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R.S.L.N Rivers State Administration of Criminal Justice Law _ _ _ _ _ A1

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Rivers State Administration of Criminal Justice Law

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Assented on this 17th day of September, 2016

Chief (Barr.) Nyesom Ezenwo Wike, CON
Executive Governor of Rivers State of Nigeria



Government of Rivers State of Nigeria

*A Law to provide for the administration of criminal justice in the
Courts of Rivers State and for other related matters.*

*General
Statement of
purpose.*

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*Date of
Commencem
ent*

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

Enactment

PART 1 PRELIMINARY

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

(2) The Courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with this Law for the realisation of its purposes.
2. (1) Without prejudice to section 86, this Law applies to criminal trials for offences established by a Law and other offences punishable in Rivers State. *Application*

(2) This Law shall not apply to a Court Martial

PART 2 - ARREST, BAIL AND PREVENTIVE JUSTICE

3. A suspect or defendant alleged to have committed an offence or charged with committing an offence established by a Law or any other offence punishable in Rivers State shall be arrested, investigated or tried according to this Law, except where otherwise provided in this Law. *Arrest generally.*
4. In making an arrest, the police officer or any other person 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. *Mode of arrest*
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 an order of Court.
6. (1) Where a police officer or any other person makes an arrest, he shall: *Notification of cause of arrest and rights of suspect.*
 - (a) immediately inform the suspect of the reason for the arrest in a language the suspect understands best; and
 - (b) where he or any law enforcement agent present does not speak a

language which the suspect best understands, inform the head of the police station or facility to which the suspect is taken of the language barrier, and the head of the station or facility shall immediately take reasonable steps to communicate the reason for the arrest to the suspect in the language he understands best.

- (2) Subsection (1) shall not apply to a suspect who:
- (a) having escaped from lawful custody, is re-arrested; and
 - (b) was told of the reason for his arrest when he was first arrested.
- (3) (a) the police officer or the person making the arrest at the point of arrest; or
- (b) the police officer in charge of a police station, where the arresting officer does not speak the language the suspect understands;
- shall inform the suspect of his rights to:
- (i) remain silent or avoid answering any question until after consultation with a legal representative or any other person of his choice;
 - (ii) consult a legal representative of his choice before he makes, endorses or writes any statement or answers any question put to him after arrest;
 - (iii) free legal representation by the Legal Aid Council of Nigeria where applicable;
 - (iv) be informed of the reason for his arrest;
 - (v) inform family members or friends of his detention;
 - (vi) be arraigned within a reasonable time; and
 - (vii) humane treatment and to be kept in a decent environment.
- (4) The arresting officer shall inform the suspect that where the suspect chooses to waive his rights in subsection (3) (b) (i) and (ii), any statement, verbal or written, given by the suspect may be presented as evidence in Court.
- (5) Where subsection (3) (i) and (ii) are not complied with, any statement oral or written purportedly made by the suspect:
- (a) after arrest but before he was informed of his rights or before conferring with his legal representative, whichever comes first, may be excluded by the Court if it considers that due to the particular circumstances of the defendant at the time the statement was made, it would be unfair to rely on the statement or comment; or
 - (b) shall be admissible where the suspect, by himself or through his

legal representative notifies the Court orally or the prosecutor in writing, that he has no objection to the use of the statement or comments in evidence notwithstanding the circumstances under which they were made.

(6) Without prejudice to subsection (5)(a):

(a) where a police officer of the rank of an inspector or above is of the opinion that further delay could lead to destruction of evidence, harm to witnesses or hinder recovery of evidence, he may give written and signed authorisation for the taking of the statement of the suspect, after waiting for the defendant's legal representative or any other person of his choice for a reasonable period; and

(b) notwithstanding the breach of subsections (3) (b) (i) and (ii), where a statement is taken under paragraph (a) of this subsection, the Court may admit the statement.

Provided that the authority having custody of the suspect shall have the responsibility of notifying the next of kin or relative of the suspect within a reasonable time but not longer than 2 hours after the arrest at no cost to the suspect.

7. No person shall be arrested in place of a suspect.

*Arrest in lieu
prohibited.*

8. (1) A suspect shall:

*Humane
treatment of
arrested
suspect.*

(a) be accorded humane treatment, having regard to his right to the dignity of his person;

(b) be kept in a decent cell with access to clean and an adequate restroom;

(c) not be subjected to any form of torture, cruel, inhuman or degrading treatment;

(d) have access to proper and adequate medical care; and

(e) be fed at reasonable times and intervals.

(2) No suspect shall be arrested merely on a civil wrong or breach of contract.

(3) A suspect shall be brought before the Court within a reasonable time or as prescribed by this Law, or be released conditionally or unconditionally.

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- (4) A female detainee shall not be detained with a male detainee.
- (5) The arraignment and trial of a suspect for a crime shall be in accordance with this Law unless otherwise stated in the law creating the offence.
9. (1) Where a suspect is arrested by a police officer or any other person, the officer making the arrest or to whom the person hands over the suspect for re-arrest: *Search of arrested suspect.*
- (a) shall take the suspect, if arrested and handed over by the person making the arrest, to the police station immediately without delay;
- (b) may search the suspect; and
- (c) shall record any article found, and place in safe custody any article other than necessary clothing worn by the suspect.
- (2) Subject to section 11, where the suspect is admitted to bail and bail is furnished, he shall not be searched unless there is a reasonable ground for believing that he has on him any:
- (a) stolen article;
- (b) instrument of violence or poisonous substance;
- (c) tools connected with the kind of offence which he is alleged to have committed; or
- (d) other article which may furnish evidence against him in regard to the offence, which he is alleged to have committed.
- (3) Where it is necessary to search a suspect, the search shall be made decently and by a person of the same sex unless the urgency of the situation or the interest of due administration of justice makes it impracticable for the search to be carried out by a person of the same sex.
- (4) Notwithstanding this section, a police officer or any other person making an arrest may take from the suspect, any instrument or thing that can cause injury, or any poisonous substance which he has on him.
10. (1) A police officer making an arrest or to whom a private person hands over the suspect, shall immediately record information about the suspect and an inventory of any item or property recovered from that suspect. *Inventory of property of arrested suspect.*
- (2) The police officer and the suspect shall sign the inventory recorded in subsection (1), but failure of the suspect to sign the inventory shall not invalidate it.

- (3) The Police officer shall give a copy of the inventory to the suspect, his legal representative or any other representative of the suspect.
 - (4) Where any property is taken from a suspect, a police officer may upon request by either the owner of the property or a party with interest in that property, release the property on bond pending the arraignment of the suspect before a Court provided it is not considered to be used as evidence or an exhibit in the case.
 - (5) Where a police officer refuses to release the property to the owner or person with interest in the property in subsection (4), the police officer or person with interest in the property may:
 - (a) make a report to the Court of the fact of the property taken from the suspect and the particulars of the property; and
 - (b) ask for guidance in the release of the property.
 - (6) The Court to which a report is made in subsection (5), may, if it is 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 with interest in the property, direct that the property or any portion of it be returned to the owner or person with interest in the property.
 - (7) Where any property is taken from a suspect in 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 committed an offence, the property taken from the suspect shall be returned to him, provided the property is neither connected to nor a proceed of an 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 is a reasonable ground to believe that an examination of his person will afford evidence as to the commission of the offence, a qualified medical practitioner or a certified professional with relevant skills, acting at the request of a police officer, may examine the suspect in custody as is reasonably necessary to ascertain the facts which may afford the evidence, and to use such force as is reasonably necessary for that purpose. *Examination of arrested suspect.*
12. (1) Where a person or police officer acting under a warrant of arrest or with authority to arrest, has reason to believe that the suspect to be arrested has entered into or is within a house or place, the person residing in or 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 *Search of place entered by suspect sought to be arrested.*

place and afford reasonable facilities to search the house or place for the suspect sought to be arrested.

- (2) Where access to a house or place cannot be obtained in subsection (1), the person or police officer may:
 - (a) enter the house or place and search it for the suspect to be arrested;
 - (b) in order to effect an entrance into the house or place, 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
 - (c) effect entry into the 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 occupied by a woman who by custom or religious practice does not appear in public, the person making the arrest shall before entering the house or place:
 - (a) give notice to the woman that she is at liberty to withdraw; and
 - (b) afford her every reasonable opportunity and facility for withdrawing.
- (4) Subsection 3 shall not apply where the person making the arrest is a woman.

13. A police officer or any other person authorised 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 a house or place for the 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 a suspect, and the person or police officer who conducts the arrest shall comply with section 6. *Arrested suspect to be taken immediately to police station.*
 - (2) Where section 6(1) is not satisfied at the point of arrest, the officer in charge of the police station shall immediately, on arrival of the suspect, take adequate steps to inform him of the reason for his arrest and his rights as provided in section 6 in a language that the suspect understands best.
 - (3) A law enforcement agent or person authorised by law who has custody of the suspect shall, within 24 hours of the arrest, give the suspect every reasonable facility for:

- (a) obtaining legal advice;
- (b) access to communication for taking steps to furnish bail; and
- (c) making arrangements for his defence or release.

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

Recording of arrests.

- (a) the alleged offence;
- (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) any other means of his identification.

(2) The process of recording in subsection (1) shall be concluded within a reasonable time of the arrest of the suspect, but not exceeding 24 hours.

(3) Pursuant to subsection (1), any further action taken in respect of the suspect shall be entered in a record of arrests.

16. (1) Pursuant to section 16 of the Administration of Criminal Justice Act 2015, the Chief Judge shall, in consultation with the Administration of Criminal Justice Monitoring Council, set up a mechanism and framework for transmitting decisions of Courts and all required criminal records to Rivers State Police Command Criminal Records Registry.

Transmitting to the Criminal Records Registry.

(2) Pursuant to subsection (1), the decisions of the Court or the required criminal records shall be transmitted from the Court to the State Criminal Records Registry not later than 2 weeks after the:

- (a) Court's final verdict on the substantive offence or offences; or
- (b) Court's sentence.

17. (1) Where a suspect is arrested on an allegation of having committed an offence, his statement shall be taken, if he wishes to make a statement.

Recording of statement of suspect.

(2) (a) Subject to sections 6 and 14, where a suspect who is arrested with or without a warrant volunteers to make a statement:

- (i) the police officer shall ensure that the making and taking of the statement are in writing; and

- (ii) the statement may be recorded electronically on a retrievable video compact disc or device, or on any other audio or visual device.
 - (b) Where the statement is electronically recorded:
 - (i) a copy of the electronically recorded statement shall be given to the suspect; and
 - (ii) the original recording shall be sealed and signed in the presence of the suspect.
 - (3) The statement shall be:
 - (a) taken in the presence of:
 - (i) a legal representative of his choice; or
 - (ii) an officer of the Legal Aid Council, an official of a Civil Society Organization, a Justice of the Peace or any other person of his choice, where he has no legal representative of his choice; or
 - (b) recorded electronically on a retrievable digital audio disc or device or recordable audio device either in the presence or absence of a legal representative of his choice or any other person of his choice.
- Provided that the Legal representative 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 representative.
- (4) Where a suspect does not understand, speak or write in the 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 any other particulars on the statement.
 - (6) The suspect in subsection (1) shall endorse the statement with his full particulars.
 - (7) Where a suspect is represented at the taking of his statement, the legal representative or other representative shall endorse the statement.
 - (8) Notwithstanding subsection (4), an oral confession of an arrested suspect may be admissible in evidence.

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 an 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 Nigeria which, if committed in Nigeria, would have been punishable 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, stealing, 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 warrant of arrest 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 planning 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
 - (l) required to appear by a public summons issued in this law or any other legislation.
- (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 an offence 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 has:

*Refusal to give
name and
residence.*

(a) committed an offence in the presence of a police officer; or

(b) been accused of committing an offence triable summarily,

refuses on demand by 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.

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

(3) Where:

(a) the true name and address of the suspect cannot be ascertained within 24 hours from the time of arrest; or

(b) the suspect fails to execute a recognizance or furnish sufficient sureties where required,

He shall without delay be brought before the nearest Magistrate or Judge having jurisdiction.

(4) Where the suspect on being brought before the Court still refuses to give his name and residential address, the Court may deal with him as it would normally deal with an uncooperative witness in this Law.

20. A private person may arrest a person in Rivers State, who commits an offence in his presence, 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.*

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 servant, agent or a person authorised by him.

*Arrest by owner
of property.*

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

*Arrest of
suspect doing
damage to
public property.*

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

*Handing over
of an arrested
suspect by
private person.*

(2) Where there is a reason to believe that the suspect falls under section 18 (1), a police officer shall re-arrest him.

(3) Where there is a reason to believe that the suspect has committed an offence, and he refuses on the demand by 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 in accordance with section 19.

(4) Where a suspect 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:

- (a) the name and residential address of the private person making the arrest;
- (b) any other particular of the private person making the arrest; and
- (c) the date, time and other circumstances of the arrest,

and where the 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 committed an offence, he shall immediately be re-arrested but if there is no sufficient reason within 24 hours of his arrest to believe that the suspect committed an offence, he shall be released immediately.

(7) Section 15 does not apply to this section unless the suspect arrested and

handed over is re-arrested in accordance with subsection (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 arrest or order a person to arrest the suspect and may, subject to the provisions of 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 of a suspect in his presence 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 under section 23 or 24, the Judge or Magistrate making or directing the making of the arrest may deal with the suspect arrested in the same manner as if the suspect is 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 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. A person is bound to assist a Judge, Magistrate, Justice of the Peace, police officer or other person reasonably demanding his aid in arresting or preventing the escape of a suspect whom the Judge, Magistrate, Justice of the Peace, police officer or other person is authorised to arrest. *When public is bound to assist in arrest.*
28. A person authorised to arrest a suspect may, for the purpose of arresting the suspect, pursue him to any part of Nigeria. *Pursuit of suspect into other jurisdictions.*
29. (1) The Rivers State Commissioner of Police and head of an agency authorised by law to make arrest within the State shall send a quarterly report to the Attorney-General which shall contain a record of all arrests made with or without warrant in the State. *Quarterly report of arrests to the Attorney-General*
- (2) The report shall contain the full particulars of an arrested suspect as prescribed by section 15.

- (3) A register of arrests containing the particulars provided in section 15 shall be kept in the prescribed form at every police station or agency authorised by law to make an arrest, and any arrest, whether made with or without warrant, within the local limits of the police station or agency, shall be entered 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 shall establish and maintain an electronic or manual database of all records of arrests at the State level and he shall transmit or transfer these records to the national database established by the Attorney-General of the Federation.
30. (1) Where a suspect is taken into police custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station shall inquire into the case and if it will not be practicable to bring the suspect before a Court having jurisdiction with respect to the offence alleged within the time allowed by law, the officer shall, within 24 hours after the arrest, release the suspect on bail subject to subsection (2). *Release on bail of a suspect arrested without warrant.*
- (2) The officer in charge of the police station shall release the suspect on bail on his entering into a recognizance with or without a surety for a reasonable amount of money to appear before the Court or at the police station at the time and place named in the recognizance.
- (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 suspect shall be detained in custody, and the police officer shall 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 immediately, he may discharge the suspect on his entering into a recognizance, with or without a surety for a reasonable amount, to appear at the police station and at the time named in the recognizance, 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 recognizance in subsection (1) may be enforced as if it is a

recognizance conditional for the appearance of the suspect before a Magistrate's Court or the place in which the police station named in the recognizance is situate.

