


Spring 1982

## The Criminal Procedure Law of the People's Republic of China

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

The Criminal Procedure Law of the People's Republic of China, 73 J. Crim. L. & Criminology 171 (1982)

This Symposium is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

# THE CRIMINAL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA\*

(Adopted by the Second Meeting of the Fifth Session of the National  
People's Congress, July 1, 1979)\*\*

## TABLE OF CONTENTS

Part I: General Provisions

- Chapter I: Guiding Ideology, Tasks and Basic Principles
- Chapter II: Jurisdiction
- Chapter III: Withdrawal
- Chapter IV: Defense
- Chapter V: Evidence
- Chapter VI: Coercive Measures
- Chapter VII: Supplementary Civil Actions
- Chapter VIII: Time Periods and Service
- Chapter IX: Other Provisions

Part II: Filing a Case, Investigation and Initiation of Public  
Prosecution

- Chapter I: Filing a Case
- Chapter II: Investigation
  - Section 1: Interrogation of the Defendant
  - Section 2: Questioning of the Witnesses
  - Section 3: Inspection and Examination
  - Section 4: Search
  - Section 5: Seizure of Material Evidence and Documentary  
Evidence
  - Section 6: Expert Evaluation
  - Section 7: Wanted Orders
  - Section 8: Conclusion of Investigation
- Chapter III: Initiation of Public Prosecution

Part III: Adjudication

---

\* Translated by Jerome Alan Cohen, Lecturer in Law, Harvard Law School. Partner, Paul, Weiss, Rifkind, Wharton & Garrison, specializing in East Asian legal issues. J.D. Yale Law School, 1955; Timothy A. Gelatt, Associate, Baker & McKenzie, Hong Kong. J.D. Harvard Law School, 1981; Florence M. Li, Research Associate, Harvard Law School East Asian Legal Studies. S.J.D. Harvard Law School, 1981.

\*\* This law went into effect on January 1, 1980 (trans.).

- Chapter I: Organization of Adjudication
- Chapter II: Procedure of First Instance
  - Section 1: Cases of Public Prosecution
  - Section 2: Cases of Private Prosecution
- Chapter III: Procedure of Second Instance
- Chapter IV: Procedure for Review of Death Sentences
- Chapter V: Procedure for Adjudication Supervision
- Part IV: Execution of Sentences

## PART I: GENERAL PROVISIONS

### CHAPTER I: GUIDING IDEOLOGY, TASKS AND BASIC PRINCIPLES

**Article 1** The Criminal Procedure Law of the People's Republic of China, which takes Marxism-Leninism-Mao Zedong Thought as its guide and the Constitution as its basis, is formulated by bringing together the concrete experiences of all our country's ethnic groups in carrying out, under the leadership of the proletariat and on the basis of the worker-peasant alliance, the people's democratic dictatorship, that is, the dictatorship of the proletariat, and in light of the actual need to attack the enemy and protect the people.

**Article 2** The tasks of the Criminal Procedure Law of the People's Republic of China are to guarantee the accurate and timely clarification of the facts of crimes, to apply the law correctly, to punish criminal elements, to safeguard innocent people from criminal prosecution, to educate citizens to observe the law voluntarily and to struggle against criminal conduct actively, in order to uphold the socialist legal system, to protect the rights of the person and the democratic rights and other rights of citizens, and to safeguard the smooth progress of the socialist revolution and the work of socialist construction.

**Article 3** The public security organs are responsible for investigation, detention and preparatory examination in criminal cases. The people's procuracies are responsible for approving arrest, conducting procuratorial control (including investigation) and initiating public prosecution. The people's courts are responsible for adjudication. No other organ, organization or individual has the right to exercise these powers.

In conducting criminal procedure, the people's courts, the people's procuracies and the public security organs must strictly observe this Law and relevant provisions of other laws.

**Article 4** In conducting criminal procedure, the people's courts, the people's procuracies and the public security organs must rely on the masses and must take facts as their basis and law as their criterion.

The law is equally applicable to all citizens, and no special privilege whatever is permissible before the law.

**Article 5** In conducting criminal procedure, the people's courts, the people's procuracies and the public security organs shall have a division of labor with separate responsibilities and coordinate with each other and restrain each other in order to guarantee the accurate and effective enforcement of the law.

**Article 6** Citizens of various ethnic groups all have the right to conduct proceedings in their native spoken and written language. The people's courts, the people's procuracies and the public security organs shall provide interpretation for participants in proceedings who are not proficient in the spoken and written language commonly used in the locality.

In areas inhabited by a concentrated minority ethnic group or by several ethnic groups, hearings shall be carried out in the spoken language commonly used in the locality, and judgments, announcements and other documents shall be issued in the written language commonly used in the locality.

**Article 7** In adjudicating cases, the people's courts shall carry out a system in which the second instance is the final instance.

**Article 8** The people's courts shall adjudicate all cases in public unless otherwise provided by this Law. Defendants have a right to obtain defense, and the people's courts have a duty to guarantee that defendants obtain defense.

**Article 9** In adjudicating cases, the people's courts, in accordance with this Law, shall carry out the system of people's assessors taking part in adjudication.

**Article 10** The people's courts, the people's procuracies and the public security organs shall safeguard the procedural rights that participants in proceedings enjoy according to law.

In cases in which a minor under the age of eighteen commits a crime, the legal representative of the defendant may be notified to be present at the time of interrogation and adjudication.

Participants in proceedings have the right to bring complaints against adjudication personnel, procuratorial personnel and investigation personnel for acts that violate their procedural rights as citizens and that subject their persons to indignities.

**Article 11** In any of the following circumstances, criminal responsibility shall not be investigated, or, in situations where investigation has already begun, the case shall be quashed, or there shall be no prosecution or an announcement of not guilty shall be made:

1. If the circumstances are clearly minor, the harm is not great, and the act is thus not deemed to be a crime;

2. If the period of limitation for prosecuting the crime has expired;
3. If an exemption from criminal punishment has been ordered in a special amnesty decree;
4. If according to the Criminal Law, a crime is to be handled only upon complaint and there has been no complaint or the complaint has been withdrawn;
5. If the defendant is deceased; or
6. If other laws or decrees provide for exemption from investigation of criminal responsibility.

**Article 12** In cases where foreigners commit crimes, their criminal responsibility shall be investigated, and the provisions of this Law shall be applicable. Cases where foreigners with diplomatic privileges and immunity commit crimes for which criminal responsibility should be investigated shall be solved through diplomatic channels.

## CHAPTER II: JURISDICTION

**Article 13** Minor criminal cases that may be handled only upon complaint and others that do not require the conducting of an investigation shall be accepted directly by the people's courts, and mediation may be carried out.

Cases involving crimes of corruption, violation of the democratic rights of citizens, and dereliction of duty and other cases that the people's procuracies consider necessary directly to accept themselves shall be filed and investigated by the people's procuracies, which shall decide whether or not to initiate a public prosecution.

The investigation of cases other than those provided in the first and second paragraphs shall be conducted by the public security organs.\*

**Article 14** The basic people's courts have jurisdiction as courts of first

---

\* A commentary to the Criminal Procedure Law specifies that the courts directly accept cases involving the crimes referred to in Articles 134 para. 1, 145 para. 2, 157, 179 para. 1, 180, 181, 182 para. 1, and 183 of the Criminal Law. In relation to cases to be investigated by the procuracies, the Commentary specifies that the crimes referred to in Article 13 as "cases involving crimes of corruption, violation of the democratic rights of citizens, and dereliction of duty" are the crimes in Articles 155, 136, 138, 142, 143, 144, 146, 147, 148, 149, 191, 185, 186, 187, 114, 188, 189, 190, 121, 126, 127, 128 of the Criminal Law; the cases referred to in Article 13 as "other cases that the people's procuracies consider necessary directly to accept themselves" are, according to the commentary, "primarily cases of treason, dismemberment of the State and major criminal cases involving grave undermining of the uniform application of the State's policies, laws, decrees and government orders." WANG SHUNHUA, ET AL, ANNOTATION OF THE CRIMINAL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA 17-18 (1980). This commentary, hereinafter cited as ANNOTATION, will be referred to in notes to this translation where it adds particularly useful information to the provisions of the Law

instance over ordinary criminal cases, with the exception of those cases over which people's courts at higher levels have jurisdiction according to this Law.

