to the court for so doing, suspend payment of any fees 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.

*Use of forms in  
schedules*

488. 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.

*Power to make  
rules of court*

489. 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.

490. 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 for carrying into effect the purposes of this Law.  
Power to make rules of Court.

*Non-compliance*

*Saving as to other  
forms and  
procedure.*

491. 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.

492. (1) Nothing in this Law shall affect the use or validity of any forms 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.

*Repeals*

(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 Act came into force.

*Interpretation*

493. The Criminal Procedure Law (**Laws of the Bendel State of Nigeria (1976) as applicable in Edo State**) is repealed.

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

“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;

**“Attorney-General” means Attorney General of Edo State**

**“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 a Chief Judge of **Edo State**;

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

**“Commissioner of Police”** means **Commissioner of Police, Edo State**

**“Committee”** means the Administration of Criminal Justice Monitoring Committee established under section 469 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 is Law;

**“court”** includes **High Courts**, the Magistrates’ Court, **Customary Court**, Area Courts presided over by Legal Practitioners ;

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

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

**“division”** means a judicial division of the High Court;

**“State law”** means any Law enacted or deemed enacted by the **State House of Assembly** having effect with respect to the **State** 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 enLawment” means any enLawment 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 Edo 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” include a Judge of a High Court and **President of an Area Customary Court** presided by legal practitioners;

“Justice of the Peace” means a person appointed to be a Justice of the Peace under any enactment;

“law officer or State Counsel” means the Attorney General of the State or the Solicitor-General of the State and includes the Director of Public

Prosecutions and such other qualified officers, however designated, to whom any of the powers of a law officer **or State Counsel** is delegated. **The terms are used interchangeably in this law and means one and the same thing.**

“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 appointed in accordance with the law of a State or of **Edo State**;

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

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

“misdemeanour” 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 misdemeanour;

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

“offence” means an offence against a Law of the Edo **State House of Assembly**;

“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 Laws in the absence of the officer in charge;

“open court” means a room or place in which a court sits to hear and determine a 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” means the Nigeria Police established by the Constitution or where the context so admits, shall include any officer of any law enforcement agency established by an Law of the **State House of Assembly**;

“police officer” includes any member of the Nigeria Police Force established by the Police Law or where the context so admits, shall include any officer of any law enforcement Agency established by a Law of the **State House Assembly**;

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

“private prosecutor” does not include a person prosecuting on behalf of the State or a public officer prosecuting in his official capacity;

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

“rules” or “the rules” means rules of court relating to the procedure and practice 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 Law 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 Magistrate’s court can make an order in the exercise of its summary jurisdiction;

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

(a) a Judge of the High Court when sitting in court and presiding over a summary trial, and

(b) a Magistrate 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” or “summary court” within the meaning of this Law;

“summary trial” means any trial by a Magistrate or a trial by a High Court commenced without filing an information;

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

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

“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;

“young person” means a person who has attained the age of fourteen and has not attained the age of eighteen years.

**FIRST SCHEDULE  
FORMS**

**FORM NO. 1 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 .....

Section 54

FORM NO. 2 – ORDER OF RECOGNISANCE TO KEEP THE PEACE, AND  
BE OF GOOD BEHAVIOUR

(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 recognizance 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,

And it is ordered that the defendant pay to the said ..... the sum  
of ..... for cost [by instalments of ..... For

every ..... days, the first instalment to be paid] forthwith [or on the ..... day of 20.....]:

And in default of payment if 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 89

COMPLAINT

(General Title-Form No. 1)

The complaint of C.D (address and description), who upon oath (or affirmation) state that A.B of (address and description) on the ..... day of ..... 20..... at ..... in the ..... above-mentioned, did\* .....

.....  
taken before me this ..... day

FORM NO. 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 No. 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

Your 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 ..... 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 Federal Republic of Nigeria, 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 PROSECUTION  
XYZ

Applicant  
AND  
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 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  
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 Prosecution 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 organisation:

Name of the Organisation: .....

.....

Address of the Defendant (or Place of custody is on remand) .....

.....

.....

Signature of the Defendant: .....

Signature of the Prison official or police official 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 informat

[or complainant or defendant], and will not voluntarily appear for that purpose.

You are therefore hereby summoned to appear before 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 Federal Republic of Nigeria v C.D

In the High Court of

.....

In the Judicial Division of

.....

The Federal Republic of Nigeria v.CD

The ..... day of ..... 20.....