32. (1) Where a suspect who is taken into custody in respect of a non-capital offence is not released on bail after 24 hours, a Court having jurisdiction with respect to the offence may be notified by application on behalf of the suspect. *Remedy of suspect detained in custody.*
- (2) The Court shall order the production of the suspect detained and inquire into the circumstances constituting the grounds of the detention and where it deems fit, admit the suspect to bail.
Provided that where the suspect's legal representative brings an application before the Court for bail, the Court shall immediately, notwithstanding that the suspect is absent from Court, inquire into the circumstances constituting the grounds for detention, and where it deems fit, admit the suspect to bail.
- (3) Where the suspect has no legal representation, the police in charge shall immediately notify the nearest Court of why the suspect has neither been granted bail nor arraigned before a Court of competent jurisdiction, and the Court shall:
- (a) based on the written information, determine whether to admit the suspect to bail; or
 - (b) nominate to serve as the suspect's legal representative, a Legal Aid Council lawyer within jurisdiction pending when the suspect can afford the services of a legal representative of his choice or can secure the services of a legal representative of his choice as the case may be.
- (4) Subject to the discretion of the Court, an application for bail in this section may be made orally or in writing, provided that where an application in this section is made orally, the Court may take details of every surety on oath and examine any other relevant information and document pertaining to the surety that are necessary for making a decision.
33. (1) An officer in charge of a police station or official in charge of an agency authorised to make an arrest shall, on the last working day of every month, report to the nearest Magistrate cases of suspects arrested without warrant within the limits of the station or agency whether the suspects have been admitted to bail or not. *Police to report to supervising Magistrates.*

- (2) The report shall contain particulars of the suspects arrested as provided in section 15.
 - (3) The Magistrate shall, on receipt of the report, forward it to the Administration of Criminal Justice Monitoring Council which shall analyse the reports and advise the Attorney-General as to the trends of arrests, bail and related matters.
 - (4) The Attorney-General may, 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 subsection (1), the Magistrate shall forward a report to the Chief Judge and the Attorney-General for appropriate remedial action.
34. (1) The Chief Judge or a judge nominated by him shall visit prisons in the State at least once in 3 months, and during his visit, he shall: *Chief Judge to visit prisons.*
- (a) ascertain the inmates awaiting trial;
 - (b) establish how long they have been awaiting trial; and
 - (c) where the circumstances and the justice of a case in paragraph (b) allow:
 - (i) consider the release of inmates who have been in custody awaiting trial for a period which is longer than a reasonable sentence that could have been imposed if they had been convicted for the offences they have been charged with; or
 - (ii) arrange to expedite their trials;
 - (d) consider dealing with inmates and prisoners as the circumstances and justice of the case dictate; and
 - (e) consider bail for inmates.
- (2) The Chief Magistrate, subject to the approval of the Chief Judge, shall designate, for a judicial division, a minimum of two magistrates to conduct on a monthly basis, an inspection of police stations or other places of detention within his designated judicial division other than the prison. *Chief Magistrate to visit police stations every month.*
- (3) During a visit, the Magistrate Shall:
- (a) inspect the record of arrests;

- (b) direct the arraignment of a suspect; and
 - (c) where bail has been refused, grant bail to a suspect where appropriate if the offence for which the suspect is held is within the jurisdiction of the Magistrate.
- (4) An officer in charge of a police station or official in charge of an agency authorised to make an arrest shall make available to the visiting Chief Magistrate or designated Magistrate exercising his powers under subsection (1):
- (a) the record of arrest and record of bail;
 - (b) any application and decision on bail made within the period; and
 - (c) any other facility the Magistrate requires to exercise his powers under that subsection.
- (5) Where there is a default by an officer in charge of a police station or official in-charge of an agency authorised to make an arrest to comply with the provisions of subsection (3), the default shall be treated as a misconduct and shall be dealt with in accordance with the relevant Police Regulations under the Police Act, or pursuant to any other disciplinary procedure prescribed by a provision regulating the conduct of the officer or official of the agency.

PART 3 - WARRANTS

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

*General
authority to
issue warrant.*

- 36 (1) A warrant of arrest issued under this Law, unless the contrary is expressly provided in 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:

- (a) state concisely the offence or matter for which it is issued;
- (b) name or describe the suspect to be arrested; and
- (c) order the police officer or officers to whom it is directed to arrest the suspect and bring him before the Court to:
 - (i) answer the complaint or statement;
 - (ii) testify; or
 - (iii) 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 or by a material witness. *Warrant to be issued 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. *Warrant, to whom directed and duration.*
- (2) It is not necessary to make a warrant of arrest returnable at any particular time and a warrant remains 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 is released, the warrant shall no longer be a valid authority for re-arresting the suspect.
40. (1) A Court issuing a warrant of arrest may, where its immediate execution is necessary and no police officer is immediately available, direct it to another person and the person shall execute it. *Warrant of arrest may in exceptional cases be directed to other persons.*
- (2) A person, when executing a warrant of arrest directed to him, shall have powers, rights, privileges and protection given in accordance with the 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 that Court, another 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 time not less than 30 days from the date of publishing the public summons. *Public summons for person absconding.*
42. (1) A public summons shall be published: *Publication of public summons.*
- (a) in a newspaper that has wide circulation or circulated in any other medium as may be appropriate;
- (b) by affixing it to a conspicuous part of the house or premises or to a

conspicuous place in the town or village, in which the person ordinarily resides; or

(c) by affixing a copy to a conspicuous part of the High Court or Magistrates' Court building.

(2) Where a Judge of the High Court or a Magistrate states in writing that the public summons was duly published on the specified day, it shall be conclusive evidence that requirements of this section have been complied with and that the public summons was published on that 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 a police officer at a time and place in any State excluding inside the Courtroom in which a Court is sitting.

(3) The police officer or any other person authorised in section 40 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 cause an escape, a resistance or rescue of the suspect.

(4) Subject to the Constitution of the Federal Republic of Nigeria, and sections 44 and 45 of this Law, a suspect arrested on a warrant of arrest shall be brought before the Court that issued it.

44. (1) A warrant may be executed notwithstanding that the person executing it does not have the warrant at the time of executing the warrant. *Power to arrest on warrant but without the warrant.*

(2) Pursuant to subsection (1), the person executing the warrant shall, on demand by the suspect, show the warrant to the suspect as soon as practicable after his arrest.

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 a recognizance 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 the:

(a) number of sureties, if any;

(b) amount in which the sureties 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) Court before which the suspect is to attend; and
 - (d) time at which the suspect is to attend, including an undertaking to appear at a subsequent time as may be directed by a Court before which he may appear.
- (3) Where an endorsement is made and the suspect named in the warrant is arrested and brought to the police station, the officer in charge of that station shall discharge him on his entering into a recognizance, with or without sureties approved by the officer, in accordance with the endorsement, conditions for his appearance before the Court and at a time and place named in the recognizance.
- (4) Where security is taken in this section, the officer who takes the recognizance shall forward it to the Court before which the suspect named in the recognizance is bound to appear.
- (5) Subject to section 46, 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, be taken before the Court within the division or district in which the arrest was made.
- Procedure on arrest of suspect outside division or district of Court issuing warrant.*
- (2) Where the Court, on conducting an inquiry which it deems necessary, is satisfied that the suspect appears to be the one intended to be arrested by the Court which issued the warrant, it shall direct his removal in custody to that Court, if the suspect is arrested in respect of a 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 is endorsed in section 45 on the warrant and the suspect is ready and willing to give the security required by the direction,
- the Court shall take bail or security and forward the recognizance to the Court which issued the warrant.
- (3) Nothing in this section is deemed to prevent a police officer from taking security in section 30.

47. (1) A warrant of arrest issued by the High Court may be executed in any part of Nigeria. *Warrant issued by the High Court.*
- (2) A warrant issued in this section may be executed in accordance with section 44.
48. Where a suspect in lawful custody escapes or is rescued, the person from whose custody he escaped or is rescued or any other person may pursue and re-arrest him in any place in Nigeria. *Re-arrest of suspect escaping.*
49. Sections 12 and 13 apply to an arrest in section 48, although the person making the 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 arrests in section 48.*

PART 4 - PREVENTION OF OFFENCES AND SECURITY FOR GOOD BEHAVIOUR

50. (1) A police officer may intervene for the purpose of preventing the commission of an offence, and shall, to the best of his ability, prevent the commission of that offence. *Police to prevent offences and injury to public property.*
- (2) A police officer may use his authority to intervene to prevent any injury or damage attempted to be committed in his presence to a public property, whether movable or immovable, or he may remove any injury or damage to a public landmark or thing whether on land, water or in the air.
51. A police officer receiving information of a plan to commit an 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 offence.*
52. Notwithstanding the provisions of this Law or any other law relating to arrest, a police officer on a reasonable suspicion of a plan to commit an offence may arrest, without orders and a warrant from a Magistrate, the suspect where it appears to the officer that the commission of the offence cannot be prevented. *Arrest by police to prevent offences.*
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: *Prevention by other public officers of offences and injury to public property.*

- (a) the commission of an offence, for which he is authorised to arrest without a warrant; or
- (b) damage to a public property, movable or immovable.

- (2) A person is bound to assist a Judge, Magistrate, police officer or any other public officer reasonably demanding his aid in the:
 - (a) prevention of, and shall to the best of his ability, prevent:
 - (i) the commission of an offence for which he is authorised to arrest without a warrant; or
 - (ii) damage to a public property, movable or immovable;
 - (b) suppression of a breach of the peace or in the prevention of a damage to a property, movable or immovable or to a railway, canal, water supply, telecommunication system, oil pipeline or installation, or electrical installation; or
 - (c) prevention of the removal of a public landmark, buoy or other mark used for navigation.

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

Power of Magistrate to require execution of recognizance for keeping peace.

- (a) commit a breach of the peace or disturb public tranquillity; or
- (b) do a wrongful act that may probably occasion a breach of the peace or disturb public tranquillity,

the Magistrate may, in the manner provided in this Part, require the suspect to show cause why he should not be ordered to enter into a recognizance, with or without sureties, for keeping the peace for a period, not more than 12 months, as the Magistrate deems fit.

- (2) No proceeding shall be taken in this section unless the suspect is:
 - (a) in the State; and
 - (b) the subject of the information in subsection (1) within the jurisdiction of the Magistrate, or the place where the breach of the peace or disturbance occurred or where the suspect is, is within the jurisdiction of the Magistrate.

55. Where a Magistrate is informed on oath that:

Security for good behaviour for suspected persons.

- (a) a suspect is taking precaution 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 precaution 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 recognizance, with sureties, for his good behaviour for a period not more than 12 months, 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;
- (d) habitually commits or attempts to commit, or aids or abets the commission of any offence relating to property;
- (e) habitually commits or attempts to commit, or aids or abets in the commission of an 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,

the Magistrate may, in the manner provided in this Law, require the suspect to show cause why he should not be ordered to enter into a recognizance with sureties for his good behaviour for a period, not exceeding 3 years, as the Magistrate deems fit.

57. Where a Magistrate acting under sections 54, 55 or 56 considers it necessary to require a suspect to show cause under the section, he shall make an order in writing setting out the:

Order to be made.

- (a) substance of the information received;
- (b) amount of the recognizance to be executed;
- (c) term for which it is to be in force; and
- (d) number, character, and class of sureties, if any, required.

58. (1) 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.

- (2) Where the suspect is not in Court but his legal representative is, the order shall be deemed to have been read and explained to the suspect unless the

legal representative satisfies the Court that he cannot contact the suspect.

59. (1) Where neither the suspect nor his legal representative is 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.
- (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 other 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 in section 59 shall be accompanied by a copy of the order made in section 57, 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.
61. The Magistrate may, where he sees sufficient cause, dispense with the personal attendance of a suspect called to show cause why he should not be ordered to enter into a recognizance for keeping the peace, and may permit him to appear by a legal representative.
62. (1) Where an order in section 57 is read or explained in section 58 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, the Magistrate shall inquire into the truth of the information upon which the action has been taken, and to take further evidence as may appear necessary.
- (2) The inquiry shall be made, as nearly as may be practicable, in the manner prescribed in this section for conducting trials, and recording evidence, except that the standard of proof shall be that of preponderance of evidence.
- (3) Pending the completion of the inquiry in subsection (1), the Magistrate may for reasons to be recorded in writing, if he considers that immediate measures are necessary for the prevention of:

Summons or warrant in case of suspect not present.

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

Power to dispense with personal attendance.

Inquiry as to truth of information.

- (a) a breach of the peace or disturbance of public tranquillity; or
- (b) the commission of an offence or for public safety,

direct the suspect in respect of whom the order in section 57 is made, to enter into a recognizance, 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 recognizance is entered into or, in default of execution, until the inquiry is concluded

- (4) For the purposes of subsection (3):
 - (a) a suspect against whom proceedings are not being taken in section 54 shall not be directed to enter into a recognizance for maintaining good behaviour;
 - (b) the conditions of the recognizance, 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 in section 58; and
 - (c) no suspect shall be remanded in custody under the powers conferred by this section for more than 15 days at a time.
- (5) For the purposes of this section, the fact that a suspect comes within section 55 may be proved by evidence of general repute or otherwise.
- (6) Where two or more suspects are 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 an inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, that the suspect in respect of whom the inquiry is made should enter into a recognizance, with or without sureties, the Magistrate shall make an order accordingly, but:

Order to give security

- (a) a suspect shall not be ordered to give security:
 - (i) of a nature different from;
 - (ii) of an amount larger than; or
 - (iii) for a period longer than,that specified in the order made in section 57 ;
- (b) the amount of a recognizance 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 recognizance shall be entered into as provided in section 171.

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

64. Where on an inquiry in section 59, it is not proved that it is necessary for keeping the peace or maintaining good behaviour that the suspect in respect of whom the inquiry is made should enter into a recognizance, the Magistrate shall make an entry on the record to that effect, and shall, if the suspect is:
- (a) in custody only for the purpose of the inquiry, release him; or
 - (b) not in custody, discharge him.

Discharge of suspect informed against.

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

65. (1) Where a suspect in respect of whom an order requiring security is made in section 57 is, at the time the order was 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.
- (2) In any other case, the period shall commence on the date of the order unless the Court, for sufficient reason, fixes a later date.
66. The recognizance to be entered into by a suspect in section 57 shall bind him to keep the peace or be of good behaviour, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling, or procuring the commission, anywhere in Nigeria, of an offence punishable with imprisonment, wherever it may be committed, at any time during the continuance of the recognizance, shall be a breach of the recognizance.
67. A Court may refuse to accept a surety offered in any of the preceding sections on the ground that, for reasons to be recorded by the Court, the surety is an unfit person.
68. (1) Where a suspect ordered to give a security does not give the security on or before the commencement date of the security period, he shall be committed to prison until:
- (a) the period expires; or
 - (b) he gives the security to the Court that made the order requiring it within the security period.
- (2) Subsection (1) shall not apply in the cases mentioned in other sections of this Law.