**Article 15** The intermediate people's courts have jurisdiction as courts of first instance over the following criminal cases:

1. Counterrevolutionary cases;
2. Ordinary criminal cases in which there may be a sentence of life imprisonment or death;
3. Criminal cases in which foreigners commit crimes or in which citizens of our country violate the legal rights of foreigners.

**Article 16** Criminal cases over which the high people's courts have jurisdiction as courts of first instance are major criminal cases with an impact on an entire province (municipality directly under the central government or autonomous region).

**Article 17** Criminal cases over which the Supreme People's Court has jurisdiction as the court of first instance are major criminal cases with an impact on the entire country.

**Article 18** When necessary, people's courts at higher levels may adjudicate cases over which people's courts at lower levels have jurisdiction as courts of first instance; they may also transfer criminal cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for adjudication; people's courts at lower levels, when they consider the circumstances of a criminal case in the first instance to be major or complex and to require adjudication by a people's court at a higher level, may request that the case be sent to a people's court at a higher level for adjudication.

**Article 19** A criminal case is under the jurisdiction of the people's court in the place where the crime was committed. If it is even more appropriate for the people's court in the place of the defendant's residence to adjudicate the case, jurisdiction may be taken by the people's court in the place of the defendant's residence.

**Article 20** Cases over which several people's courts at the same level have jurisdiction shall be adjudicated by the people's court that first accepted the case. When necessary, such cases may be sent for adjudication to the people's court in the principal place of the crime.

**Article 21** People's courts at higher levels may instruct people's courts at lower levels to adjudicate cases over which jurisdiction is unclear

---

itself. However, there is no reason to assume that the commentary, prepared by a group of legal experts, has the force of law (trans.).

and may also instruct people's courts at lower levels to transfer cases to other people's courts for adjudication.

**Article 22** Provisions will be made separately for jurisdiction over cases in special people's courts.

#### CHAPTER III: WITHDRAWAL

**Article 23** In any of the following circumstances, adjudication personnel, procuratorial personnel and investigation personnel shall withdraw of their own accord, and parties and their legal representatives also have the right to demand their withdrawal:

1. If he is a party or close relative of a party to the case;
2. If he himself or his close relative has an interest in the case;
3. If he has served as a witness, expert witness or defender in the case or as a representative of a party to a supplementary civil action;
4. If he has another relationship with a party to the case that may influence the just handling of the case.

**Article 24** The withdrawal of the adjudication personnel, procuratorial personnel and investigation personnel shall be decided respectively by the chief judge, the chief procurator, and the responsible person in the public security organ; the withdrawal of the chief judge shall be decided by the adjudication committee of that court; the withdrawal of the chief procurator and of the responsible person in the public security organ shall be decided by the procuratorial committee of the people's procuracy at the same level.

Investigation personnel may not cease their investigation of a case before a decision is rendered on their withdrawal.

Where a decision is made to reject an application for withdrawal, a party may apply for one reconsideration.

**Article 25** The provisions of Article 23 and Article 24 of this Law shall also be applicable to clerks, interpreters and expert witnesses.

#### CHAPTER IV: DEFENSE

**Article 26** In addition to exercising the right to defend themselves, defendants may also entrust the following people with their defense:

1. Lawyers;
2. Citizens who are recommended by a people's organization or by the defendant's unit or who are authorized by the people's court;
3. Close relatives or guardians of the defendant.

**Article 27** In cases in which a public prosecutor appears in court to bring a public prosecution, and the defendant has not appointed

anyone to be defender, the people's court may designate a defender for the defendant.

In cases in which the defendant is deaf, mute or a minor and has not appointed anyone to be defender, the people's court shall designate a defender for him.

**Article 28** The responsibility of a defender is, on the basis of the facts and the law, to present materials and opinions proving that the defendant is not guilty, that his crime is minor, or that he should receive a mitigated punishment or be exempted from criminal responsibility, safeguarding the lawful rights and interests of the defendant.

**Article 29** A defense lawyer may consult the materials of the case, acquaint himself with the circumstances of the case, and may interview and correspond with a defendant held in custody; other defenders, with the permission of the people's court, may also acquaint themselves with the circumstances of the case and interview and correspond with a defendant held in custody.\*

**Article 30** During the adjudication process, a defendant may refuse to have a defender continue to defend him and may also entrust another defender with his defense.

#### CHAPTER V: EVIDENCE

**Article 31** All facts that prove the true circumstances of a case are evidence.

There are the following six categories of evidence:

1. Material evidence and documentary evidence;
2. Testimony of witnesses;
3. Statements of victims;
4. Statements and explanations of defendants;
5. Conclusions of expert evaluations;
6. Records of inspection and examination.

The above evidence must undergo examination for truth before it can be used as the basis for determining cases.

**Article 32** Adjudication personnel, procuratorial personnel and investigation personnel must, in accordance with legally-prescribed procedures, gather various types of evidence that can prove the

---

\* A set of rules published in May 1981 spells out the rights of the lawyer under this Article and provides rules for their implementation. For instance, it is stipulated that a lawyer may take notes on the case file. See *Supreme People's Court, Supreme People's Procuratorate Public Security Ministry, Justice Ministry Issue Joint Report Regarding Several Specific Regulations for the Lawyers' Participation In Litigation*, *Zhongguo Fazhi Bao* (China Law Weekly), May 15, 1981, at 1; report in *Foreign Broadcast Information Service: Daily Report People's Republic of China*, May 15, 1981, at K23 [hereinafter cited as FBIS-CHI] (trans.).



defendant's guilt or innocence and the gravity of the circumstances of the crime. The use of torture to coerce statements and the gathering of evidence by threat, enticement, deceit or other unlawful methods are strictly prohibited. Conditions must be guaranteed for all citizens who are involved in the case or who are acquainted with the circumstances of the case to provide evidence objectively and fully, and, except in special circumstances, they may be brought in to assist in the investigation.

**Article 33** Applications for approval of arrest submitted by the public security organs, bills of prosecution of the people's procuracies and judgments of the people's courts must be faithful to the facts and the true situation. The responsibility of those who intentionally conceal the facts and the true situation shall be investigated.

**Article 34** The people's courts, the people's procuracies and the public security organs have the right to gather and obtain evidence from the relevant state organs, enterprises, public institutions, people's communes, people's organizations and citizens.

Evidence involving state secrets shall be kept secret.

Anyone who falsifies, conceals or destroys evidence, regardless of his affiliation, must be investigated under the law.

**Article 35** In the decision of all cases, the emphasis should be placed on evidence and investigative research, and credence should not be readily given to oral statements. In cases where there is only the testimony of the defendant and there is no other evidence, the defendant cannot be found guilty and sentenced to a criminal punishment; in cases where there is no testimony of the defendant and the evidence is complete and reliable, the defendant may be found guilty and sentenced to a criminal punishment.

**Article 36** The testimony of witnesses must be subjected in the courtroom to the questioning and verification of both sides—the public prosecutor and the victim, and the defendant and the defender—and only after the testimony of witnesses of all sides has been heard and has undergone examination for truth may it be used as a basis for determining a case. Should the tribunal ascertain that a witness has intentionally given false testimony or concealed criminal evidence, it shall handle the matter according to law.