At the sessions holding at

.....

On the ..... day of .....20....., the court is

informed by the Attorney- General of the Federation on behalf of the Federal Republic 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 .....  
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 instamens 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 peace 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 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 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 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]

Section 250  
FORM NO. 15  
WARRANT TO COMMIT A WITNESS  
(General Title-Form No.1)

To..... and to the Superintendent 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 knows 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 Superintendent thereof, together  
with this Warrant, and you, the Superintendent 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.....

A. 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  
defendant's 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]



FOR11NO 17  
Section 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 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 454

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 sum 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 .....dayof..... 20 .....

A. B., having made a compliant that C.D hereinafter called the defendant, on the  
.....dayof ..... at in  
the.....

.....above mentioned, 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..... 20 ..... Complaint having been made by .....  
..... that A.B hereinafter called the  
defendant, on the ..... day of ..... at .....  
..... in the ..... the above-  
mentioned, did .....

This Court having heard and determine the said complaint do dismiss same:\*

\*on its merits thereof 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]

N 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 fourteen days of service on you of this notice of trial.

#### SECOND SCHEDULE

##### Sections 193 and 194 CHARGES

##### FORM OF CHARGE UNDER THE CRIMINAL CODE

##### A: CHARGES WITH ONE HEAD

I .....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. snatch a leather wallet from one Y. Z. in the  
..... on the ..... day of ..... 20.....,  
and thereby committed an offence punishable under section 118 of the Criminal  
Code.

Criminal Code 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.

Criminal Code 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.

Criminal Code 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.

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 Section 332(1)

6. That you on the ..... day of ..... at ..... unlaw fully 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

Section 338(1)

7. That you on the ..... day of ..... at ..... unlawfully wounded C.D and hereby committed an offence punishable under section 338( 1) of the Criminal Code!

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.

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

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

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

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

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.

## CHARGES WITH TWO OR MORE HEADS

Section 230

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.

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

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

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

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

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.

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

THIRD SCHEDULE  
INFORMATION PRECEDENT

Section 378

STATEMENT OF OFFENCE

Perjury, contrary to section 118 of the Criminal Code.

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 .....

### STATEMENT OF OFFENCE

Uttering counterfeit coin, contrary to section 151 of the Criminal Code.....

Particulars 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.

### STATEMENT OF OFFENCE

Murder, contrary to section 319 of the Criminal Code/

Particulars of offence

A.B., on the .....day of ..... 20.....  
in the division of ..... murdered  
J.S.

### STATEMENT OF OFFENCE

Accessory after the fact to murder, contrary to section 322 of the Criminal Code

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.

### STATEMENT OF OFFENCE

Manslaughter, contrary to section 325 of the Criminal Code

Particulars of offence

A.B., on the .....day of .....,20.... in the division of.....  
..... unlawfully killed J.S.

**STATEMENT OF OFFENCE-FIRST COUNT**

Wounded with intent, contrary to section 332, subsection (1) of the Criminal Code

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

Particulars of offence

A.B.,on the ..... day of ....., 20..... in the  
division of ..... , unlawfully wounded C.D.

**STATEMENT OF OFFENCE**

Rape, contrary to section 358 of the Criminal Code/Penal Code

Particulars of offence

A.B., on the .....day of..... , 20 .....in  
the division of ..... , had carnal knowledge of E.F without her  
consent.

**STATEMENT OF OFFENCE**

Publishing defamatory matter" contrary to section 375, of the Criminal Code

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]

#### STATEMENT OF OFFENCE-FIRST COUNT

Stealing contrary to section 390, Criminal Code

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.

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.

#### STATEMENT OF OFFENCE-FIRST COUNT

Stealing by clerks contrary to section 390(6) of the Criminal Code

Particulars of offence .

A.B., on the .....day of ..... ,20..... in the  
division of , stole two hundred naira 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

Particulars of offence

A.B., on the ..... , day of..... , 20 ..... in the  
division of. .... stole two hundred naira which  
had been received by him for and on account of L.M.

STATEMENT OF OFFENCE

Robbery with violence, contrary to section 402 of the Criminal Code

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.

STATEMENT OF OFFENCE

Demanding property by written threats, contrary to section 402 of the Criminal Code

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 EF.

STATEMENT OF OFFENCE

Attempt to extort by threats contrary to section 408, of the Criminal Code

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.