Commencement of period for which security is required.

Conditions of recognizance.

Power to reject sureties.

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 it deems fit, order the suspect to be discharged. Power to release suspect imprisoned for failure to give security.
70. Where a recognizance for keeping the peace or for good behaviour is executed under any of the preceding sections by order of a lower Court, the High Court may at any time, for sufficient reasons to be recorded in writing, cancel the recognizance. 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 recognizance executed in 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 he is satisfied that there is good reason for the application, issue a 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 recognizance and order the suspect to give, for the unexpired portion of the term of the recognizance, fresh security for the unexpired portion of the same description as the original security.
- (4) An order made in subsection (3) shall, for the purposes of sections 65, 66, 67 and 68, be deemed to be an order in section 57.

PART 6 - PUBLIC NUISANCE

72. (1) Where a Court, on receiving a police report or other information and on taking evidence, if any, as it deems fit, considers that an offence relating to public nuisance is being committed, the Court may make a conditional order requiring the suspect to: Conditional order for removal of nuisance.
- (a) cease committing the offence and to amend or remove the cause of the nuisance within a time fixed in the order and in a manner specified in the order; or
- (b) appear before the Court at a time and place fixed by the order and apply to have the order set aside or modified in the manner provided.
- (2) The Judge or Magistrate may take evidence in chambers where the informant is a member of the public.

- (3) The Judge or Magistrate may allow the informant to give evidence anonymously or behind screens and such a witness may be treated as a vulnerable or an intimidated witness for the purposes of sections 239 (3) and 267.
- (4) The details of the informant shall not appear in the Court processes served on the suspect.
73. (1) An order made in section 72 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 in subsection (1) cannot be served in the manner laid down in that subsection, it may be served:
- (a) by registered letter through the post addressed to the suspect against whom it is made at his last known address; or
 - (b) where his last address is not known, by affixing a notice in a conspicuous place in the town or village or near which the nuisance or offence is being committed.
74. A suspect against whom an order in section 72 is made shall: Suspect to whom order is addressed to obey or appear before Court.
- (a) perform the act directed by the order within the time and manner specified in the order; or
 - (b) appear in accordance with the order and apply to have the order set aside or modified.
75. (1) Where a suspect against whom an order in section 72 is made does not perform the act specified in the order or appear and apply to have the order set aside or modified, he is liable, where the act, conduct or omission: Consequences of failure to obey order or to appear.
- (a) offends public safety or causes any other form of unreasonable interference or inconvenience to the public, to a fine not less than N100,000.00 for an individual or a business name, and not less than N1,000,000.00 in the case of a corporate body or imprisonment for a term of six months, provided that the Court may impose separate amounts of fines for each day from the date the first order was made in section 72 until the date the nuisance was abated; or

- (b) threatens human or aquatic life, or environmental degradation, to a fine not less than N200,000.00 for individual or a business name, and not less than N2,000,000.00 in the case of a corporate body or imprisonment for a term of 12 months, provided that the Court may impose separate amounts of fines for each day from the date the first order was made under section 72 until the date the nuisance was abated.
- (2) Where the offence is committed by a body corporate every director and other person concerned in the management of the body corporate commits the offence unless that person proves that:
- (a) the offence was committed without his knowledge or connivance; and
 - (b) he exercised all such diligence to prevent the commission of the offence as ought to have been exercised by that person having regard to the nature of his functions in that capacity and to all the circumstances.
76. (1) Where a suspect in section 72 (1) (b) 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 the 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 in section 72 which is made absolute in section 75 or 76 (2) (a) is not performed within the time fixed and in the manner specified in the order, the Court may cause it to be performed and may recover the cost of performing it by: Consequences of disobedience to order made absolute.
- (a) the sale of any building, goods or any other property removed by its order; or
 - (b) seizure and sale of any other movable property of the person against whom the order in section 72 was made in the manner prescribed in this Law for the recovery of a fine.
78. (1) Where the Court making an order in section 72 considers that immediate Order pending inquiry.

measures should be taken to prevent imminent danger or injury of a serious kind to the public, it may issue any further order to the suspect against whom the original order was made as is required to prevent the danger or injury pending the determination of the matter.

- (2) If in default of the further order in subsection (1), the suspect is found to be immediately disobeying the further order 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 any means as it deems fit to prevent the danger or injury.

79. A Court may, in any proceeding in this Part or in any criminal proceeding in respect of a public nuisance, order a suspect not to repeat or continue the public nuisance. Prohibition of repetition or continuance of nuisance.

PART 7- ATTACHMENT WHERE A PERSON DISOBEYS SUMMONS OR WARRANT

80. A Judge or Magistrate may, at any time after action is taken in section 41 or on an application made in that regard after summons or warrant is issued but disobeyed, order the attachment of a property, movable or immovable or both, belonging to a suspect the subject of a public summons or warrant. Attachment of property of suspect absconding.
81. (1) An order in section 80 shall authorize a public officer named in it to attach a 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) No property under attachment shall be sold until the expiration of 3 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 case the Judge or Magistrate may cause it to be sold whenever he thinks fit.
82. (1) Where within 1 year from the date of the attachment, a suspect, whose property is or has been at the disposal of the Court in section 80, appears voluntarily or being arrested is brought before the Court and proves to Restoration of attached property.

the satisfaction of the Court that he:

- (a) did not abscond or conceal himself for the purpose of avoiding execution of the warrant; and
- (b) had no notice of the public summons or warrant as to enable him to attend within the time specified,

the property, where it has not been sold, and the net proceeds of any part of it which is sold, after satisfying from the proceeds any cost incurred in consequence of the attachment, shall be delivered to him.

- (2) Where, after 1 year from the date of attachment, the suspect whose property is attached or is 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 giving reasons in writing, issue a warrant for the arrest of the suspect 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 issuance of the summons, the Court or Justice of the Peace sees reason to believe that the suspect has absconded or will not obey the summons; or
 - (b) at the time fixed for his appearance, the suspect fails to appear and the summons is proved to have been duly served in time to allow for his appearance and no reasonable excuse is offered for his failure to appear.
- (2) A Court or Justice of the Peace empowered by this Law to issue a warrant for the arrest of a suspect may issue a summons in place of a warrant where he deems 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 in this Part relating to summonses, warrants and their issue, service and execution shall, so far as may be, apply to every summons and warrant issued in this Law
- Provisions of this Part 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 shall apply to all criminal trials and proceedings unless express provision is made in respect of a particular Court or form of trial or proceeding. Application of Part 8.
87. A Court has authority to compel the attendance of a suspect before it who is within the jurisdiction and is charged with an offence committed in the State or outside the State which according to law, may be dealt with as if the offence is committed within the jurisdiction. General authority to bring suspect before a Court.
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) A police officer may make a complaint in a case of assault even though the aggrieved party refuses to make a complaint, notwithstanding anything to the contrary contained in any other law.
89. (1) A complaint: Form of complaint.
- (a) may not be in writing, unless it is required by the law on which it is founded or by another law to be in writing; and
- (b) not made in writing, shall be reduced into writing by the Court or registrar.
- (2) Subject to section 54, a complaint may be made without oath, unless required by another law.
- (3) A complaint may be made by the complainant in person, by his legal representative or by a person authorized in writing by him.
- (4) A complaint shall be for one offence only, but the complaint shall not be avoided by describing the offence, or any material act relating to it in alternative words in accordance with the language of the law creating the offence.
- (5) A complaint made to the Court directly in this section shall first be referred to the police for investigation before an action is taken by the Court.
90. A complaint, summons, warrant or any other document laid or issued in Form of

connection with any proceedings before a Court for an offence, shall be sufficient if it contains a statement of the specific offence with which the suspect is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

documents in criminal proceedings.

- 91 (1) A defendant may prove any exception, proviso, exemption, condition, excuse or qualification, whether it does or does not accompany an offence in the enactment which creates and describes the offence.

Rule as to statement of exception.

(2) The proof in subsection (1) need not be specified or refuted in the complaint, and where it is specified or refuted, no proof in relation to the matter specified or refuted shall be required on the part of the complainant.

92. In a case where there is no time limit for making a complaint for a summary conviction of an offence in the law relating to the offence, the complaint, if it is not made by a person in his official capacity, shall be made within 6 years from the time when the matter of the complaint arose.

Limitation of period for making a private complaint.

PART 9 - PLACE OF TRIAL OR INQUIRY

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

Venue generally.

- (a) the offence was wholly or partly committed or some act forming part of the offence was done;
- (b) the consequence of the offence has ensued;
- (c) the 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 with knowledge 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 not to do so otherwise for security reasons.

(3) The Commissioner of Police shall post one or more armed policemen to provide security during a criminal trial.

94. An offence committed while the suspect is in the course of performing a journey may be tried or inquired into by a Court in the State, division or

Offence committed on a

- 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.
95. (1) Where an offence is committed in a division or district and completed in another division or district the suspect may be tried and punished as if the offence had, in fact or wholly, been committed in any of the divisions or districts. Offence commenced and completed in different divisions or districts.
- (2) Where there is a conflict as to which of the two or more Courts of the State ought to inquire into or try the offence, it shall be decided by the Chief Judge. Chief Judge to decide question as to Court of inquiry or place of trial.
96. A person suspected of committing an offence against a law, which the House of Assembly has power to make, can be tried in the State if he is apprehended or found within the State, notwithstanding that the offence or any part of the offence did not occur within the State. Jurisdiction over offences committed elsewhere.
97. (1) The Chief Judge 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 public peace, transfer a case from one Court to another. Chief Judge may transfer a case.
- (2) The Chief Judge may not exercise the power in subsection (1) where the prosecution has called witnesses.
- (3) Subsection (2) shall not apply where a hearing has commenced and witnesses have been called in a case and due to the particular circumstances of the case, the Chief Judge may move the Court to another venue in the interest of justice and the public, integrity of the Court process, public order or security reasons.
98. A Court before which a person charged with an offence is brought shall, where: When cases 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,
- send the case and all processes relating to the case, within a reasonable period not later than 7 days, to the head of Court for reassignment 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.

99. (1) Where a suspect is to be remanded in custody in section 98, a warrant shall be issued by the remitting Court and that warrant shall be sufficient authority to a person to whom it is directed to: Removal under warrant.

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

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

100. Where a suspect is:

- (a) in custody and the Court directing a transfer thinks it expedient that the custody should be continued; or

Transfer of case where cause of complaint has arisen out of jurisdiction of Court.

- (b) not in custody and the Court thinks it expedient 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 where the cause of complaint arose.

101. (1) Notwithstanding sections 93 and 98, a Judge or Magistrate of a division or district in which a suspect:

Court may assume jurisdiction under certain conditions.

- (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 as if the offence had been committed in the division or district.

- (2) The offence in subsection (1) shall, for all purposes, be deemed to have been committed in that division or district.
102. Where a case is commenced in another division or district other than that in which it ought to have been commenced, the Court may assume jurisdiction in accordance with section 101 and an act performed and a decision given by the Court during the trial or any other proceedings are deemed to be valid as if the jurisdiction had been assumed prior to the performance of the act and the giving of the decision. Assumption of jurisdiction after commencement of proceedings.
103. Where an offence against an Act is: Offences against an Act
- (a) commenced in the State and completed in another State; or
- (b) completed in the State after being commenced in another State, the offender may be tried and punished as if the offence had been actually or wholly committed in the State.

PART 10 - POWERS OF THE ATTORNEY-GENERAL OF THE STATE

104. (1) Notwithstanding anything to the contrary in this Law or any other Law in the State, the Attorney-General may prefer or exhibit an information or charge in respect of an offence triable on information or charge created by a law or an Act, the prosecution for which offence or an element of which has been committed in the State. Information by the Attorney-General.
- (2) The Attorney-General may authorize another person to exercise any or all the powers conferred on him in this section.
- (3) Where a:
- (a) person other than the Attorney-General, on behalf of the State, initiates or prosecutes in a criminal proceeding for an offence against a Law; or
- (b) public officer initiates or prosecutes in his official capacity in that criminal proceeding, the person or public officer shall initiate or prosecute the case subject to any general or specific direction as the Attorney-General may give.
105. (1) The Attorney-General may issue legal advice or other directive to the Police or any other law enforcement agency in respect of an offence Issuance of legal advice and other

created by a Law of the State.

directives to
police.

- (2) The Commissioner of Police shall:
- (a) within 48 hours of the completion of his investigation; or
 - (b) where he decides that there is a *prima facie* case,
- whichever is earlier, forward a duplicate case file with respect to an offence triable on information to the office of the Attorney-General for the purpose of issuing legal advice.
- (3) The legal advice issued by the Office of the Attorney-General with respect to an offence triable on information or a person is conclusive.
- (4) Notwithstanding subsections (2) and (3), the Attorney-General may request from the Police or any other agency for the case file or duplicate case file in a matter in respect of an offence created by a Law and the Police or other agency shall immediately send the case file as requested.
- (5) (a) Where the facts of a Police duplicate file forwarded to the Office of the Attorney-General in a proceeding with respect to an offence triable on information against a Law of the State indicate a *prima facie* case against a person, the Attorney-General shall inform the Magistrate in writing by way of legal advice through an officer in his Chambers or the prosecuting Police Officer.
- (b) The legal advice in paragraph (a) may be an edited or summarised version of the Attorney-General's legal advice.
- (6) (a) The office of the Attorney-General shall ensure service of a copy of the legal advice or an edited or summarized copy of it on a person in respect of whom legal advice is preferred through the:
- (i) prison authority if the person is remanded in custody; or
 - (ii) appropriate Court if the person is on bail.
- (b) The Legal advice in paragraph (a) includes edited or summarized legal advice.
- (7) A form indicating a desire to be represented by counsel of his choice or by the office of the Public Defender, Legal Aid Council or any other organisation providing legal aid shall be attached to each legal advice for purposes of endorsement by the person in respect of whom legal advice is preferred
- (8) Where a proceeding is pending in respect of the offence for which legal

advice or other directive in subsection (1) is given, a copy of the legal advice or direction or an edited or summarised version shall be forwarded by the Attorney-General or Director of Public Prosecutions to the Court before whom the proceeding is pending.

- (9) (a) Nothing in this Section shall be construed as precluding the Attorney-General from instituting and undertaking criminal proceedings against a person before a Court of Law in the State.
- (b) Where in this section, an edited or summarised copy of the legal advice is served or forwarded to the Court or a defendant, neither the Attorney-General nor an officer in his chambers, nor a staff of the Director of Public Prosecutions shall be ordered to disclose or produce the contents of the full legal advice.
- (c) A failure or refusal in paragraph (b) to produce or forward or disclose the full legal advice shall not invalidate the legal advice or any proceeding upon which it is premised.