**Article 37** Anyone with knowledge about the circumstances of the case has a duty to testify.

Those with physical or mental handicaps or children who cannot distinguish right from wrong or cannot accurately express themselves cannot be witnesses.

## CHAPTER VI: COERCIVE MEASURES

**Article 38** The people's courts, the people's procuracies and the public security organs, according to the circumstances of the case, may summon a defendant for detention, allow him to obtain a guarantor and await trial out of custody, or allow him to live at home under surveillance.

A defendant who lives at home under surveillance may not leave the designated area. Surveillance of his home shall be carried out by the local public security station, or by the people's commune or the defendant's unit entrusted with the task.

In cases where the defendant is allowed to obtain a guarantor and await trial out of custody or to live at home under surveillance, if changes in the circumstances develop, these measures shall be revoked or altered.

**Article 39** The arrest of an offender must be approved by the people's procuracy or decided by a people's court and is to be carried out by a public security organ.

**Article 40** In the case of an offender the principal facts of whose crime have already been clarified and who could be sentenced to a punishment of not less than imprisonment, where adopting such measures as allowing him to obtain a guarantor and await trial out of custody or to live at home under surveillance would be insufficient to prevent the occurrence of danger to society and where there is thus the necessity of arrest, the offender should be immediately arrested according to law.

In the case of an offender who should be arrested but who is suffering from grave illness or is a woman who is pregnant or nursing her own baby, the measures of allowing the person to obtain a guarantor and await trial out of custody or to live at home under surveillance may be adopted.

**Article 41** In any of the following circumstances, the public security organs may first detain an active criminal who, on the basis of his crime, should be arrested, or a major suspect element:

1. If he is in the process of preparing to commit a crime, is committing a crime or is discovered immediately after committing a crime;
2. If he is identified as having committed a crime by the victim or by an eyewitness on the scene;
3. If he is discovered to have criminal evidence on his person or at his residence;
4. If, after committing the crime, he attempts to commit suicide or to escape or is a fugitive;

5. If he may possibly destroy or fabricate evidence or collude with others to devise a consistent story;
6. If his identity is unclear and there is strong suspicion that he will flee and commit further crimes;
7. If he is carrying on "beating, smashing and looting" and gravely undermining work, production or social order.

**Article 42** Any citizen may seize an offender and deliver him to the public security organs, the people's procuracies or the people's courts for handling:

1. If he is in the process of committing a crime or is discovered immediately after committing a crime;
2. If he is wanted for arrest;
3. If he has escaped from prison;
4. If he is being pursued for arrest.

**Article 43** When a public security organ detains a person, it must produce a detention warrant.

The family of the detained person or his unit shall be notified within twenty-four hours after detention of the reasons for detention and the place of custody, except in circumstances where notification would hinder the investigation or there is no way to notify them.

**Article 44** The public security organ shall conduct interrogation of the detained person within twenty-four hours after detention. When it is discovered that he should not have been detained, the detained person must be released immediately and be issued a release certificate. A person whom it is necessary to arrest but against whom there is not yet sufficient evidence may be allowed to obtain a guarantor and await trial out of custody or to live at home under surveillance.

**Article 45** When a public security organ wishes to arrest an offender, it shall fill out and submit an application for approval of arrest that, together with the materials in the case file and the evidence, shall be transmitted to the people's procuracy at the same level for review and approval. The people's procuracy may send people to participate in the discussion of a major case by the public security organ.

**Article 46** When a people's procuracy reviews and approves the arrest of an offender, the chief procurator shall make the decision. A major case shall be submitted to the procuratorial committee for discussion and decision.

**Article 47** After conducting a review of a case that a public security organ has submitted for approval of arrest, the people's procuracy, according to the differing circumstances, shall make a decision to

approve arrest, not to approve arrest, or to have supplementary investigation.

**Article 48** In cases where a public security organ considers it necessary to arrest a detained person, it shall, within three days after detention, submit a request to the people's procuracy for review and approval. Under special circumstances, the time for requesting review and approval may be extended by from one to four days. The people's procuracy shall make its decision to approve arrest or not to approve arrest within three days after receiving the application for approval of arrest from the public security organ. In cases where the people's procuracy does not approve the arrest, the public security organ shall, immediately after receiving the notice, release the detained person and issue him a release certificate.

If the public security organ or the people's procuracy does not handle a matter in accordance with the provisions of the preceding paragraph, the detained person or his family has the right to demand release, and the public security organ or the people's procuracy shall immediately release him.

**Article 49** When a public security organ considers that a decision of the people's procuracy not to approve arrest is mistaken, it may demand reconsideration, but it must immediately release the detained person. If its opinion is not accepted, it may request review by the people's procuracy at the next higher level. The higher level people's procuracy shall immediately review the matter, render a decision whether or not to make any revision and inform the people's procuracy and the public security organ at the lower level to carry out the decision.

**Article 50** When a public security organ arrests a person, it must produce an arrest warrant.

The family of the arrested person or his unit shall be notified within twenty-four hours after arrest of the reasons for arrest and the place of custody, except in circumstances where notification would hinder the investigation or there is no way to notify them.

**Article 51** Interrogation must be conducted within twenty-four hours after arrest, by a people's court or a people's procuracy with respect to a person it has decided on its own to arrest, and by a public security organ with respect to a person it has arrested with the approval of a people's procuracy. When it is discovered that the person should not have been arrested, he must be released immediately and issued a release certificate.

**Article 52** If in the course of its work of reviewing and approving arrests, a people's procuracy discovers that there are illegalities in the investigation activities of a public security organ, it shall notify the

public security organ to correct the matter, and the public security organ shall notify the people's procuracy of the circumstances of the correction.

#### CHAPTER VII: SUPPLEMENTARY CIVIL ACTION

**Article 53** A victim who has suffered material losses because of the defendant's criminal act has the right, during the process of criminal procedure, to bring a supplementary civil action.

If it is state property or collective property that has suffered losses, a people's procuracy, when initiating a public prosecution, may bring a supplementary civil action.

When necessary, a people's court may seal up or seize the defendant's property.

**Article 54** A supplementary civil action shall be adjudicated together with the criminal case. Only for the purpose of preventing excessive delay in adjudication of the criminal case may the same adjudication organization, after the criminal case has been adjudicated, continue to hear the supplementary civil action.

#### CHAPTER VIII: TIME PERIODS AND SERVICE

**Article 55** Time periods are counted in hours, days and months.

The hour and day in which a time period begins are not counted as within that time period.

Legally prescribed time periods do not include travel time. Appeals or other documents that have been posted before the expiration of the time period shall not be considered overdue.

**Article 56** In cases where parties are delayed and cannot meet the deadline because of irresistible causes or other legitimate reasons, they may, within five days after the removal of the obstacle, apply to continue conducting the procedural activities that should have been completed before the expiration of the time period.

The people's court shall issue an order on whether or not to approve the application in the preceding paragraph.

**Article 57** The service of subpoenas, notices and other procedural documents shall be made upon the addressee himself; if the person is not in, delivery may be made in his behalf to an adult member of his family or a responsible person of his unit.

When the addressee himself or the person receiving in his behalf refuses to accept a document or refuses to sign his name or place his seal upon a document, the person serving the document may invite a neighbor or other eyewitness to the scene, explain the situation, leave the document at his residence, record on the service

certificate the particulars of refusal and the date of service, and sign his name to the certificate, and service shall thus be deemed to have been made.