STATEMENT OF OFFENCE

Obtaining goods by false pretences, contrary to section 419, of the Criminal Code

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.

#### STATEMENT OF OFFENCE

Burglary, contrary to section 411, and stealing, contrary to 390(4)(b) of the Criminal Code

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.

#### STATEMENT OF OFFENCE

Conspiracy to defraud, contrary to Section 422 of the Criminal Code

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 B.S. newspaper, falsely representing that A.B. and C.D were then carrying on genuine business as jewellers at ....., in the division of ..... and that they were then able to supply certain articles of jewellery to whosoever would remit to them the sum of. ....

#### STATEMENT OF OFFENCE FIRST COUNT

Fraudulent false accounting, contrary to section 438 of the Criminal Code

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 hundred naira had been paid to L.M

#### STATEMENT OF OFFENCE-SECOND COUNT

Fraudulent false accounting, contrary to section 438 of the Criminal Code

##### 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 one hundred naira from H. S.

#### STATEMENT OF OFFENCE

Arson, contrary to section 443, of the Criminal Code

##### Particulars of offence

A.B., on the..... day of .....,20 ..... in the division of , wilfully and unlawfully set fire to a house.

#### STATEMENT OF OFFENCE-

A.B., arson, contrary to section 443, of the Criminal Code.C.D., accessory before the fact to same offence.

##### Particulars of offence

A.B.,on the..... day of.....:..... ,20..... in the division of , willfully and unlawfully set fire to a house. C.D., on the same day, in the division of , did counselor procure the saidA.B. to commit the said offence.

STATEMENT OF OFFENCE-FIRST COUNT

Offence under section 449, subsection (1), of the Criminal Code

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

Particulars of offence

A.B., on the ..... day of ....., 20..... in the division of ....., by unlawfully displacing a sleeper belonging to Nigerian Railway, caused an engine or vehicle in use upon the said railway to obstructed in its passage.

STATEMENT OF OFFENCE

Damaging trees, contrary to section 451 of Criminal Code

Particulars of offence

A.B., on the .....day of. ....20 .....in the division of..... wilfully and unlawfully damaged a cocoa tree from growing.

STATEMENT OF OFFENCE-FIRST COUNT

Forgery, contrary to section 467(2), of the Criminal Code

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, country to section 468 of the Criminal Code.

Particulars of offence

A.B., on the ..... day of ..... 20..... in the division of  
....., knowingly and fraudulent uttered a certain forged  
Will purporting to be the Will of CD

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

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;

Where the fine does not; The period of imprisonment shall not  
exceed;

Where the fine does not ;	The period of imprisonment shall not exceed:
exceed two thousand naira	Seven days
exceeds two thousand naira and does not exceed five thousand naira	Fourteen days
exceeds five thousand naira and does not exceed twenty thousand naira	One month
exceeds twenty thousand naira and does not exceed sixty thousand naira	Two month
exceeds sixty thousand naira and does not not exceed one hundred thousand naira	Three month
Exceed one hundred thousand naira and not exceed two hundred thousand naira	Four month
Exceed two hundred thousand naira and does not	Five month



exceeds four hundred thousand naira	
Exceeds four hundred thousand naira but does not exceed six hundred thousand naira	Six month
Exceeds six hundred thousand naira and does not exceed one million naira	Seven month
Exceeds one million naira and does not exceed two million naira	Eight month
Exceeds two million naira and does not exceed five million naira	Nine month
Exceeds five million naira and does not exceed ten million naira	Ten month
Exceeds ten million Naira	To the discretion of the judge from 18 months and above

Public  
seal

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 interment 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 the Edo State Government this .....  
day of .....20 .....

.....  
Governor

To the Sheriff at. ....

#### Section 411

#### ORDER FOR COMMENDATION 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 confirm 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 Edo State Government this

.....day of .....20

.....

Governor

To the Sheriff at .....

(for transmission to the appropriate prisons authority).

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 here by authorizes, sponge '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 ..... day of ....., 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 here by 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 five 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 ..... day of ....., 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 Superintendent of Prison:

The defendant ..... was on the ..... day of ....., 20....., sentenced as follows-

<i>No.</i>	<i>Offence</i>	<i>Term, Fine, Compensation, Cots or Srokes</i>	<i>Term in default</i>
------------	----------------	---	------------------------

The defendant has made default in payment of the above sum (or sums, or 1<sup>st</sup> 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 complies with the requirement of any notice which he/she may subsequently receive be void but otherwise shall remain in full force.