106. Subject to the provisions of the Constitution relating to the powers of prosecution by the Attorney-General of the State, prosecution of an offence in a Court of the State shall be undertaken by:
- (a) the Attorney-General or a Law Officer in his Ministry;
 - (b) a legal representative authorised by the Attorney-General;
 - (c) a legal representative authorized to prosecute by this Law or any other Law of the State; or
 - (d) a police officer or any other person authorised by the Attorney-General

Prosecution of offences

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

107. (1) In a criminal proceeding for an offence against a law of the State and at any stage of the proceeding before judgment, the Attorney-General may discontinue the proceedings either in person or through an officer in his Ministry by stating in Court or informing the Court in writing that the Attorney-General intends that the proceedings shall not continue and the defendant shall immediately be discharged in respect of the charge or information for which the discontinuance is entered
- (2) Pursuant to subsection (1), where the defendant is:
- (a) committed to prison, he shall be released immediately in relation to that offence;
 - (b) on bail, the recognizance shall be discharged;

Discontinuance of criminal cases.

- (c) not before the Court when the discontinuance is entered, the registrar or appropriate officer of the Court shall immediately cause notice in writing of the entry of the discontinuance to be given to the officer in charge of the prison or the place where the defendant may be detained and the notice shall be sufficient authority to discharge the defendant; or
- (d) not in custody, the Court shall immediately cause notice in writing to be given to the defendant and his sureties and shall in either case cause a similar notice in writing to be given to a witness bound over to attend the trial.
- (3) Notwithstanding subsection (2) (c), where a defendant is not in Court, the registrar or appropriate officer of the Court shall immediately cause a production warrant to be given to the officer in charge of the prison or the place in which the defendant is detained to produce the defendant at a specified time and date at the Court so he can be released.
- (4) Where discontinuance is entered in accordance with this section, the discharge of the defendant shall not operate as a bar to any subsequent proceedings against him on account of the same facts.
108. (1) The Attorney-General may, in a trial or proceeding before a High Court or Magistrates' Court, instruct a prosecutor in the case of an offence against a Law of the State, to withdraw from the prosecution of a person:
- Withdrawals from prosecution in trials and inquiries before a Court.
- (a) either generally; or
- (b) in respect of one or more of the offences with which the person is charged,
- at any time before judgment is pronounced or an order of committal is made.
- Provided that an advice in writing by an officer from the Attorney-General's chambers and authorised by the Attorney-General, that he is withdrawing the prosecution generally or for one or more of the offences shall be sufficient and a copy or a summary of the written advice may be served on the Court and on the defendant.
- (2) Where the withdrawal is made:
- (a) before the defendant is called upon to enter his defence, he shall be discharged of the offence; and
- (b) after the defendant is called upon to enter his defence, he shall be

acquitted of the offence.

- (3) (a) In a trial before a Court where 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 proper.
- (b) 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 in this section, the Court may, in its discretion, award costs against the private prosecutor.
- (5) A discharge of a defendant in this section does not operate as a bar to subsequent proceedings against him on account of the same facts, except as provided in this section

PART 12 - INSTITUTION OF PROCEEDINGS

109. (1) Subject to any other law, criminal proceedings may, in accordance with this Law, be instituted:

Different methods of instituting criminal proceedings.

- (a) in a Magistrate Court by a charge or complaint;
- (b) in a High Court, by information and proofs of evidence filed by the Attorney-General, subject to section 104;
- (c) by information or charge filed in Court after the defendant has been summarily committed for perjury by a Court in this Law ;
- (d) by information or charge filed in Court by any other prosecuting authority; or
- (e) by information or charge filed by a private prosecutor who has been granted fiat by the Attorney-General provided that a certificate has been endorsed on the information by a law officer in the office of the Attorney-General.

Provided that the private prosecutor has entered into a recognizance in the sum of N100,000.00 together with one surety to be approved by the Chief Registrar in like sum to prosecute the information to conclusion and to pay costs as ordered by the Court, or in lieu of entering into the recognizance, to deposit the amount in Court and abide by the same conditions

- (2) (a) Where a law officer refuses or fails to endorse the information or charge prepared by a private prosecutor, an affidavit by the private prosecutor that a law officer has refused or failed to endorse the information or charge shall be served on the Attorney-General.
- (b) Where the private prosecutor has satisfied the requirements in paragraph (a), he may file the information or charge in Court.

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

Mode of instituting criminal proceedings in a Magistrate Court.

- (a) bringing a suspect arrested without a warrant before the Court on a charge contained in a charge sheet specifying the name, address, age, sex, occupation of the suspect charged, the charge against him, 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; or
 - (b) complaint to the Court, subject to section 89, 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 issuance of 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 7 days of its being filed or at a time as the Court may allow.
- (3) The trial of a charge preferred in subsection (1) (a) shall:
- (a) commence not later than 30 days from the date of filing the charge; and
 - (b) be completed within a reasonable time, but not later than 180 days.
- (4) Where a charge is preferred in subsection (1) (a) and the trial:
- (a) does not commence within 30 days of bringing the charge; or
 - (b) has commenced but has not been completed after 180 days of arraignment on that charge,
- the Court shall forward to the Chief Judge particulars of the charge and reasons for failure to commence or to complete the trial.
- (5) Notwithstanding the provisions of subsection (4), a party to the

proceedings has the right to notify the Chief Judge of the failure of the Court to either commence or complete the trial within the time stipulated in subsection (4).

- (6) Where the Chief Judge has been notified in subsection (4) or (5), he may recommend to the trial Court, that the case be continued but be completed within a reasonable time not later 28 days.
- (7) Where the case is not completed within the extra days granted in subsection (6), and the Court observes that there has been a deliberate attempt by the:
 - (a) prosecution to stall the progress of the trial either because of on-going investigation, non-availability of witnesses or evidence, frivolous adjournments or the excessive use of technicalities as an instrument of delay, the Court shall, where it is in the interest of justice, discharge the defendant without prejudice and may report the prosecutor to the Attorney-General or the Legal Practitioners Disciplinary Committee; or
 - (b) defence to stall the progress of the trial, through the use of frivolous adjournments or the excessive use of technicalities as an instrument of delay, the Court:
 - (i) may report the defence counsel to the Legal Practitioners Disciplinary Committee;
 - (ii) may if the accused is on bail, revoke the bail and place the accused in custody indefinitely, or
 - (iii) shall complete the trial within 10 working days where the accused is not on bail.
- (8) A Court seised of criminal proceedings shall make, to the Chief Judge, quarterly returns of particulars of all cases, including charges, remand and other proceedings commenced and dealt with in the Court within the quarter.
- (9) The Chief Judge shall, when reviewing the returns made by a Court in subsections (4) and (8), consider 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) a person awaiting trial is not, as far as possible, detained in prison custody for a length of time beyond that prescribed in section 300.
- (10) (a) The Administration of Criminal Justice Monitoring Council has

- power to consider returns made to the Chief Judge in subsections (4) to (8) for the purpose of ensuring expeditious disposal of cases.
- (b) The National Human Rights Commission set up under the National Human Rights Commission Act shall have access to the returns on request to the Chief Judge.
111. (1) The Rivers State Comptroller of Prisons shall make returns every 90 days to the Chief Judge and to the Attorney-General of every person awaiting trial held in custody in prisons in the state for more than 180 days from the date of remand or arraignment. Returns by Comptroller-General of Prisons.
- (2) The returns in subsection (1) shall be in a prescribed form and shall include:
- (a) the name of the suspect held in custody or Awaiting Trial Person;
 - (b) passport photograph of the suspect;
 - (c) the date of his arraignment or remand;
 - (d) the date of his admission to custody;
 - (e) the particulars of the offence with which he was charged;
 - (f) the Court before which he was arraigned;
 - (g) name of the prosecuting agency; and
 - (h) any other relevant information.
- (3) Upon receipt of the return, the recipient shall take necessary steps to address the issues raised in the return in furtherance of the objectives of this Law

PART 13 – RECEIVING COMPLAINTS AND FILING CHARGES

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: Procedure for receiving complaints.
- (a) one for which the police is authorised to arrest without a warrant; and
 - (b) triable by a magistrate Court within which jurisdiction the police station is situated,
- the police officer shall, if the complaint is made orally, reduce the complaint or cause it to be reduced into writing in the Crime Diary.
- (2) The complaint, whether written or oral shall be written in the Crime Diary and read or cause to be read over to the complainant and the 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 in subsection (1), he shall enter or cause to be entered the grounds of his suspicion in a Crime Diary.
- (4) Where the officer is satisfied that no public interest may be served by prosecuting, he may refuse to accept the complaint provided he notifies the complainant of his right to complain to a Court in section 109 (a).
- (5) Notwithstanding subsection (2), 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 that other police station.
- (6) Pursuant to subsection (3), the officer in charge of the police station shall:
 - (a) without delay, proceed to the scene and investigate the case and if the suspect is not in custody, take steps necessary for the discovery and arrest of the suspect or may direct a police officer subordinate to him to do so and report to him;
 - (b) in a case involving death or serious injury to a person, arrange, if possible, for the person to be taken to the nearest hospital for 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, need not make or direct investigation on the spot;
 - (d) in the case mentioned in paragraph (c), record in the Crime Diary his reason for not referring for an investigation or for not directing an investigation on the spot;
 - (e) where after the investigation, it appears that the complaints against the suspect are unfounded, shall terminate the investigation; and
 - (f) where there is sufficient evidence and he considers that the prosecution of the alleged offence will serve the public interest, forward the file to the office of the Attorney-General for legal advice.
- (7) (a) Where the suspect appears or is brought on a charge before the Magistrates' Court, he shall where the Magistrate has jurisdiction to try the matter, be asked to elect whether he wants to be tried before the Magistrates' Court or the High Court.
 - (b) Where he elects to be tried at the Magistrates' Court, the charge shall

- be read to him.
- (c) Where the Magistrate has no jurisdiction, the prosecutor shall file the information at the High Court.
 - (d) Where the suspect elects to be tried by the High Court, the Magistrate shall record:
 - (i) the charge against the accused person;
 - (ii) the fact that the accused person has elected to be tried by the High Court;
 - (iii) whether bail was granted or refused to the suspect and where bail was refused, the fact that the suspect was informed of his right to apply to the High Court for bail; and
 - (iv) any other fact relevant to the charge which transpired in the proceedings before the magistrate.
- (8) Where the charge is read to the suspect in subsection (7) (b) and he admits the commission of the offence, his admission shall be recorded in the exact words used by him and the Magistrate may proceed to convict him.
- (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 enter a not guilty plea for him and proceed to trial.
113. (1) The magistrate shall, as soon as possible but not later than 2 days after recording the details in section 112(7)(d), transmit a copy of the record and any relevant document to the Attorney-General. Transmission of documents.
- (2) The magistrate shall direct the prosecuting police officer or a police officer acting under the general or special instruction of the Commissioner of Police, to transmit to the Attorney-General not later than 2 days after the direction:
 - (a) the police case file relating to the charge; and
 - (b) an inventory of any article or exhibit relating to the charge.
 - (3) Pursuant to sub-section (2), the Magistrate before whom the suspect is charged shall direct the prosecuting police officer or a police officer generally or specially instructed by the Commissioner of Police, to take inventory of, label or mark an article or exhibit connected with the charge.
 - (4) A police officer who fails to comply with the directions of the Magistrate within the period specified in sub-section (2) commits an

offence and is liable, on summary conviction, to a sum of N10,000.00.

- (5) A police officer who fails to comply with sub-section (4) commits an offence and is liable, on summary conviction, to a fine of N10,000.00.

114.(1) The Magistrate shall, after the charge has been read to the suspect or after the suspect has elected to be tried by the High Court or at any time thereafter, bind over every witness present in Court or brought before him subsequently to attend to give evidence at the trial of the suspect before the High Court, whether or not the prosecution intends not to call all of them as witnesses. Binding over of witness.

- (2) Where there is a witness bound over that the prosecution does not intend to call at the trial, the witness shall continue to be present at the trial for a reasonable period as may enable the suspect or his counsel to decide whether or not to call the witness to give evidence for the defence.

- (3) A witness bound over shall enter into a recognizance which shall specify the name, surname, occupation or profession, if any, and address of the person entering into it.

- (4) The recognizance shall be acknowledged by the person entering into it and be subscribed by the Magistrate before whom it is acknowledged.

- (5) A witness who refuses, without reasonable excuse, to enter into the recognizance in subsection (3) may, by warrant under the hand of the Magistrate, be committed to prison or a place of safe custody until after trial or until the witness enters into a recognizance before a Magistrate.

- (6) Where the suspect is discharged:
(a) the magistrate shall order any witness in the case to be discharged immediately; and
(b) any recognizance entered into by the witness becomes void.

115(1) Where the Attorney-General receives the police case file, the record of the facts in section 112(7)(d) and documents in section 113, he may direct a law officer in the Ministry of Justice to prepare proofs of evidence as specified in section 116. Preparation of proofs of evidence.

- (2) Without prejudice to subsection (1), it is the duty of the Director of Public Prosecutions and law officers in the Attorney-General's chambers, acting under the Attorney-General's directives, to prepare proofs of evidence in

respect of a criminal charge.

- (3) Where a private prosecutor is prosecuting a case, he shall prepare proofs of evidence in accordance with this Law.

116.(1) Pursuant to section 115, the proofs of evidence shall contain:

Contents of
proofs of
evidence.

- (a) a statement of the charge against an accused person;
- (b) where the accused person has a right of election, a statement that he elected to be tried by the High Court;
- (c) name, address and statement of a material witness whom the prosecution intends to call;
- (d) name, address and statement of a material witness whom the prosecution does not intend to call; provided that the submission of the name of the witness shall not prevent the prosecution from calling that witness at the trial if the prosecution later desires to;
- (e) copy of a report, if any, made by a medical practitioner about the state of mind of the accused person in custody or any other medical report submitted under section 372;
- (f) an inventory of any article and exhibit to be produced in Court at the trial;
- (g) record of a previous conviction, if any, affecting the credibility of a witness for the prosecution;
- (h) statement of the accused person; and
- (I) any other statement or document which the prosecution may consider relevant to the case.

117.(1) The Attorney-General may, after preparation of the proofs of evidence, if he considers it necessary, remit or cause to be remitted to the Magistrate before whom the charge was laid or to any other Magistrate, the statement of a witness for verification.

Verification of
statements of
witnesses.

- (2) The Magistrate shall then fix a date when he shall summon the witness and the accused person before him for the purpose of verification of the statement of the witness.
- (3) On the date fixed by the Magistrate, the Court clerk shall read out the statement of the witness in the presence of the accused person and the witness shall verify his statement on oath.
- (4) After the witness has verified his statement, the Magistrate shall inform

the accused person of his right and give him or his legal representative the opportunity to cross-examine the witness.

(5) The answers of the witness to the cross-examination and the fact that the accused person was informed of his rights and given opportunity to cross-examine, if he or his counsel did not elect to do so, shall be recorded by the magistrate and form part of the proofs of evidence.

(6) The Magistrate shall remit back to the Attorney-General the verified proofs of evidence in subsection (5) which includes the witness's answers given in cross-examination and the fact that the accused person was informed of his rights and given the opportunity to cross-examine the witness.

(7) Where the evidence of two or more witnesses are to be verified, the verification of each witness's evidence shall be held apart from the other unless the Magistrate directs otherwise or considers it necessary in the interest of justice that a particular witness should be permitted or required to be present during the whole or a part of the verification of the evidence of any other witness.

(8) A verification of evidence shall not be held in an open or public Court and a Court or Magistrate may order that any person entering the Court without express permission of the Court be refused access to be or remain in the place where the verification takes place.