#### CHAPTER IX: OTHER PROVISIONS

**Article 58** The meanings of the following terms used in this Law are:

1. "Investigation" refers to the specialized investigatory work conducted and the related coercive measures taken according to law by the public security organs and the people's procuracies in the process of handling cases;
2. "Parties" refers to private prosecutors, defendants, and plaintiffs and defendants in supplementary civil actions;
3. "Legal representatives" refers to the parents, adoptive parents or guardians of the person represented and the representatives of an organ or organization that has the responsibility to provide protection;
4. "Participants in proceedings" refers to parties, victims, legal representatives, defenders, witnesses, expert witnesses and interpreters;
5. "Close relatives" refers to husbands, wives, fathers, mothers, sons, daughters, and brothers and sisters born of the same parents.

### PART II: FILING A CASE, INVESTIGATION AND INITIATION OF PUBLIC PROSECUTION

#### CHAPTER I: FILING A CASE

**Article 59** Upon discovery of facts of a crime or criminal suspects, government organs, organizations, enterprises, institutions, and citizens have the right and also the duty to bring complaints and accusations to the public security organs, the people's procuracies and the people's courts, within the scope of jurisdiction provided in Article 13 of this Law.

The public security organs, the people's procuracies and the people's courts shall accept complaints, accusations and the voluntary surrender of criminals. Should the matter not fall under the jurisdiction of the organ receiving it, that organ shall transfer it to the competent organ for handling and notify the complainant and accuser; in cases where the matter does not fall under the jurisdiction of the organ receiving it but where emergency measures must be adopted, emergency measures shall first be adopted and the matter then transferred to the competent organ.

**Article 60** Complaints and accusations may be submitted in written or

oral form. Personnel who receive oral complaints and accusations shall make a written transcript that the complainant or accuser shall sign or place his seal upon after it has been read to him and found free of error.

Personnel who accept complaints and accusations shall explain to complainants and accusers the legal responsibility to be incurred for false accusations. However, as long as fabrication of facts and falsification of evidence are not involved, cases where a complaint or an accusation is at variance with the facts and even cases of mistaken complaints are to be strictly distinguished from false accusations.

If the complainant or accuser does not want to make his own name public, during the investigation period it shall be kept secret for him.

**Article 61** The people's courts, the people's procuracies and the public security organs, within the scope of their jurisdiction, shall promptly conduct a review of the materials involved in complaints, accusations, and voluntary surrenders, and if they believe that there are facts of a crime necessitating the investigation of criminal responsibility, they shall file a case; when they believe that there are no facts of a crime or that the facts of a crime are obviously minor and do not necessitate the investigation of criminal responsibility, they shall not file a case, and they shall inform the complainant of the reasons for not filing a case. If the complainant does not agree, he may apply for reconsideration.

## CHAPTER II: INVESTIGATION

### Section 1: Interrogation of the Defendant

**Article 62** The responsibility for conducting interrogation of the defendant must be borne by the investigation personnel of the people's procuracies or the public security organs. No fewer than two investigation personnel may be present during interrogation.

**Article 63** A defendant whom it is not necessary to arrest or detain may be summoned to a designated place for interrogation, or it may be conducted at his residence or his unit, but he shall be shown a certificate of a people's procuracy or a public security organ.

**Article 64** When interrogating a defendant, investigation personnel shall first ask the defendant whether or not he has engaged in a criminal act and let him state the circumstances of his guilt or explain his innocence, and then put questions to him. The defendant shall answer the questions put by the investigation personnel ac-

ording to the facts. However, he has the right to refuse to answer questions that have no relation to the case.

**Article 65** A person who is proficient in sign language shall participate in the interrogation of a deaf or mute defendant, and a clear record shall be made of such circumstances.

**Article 66** The transcript of the interrogation shall be turned over to the defendant for checking, and it shall be read to a defendant who is unable to read. If there are omissions or errors in the record, the defendant may present additions or corrections. After the defendant has acknowledged that the transcript is free of error, he shall sign it or place his seal upon it. The investigation personnel shall also sign the transcript. If the defendant asks of his own accord to make a written statement, he shall be permitted to do so. When necessary, investigation personnel may also request the defendant to make a written statement in his own handwriting.

### Section 2: Questioning of the Witnesses

**Article 67** Investigation personnel may question a witness at his unit or residence, but they must produce a certificate of a people's procuracy or a public security organ. When necessary, they may also notify witnesses to come to the people's procuracy or the public security organ to provide testimony.

Witnesses shall be questioned individually.

**Article 68** In questioning a witness, the witness shall be told that he shall provide evidence and testimony according to the facts and that legal responsibility shall be incurred for intentionally falsifying evidence or concealing criminal evidence.

**Article 69** The provisions of Article 66 of this Law also apply to the questioning of witnesses.

**Article 70** The various provisions of this Section apply to the questioning of victims.

### Section 3: Inspection and Examination

**Article 71** Investigation personnel shall conduct inspection or examination of sites, articles, persons and corpses related to a crime. When necessary, persons with special knowledge may be assigned or invited to conduct inspection or examination under the direction of investigation personnel.

**Article 72** Every unit and individual has a duty to protect the scene of a crime and also immediately to inform the public security organs to send personnel to inspect it.

**Article 73** To conduct inspection or examination, investigation personnel must hold a certificate of a public security organ.



**Article 74** The public security organs have the right to decide on an autopsy of the corpse where the cause of death is not clear and to inform the family members of the deceased to be present.

**Article 75** Examination of the person of victims or defendants may be conducted in order to ascertain certain of their characteristics, the circumstances of their injuries or their physiological condition.

If a defendant refuses to be examined, the investigation personnel, when they consider it necessary, may compel examination.

Examination of the person of women shall be conducted by female personnel or physicians.

**Article 76** A written record of the circumstances of inspection or examination shall be made, and those who participate in the inspection or examination and the eyewitnesses shall sign it or place their seal upon it.

**Article 77** When in reviewing a case a people's procuracy considers that reinspection or reexamination of the inspection or examination done by a public security organ is necessary, it may demand that the public security organ conduct a reinspection or reexamination, and it may also send procuratorial personnel to participate.

**Article 78** In order to clarify the circumstances of a case, when necessary, investigation personnel may, with the approval of the chief of a public security bureau, conduct investigative experiments.

In performing investigative experiments, all conduct capable of creating danger, insulting human dignity or offending public morals is prohibited.

#### Section 4: Search

**Article 79** For the purpose of gathering criminal evidence and apprehending criminals, investigation personnel may conduct searches of the person, articles, residences and other relevant places of defendants and persons who might conceal criminals or criminal evidence.

**Article 80** Every unit and individual has a duty, on the demand of people's procuracies and public security organs, to turn over material evidence and documentary evidence that may prove the guilt or innocence of a defendant.

**Article 81** In conducting a search, a search warrant must be shown to the person searched.

When carrying out arrest or detention, if an emergency situation is encountered, a search may be conducted without the use of a search warrant.

**Article 82** The person searched or his family members, neighbors or other eyewitnesses shall be present during a search.

Searches of the person of women shall be conducted by female personnel.

**Article 83** A written record shall be made of the circumstances of a search, and the investigation personnel and the person searched or his family members, neighbors or other eyewitnesses shall sign it or place their seal upon it. If the person searched or his family members are fugitives or refuse to sign or place their seal upon the record, this shall be noted on the record.

#### Section 5: Seizure of Material Evidence and Documentary Evidence

**Article 84** Various kinds of articles and documents discovered in inspections or searches that may be used to prove the guilt or innocence of a defendant shall be seized; articles and documents that have no relation to the case should not be seized.

Seized articles and documents should be well cared for or sealed up for safekeeping; they should not be used or damaged.

**Article 85** The number of seized articles and documents shall be checked clearly in the company of the eyewitnesses present and the possessor of the seized articles; an inventory shall be made in duplicate on the spot; the investigation personnel, the eyewitnesses and the possessor shall sign it or place their seals upon it; and one copy shall be given to the possessor, and another copy placed on file for reference.