FORM GI  
RECONGNISANCE OF WITNESS CONDITIONALLY BOUND OVER

In the Magistrate's Court of ..... C.D  
.....  
(address and occupation of 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 abqovementioned 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 recognizance, then this recognisance shall be void but otherwise shall remain in full force.

**FORM H**

Notice of Witness that Defendant has not been committed for Trial

In the Magistrate's 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 E

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 .....

Where as 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  
COMPTROLLER-GENERAL OF PRISONS RETURNS OF PERSON(S)  
AWAITING TRIAL

(Complete form in triplicate per individual)

To the: The Chief Judge of Edo State and to The Attorney-General of the State.

The Chief Judge of Edo State and the Attorney-General of the State are hereby informed that these are the records of all persons awaiting trial held in custody within Edo State for a period beyond one hundred and eighty days from the date of arraignment.

1. Name of person in custody: .....

2. Date of Arraignment. ....

3. Court where arraigned: .....

4. Particulars of the offence charged with: .....

5. Date of his Admission to custody .....

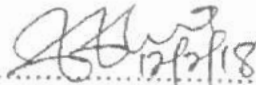
6. Name of the Prosecuting Agency: .....

7. Any other relevant information .....

Insert Passport  
Photograph of  
individual  
Awaiting Trial  
Person (ATP)

.....  
Comptroller-General of Prisons

This printed impression has been compared by me with the Law which has been passed by Edo State House of Assembly and found by me to be a true and correctly printed copy of the said Law.



.....  
Clerk of the House of Assembly

Assented to by me this 20<sup>th</sup> day of MARCH 2018



.....  
Governor of Edo State of Nigeria

Assent withheld by me this ..... day of ..... 2018



## **PUBLISHER'S NOTE**

The Administration of Criminal Justice Law (ACJL) 2016 became operative on the 20<sup>th</sup> March 2018.

On the said date, it was signed into Law by the Executive Governor of Edo State, His Excellency Mr. Godwin Nogheghase Obaseki. The signing was enabled by the passage of the Bill into Law by the Edo State House of Assembly led by the Speaker, Right Honourable Kabiru Adjoto.

But the enactment of the Law would not have seen the light of day but for the indefatigable efforts of the Chief Judge of Edo State, His Lordship Honourable Justice (Mrs.) Esohe Ikpomwen, who worked tirelessly on the matter.

In domesticating the law, the Edo State Government commendably adopted the monumental provisions of the Administration of Criminal Justice Act, (ACJA) 2015, which was enacted by the National Assembly.

The ACJ Law has now changed the framework of criminal procedure law in Edo State, by overhauling and at the same time updating law enforcement procedures and the criminal justice system in the State.

This Publisher commends the Edo State Government for this giant leap forward.

### **Errors in the Law:**

However, there are several, perhaps, inadvertent errors in the Law, some of which we humbly outline hereunder in the hope that it will inspire a possible future amendment.

1. Section 4: The letter “n” appears in the marginal note in the words “Arrest, **now** made”, instead of “Arrest, **how** made”.
2. Section 6 (1): There should be a full stop/period (.) immediately after the word arrest at the end of the sentence.
3. Section 15 (4): The law provides that a confessional statement should be in writing and shall be recorded electronically on a retrievable “video compLAW disc or such other audio visual means”. There is in reality no device known as “**video compLAW disc**”. It should be amended to a retrievable “**video compact disc**”. See Section 15

(4) of the ACJA 2015.

4. Section 110 (1) (b): **"Recelvmg"** which appears in the first line should be amended to **"receiving"**.
5. Section 118: The word **"swummons"** appears instead of **"summons"** in the marginal note "Hearing by consent before return date of swummons".
6. Section 120: This section, from the marginal note, ought to deal with the "Discretion in ex parte applications" of Magistrates. However, Section 120 erroneously duplicated the provisions of Section 121 which deals differently with the requirement for "Summons to be in duplicate". It seems that the error was copied from the ACJA which made the same mistake. It is therefore humbly recommended that the provision in the entire section 120 should be deleted and replaced with the following words:

**"Nothing contained in Sections 117, 118 or 119 shall oblige any Magistrate to issue any such summons in any case where the application for an order may be made ex parte"**

(See Section 84 of the ACJL of Lagos State 2015 which got it right).

Aside from the above peripheral errors, the law is totally awesome!

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