Verification not
to be held in
open Court.

(9) The verification of evidence taken by the Court or Magistrate shall be transmitted to the Attorney-General.

118(1) Where the Attorney-General receives the verified proofs of evidence and is satisfied that there is a prima facie evidence from the record to put the accused person on trial on all or any of the charges against him, he shall prefer an information against the accused person in respect of all or any of the charges.

Information

(2) Where the record of the verified proofs of evidence does not, in the opinion of the Attorney-General, disclose sufficient evidence to support the charge or charges against the accused person, the Attorney-General shall inform the Magistrate in writing and the magistrate shall, as soon as possible, summon the accused person to Court and discharge him.

119(1) Subject to section 118(1), where the Attorney-General prefers an information after the preparation of the proofs of evidence, he shall cause sufficient copies of the information and proofs of evidence to be transmitted to the Registrar of the High Court in which the trial is to take place.

Service of
copies of
information

(2) Where the Registrar of the High Court in which the trial is to take place receives the documents in subsection (1), he shall furnish every accused person, free of charge, with a copy of the information and proofs of evidence.

(3) The records transmitted to the Registrar of the High Court in subsection (1) shall not include particulars of the accused person's previous convictions except the particulars shall be supplied to the High Court after the accused person has been convicted, and it shall be open to the accused or his legal representative at any time before the trial commences to request the police to supply him with particulars of his or the accused person's previous convictions as the case may be

PART 14 - ENFORCING APPEARANCE OF SUSPECT

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

Compelling
appearance of a
suspect.

121. In every case, the Court may proceed either by way of summons to the suspect or by way of warrant for his arrest in the first instance according to the nature and circumstances of the case.

Summons and
warrants.

122.(1) Subject to section 89, a person who has a probable cause or reasonable grounds to believe 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.

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

(b) issue a summons or warrant as he deems fit to compel the attendance of the suspect 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

123. A summons may be issued or served on any day, including Sunday or a public holiday. Issue and service.
124. Where a complaint is made before a Magistrate in section 122 and the Magistrate decides to issue a summons, the summons shall be directed to the suspect:
 (a) stating concisely the substance of the complaint; and
 (b) requiring him to appear at a certain time and place, not less than 48 hours after the service of the summons before the Court to answer to the complaint and to be further dealt with according to law. Issue of summons and its contents.
125. The Court may, where it deems fit and with the consent of the parties, hear and determine a complaint notwithstanding that the time which the defendant was required to appear may not have elapsed. Hearing by consent before return date of summons.
126. Where a complaint is made before a Magistrate in section 122, and the Magistrate decides to issue a summons, the defendant may be directed to appear immediately in a case 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 48 hours. Summons with immediate return date in special circumstances.
127. Without prejudice to this law or any other enactment, where an ex parte application is brought before a Court, the Court shall consider the justice of the circumstances including whether the application should be brought on notice before granting the ex parte order. Discretion in ex parte application.
128. A summons issued by a Court in this Law shall be:
 (a) in writing;
 (b) made in duplicate; and
 (c) signed by the presiding officer of the Court or by any other officer as the Chief Judge may specify. Summons to be in duplicate.
129. A summons shall be:
 (a) served by a police officer;
 (b) an officer of the Court issuing it;
 (c) other public officer; or
 (d) through a courier service company duly registered with the Chief Judge as a process service agent of the Court in this Law. Service of summons.

130. The person effecting service of a summons shall effect the service by delivering it on, if to:
- Normal methods of effecting service.
- (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 Company secretary,
 - (iv) to the chief agent within the jurisdiction,
 - (v) by leaving it at the principal place of business in Nigeria of the firm or corporation, or
 - (vi) to anyone having, at the time of service, control of the business of the firm;
 - (c) a Local Government Council, in accordance with the Local Government Law;
 - (d) the Nigeria Police Force, either to the office of the Inspector-General of Police or Commissioner of Police of Rivers State;
 - (e) any Federal Government Ministry, Department or Agency, to the Attorney-General of the Federation or to the Legal Department of that Ministry, Department or Agency;
 - (f) any state Government Ministry, Department or Agency, to the Attorney-General of the State or to the Legal Department of that Ministry, Department or Agency; or
 - (g) any arm of the armed forces, to the Director of Legal Services of the Service or Command concerned.
131. Where service in section 130 (a) cannot, by the exercise of due diligence, be effected, the person serving the summons may, with leave of the Court, affix one of the duplicates of the summons to a conspicuous part of the premises or place in which the individual to be served ordinarily resides or works, and the summons shall be deemed to have been duly served.
- Service where person summoned cannot be found.
132. (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 that person, if it appears to the Court that it may be most conveniently served in that manner.
- Service on public officers.
- (2) The officer in charge of the department shall, on receipt of the summons, cause it to be served in the manner in section 130 (a) and shall

return the duplicate to the Court under his signature, with the endorsement required by section 122, and the signature shall be evidence of the service.

133. Where a Court issues a summons to a person outside its jurisdiction, the summons shall be sent in duplicate to a Court in whose jurisdiction the person resides or works. Service outside jurisdiction of Court.
134. Where an 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.
135. (1) Where a summons has been served on a 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, 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 another method approved by this Law, the person effecting service shall endorse on the duplicate, particulars of the method by which he effected service.
136. 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 but refuses to sign the receipt may be: Person refusing to sign receipt may be arrested.
- (a) arrested by the person serving the summons or another person with powers of arrest in this Law and taken before the Court which issued the summons; and
- (b) detained in custody or committed to prison for a period not more than 14 days as the Court may deem fit.
137. An affidavit or declaration made before a Court by the person serving the summons or by a witness to the service or return slip of a registered courier service company that a summons has been served and a duplicate of the summons endorsed by the person to whom it was delivered or tendered or with whom it was left is admissible in evidence and the statements made in it is deemed to be correct unless the contrary is proved. Proof of service.
138. 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 Summons disobeyed,

- the summons and his personal attendance has not been dispensed with pursuant to section 142, the Court may issue a warrant for his arrest and production before the Court. warrant may be issued.
139. Where a complaint is made on oath before a Magistrate in this law, the Magistrate may issue a warrant to arrest the suspect and bring him before the Court to answer the complaint and be dealt with according to law. Issue of warrant for suspect in the first instance.
140. Where a warrant of arrest is issued in consequence of a complaint on oath in section 139, sections 35 to 47 shall apply to the warrant. Application of sections 35 to 47 to such warrant.
141. Notwithstanding the issue of a warrant in section 184, a warrant may be issued at any time before or after the time appointed for the appearance of the suspect. Warrant may be issued before or after return date of summons.
142. (1) Where a Magistrate issues a summons in respect of an offence for which the penalty is a fine not exceeding N100,000.00 or Band E of the Fine Bands in the 4th Schedule or imprisonment for a term not exceeding 6 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 pleads guilty by his legal representative.
- (2) The Magistrate trying a case in which the presence of the defendant has been dispensed with, may in his discretion, or on the application of the prosecution, 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 in 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 this Law for the non-payment of a fine.
- (4) Where the attendance of a defendant has been dispensed with but

previous convictions which are alleged against him are not or have not been admitted in writing or through his legal representative, the Court may adjourn the proceedings and direct the personal attendance of the defendant in the same manner in subsection (2).

PART 16 - MISCELLANEOUS PROVISIONS REGARDING PROCESS

143. Where a defendant is before a Court, whether voluntarily, on summons, after being arrested with or without a warrant, or while in custody for the same or any other offence, the trial may be held notwithstanding:
- Irregularities 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 a complaint on oath; or
 - (c) a defect in the complaint, charge or information, or an irregularity in the arrest or custody of the defendant.
144. Where a Court or Justice of the Peace who is not empowered by law:
- Irregularities which vitiate proceedings.
- (a) attaches and sells property in section 80;
 - (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 pursuant to section 72 as to a public nuisance;
 - (g) prohibits the repetition or continuance of a public nuisance in section 79;
 - (h) tries an offender; or
 - (i) decides an appeal,
- the proceedings shall be void.
145. A variance between the charge or information contained in the summons or warrant, and the:
- Variance between charge and complaint.
- (a) offence alleged in the complaint; or
 - (b) evidence adduced on the part of the prosecution,
- shall not affect the validity of any proceedings, and no irregularity in the charge or information or variance between the charge or information and the evidence adduced shall invalidate the proceedings.
146. A summons, warrant or other process issued under a law shall not be invalidated by reason of the person who signed the summons or warrant being dead, ceasing to hold office or have jurisdiction.
- Process valid notwithstanding death or vacation of

office of person
issuing.

PART 17 - SAVING OF VALIDITY OF PROCESS

147.(1) Where it is alleged that a 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 a warrant of commitment, it shall not be held void by reason of a defect in it.

Validity of
process:
warrant of
commitment
and warrant of
distress

(2) A warrant of distress shall not be held void by reason of a 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 a defect in the warrant or of an irregularity in the execution of the warrant.

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

148.(1) In addition to sections 36 and 40 in respect of warrants of arrest, every summons, warrant and process shall be sufficiently addressed for service or execution by being directed to the Sheriff.

General
addressee of
process for
issue and
execution.

(2) Notwithstanding subsection (1), 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.

149. The provisions of this Law in respect of warrants of arrest and the provisions in this Part relating to summonses, warrants and other processes and their issuance, service, enforcement and execution shall, so far as may be, apply to every summons, warrant and other process issued in respect of a matter within the criminal jurisdiction of the Court.

Certain
provisions
applicable to all
summonses and
warrants in
criminal
matters.

PART 18 - SEARCH WARRANTS

150. Where an investigation in 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.

151.(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

Cases in which
search warrants
may be issued.

any building, ship, carriage, receptacle, motor vehicle, aircraft or place anything:

- (a) in respect of which an offence has been or is suspected to have been committed;
- (b) which there is reasonable ground for believing will provide evidence as to the commission of an offence; or
- (c) 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 act in accordance with subsection (2).

(2) A search warrant issued in subsection (1) shall authorize the officer of the Court, a police officer or the person named to:

- (a) search the building, ship, carriage, receptacle, motor vehicle, aircraft or place for any of the things in subsection (1)(a),(b) or (c), and seize it for the purpose of detecting or investigating an offence, or until further trial proceedings before the Court issuing the search warrant or any 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 to direct on the warrant.

152. Where the occupier of a building or the person in whose possession a thing named in a search warrant is found and brought before a Court or Justice of the Peace, and a complaint is not made that he has committed an offence, the Court or Justice of the Peace shall immediately discharge him.

Discharge of suspected person.

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

Search warrant to be signed by Judges, Magistrate or Justice of the Peace.

(2) A warrant remains in force until it is executed or cancelled by the Court which issued it.

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

Search warrant to whom directed.

155. A search warrant may be issued and executed at any time on any day, including a Sunday or public holiday.

Time when search warrant may be issued and executed.

156. (1) Where a building, other thing or place liable to be searched is closed, a person residing in or 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 obtained, the police officer or another person executing the search warrant may proceed in the manner prescribed by sections 12 and 13.
- (3) Where a suspect in or about the building, thing or place is reasonably suspected of concealing on his person an article for which a 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 or may be taken to a police station for that purpose.
- (4) A search in 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) Where a search is carried out on a person, the person who carried out the search shall draw up a list of things found and seized.
(b) The list shall be signed or sealed by the person to whom the search warrant is addressed, the person executing the search warrant and the witness.
(c) A witness copy of the list shall be delivered to the person searched.
- (6) Where a place to be searched is a building physically occupied by a woman who, according to custom or religion does not appear in public, the person making the search shall, before entering the building, give notice to the woman that she may withdraw and shall afford her every reasonable facility for withdrawing and may then enter the building.
157. The occupant of a place searched or another person on his behalf is permitted to be present at the search and shall, if he requires, receive a copy of the list of things seized, signed or sealed by the witnesses, if any. Occupant of place searched may attend.
158. 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 the search is to be made and shall act under its Execution of search warrant outside jurisdiction.

directions.

159. A Magistrate or Justice of the Peace may direct that a search be conducted in his presence, of a place, for which he is competent to issue a search warrant. Magistrate may direct search in his presence.
- 160(1) Where on the execution of a search warrant anything in section 151 is recovered, it may be detained by the police, taking reasonable care that it is preserved until trial or any further proceedings. Detention of articles recovered.
- (2) A list of things recovered in course of the search and of the places in which they were found shall be drawn up by the person carrying out the search in accordance with section 156 (5), and a copy of the list forwarded to the Judge, Magistrate or Justice of the Peace who issued the warrant for his information, with an indication, as in the prescribed form set out in the 1st Schedule, 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. 1st Schedule
- (3) Where a defendant is charged to Court with an offence and no appeal or further proceedings are pending in relation to an item recovered during a search, the police shall:
- (a) restore it to the person entitled to it; and
- (b) where he is the defendant, cause it to be restored to him or to another person as the defendant may direct.
- (4) The police or any other agency carrying out the search and authorised by law to dispose of the items seized, shall release the proceeds of the disposal of the seized items to the person entitled to it.
- 161(1) Where a thing seized under a search warrant is of a perishable or noxious nature, it may be disposed of in a manner as the Court may order or direct. Perishable articles may be disposed of by Court.
- (2) In making an order for disposal or in directing the manner of disposal in subsection (1), the Court:
- (a) shall consider the justice of the situation including the interests and proprietary rights of a person over the thing seized; and
- (b) may hear evidence or allow representations from a person with an interest in the thing seized.
- 162(1) Where a thing to be searched for under a search warrant is gunpowder, arms, ammunition or any other explosive, dangerous or noxious Search for and disposal of gunpowder.

substance or thing, a 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.

- (2) The thing shall be disposed of in the same manner as directed by the law, or in absence of the direction, as the Court may either generally or in any particular instance order.

163. Where, in consequence of the execution of a search warrant, there is brought before a Court any forged banknote, banknote paper, counterfeit 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.

Disposal of counterfeit currency and certain other thing.

164.(1) Where a search warrant is issued in respect of an offence against the law of a State and a summons has been issued for that offence by a Court of that State, or a person has been charged with that offence before it, the Court issuing the search warrant may, except the person has disposed of the thing in accordance with section 160, transmit anything seized and brought before him to that Court.

Transmission to Court of other State.

- (2) Pursuant to subsection (1) where a thing is 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 RECOGNIZANCE: GENERALLY

165.(1) When a person who is suspected to have committed an offence or is accused of an offence is arrested or detained, or is brought before a Court, he shall, subject to this Part, be entitled to bail.

General entitlement to bail.

- (2) Bail shall be granted on the condition that:
- (a) the defendant has given an undertaking to the Court to be present at every hearing throughout his trial unless the Court allows his absence for minor non trial related hearings;
 - (b) failure to attend Court in breach of his conditions of bail and undertaking means he has willingly elected not to be present at his trial;
 - (c) the defendant consents to the continuation of his trial in his absence, if he elects to be absent from it; and
 - (d) the defendant is fully aware that he can be convicted in his absence.