**Article 86** When investigation personnel consider it necessary to seize the mail or telegrams of a defendant, upon approval of a public security organ or a people's procuracy, they may notify the post and telecommunications organ to check for relevant mail and telegrams and turn them over to the investigation personnel for seizure.

When it is not necessary to continue seizure, the post and telecommunications organ shall be notified immediately.

**Article 87** When it has been ascertained that seized articles, documents, mail, or telegrams actually have no relation to the case, they shall be promptly returned to the rightful owner or to the post and telecommunications organ concerned.

#### Section 6: Expert Evaluation

**Article 88** When it is necessary, in order to clarify the circumstances of a case, to solve certain problems of a specialized nature in the case, persons with special knowledge shall be assigned or invited to conduct expert evaluation.

**Article 89** After conducting an expert evaluation, experts shall write and sign a conclusion of expert evaluation.

**Article 90** A defendant shall be informed of conclusions of expert eval-

uation to be used as evidence. A supplementary expert evaluation or a new expert evaluation may be made if the defendant makes application for one.

### Section 7: Wanted Orders

**Article 91** If a defendant who should be arrested is a fugitive, the public security organs may issue a wanted order and adopt effective measures to pursue him for arrest and bring him to justice.

Public security organs at various levels may directly issue wanted orders within the area of their own jurisdiction; beyond the area of their own jurisdiction, they shall request the higher-level organs that have the decision-making authority to issue them.

### Section 8: Conclusion of Investigation

**Article 92** The period for holding a defendant in custody during investigation may not exceed two months. Where the circumstances of a case are complex and the case cannot be concluded before the expiration of the period, the period may be extended by one month with the approval of the people's procuracy at the next higher level.

In especially major or complex cases, if the case still cannot be concluded after an extension according to the provisions of the preceding paragraph, the Supreme People's Procuracy shall request the Standing Committee of the National People's Congress to approve postponement of consideration.\*

**Article 93** In cases investigated by a people's procuracy, after conclu-

---

\* A commentary states that an application for the one month extension provided by this Article must be made by the investigation authorities to the people's procuracy at the same level seven days before the end of the initial two month period. The application must be reported for approval to the people's procuracy at the next higher level. The application for further postponement in especially major or complex cases must be made by the investigation organ to the people's procuracy at the same level fifteen days prior to the end of the already extended period; the application is then reported to the Supreme People's Procuracy, which requests the approval of the Standing Committee of the National People's Congress. ANNOTATION, *supra* note to Article 13, at 96 (trans.).

A decision of the National People's Congress Standing Committee in February 1980 provided that: "If there are too many cases, and personnel handling cases is insufficient and thus unable to handle cases according to the time limits prescribed by the Criminal Procedure Law regarding the investigation [and] prosecution phases . . . within the year 1980, the standing committees of [provincial-level] people's congresses may approve extensions of the time limits for handling cases." *Decision of the (13th Meeting of the) Standing Committee of the Fifth Session of the National People's Congress Regarding Questions of Implementation of the Criminal Procedure Law*, Renmin Ribao (People's Daily), Feb. 13, 1980, at 1, *trans. in* FBIS-CHI, Feb. 13, 1980, at L6. Such extensions were approved in various parts of China; in Peking, for instance, the maximum pretrial detention time seemed to have been extended to seven months. *Decision of the 3rd Meeting of the Standing Committee of the 7th Session of the (Peking) City People's Congress Regarding the Extension of Time Limits for Handling Criminal Cases, passed by the 3rd Meeting of the*

sion of the investigation, a decision shall be made to initiate a public prosecution, to exempt from prosecution or to quash the case.

In cases investigated by a public security organ, after conclusion of the investigation, the public security organ shall draft an opinion recommending prosecution or an opinion recommending exemption from prosecution and transmit it together with the materials in the case file and the evidence to the people's procuracy at the same level for review and decision.

**Article 94** If in the process of investigation, it is discovered that the defendant's criminal responsibility should not be investigated, the case shall be quashed; if the defendant has already been arrested, he shall be immediately released and issued a release certificate, and the people's procuracy that originally approved the arrest shall be notified.

### CHAPTER III: INITIATION OF PUBLIC PROSECUTION

**Article 95** A people's procuracy shall review and make a decision in cases in which it is necessary to initiate a public prosecution or to exempt from prosecution.

**Article 96** In reviewing cases, a people's procuracy must ascertain:

1. Whether the facts and circumstances of the crime are clear, whether the evidence is reliable and complete and whether the nature of the crime and the specific charge are correctly determined;
2. Whether there is criminal conduct that has been omitted from the charges and whether there are other persons whose criminal responsibility should be investigated;
3. Whether it is a case in which criminal responsibility should not be investigated;
4. Whether there is a supplementary civil action;
5. Whether the investigation activities were lawful.

**Article 97** A people's procuracy shall render a decision within one

---

*Standing Committee of the 7th Session of the (Peking) City People's Congress, Apr. 1, 1980, Beijing Ribao (Peking Daily), Apr. 2, 1980, at 1.*

A decision passed September 10, 1981 by the 20th meeting of the Standing Committee of the 5th Session of the National People's Congress provides that "in general" cases received by the investigatory authorities on or after January 1, 1981 should be handled in accordance with the time limits in the Criminal Procedure Law. However, if in "a small number of criminal cases where the circumstances of the case are complex or which take place in outlying districts to which transportation is inconvenient," the time limits in Articles 92, 97, 125 and 142 of the Criminal Procedure Law cannot be observed, the Decision authorizes the standing committees of the provincial-level people's congresses, from 1981 to 1983, to "decide or approve appropriate extensions of the time periods for handling cases." *Decision of the Standing Committee of the National People's Congress Regarding the Question of Time Limits for Handling Cases, Renmin Ribao, Sept. 11, 1981, at 1.*

month with respect to cases that the public security organs transmit with a recommendation to initiate a public prosecution or to exempt from prosecution; in major or complex cases there may be an extension of one-half month.\*

**Article 98** In reviewing a case, a people's procuracy shall interrogate the defendant.

**Article 99** In reviewing a case that requires supplementary investigation, a people's procuracy may investigate on its own and may also return the case to the public security organ for supplementary investigation.

In cases where supplementary investigation is carried out, supplementary investigation shall be completed within one month.

**Article 100** In cases where a people's procuracy considers that the facts of the defendant's crime have already been clarified, that the evidence is reliable and complete and that according to law criminal responsibility should be investigated, it shall make a decision to prosecute and initiate a public prosecution in a people's court in accordance with the provisions on adjudication jurisdiction.

**Article 101** In cases where, according to the provisions of the Criminal Law, it is not necessary to impose a sentence of criminal punishment or an exemption from criminal punishment may be granted, a people's procuracy may exempt the case from prosecution.

**Article 102** A decision to exempt from prosecution shall be publicly announced and the document of decision to exempt from prosecution shall be given to the defendant and to his unit. If the defendant is in custody, he shall be immediately released.

When a people's procuracy decides to exempt from prosecution a case that a public security organ has transmitted for prosecution, it shall deliver the document of decision to exempt from prosecution to the public security organ. When the public security organ considers that a decision to exempt from prosecution is mistaken, it may demand reconsideration, and if its opinion is not accepted, it may request review by the people's procuracy at the next higher level.

When there is a decision to exempt from prosecution a case in which there is a victim, the people's procuracy shall deliver the document of decision to exempt from prosecution to the victim. If the victim does not agree, he may, within seven days after receipt, petition the people's procuracy. The people's procuracy shall inform the victim of the result of its reexamination.