- 166 (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 that other place to produce the suspect or defendant, before the Court, at the time and date specified in the order. Power of Court to order person in custody to be brought before it.
- (2) The Court may, on production of the person or subsequently, make an order or give a directive, as it considers appropriate in the circumstances in accordance with this Law.
- 167.(1) Where a child is arrested with or without warrant and cannot be brought immediately before a Court, the police officer in charge of the police station at the time the child is brought, shall inquire into the case and shall release the child on a recognizance entered into by his parent or guardian, with or without sureties, except: Recognizance by parent or guardian of a child.
- (a) the charge is one of homicide;
- (b) the offence charged is punishable with imprisonment for a term exceeding 3 years; or
- (c) it is necessary in the interest of the child to remove him from association with a reputed criminal or prostitute.
- (2) The parents or guardian of the child shall execute a bond for an amount as will, in the opinion of the officer, secure the attendance of the child for the hearing of the charge.
- 168.(1) A suspect arrested, detained or charged with an offence punishable with death shall only be admitted to bail by a Judge of the High Court under exceptional circumstances. Bail where a suspect is charged with capital offence.
- (2) For the purpose of the exercise of discretion in subsection (1), “exceptional circumstance” includes:
- (a) ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a Government hospital, unless the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him;
- (b) extraordinary delay in the investigation, arraignment and prosecution for a period exceeding 1 year; or
- (c) any other circumstance that the Judge may, in the particular facts of the case, consider exceptional.

169. A defendant charged with an offence punishable with imprisonment for a term exceeding 3 years shall, on application to the Court, be released on bail except in any of the following circumstances, namely that there are reasonable or substantial grounds to believe that, if released on bail, he will:
- (a) commit another offence or offences;
 - (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.
- Bail where a defendant is charged with offence exceeding 3 years imprisonment.
170. In any other circumstance other than those in sections 168 and 169, the defendant is entitled to bail, unless the Court sees reasons to the contrary.
- Bail where a defendant is charged with offence not exceeding 3 years imprisonment.
171. Where a defendant is brought before a Court on a process in respect of a matter not included in sections 165 to 170, the defendant may, at the discretion of the Court, be released on his entering into recognizance, 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 recognizance.
- Bail in respect of matters in other offences.
172. (1) The conditions for bail in a case shall be at the discretion of the Court with due regard to the circumstances of the case and shall not be excessive.
- Conditions for bail.
- (2) The Court may require the deposit of a sum of money or other security from the defendant or his surety as the Court may specify before the bail is approved.
- (3) The money or security deposited shall be returned to the defendant or his surety or sureties at the conclusion of the trial or on an application by the surety to the Court to discharge his recognizance.
173. Where in a case the defendant in respect of whom the Court makes an order requiring that a recognizance be entered into is a child, the child shall not execute the recognizance but the Court shall require a parent, legal guardian or other fit person, with or without sureties, to enter into a recognizance that
- Recognizance in respect of a child.

the child shall do what is required under the Court's order.

- 174.(1) A defendant admitted to bail may be required to produce surety or sureties, which in the opinion of the Court, will be sufficient to ensure his appearance as and when required. Sureties.
- (2) The defendant, or his surety or sureties may be required to enter into recognizance.
- (3) A person shall not be denied, prevented or restricted from entering into a recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman.
175. A Judge of a High Court may direct that the: Judge may vary bail fixed by Magistrate or police.
- (a) bail conditions required by a Magistrate's Court or police officer be reviewed and vary it accordingly; or
- (b) defendant in custody in the State be admitted to bail.
176. (1) Where a defendant has been admitted to bail and circumstances arise which, in the opinion of the Director of Public Prosecutions on information from a law enforcement officer or a reliable source, would justify the Court in cancelling the bail or requiring more stringent bail conditions, a Court may, on application being made by the Director of Public Prosecutions or any of his prosecutors, issue a warrant for the arrest of the defendant. Reconsideration of bail.
- (2) Pursuant to subsection (1), where the defendant is given an opportunity of being heard, the Court may commit him to prison to await trial, or admit him to bail on the same or more stringent bail conditions.
177. (1) The terms of recognizance fixed by a Court in respect to any surety or sureties shall be processed in that Court. Before whom recognizance may be executed.
- (2) The recognizance in subsection (1) may be entered into by parties before any other Court, registrar, superior police officer, officer in charge of a police station or any official in charge of a prison.
- (3) Recognizance entered into in subsection (2) has the same effect as if it has been entered into before that Court.

178. (1) As soon as a recognizance has been entered into in accordance with section 171, or money or other security deposited in the registry of the Court: Release on execution of recognizance.
- (a) the defendant for whose appearance it has been entered into or security executed shall be released; and
 - (b) where he is in prison, 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 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 a person or courier company as the Chief Judge may authorize to serve criminal processes of the Court.
179. Where as a condition for the release of a defendant, he is required to enter into a recognizance with sureties, the recognizance of the sureties may be taken separately and either before or after the recognizance of the principal, and if taken, the recognizance of the principal and sureties shall be binding as if they had been taken together at the same time. Mode of entering into recognizance.
- 180(1) Where a defendant is released on bail, the recognizance may be conditional on his appearance at a time and place to which, during the course of the proceedings, the hearing may be adjourned. Continuous bail.
- (2) The Court, where the circumstances appear just:
- (a) may vary the order of release on bail of the defendant at a subsequent hearing;
 - (b) may cause a defendant who has been released on bail to be arrested and be committed to custody, at a subsequent stage of a proceeding; and
 - (c) shall give the defendant the opportunity to make representations which shall also be recorded before invoking its powers in this section.
- Provided that the Judge shall state in his record the reason for the variation of the order or committal of the defendant.
- (3) Nothing in this Law relating to bail is deemed to require the release of a defendant liable to be detained for a matter other than that in respect of

which the recognizance was entered into or to which the bail relates.

181. Where an application is made before a Court by information on oath by a complainant, surety or other person that a defendant bound by recognizance to appear before a Court or police officer:
- Defendant bound by recognizance to appear before a Court or police may be committed to prison.
- (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 recognizance.
182. Where a defendant has been admitted to bail and circumstances arise which, if the defendant had not been admitted to bail, in the opinion of a law officer or police officer, would justify the Court in refusing bail or in requiring bail of greater amount, a Court may:
- Reconsideration of amount of bail on application by law officer or police.
- (a) issue a warrant for the arrest of the defendant on the circumstances being brought to its notice by a law officer or police officer; 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.
183. Where at any time after a recognizance has been entered, it appears to the Court that for any reason the surety or sureties are unsuitable, the Court may:
- Variation of a recognizance if surety unsuitable.
- (a) issue a summons or warrant for the appearance of the principal; and
 - (b) order the principal to execute a fresh recognizance with another surety or sureties on his coming to Court.
- 184.(1) A surety to a recognizance may, at any time, apply to the Court which caused the recognizance to be taken to discharge the bond either wholly or as it relates to the applicant.
- Discharge of sureties.
- (2) The bond person shall produce the defendant in Court at the time of applying for discharge of the bond unless he is able to give reasons to the satisfaction of the Court.

- (3) Where an application is made in subsection (1), the Court shall:
- (a) issue a warrant for the arrest of the defendant on whose behalf the recognizance was executed;
 - (b) discharge the recognizance either wholly or as it relates to the applicant, on the defendant's appearance; and
 - (c) require the defendant to find other sufficient sureties or meet other conditions, and if he fails to do so, may make an order as it deems fit.

185.(1) Where a surety to a recognizance becomes insolvent, dies or where a recognizance is forfeited, the Court may order the defendant from whom the recognizance was demanded to furnish fresh security in accordance with the directions of the original order. Order of fresh security upon original order.

- (2) Where the security in subsection (1) is not furnished, the Court may proceed as if there is a default in complying with the original order.

186.(1) Where it is proved to the satisfaction of the Court by which a recognizance 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 recognizance has been forfeited, the Court shall record the grounds of proof and may call on a person bound by the bond to pay the penalty or show cause why it should not be paid. Forfeiture of recognizance.

- (2) Where sufficient cause is not shown and the penalty is not paid, the Court may recover the penalty from the 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 be liable in this section where the surety dies after the recognizance is forfeited.

- (4) When the penalty is not paid and cannot be recovered in the manner provided in this Law, the person bound is liable to imprisonment for a term not exceeding 6 months.

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

187. The Court may at any time cancel or mitigate the forfeiture, on the person liable under the recognizance applying and giving security to the satisfaction of the Court, for the future performance of the condition of the recognizance and paying, or giving security for the payment of the costs incurred in respect of the forfeiture or other conditions as the Court may Mitigation of forfeiture.

consider just.

188. 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 another 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 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.
189. (1) Where a recognizance has been entered by a defendant as principal or as surety before a Court to keep the peace and be of good behaviour, or not to commit an act or thing, a Court, on proof that the person bound by the recognizance as principal has been convicted of an offence which is by law a breach of the condition of the recognizance, may order that the:
- (a) recognizance be forfeited; and
 - (b) person bound by it, whether as a principal or as surety, shall pay the amount for which he is 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 in this section and, where the certified copy is used, the Court shall presume the defendant committed the offence until the contrary is proved.
190. Where a recognizance is ordered to be forfeited, the Court having jurisdiction over the matter, may, immediately or at any time after the order, issue a warrant of commitment against a person liable, whether as principal or surety under the recognizance, for a term not exceeding the term prescribed in respect of the same amount in the scale of imprisonment set out in this Law except the amount due under the recognizance is paid.
191. Where a defendant who is bound by a recognizance or bond to appear before a Court or police station does not appear, the Court may issue a warrant for his arrest.
192. An amount paid or recovered in respect of a recognizance order by a Court

Where defendant fails to find surety.

Forfeiture on conviction.

Where recognizance forfeited warrant may be issued.

Arrest on failure to appear.

Payment on

pursuant to section 185 to be forfeited shall be paid to the Treasury and a receipt issued which shall be produced in Court as evidence of payment. recognizance.

193. An order of forfeiture made pursuant to this Law is subject to appeal. Appeal.

194. Where bail is considered in this Part, parties to the proceedings shall have regard to sections 35 and 36 of the 1999 Constitution of the Federal Republic of Nigeria. Consideration of the Constitution in Bail proceedings

195. A defendant who elects to be absent from his trial may be tried and convicted in his absence. Trial in absence.

PART 20 - PROPERTY AND PERSONS

196. Where a Court, in the exercise of its criminal jurisdiction, issues a complaint, summons, warrant of any description, charge sheet, information or any document, deems it necessary to refer to the ownership of a property, whether moveable or immovable, which belongs to or is in the possession of more than one person, the Court may if: Methods of stating multiple ownership of property.

- (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, described it in the name of any one of them or group of any of them;
- (b) the property belongs to a company, club, society or an association, described it, subject to the provisions of any other law, as the property of an official of the company club, society or association, or as belonging to the company, club, society or association by its legal or registered title;
- (c) the property belongs to, or is provided for the use of public establishment, service or department, be described as the property of the State;
- (d) it is necessary to state the ownership of a church, chapel, mosque or building or place set apart for religious worship or of anything belonging to or being in the place, describe it 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 any other property in the charge, custody, or control of a public officer, state it to be the money or property of the Federation or of the State;
- (f) it is necessary to state the ownership of:
 - (i) a work or building made, erected or maintained, either wholly or in

- part, at the expense of the public revenue or of a part of it;
- (ii) a 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 a part or of any public institution or establishment, or of any material or tool provided or used for repairing any work or building or a public road or highway; or
 - (iv) any other property whether movable or immovable, then it shall suffice to describe it as the property of the Federation or of the State or of the town, or village, or of a Local Government, without naming any of the inhabitants of the area or jurisdiction; or
- (g) the property belongs to a woman who has contracted a marriage under the Marriage Act or a marriage recognised as a valid marriage under any law in force in Nigeria, be stated as belonging to the married woman.
197. (1) Where a Court in the exercise of its criminal jurisdiction issues a complaint, summons, warrant of any description, charge sheet, information or any document, deems it necessary to refer to a person, the description or designation of that person, it shall be in a manner as is reasonably sufficient to identify the person except as provided in section 239.
- (2) Where the description reasonably identifies a person, it shall not be necessary to state the person's correct name, residence, degree or occupation.
- (3) Where it is impracticable to give a person's correct and exact description or designation:
- (a) because the name, description or designation of the person is not known; or
 - (b) for any other reason,
- the description or designation shall be given as it is reasonably practicable in the circumstance or the person may, subject to subsection (4) be described as a "Person unknown".
- (4) No defendant charged with an offence shall be described as "a Person unknown" except in the case of a verdict found on a coroner's inquisition.
198. A woman who contracts a valid marriage shall have in her own name against any person, including the husband of the marriage, the same

Description of persons in criminal process.

Remedies of a married woman

remedies and redress by way of criminal proceedings for the protection and security of her person or her own separate property as if the property belonged to her as an unmarried woman.

against her husband and others in respect of her person or property.

199. In any proceeding taken in section 198, the husband and wife shall be competent and compellable witnesses in accordance with the Evidence Act, 2011.

Husband and wife competent as witnesses.

PART 21 - THE CHARGE

200. A charge may be as in the forms set out in the 2nd Schedule with modification as may be necessary in the circumstances of each case.

Forms of charges in 2nd Schedule to be used and adapted.

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

Offence to be stated in charge.

(2) Where a law that creates 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, 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 title of the law, section and punishment section against which the offence is said to have been committed, shall be set out in the charge

202. Where a charge has been filed or preferred, it shall be equivalent to a statement that every legal condition required by law to constitute the offence charged has been fulfilled in that particular case.

203. (1) A charge shall contain particulars of the time and place of the alleged offence and the name of the defendant, if any, against whom or the thing, if any, in respect of which it was committed as is reasonably sufficient to give the defendant notice of the offence with which he is charged.

Legal presumption of charge.

(2) A charge sheet shall be filed along with the passport 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.

Particulars in charge.

204. Where a defendant is charged with stealing or any other form of fraudulent

Charge of stealing.

appropriation of property, it is sufficient to specify the:

- (a) gross sum in respect of which the offence is alleged to have been committed; and
 - (b) dates between which the offence is alleged to have been committed without specifying particular items or exact date,
- and the charged framed shall be deemed to be a charge of a single offence.

205. 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 a particular person intended to be defrauded or specifying a particular sum of money intended to be the subject of the fraud or a particular day in which the offence was committed.

Charge of criminal falsification of accounts.

206. Where the nature of the offence is such that the particulars required by sections 201 and 203 do not give the defendant sufficient notice of the matter with which he is charged, the charge shall contain 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.

207.(1) In a charge, words used in the description of an offence are deemed to have been used in the sense attached to them, in a law creating the offence.

Sense of words used in charge.

- (2) Figures, expressions or abbreviation may be used for the expression of a thing, which is commonly expressed by the figures, expressions or abbreviation

208.(1) The description of a property in a charge shall be in ordinary language indicating with reasonable clarity the property referred to.

Description of property and joint owners.

- (2) Where the property is 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.
- (3) Where a 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 196.
- (4) Where the owner of a property is a company, club, society or an association proof of registration shall not be required unless, the Court decides that proof shall be given, in which case, further hearing may be

adjourned for that purpose or the Court may in its discretion amend the proceedings by substituting the name of a person for the registered title.

209.(1) A bank or currency note may be described as money, and an averment as to money, regarding the description of a property, shall be sustained by proof of an amount of a bank or currency note;

Description of bank or currency notes.

(2) The particular type of currency of which the amount was composed or the particular nature of the bank or currency note need not be proved.

(3) In a case of stealing or defrauding by false pretence, the bank or currency note may be described by proof that the defendant dishonestly appropriated or obtained the bank or currency note, or a 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.

210.(1) Where a law which constitutes an offence states:

Provision as to statutory offences.

(a) the offence to be an omission to do any one of different acts in the alternative;

(b) the offence to be the doing or the omission to do an act in any one of the different capacities, or with any one of the different intentions; or

(c) a part of the offence in the alternative, the act, omission, capacity, or intention, or other matter stated in the alternative in the law, may be stated in the alternative in the charge

(2) It shall not be necessary in a charge where the offence is one constituted by a law to negate an exception or exemption from or qualification to the operation of the law creating the offence.

211. A description or designation of a defendant in a charge or of any other person to whom reference is made may be in the manner set out in section 197.

Description of persons.

212. Where it is necessary to refer to a document or an instrument in a charge, it is sufficient to describe it by:

Description of document.

(a) a name or designation by which it is commonly known; or

(b) the purport of the document without setting out the content or attaching a copy of the document to the charge.

213. Subject to this Law, it is sufficient to describe any place, time, thing, matter,

General rule as

- act, or omission to which it is necessary to refer in a charge in ordinary language in a manner as to indicate with reasonable clarity the place, time, thing, matter, act or omission referred to. to description.
214. Where the law which creates an offence does not make an intent to defraud, deceive or injure a person an essential ingredient of the offence, it is not necessary to state an intent to defraud, deceive or injure the person. Statement of intent.
215. Defendants accused of: Defendants 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 extortion or 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 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, may be charged and tried together.
216. For any distinct offence with which a defendant is accused, there shall be a separate charge and the charge shall be tried separately except in the following circumstances: Separate charges for distinct offences.
- (a) any three offences committed by a defendant within 12 months whether or not they are of the same or similar character or whether or not they are in respect of the same person or persons;
 - (b) any number of the same type of offence committed by a defendant;
 - (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 217 to 222.
217. An offence is deemed to be an offence of the same kind as an attempt to commit that offence where the attempt is itself an offence. Attempt same as substantive offences.

218. Where in a series of acts or omissions connected 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.
219. Where the acts or omissions alleged which constitute an offence fall within two or more separate definitions in any law under which offences are defined or punished, the defendant accused of the offences may be charged with and tried at one trial for each of the offences. Offences falling within two definitions.
220. Where several acts or omissions, of which one or more than one would by itself or themselves constitute an offence, and when combined with a different offence, a defendant accused of them may be charged with and tried at one trial for the offence constituted by those acts or omission when combined or for any offence constituted by any one or more of the acts Acts constituting one offence but constituting a different offence when combined.
221. Where a single act or omission or series of acts or omissions is of 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 the offences. Where it is doubtful which offence has been committed.
222. Where a single act or omission the fact or combination of facts constitutes more than one offence, the defendant may be charged and tried at one trial for one or more of the offences. Incidental offences in the same transaction.

PART 22 - ALTERATION OR AMENDMENT OF CHARGES

- 223.(1) A Court may permit an alteration or amendment to a charge or framing of a new charge at any time before judgment is pronounced. Alteration and amendment of charge by permission of Court.
- (2) Where there is an alteration or amendment of a charge or a new charge, the altered, amended or new charge shall be read and explained to the defendant and his plea to the altered, amended or new charge shall be taken.
- (3) Where a defendant is arraigned for trial on an imperfect or erroneous charge, the Court may permit or direct the prosecutor to frame a new charge, amend or alter the original charge.

- (4) Where a defendant is committed for trial without a charge or with an imperfect or erroneous charge, the Court may direct the prosecutor or prosecution to draft or frame the appropriate charge, add or alter the charge in accordance with the provisions of this Law.
224. Where a new charge is framed or alteration made to a charge in section 223, the Court shall:
- Procedure on alteration of charge.
- (a) call on the defendant to plead to the new or altered charge as if he is arraigned for the first time; and
 - (b) proceed with the trial as if the new or altered charge is the original charge.
- 225.(1) Where the revised charge in section 223 or 224 is such that to proceed immediately with the trial is not likely in the opinion of the Court, to prejudice the defendant in his defence or the prosecutor in the conduct of the case, the Court may in its discretion proceed with the trial as if the revised charge is the original charge.
- When Court may proceed with trial immediately after altering, adding to or framing charge.
- (2) Where a charge is 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 connected proceedings as having been filed in the amended form.
226. Where a charge is altered, amended or substituted after the commencement of a trial, the prosecutor and the defendant shall be allowed to recall or re-summon and examine a witness who may have been examined and to call any further witness, provided that the examination shall be limited to the alteration, amendment or substitution made.
- Recall of witnesses when charge is revised.
227. Where there is:
- Effect of error.
- (a) an error in stating the offence or the particulars required to be stated in a charge;
 - (b) an omission to state the offence or the particulars required to be stated in a charge; or
 - (c) a duplicity, mis-joinder or non-joinder of the particulars of the offence,
- it shall not be regarded at any stage of the case as material unless the defendant is in fact misled by the error or omission.
228. No objection shall be taken or entertained during proceedings or trial on the grounds of an imperfect or erroneous charge.
- Objection to a charge.

229. Where an appellate Court is of the opinion that: Effect of material error.

- (a) 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;
- (b) 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

230. Where a defendant is charged with one offence and it appears in evidence that he committed a similar offence with which he might have been charged in accordance with the provisions of this Law, he may be convicted of that offence, which he is shown to have committed although he was not charged with it. Where defendant charged with one offence may be convicted of another.
231. 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.
232. Where a defendant is charged with an attempt to commit an offence but the evidence establishes the commission of the offence he shall not be entitled to an acquittal but he may be convicted of the attempt and punished. Attempt charged-full offence proved.
233. Where a defendant is convicted of an attempt pursuant to section 231 or 232, he shall not be liable to be prosecuted for the offence for which he was convicted of attempting to commit. Liability as to further prosecution.
234. 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 any other offence of which a defendant charged with the first-mentioned offence, may be convicted in accordance with the provisions of this Law, he may be convicted as an accessory after the fact to that offence or the other offence. On charge of an offence conviction as accessory after the fact to that or connected offence may follow.
- 235.(1) Where on a trial of a defendant for a lesser offence and 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) is not liable to be prosecuted for the higher offence proved, but the Court may in its discretion stop the trial of the lesser offence or direct that the defendant be charged and tried for the higher offence, in which case, the defendant may be dealt with in all respects as if he had not been put to trial for the lesser offence.
- (3) Where a charge is brought for the higher offence pursuant to this section, the defendant shall be tried before another Court.
236. Where a defendant is charged with an offence relating to a property and the evidence establishes the commission of another offence with respect to the same property, he may be convicted of that other offence although he was not charged with it. Conviction of kindred offences relating to property.
237. Where on trial for burglary, housebreaking or a related offence and the facts proved in evidence justify a conviction for some other offence 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 that offence. Defendant charged with burglary may be convicted of kindred offence.
238. Where on a trial for rape, defilement, incest, unnatural or indecent offences against a person, the facts proved in evidence can secure a 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 is convicted on a charge or an information charging him with the offence of indecent assault. On charge of rape conviction under defilement, incest, unnatural or indecent assault may follow.
- 239.(1) Where the Court determines, a trial for an offence in subsection (4) may not be held in an open Court. Procedure for trial on charge for certain offences.
- (2) In a trial before a Court or tribunal for an offence in subsection (4), the name, identity, address, telephone number or any identifying information or material of a victim, witness or any person concerned in the proceedings as the judge may determine, shall not be disclosed or published anywhere or reported in a newspaper, digital or online, social media or in a sound, radio or television broadcast unless the Court makes a specific written order to that effect, and the address, telephone number and identity of a victim of the offence or witness may not be disclosed in a record or report of the proceedings and where a judge orders the non-disclosure, it shall be sufficient to designate the name of the victim or witnesses with a combination of alphabets.
- (3) Where the Court deems it necessary in a proceeding to protect the identity of the victim or witness, the Court may take any or all of the

following measures to be known as Special 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 it considers appropriate in the circumstance.

(4) The application of this section shall include but not limited to an act or omission linked to:

- (a) offences in section 238 of this Law;
- (b) offences under the Terrorism (Prevention) (Amendment) Act;
- (c) offences relating to Economic and Financial Crimes;
- (d) Trafficking in Persons and related offences; and
- (e) any other offence in respect of which a Law of the State, permits the use of such protective measures or as the Judge may consider appropriate in the circumstance.

(5) A person who contravenes subsection (2) commits an offence and is liable on conviction to imprisonment for a minimum term of 1 year

240. In a trial for an offence of defilement, and the facts proved in evidence warrants a conviction for an indecent assault and not the offence with which the defendant is charged, the defendant may be convicted of indecent assault although he was not charged with that offence. On charge of defilement conviction of indecent assault may follow.
241. Where a defendant is charged and tried for the murder of a child or for infanticide and it appears in evidence that the defendant is not guilty of murder or infanticide, but is guilty of the offence of concealment of birth, the defendant may be convicted of that offence. Where murder or infanticide is charged and concealment of birth is proved.
242. (1) Where a defendant is charged and tried for the murder of a new born child and it appears in evidence that the defendant is not guilty of murder but is guilty of infanticide, the defendant may be convicted of infanticide. Where murder is charged and infanticide proved.
- (2) Nothing in subsection (1) prevents a defendant who is tried for the murder of a new born child from being:
- (a) convicted of manslaughter;
 - (b) found guilty of concealment of birth; or
 - (c) acquitted on the ground that by virtue of an applicable law he is not criminally responsible and dealt with in accordance with this Law or any other law.
243. (1) Where a defendant is charged with an offence consisting of several particulars, a combination of some of which constitutes a lesser offence Where offence proved is not included in

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 is not charged with it.

offence charged.

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

244.(1) Where more than one charge is proffered against a defendant and the Court has entered a conviction on one or more of them:

Withdrawal of remaining charges on conviction on one of several charges.

- (a) the prosecutor may after offering his reasons or explanation to the Court, withdraw the remaining charge or charges; or
 - (b) the Court may of its own motion, ask the prosecutor what he intends to do with the remaining charge or charges, and where the prosecutor indicates that he wants to withdraw the remaining charge or charges, the Court may stay the trial of the other charge or charges.
- (2) A withdrawal has the effect of an acquittal on the charge or charges unless the conviction is set aside, then, subject to an order of the Court setting aside the conviction, the Court before which the withdrawal was made may, on the request of the prosecutor, proceed on the charge or charges withdrawn.

PART 24 - PREVIOUS ACQUITTALS OR CONVICTION

245.(1) Without prejudice to section 233, a defendant charged with an offence is not liable to be tried for that offence where it is shown that he has previously been:

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

- (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) shall prejudice the operation of a law which gives power to a Court, on an appeal, to set aside a verdict or finding of another Court and order a re-trial.

246. A defendant acquitted or convicted of an offence may afterwards be tried for a distinct offence for which a separate charge may have been made against him on a previous trial in accordance with section 218
- A defendant may be tried again on separate charge in certain cases
247. A defendant acquitted or convicted of an offence constituted by an act or omission causing consequences which together with that act or omission constitute a different offence from that for which he was acquitted or convicted, may afterwards be tried for the later 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
- Consequences supervening or not known at previous trial

**PART 25 - WITNESSES: COMPELLING ATTENDANCE AND
TAKING OF OATH OR MAKING OF AFFIRMATION**

- 248.(1) A Court may, on an application of the prosecution or the defence, issue a summon or writ of subpoena on a witness requiring him to:
- Issue of summons for witness.
- (a) attend Court to give evidence in respect of the case;
 - (b) bring with him any specified document or thing; and
 - (c) any other document or thing relating to it which may be in his possession, 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 travelling expenses are paid to him.
- 249.(1) A Court with criminal jurisdiction shall have a process server specifically assigned to it.
- Service of summons and other processes on witnesses.
- (2) The process server has the responsibility to effect due efficient service of witness summons, defendant's production orders, writs and any other process issued in the Court in respect of any criminal matter.
 - (3) A summons shall be served on the person to whom it is directed in the same manner as set out in section 129 or 130 or, with leave of the Court, section 131 and sections 133 to 137 shall apply to the summons.
 - (4) Service of process may be effected by a registered reputable courier company, recognised and authorised by the Chief Judge in accordance with the provisions of this law, and the registered courier company may be assigned to a Court with criminal jurisdiction as a process server in accordance with subsection (1).
 - (5) The Attorney-General of the State or a person authorized by him or the

police, may serve a witness summons or writ of subpoena on a person whom the prosecutor wishes to call as a witness.

- (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.

250. Where a witness summoned to give evidence does not:

Warrant for witness after summons.

- (a) attend Court at the time and place indicated on the summons; and
(b) provide a reasonable excuse for his non-attendance, then after proof that the summons was duly served on him, or that the person to be served wilfully avoided service, the Court may issue a warrant to arrest and bring him before the Court.

251. 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, the Court may issue a warrant for the arrest of the person.

Issue of warrant for witness.

252.(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 24 hours after the arrest, be taken before a Magistrate and the Magistrate:

Mode of dealing with witness arrested under warrant.

- (a) may, on the witness furnishing security by recognizance 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 a defendant shall apply to a witness.

(3) No witness arrested or detained pursuant to this section shall be kept in the same room or place as the defendant, if the defendant is in custody the defendant shall not be allowed to make any contact with the witness.

253.(1) A witness who:

Penalty on witnesses refusing to attend.

- (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, commits an offence and is liable on summary conviction, to a fine not exceeding N10,000.00 or to a term of imprisonment not exceeding 2 months.

- (2) No complaint shall be made for an offence in this section except by an order of the Court made during the hearing of the case for which the evidence of the witness is required.

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

Non-attendance of witness on adjourned hearing.

255. A person present in Court and compellable as a witness, whether a party or not in a cause, may be compelled by the 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 a refusal to obey the order of the Court.

Persons in Court may be required to give evidence though not summoned.

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

Manner of taking oath or affirmation

257.(1) When a person who is in Court is required to give evidence, without any sufficient excuse or reason and he:

Witness refusing to be sworn, or produce documents

- (a) refuses to be sworn or to affirm as a witness;
 - (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 30 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 required of him; or
 - (b) prevent the Court from disposing of the case in the meantime according to any other sufficient evidence taken by it

PART 26 - WITNESSES: EXPENSES

258. Where a person attends Court as a prosecution witness, the witness shall be entitled to payment of such reasonable expenses as may be prescribed. Expenses of witnesses for the prosecution.
259. Where a person attends Court as a witness to give evidence for the defence, the Court may in its discretion on application, order the Registrar to pay to the witness an amount of money as it may deem reasonable and sufficient to compensate the witness for the expenses he reasonably incurred in attending the Court. Expenses of witnesses for the defence.
260. (1) The Court may concede to an application by a party for an adjournment of the proceedings, and in doing so, may order the party seeking the adjournment to pay to a witness present in Court whose evidence the Court has not been able to take due to the adjournment, a sum in the amount payable to a witness in accordance with sections 258 and 259, or a sum as the Court may fix. Adjournment may be granted subject to witnesses' costs.
- (2) A cost awarded in subsection (1), against either the counsel or party to the proceedings shall be paid before the next hearing date and confirmed by the beneficiary.
261. Pursuant to sections 258 and 259, the Registrar of the Court shall process and pay to a witness the amount of expenses out of the relevant vote as appropriated by the Judiciary. Ascertainment of witness 'expenses.