**Article 103** If a defendant does not agree with the decision to exempt

---

\* See note to Article 92 *supra*.

the case from prosecution, he may, within seven days, petition the people's procuracy. The people's procuracy shall make a decision on reexamination, inform the defendant, and at the same time send a copy of the decision to the public security organ.

**Article 104** If any of the circumstances provided in Article 11 of this Law is applicable to the defendant, the people's procuracy shall make a decision not to prosecute.

The provisions of Article 102 of this Law apply to decisions not to prosecute.

### PART III: ADJUDICATION

#### CHAPTER I: ORGANIZATION OF ADJUDICATION

**Article 105** Adjudication of cases in the first instance in the basic people's courts and the intermediate people's courts shall be conducted by a collegial panel composed of one judge and two people's assessors, with the exception of cases of private prosecution and other minor criminal cases that a single judge may adjudicate independently.

Adjudication of cases in the first instance in the high people's courts or the Supreme People's Court shall be conducted by a collegial panel composed of from one to three judges and from two to four people's assessors.

In carrying out their duties in the people's courts, people's assessors have equal rights with judges.

Adjudication of appeals and protests in the people's courts shall be conducted by a collegial panel composed of from three to five judges.

The chief judge or the head of a chamber shall designate one judge to serve as presiding judge of the collegial panel. When the chief judge or the head of a chamber participates in the adjudication of a case, he himself serves as presiding judge.

**Article 106** When the collegial panel is conducting its deliberations, if opinions diverge, the minority shall defer to the majority, but the opinion of the minority shall be entered in the record. The record of the deliberations shall be signed by the members of the collegial panel.

**Article 107** In all major or difficult cases, where the chief judge considers it necessary to submit the case to the adjudication committee for discussion, it shall be submitted by the chief judge to the adjudication committee for discussion and decisions. The collegial panel shall carry out decisions of the adjudication committee.

## CHAPTER II: PROCEDURE OF FIRST INSTANCE

## Section 1: Cases of Public Prosecution

**Article 108** After a people's court has conducted a review of a case in which a public prosecution has been initiated, where the facts of the crime are clear and the evidence is complete, it shall decide to open the court session and adjudicate the case; where the principal facts are not clear and the evidence is insufficient, it may remand the case to the people's procuracy for supplementary investigation; where there is no need for a criminal sentence, it may demand that the people's procuracy withdraw its prosecution.

**Article 109** When necessary, the people's court may conduct inspection, examination, search, seizure and expert evaluation.

**Article 110** After the people's court has decided to open the court session and adjudicate the case, it shall proceed with the following work:

1. Determining the members of the collegial panel;
2. Delivering to the defendant, no later than seven days before opening the court session, a copy of the bill of prosecution of the people's procuracy, and informing the defendant that he may appoint a defender, or, when necessary, designating a defender for the defendant;
3. Informing the people's procuracy, three days before opening the court session, of the time and place of the court session;
4. Summoning the parties, notifying defenders, witnesses, expert witnesses, and interpreters, and delivering the summonses and notices no later than three days before the opening of the court session; and
5. In cases to be adjudicated in public, announcing in advance the subject matter of the case, the name of the defendant, and the time and place of the court session.

The circumstances of the above activities shall be entered in the record, which shall be signed by the adjudication personnel and court clerk.

**Article 111** The people's courts shall conduct adjudication of cases in the first instance in public. However, cases involving state secrets or the private affairs of individuals shall not be heard in public.

No cases involving the commission of crimes by minors aged fourteen or over but under the age of sixteen shall be heard in public. Cases involving the commission of crimes by minors aged sixteen or over but under the age of eighteen shall also generally not be heard in public.

In a case that is not to be heard in public, the reasons for not hearing it in public shall be announced in court.

**Article 112** When a people's court adjudicates a case of public prosecution, the people's procuracy shall send personnel to appear in court to support the public prosecution, unless the criminal conduct is relatively minor and the people's court agrees.

When the procuratorial personnel appearing in court discover that there are illegalities in the adjudication activities, they have the right to present the tribunal with opinions on how to correct them.

**Article 113** When the court session opens, the presiding judge shall ascertain whether the parties are present in court and announce the subject matter of the case, announce the names of the members of the collegial panel, the court clerk, the public prosecutor, the defender, expert witnesses, and interpreters, inform the parties of their right to apply for the withdrawal of members of the collegial panel, the court clerk, the public prosecutor, expert witnesses, and interpreters, and inform the defendant of his right to defense.

**Article 114** After the public prosecutor has read out the bill of prosecution in the courtroom, the adjudication personnel shall begin to question the defendant.

The public prosecutor may interrogate the defendant with the permission of the presiding judge.

After the adjudication personnel have questioned the defendant, the victim, the plaintiff in a supplementary civil action and the defender may put questions to the defendant with the permission of the presiding judge.

**Article 115** When questioning a witness, the adjudication personnel and public prosecutor shall inform him that he must provide testimony according to the facts and inform him of the legal responsibility he must bear for intentionally giving false evidence or for concealing criminal evidence. Parties and defenders may request the presiding judge to put questions to witnesses or expert witnesses or may request permission from the presiding judge to put their questions directly. When the presiding judge considers that the content of the questioning bears no relation to the case, he shall put a stop to it.

**Article 116** The adjudication personnel shall show the material evidence to the defendant and have him identify it. Records of testimony of witnesses who are not present in court, conclusions of the expert evaluations of expert witnesses, records of inspections, and other documents serving as evidence shall be read out in court and the opinions of parties and defenders shall be heard.



**Article 117** During the process of the courtroom hearing, parties and defenders have the right to apply to notify new witnesses to come to court, to obtain new material evidence, and to apply for new expert evaluation or inspection.

The tribunal shall make a decision whether to approve the above applications.

**Article 118** After the inquiry by the tribunal, the public prosecutor shall speak, the victim shall speak, and then the defendant shall make his statement and defense, the defender shall conduct the defense, and there may be debate. After the presiding judge has announced the closing of debate, the defendant has the right to make a final statement.

**Article 119** During the process of the courtroom hearing, if participants in the proceedings violate order in the courtroom, the presiding judge shall warn them to cease; if the circumstances are grave, they may be ordered to leave the courtroom or their criminal responsibility may be investigated according to law.

**Article 120** After the defendant makes his final statement, the presiding judge shall announce a recess, the collegial panel shall conduct its deliberation, and based on the facts and evidence that have been clarified and on the provisions of the relevant laws, render a judgment as to whether the defendant is guilty or innocent, what crime he committed, and what criminal punishment is to be applied or whether he should be exempted from criminal punishment.

**Article 121** The announcement of judgment shall in all cases be made in public.

In cases where the judgment is announced at the court session, the judgment document shall be delivered to the parties and the people's procuracy that initiated the public prosecution within five days; in cases where the judgment is announced on a fixed date, the judgment document shall be delivered to the parties and the people's procuracy that initiated the public prosecution immediately upon announcement.

**Article 122** The judgment document shall be signed by the members of the collegial panel and by the court clerk, and the time limit for appeal and the appellate court shall be clearly stated therein.

**Article 123** If during the process of the courtroom adjudication one of the following circumstances that influence conduct of the adjudication is encountered, the hearing may be postponed:

1. If it becomes necessary to notify new witnesses to come to court, to obtain new material evidence or to make a new expert evaluation or inspection;
2. If the procuratorial personnel discover that a case for which

they initiated a public prosecution requires supplementary investigation, and present a proposal to this effect;

3. If the collegial panel considers that the evidence is incomplete or discovers new facts, requiring it to return the case to the people's procuracy for supplementary investigation or to make its own inquiry;
4. If the adjudication cannot be conducted because of a party's application for withdrawal.

**Article 124** The court clerk shall make a record of all the activities of the courtroom adjudication, and the transcript shall be signed by the presiding judge and the court clerk after being checked and approved by the presiding judge.

The portion of the courtroom record comprising the testimony of witnesses shall be read out in court or delivered to the witnesses to read. After the witnesses acknowledge that it is free of error, they shall sign or place their seal upon it.

The courtroom record shall be delivered to the parties to read or shall be read out to them. If the parties consider that there are omissions or errors in the record, they may request supplementation or correction. After the parties have acknowledged that it is free of error, they shall sign or place their seal upon it.

**Article 125** In hearing a case of public prosecution, a people's court shall announce judgment within one month after receiving the case, and may not take longer than one month and one-half at the latest.\*

## Section 2: Cases of Private Prosecution

**Article 126** After a people's court conducts a review of a case of private prosecution, it may handle the case according to the following circumstances, respectively:

1. If it is a case where the facts of the crime are clear and there is sufficient evidence, a court session shall be opened and the case adjudicated;
2. If the case requires the initiation of a public prosecution by a people's procuracy, it shall be transferred to the people's procuracy;
3. In a case of private prosecution where criminal evidence is lacking, if the private prosecutor does not present supplementary evidence and the people's court is also unable to gather the necessary evidence through its inquiry, it shall persuade the ac-

---

\* See note to Article 92 *supra*.

cuser to withdraw the private prosecution or shall order its rejection;

4. If it is a case where a defendant's conduct does not constitute a crime, the court shall persuade the private prosecutor to withdraw the private prosecution or shall order its rejection.

**Article 127** A people's court may conduct mediation in a case of private prosecution; before the judgment is announced, a private prosecutor may arrange a settlement on his own with the defendant or may withdraw his private prosecution.

**Article 128** During the proceeding, the defendant in a case of private prosecution may raise a counterclaim against the private prosecutor. The provisions relating to private prosecutions apply to counterclaims.\*

### CHAPTER III: PROCEDURE OF SECOND INSTANCE

**Article 129** Parties or their legal representatives who do not agree with judgments or orders of first instance of the local people's courts at various levels have the right to appeal in writing or orally to the people's court at the next higher level. Defenders or close relatives of a defendant may present an appeal with the agreement of the defendant.

Parties to supplementary civil actions and their legal representatives may present an appeal regarding the supplementary civil action portions of judgments or orders of first instance of the local people's courts at various levels.

No pretext should be used to deprive a defendant of his right to appeal.

**Article 130** When local people's procuracies at various levels consider that a judgment or order of first instance of a people's court at the same level contains actual error, they shall present a protest to the people's court at the next higher level.

**Article 131** The time limit for an appeal or protest against a judgment is ten days; the time limit for an appeal or protest against an order is five days; time is counted from the day after a judgment document or order document is received.

**Article 132** When parties present an appeal through the people's court that originally adjudicated the case, the people's court that originally adjudicated the case shall, within three days, send the state-

---

\* A commentary states that counterclaims must be confined to the "scope" of the original claim. If they go beyond this scope, they must be treated as separate private prosecutions.

Also, the withdrawal of the original suit is stated not to influence the continued hearing of the counterclaim. ANNOTATION, *supra* note to Article 13, at 133.

ment of appeal together with the case file and the evidence to the people's court at the next higher level, and at the same time it shall send copies of the statement of appeal to the people's procuracy at the same level and to the other parties.

When parties directly present their appeal to the people's court of second instance, the people's court of second instance shall, within three days, deliver the statement of appeal to the people's court that originally adjudicated the case for delivery to the people's procuracy at the same level and to the other parties.

**Article 133** People's procuracies at various levels that protest judgments or orders of first instance of the people's courts at the same level shall present the protest document through the people's court that originally adjudicated the case and shall send a copy of the protest document to the people's procuracy at the next higher level. The people's court that originally adjudicated the case shall send the protest document together with the case file and the evidence to the people's court at the next higher level and shall send copies of the protest document to the parties.

If the people's procuracy at the higher level considers the protest inappropriate, it may withdraw the protest from the people's court at the same level and notify the people's procuracy at the lower level.

**Article 134** A people's court of second instance shall conduct a complete review of the facts determined and of the law applied in the judgment of first instance, and shall not be limited to the scope of an appeal or protest.

In cases of joint crimes, if only some of the defendants appeal, a review of the entire case shall be conducted and everything handled together.

**Article 135** In cases where a people's procuracy presents a protest or where a people's court of second instance demands that the people's procuracy send personnel to appear in court, the people's procuracy at the same level shall send personnel to appear in court. The people's court of second instance must, ten days before opening the court session, notify the people's procuracy to examine the case file.

**Article 136** In a case of appeal or protest against a judgment of first instance, the people's court of second instance shall, after a hearing, handle the case according to the following circumstances, respectively:

1. If the determination of facts and the application of law in the original judgment are correct and the punishment appropriately decided, it shall order rejection of the appeal or protest and uphold the original judgment;

2. If the determination of facts in the original judgment contains no error but there is error in the application of law or the punishment is inappropriately decided, it shall revise the judgment;
3. If in the original judgment the facts are unclear or the evidence insufficient, it may revise the judgment after clarifying the facts; it may also order quashing of the original judgment and remand the case to the people's court that originally adjudicated it for a new adjudication.

**Article 137** In adjudicating a case appealed by a defendant or his legal representative, defender or close relatives, a people's court of second instance may not increase a defendant's criminal punishment.

The limitation provided in the preceding paragraph does not apply to a case where a people's procuracy presents a protest or a private prosecutor presents a protest.

**Article 138** When a people's court of second instance discovers that a people's court of first instance has violated the litigation procedures prescribed by law and that this may have influenced the correctness of the judgment, it shall quash the original judgment and remand the case to the people's court that originally adjudicated it for a new adjudication.

**Article 139** The people's court that originally adjudicated a case shall conduct the adjudication of a case remanded to it for new adjudication in accordance with the procedure of first instance. The parties may appeal and the people's procuracy at the same level may protest the judgment rendered after the new adjudication.

**Article 140** After reviewing an appeal or protest against an order of first instance, a people's court of second instance shall order rejection of the appeal or protest or quashing or revision of the original order, in accordance with the respective circumstances and with reference to the provisions of Articles 136, 138, and 139 of this Law.

**Article 141** The procedure for adjudication by a people's court of second instance of cases of appeal or protest shall, except where this Chapter has made other provisions, be conducted with reference to the provisions of the procedure of first instance.

**Article 142** The people's courts of second instance shall conclude adjudication within one month after receiving a case of appeal or protest, and may not take longer than one month and one-half at the latest.\*

**Article 143** The judgments and orders of second instance and the judgments and orders of the Supreme People's Court are all judgments and orders of final instance.

---

\* See note to Article 92 *supra*.

## CHAPTER IV: DEATH SENTENCE REVIEW PROCEDURE

**Article 144** Sentences of the death penalty are to be approved by the Supreme People's Court.

**Article 145** Cases of first instance where an intermediate people's court imposes a sentence of the death penalty and the defendant does not appeal shall be submitted to the Supreme People's Court for approval after review by the high people's court. When the high people's court does not agree with the sentence of the death penalty, it may bring the case up and adjudicate it or remand it for new adjudication.

Cases of first instance where a high people's court imposes a sentence of the death penalty and the defendant does not appeal and cases where a sentence of the death penalty is imposed in the second instance shall all be submitted to the Supreme People's Court for approval.\*

**Article 146** Cases where an intermediate people's court imposes a sentence of the death penalty with a two-year suspension of execution are to be approved by a high people's court.

**Article 147** The review of cases involving sentences of the death penalty by the Supreme People's Court and the review of cases involving sentences of the death penalty with suspension of execution by a high people's court shall be conducted by a collegial panel composed of three judges.

## CHAPTER V: PROCEDURE OF ADJUDICATION SUPERVISION

**Article 148** Parties, victims and their family members or other citizens may go to the people's courts or the people's procuracies to present petitions regarding judgments or orders that have already become legally effective, but the execution of such judgments or orders can not be suspended.

**Article 149** If chief judges of the people's courts at various levels discover that the determination of facts or application of law in judgments and orders of their court that have become legally effective contain actual error, they must send the case to the adjudication committee to be handled.

If the Supreme People's Court discovers that judgments and

---

\* The procedures of Article 144 and Article 145 have been modified by a decision adopted by the 19th session of the Standing Committee of the 5th National People's Congress on June 10, 1981, providing that, for 1981-1983, death sentences (even those not suspended) need only be approved by a high people's court and not by the Supreme People's Court, in cases of murder, robbery, rape, bombing, arson, poison, breaching of dikes, or sabotage of communications and power facilities. For the text of this decision, *see* FBIS-CHI, June 11, 1981, at K4 (trans.).

orders of the people's courts at various levels that have already become legally effective contain actual error, it has the right to bring the cases up and adjudicate them or to direct the people's courts at lower levels to readjudicate them.

If the Supreme People's Procuracy discovers that judgments and orders of the people's courts at various levels that have already become legally effective contain actual error or if the people's procuracies at higher levels discover the same to be true of judgments and orders of the people's courts at lower levels that have already become legally effective, they have the right to present a protest in accordance with the procedure of adjudication supervision.

**Article 150** A new collegial panel must be formed for the new adjudication of cases by the people's courts in accordance with the procedure of adjudication supervision. If the case was originally one of first instance, the adjudication shall be conducted according to the procedure of first instance, and the judgment or order made may be appealed or protested; if the case was originally one of second instance or was a case that a people's court at a higher level brought up and adjudicated, the adjudication shall be conducted according to the procedure of second instance and the judgment or order made is to be final.

#### PART IV: EXECUTION OF SENTENCES

**Article 151** Judgments and orders shall be executed after they become legally effective.

The following judgments and orders are judgments and orders that have become legally effective:

1. Judgments and orders where there has been no appeal or protest and where the legally prescribed time limit has already expired;
2. Judgments and orders of final instance;
3. Judgments of the death penalty approved by the Supreme People's Court and judgments of the death penalty with a two-year suspension of execution approved by the high people's courts.

**Article 152** In cases where the people's courts of first instance judge a defendant not guilty or exempt from criminal punishment, if the defendant is held in custody, he shall be released immediately after announcement of the judgment.

**Article 153** For judgments of the death penalty with immediate execution imposed or approved by the Supreme People's Court, the

Chief Justice of the Supreme People's Court shall sign and issue an order to execute the sentence of the death penalty.

Where a criminal sentenced to the death penalty with a two-year suspension of execution truly repents or demonstrates meritorious service during the period of suspension of execution of the sentence of the death penalty and should be granted a reduction of sentence according to law, the executing organ shall present a written opinion and submit it to the high people's court in the locality for an order; if there is verified evidence that he has resisted reform in a flagrant manner and his sentence of the death penalty should be executed, the high people's court must submit the matter to the Supreme People's Court for approval.

**Article 154** After receiving an order to execute the sentence of the death penalty from the Supreme People's Court, the people's courts at lower levels shall, within seven days, deliver the criminal for execution of the sentence. However, if one of the following circumstances is discovered, the execution of the sentence shall be suspended, and the matter shall be immediately reported to the Supreme People's Court, and an order made by the Supreme People's Court:

1. If before the execution of the sentence it is discovered that the judgment may contain error; or
2. If the criminal is pregnant.

After elimination of the first reason for suspension of execution of sentence specified in the preceding paragraph, before the sentence may be executed the matter must be submitted to the Chief Justice of the Supreme People's Court for him again to sign and issue an order to execute the sentence of the death penalty; in cases where the execution of the sentence is suspended for the second reason specified in the preceding paragraph, the matter shall be submitted to the Supreme People's Court for revision of the judgment according to law.

**Article 155** Before a people's court delivers a criminal for execution of the sentence of the death penalty, it shall notify the people's procuracy at the same level to send personnel to be present at the scene to supervise.

The adjudication personnel directing the execution of the sentence shall verify the identity of the criminal, ask if he has last words or letters, and then deliver him to the execution personnel for execution of the sentence of the death penalty. Before the execution of the sentence, if it is discovered that there may be an error, the execution of the sentence shall be suspended and the matter submitted to the Supreme People's Court for an order.



Execution of the sentence of the death penalty shall be publicly announced but shall not take place before the public.'

After execution of the death sentence the court clerk on the scene shall make a written record of it. The people's court that delivered the criminal for execution of the sentence shall report the circumstances of the execution of the death sentence to the Supreme People's Court.

After execution of the death sentence, the people's court that delivered the criminal for execution of the sentence shall notify the family of the criminal.

**Article 156** In cases of criminals sentenced to the death penalty with a two-year suspension of execution, to life imprisonment, to fixed-term imprisonment or to criminal detention, the people's court delivering the criminal for execution of the sentence shall deliver the notice of execution of the sentence and the judgment document to the prison or other place of reform through labor for execution of the sentence, and the executing organ shall inform the family of the criminal.

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

**Article 157** Criminals sentenced to life imprisonment, to fixed-term imprisonment or to criminal detention may, in one of the following circumstances, have their sentence temporarily executed outside of prison:

1. If a criminal has a serious illness and must remain out of custody and obtain medical treatment; or
2. If the criminal is a woman who is pregnant or is nursing her own baby.

In cases where a criminal's sentence is to be executed outside of prison, the public security organs may entrust the public security station at the criminal's original place of residence with the execution of the sentence, and basic-level organizations or the original unit of the criminal shall assist in conducting supervision.

**Article 158** A criminal who has been sentenced to a suspended fixed-term of imprisonment shall be turned over by the public security organs to his unit or to a basic-level organization for observation.

A criminal who has been paroled, during the probational period of parole, shall be supervised by the public security organs.

**Article 159** Sentences of criminals sentenced to control or deprivation of political rights shall be executed by the public security organs.

Upon completion of the execution of the sentence, the executing organs shall notify the criminal himself and publicly announce to the masses concerned the ending of control or the restoration of political rights.

**Article 160** Criminals who have been sentenced to pay a fine, who have not paid by the expiration of the time limit, shall be compelled to pay by the people's courts; in the case of a person who has true difficulties in paying because he has suffered irresistible calamity, an order may be made to reduce the fine or exempt him from payment.

**Article 161** All judgments of confiscation of property, regardless of whether it is being applied in a supplementary or independent manner, shall be executed by the people's courts, which may, when necessary, collaborate with the public security organs in executing such judgments.

**Article 162** In cases where a criminal commits further crimes during the period in which he is serving his sentence, or where criminal conduct is discovered that was not discovered at the time of judgment, prisons and reform through labor organs shall send the matter to the people's procuracy for handling.

When a criminal sentenced to control, to criminal detention, to fixed-term imprisonment or to life imprisonment truly repents or demonstrates meritorious service during the period of execution of his sentence and should be granted a reduction of sentence or parole according to law, the executing organ shall submit a written opinion to the people's court for consideration and an order.

**Article 163** If, while executing punishment, prisons and organs of reform through labor consider a judgment mistaken, or if the criminal presents a petition, the matter shall be referred for handling to the people's procuracy or the people's court that made the original judgment.

**Article 164** The people's procuracies shall exercise supervision to determine whether or not the execution of judgments or orders in criminal cases and the activities of prisons, detention houses, and reform through labor organs are lawful. If they discover any illegalities, they shall notify the executing organ to correct them.