PART 27 - EXAMINATION OF WITNESSES

262. Subject to the provisions of any other law, the examination of a witness shall be in accordance with the provisions of the Evidence Act. Application of the Evidence Act.
263. The Court may, at any stage of a trial, inquiry or other proceedings in this Law, either of its own motion or on application of either party to the proceedings, allow a party to 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. Power to call or recall witnesses.
264. A certificate signed by an officer named in section 55 of the Evidence Act, shall be admissible in evidence in accordance with the Evidence Act. Certificates of certain Government technical officers.
265. 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 confer on the prosecution the right of reply, but a law officer for the prosecution shall in every case have the right of reply, Right of reply.

provided that a judge shall have the discretion to allow replies or further questions by parties or by himself where he requires further clarification or explanation to decide on the case.

- 266.(1) Subject to sections 239 and 267 to 269 of this Law and any other law specifically relating to it, the room or place in which a trial is to take place pursuant to this Law shall be an open Court to which the public generally may have access as far as it can conveniently contain them. Public to have access to hearing.
- (2) Notwithstanding subsection (1), the Judge or Magistrate presiding over a trial may, in his discretion and subject to section 267, exclude the public at any stage of the hearing on the grounds of public policy, decency or expedience.
- (3) Where the Court sits in a place other than in a building, the authority given in subsection (2) to exclude the public shall be construed as being authority to prevent the public from 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.
- 267.(1) Where a person who, in the opinion of the Court has not attained the age of 18 years is called as a witness in a proceeding, in relation to an offence against or a conduct contrary to decency or morality, the Court may direct that all or a person not being a:
- (a) member or officer of the Court; or
- (b) party to the case, their legal representative or persons otherwise directly concerned in the case, be excluded from the Court during the taking of the evidence of the person. Court may exclude certain persons while taking evidence of a child or young person.
- (2) Notwithstanding any provision in this Law or any other enactment and without prejudice to section 239, a Magistrate or Judge may determine that a measure should be granted to a vulnerable or intimidated witness if it is shown on the balance of probability that it is likely to improve the quality of his evidence by helping the witness to give his best evidence in terms of consistency, coherence, quantity and recollection. Measures for vulnerable or intimidated witnesses
- (3) A witness adjudged to be vulnerable or intimidated by the Magistrate or Judge shall be entitled to any of the measures in sections 239(3) (a) to (d).
- (4) (a) A vulnerable witness in this section shall include a witness whose

quality of evidence is likely to be diminished if he has to give evidence in an open Court to the full glare of the public due to his physical, emotional, personal, psychological or mental health circumstance.

(b) A child witness or a victim of a sexual offence is deemed to be a vulnerable witness, for the purposes of this section.

(5) An intimidated witness in this section includes a witness who is:

- (a) suffering from fear or distress in relation to testifying in the case;
- (b) a complainant in a sexual offence; or
- (c) a witness to an offence which involves a gun, knife and kidnapping, unless the witness wishes to opt out.

(6) (a) The prosecutor shall make an application to the Court within 14 days after the matter is set down for trial, asking for a specific measure in relation to the witness in section 267 (3).

(b) The prosecutor shall in his application to the Court state the grounds upon which the witness is vulnerable or intimidated.

(7) Where the defendant opposes the prosecutor's application, he shall respond within 7 days of receiving the prosecutor's application.

(8) Nothing in this Law or in any other enactment shall prevent a Magistrate or a judge from hearing and ruling on an oral application in this subsection during a trial.

268(1) An order made pursuant to section 266 or 267 which excludes the public from a Court shall not unless specifically stated:

Order in section 266 or 267 not to apply to press and certain others.

- (a) authorise the exclusion of a *bona fide* representative of a newspaper or news agency; or
- (b) apply to a messenger, clerk or any other person required to attend the Court for purposes connected with their employment.

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

269. 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 a proceeding preliminary to the trial except where:

Prohibition on children being present in Court during the trial of other persons.

- (a) he is the defendant charged with the alleged offence; or
- (b) his presence is required as a witness for the purpose of justice in which case he may remain for the period in which his presence is necessary.

270.(1) Where in the opinion of the Court it is in the interest of justice to move the Court to a place to view observe or examine a place, person or thing connected with the case, the Court may, either adjourn its proceedings to that place and from there, continue the proceedings or adjourn the case and proceed to view, observe or examine the place, person or thing concerned.

Visit by Court to locus.

- (2) The defendant shall be present at the viewing, examining or observing 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 witness and the defendant.
- (4) A breach of a direction given in subsection (3) shall not affect the validity of the proceedings unless the Court directs.

271.(1) Where the age of a person is in issue in a criminal proceeding, the Court may determine the question by taking into account one or both of the following:

Determination of age.

- (a) the apparent physical appearance of the person concerned;
 - (b) any evidence, in relation to the age of the person concerned, received by the Court in accordance with the Evidence Act, the Child Rights Law or any other law.
- (2) The evidence of a witness, who is not an expert within the meaning of section 68 of the Evidence Act, 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.
 - (4) Where a death sentence or life imprisonment is passed on a convict who later turns out to be a minor, the sentence may be reviewed and reduced to a term of imprisonment.

272. 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, 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, unless the contrary is proved. Age in relation to offences.
273. A defendant shall, subject to section 142, be present in Court throughout his trial unless: Presence of defendant at trial.
- (a) he misconducts himself in a manner as to render his continuing presence impracticable, undesirable or disruptive to the Court process;
 - (b) where the Court has expressly at an earlier hearing allowed his absence at the hearing of an interlocutory application;
 - (c) provisions and regulations are made for appearance at trial by a video-link; or
 - (d) where subsection 359 (4) of this law applies.
274. (1) The complainant and defendant are entitled to conduct their case by a legal representative of their choice provided that a complainant may prosecute with a fiat of the Attorney-General. Conduct of cases by legal representative for complainant or for defendant.
- (2) Where the defendant is in custody or on remand, he shall be allowed access to his legal representative at 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 a capital offence provided that a defendant who refuses to be represented by a counsel shall, after being informed in accordance to section 356 (6) 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.
275. (1) Where a private legal practitioner prosecutes on behalf of the Attorney-General or a public officer prosecutes in his official capacity in a criminal proceeding, the private legal practitioner or public officer shall prosecute subject to direction as may be given by the Attorney-General. General control of prosecution by the Attorney-General.
- (2) Where a proceeding in respect of an offence is instituted by a police officer, it shall be in the name of the Inspector-General of Police or Commissioner of Police.

- (3) Where a proceeding in respect of an offence is instituted on behalf of the Attorney-General, it shall be in the name of the State.
- (4) Where the Attorney-General of the Federation delegates to the Attorney-General of Rivers State the powers conferred on him or with respect to an offence or class of offences, the offence shall be prosecuted in the name of the Federal Republic of Nigeria.
- (5) The powers delegated to the Attorney-General in subsection (4) may be exercised directly by him or by an officer in his Department or Ministry.

276. Where a defendant appears before a Court on a summons, he shall be required to enter the dock, to either stand or sit inside it, except where circumstances do not permit, as may be directed by the Court.

Position in
Court of person
summoned.

PART 28 - PLEA BARGAIN AND PLEA GENERALLY

277.(1) Notwithstanding the provisions of this Law or in any other law, the Prosecutor may:

Plea bargain
guidelines

- (a) receive and consider a proposal for plea bargain from a defendant charged with an offence either directly from the defendant or a counsel on his behalf to deal with or dispose of the case; or
 - (b) offer or propose a plea bargain as a way of disposing of a case to a defendant charged with an offence.
- (2) The prosecution may enter into plea bargain with the defendant, with or without 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 one or more of these conditions are present:
- (a) the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;
 - (b) where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or
 - (c) where the defendant in a case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.
- (3) Where the Prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, public interest, public policy and the need to prevent abuse of legal process, he may offer or accept the plea bargain.

- (4) The prosecutor shall ensure that:
- (a) a plea bargain agreement must be in the public interest and shall reflect the gravity of the offence, the level of offending and deliver justice to the stakeholders in the case; and
 - (b) any alternative charge he proposes or accepts does not restrict the powers of a judge or magistrate in sentencing or in making any necessary and reasonable ancillary orders.
- (5) The prosecutor may enter into an agreement contemplated in subsection (3):
- (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 the:
- (i) defendant's willingness to cooperate in the investigation or prosecution of others;
 - (ii) defendant's history with respect to criminal activity;
 - (iii) defendant's remorse or contrition and his willingness to assume responsibility for his conduct;
 - (iv) desirability of prompt and certain disposition of the case;
 - (v) likelihood of obtaining a conviction at trial and the probable effect on witnesses;
 - (vi) probable sentence or other consequences if the defendant is convicted;
 - (vii) need to avoid delay in the disposition of other pending cases;
 - (viii) expense of trial and appeal; and
 - (ix) defendant's willingness to make restitution or pay compensation to the victim where appropriate.
- (6) (a) Where there is an identified victim, the prosecution shall afford the victim or his representative the opportunity to make representations to the prosecutor regarding the :
- (i) content of the agreement; and
 - (ii) inclusion in the agreement of a compensation or restitution order.
- (b) No action or claim may lie against the prosecutor or prosecution from the inability, failure or refusal of a prosecutor to contact a victim of a crime.

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- (c) Pursuant to paragraph (b), the inability, failure or refusal of a prosecutor or the prosecution to afford the victim of a crime the opportunity to make representations shall not invalidate any plea agreement in subsection (3) provided that, reasonable steps were taken to:
- (i) contact a victim or his representative or family; or
 - (ii) afford the victim the opportunity to make representation.
- (7) An agreement between the parties 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;
 - (c) be signed by the prosecutor, the defendant, the legal representative and the interpreter, and
- a copy of the agreement forwarded to the Attorney-General and copied to the Director of Public Prosecutions.
- (8) Where the terms of the agreement include the acceptance of a plea to an alternative offence the prosecutor shall draft an alternative charge or information and file the new alternative charge or information in the usual manner.
- (9) The presiding Judge or Magistrate before whom the criminal proceeding is pending shall not participate in the discussion contemplated in subsection (3).
- (10) Where a plea agreement is reached between the prosecution and the defence, the:
- (a) prosecutor shall inform the Court that the parties have reached an agreement and the presiding judge or magistrate shall inquire from the defendant to confirm the terms of the agreement; and
 - (b) Judge or Magistrate shall inform the defendant that the issue of sentence or ancillary order is a matter for the Judge or Magistrate.
- (11) The presiding Judge or Magistrate shall ascertain whether the defendant admits the allegation in the charge, an alternative charge or information to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may where he is:
- (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 may proceed to consider the terms of the agreement between the prosecution and the defendant, the ruling shall be delivered by the Court in accordance with section 315; or

- (b) 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) he shall record a plea of not guilty in respect of such charge and order that the trial proceed before him or start *de novo* before another judge if any of the parties request the matter to be transferred to another judge.
- (12) Where a defendant has been convicted pursuant to subsection (11) (a), the presiding Judge or Magistrate shall consider the sentence as agreed upon and where he is:
- (a) satisfied that the sentence is an appropriate sentence, impose the sentence;
 - (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 the heavier sentence he considers to be appropriate.
- (13) Notwithstanding any provision to the contrary in any enactment, the prosecutor shall take reasonable steps to ensure that any money, asset or property agreed to be forfeited or returned by the offender in a plea bargain in subsections (2) and (3), is transferred to or vested in the victim, his representative or other person lawfully entitled to it.
- (14) A person who wilfully and without just cause obstructs or impedes the vesting or transfer of any money, asset or property in this Law commits an offence and is liable on conviction to a term of imprisonment for 7 years without an option of fine.
- (15) Where a trial proceeds under subsection (11) (b) or *de novo* before another Judge or Magistrate:
- (a) no references shall be made to the agreement;
 - (b) no admission contained therein or statements relating thereto shall be admissible against the defendant; and
 - (c) the prosecutor and the defendant may not enter into a similar plea and sentence agreement.
- (16) Where a person is convicted and sentenced under the provisions of subsection (1), he shall not be charged or tried again on the same facts for the original offence earlier charged to which he had pleaded to an

alternative offence.

(17) The judgment of the Court in subsection 11(a) shall be final and no appeal shall lie in any Court against such judgment, except where fraud is alleged.

278.(1) Before a defendant takes a plea, the Court shall inform him of his rights as provided in section 276. Plea to information or charge.

(2) The defendant to be tried on a charge or an information shall be:

(a) brought before the Court unfettered unless, the Court sees cause to order otherwise and the charge or information shall be read over and explained to him to the satisfaction of the Court by the registrar or other officer of the Court; and

(b) called upon to plead instantly unless:

(i) where the person is entitled to service of the information, he objects to the none service; and

(ii) the Court finds that he has not been duly served.

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

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

280. A defendant who pleads not guilty shall be deemed to have put himself to trial. Effect of plea of not guilty.

281.(1) Where a defendant pleads guilty to an offence with which he is charged, the Court shall: Effect of plea of guilty.

(a) record his plea in the exact words used by him;

(b) invite the prosecution to state the facts of the case; and

(c) enquire from the defendant whether his plea of guilty is to the facts as stated by the prosecution.

(2) Where the Court is satisfied that the defendant intends to admit the truth of the facts of the offence as stated by the prosecution and for which he has pleaded guilty, the Court shall convict and sentence him or make any other order as may be necessary, unless there is sufficient reason to the contrary.

(3) Where the defendant has pleaded guilty but the judge or magistrate considers that there is a material difference between the facts as stated by the prosecution and the facts as admitted by the defendant, where such facts are likely to significantly affect the sentence and potential ancillary orders, the Judge or Magistrate may call for evidence on the disputed facts.

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

282. Without prejudice to this Law, where a defendant pleads guilty to an offence which is not contained in the charge or information on which he is arraigned, the Court shall direct the prosecution to amend the charge or information to include the admitted offence then, a fresh plea of the defendant shall be taken on the amended charge or information.

Amending charge where defendant pleads guilty to offence not charged.

Provided that the prosecution may make representations to the Court as to why it is not in the interests of justice to amend the charge or information or draft a new one in line with the admitted offence, and the Court shall not by reason of the refusal or failure of the prosecution to amend the charge or information, dismiss or discharge the original charge or information on merit or acquit the defendant on the original charge or information.

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

Failure to plead due to malice or otherwise

(2) A plea entered in subsection (1) has the same effect as if the defendant entered a plea of not guilty to the charge.

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

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

284(1) A defendant against whom a charge or information is filed may plead that:

Plea: autrefois acquit or convict, pardon.

- (a) pursuant to section 245 he is not liable to be tried for the offence with which he is charged; or
- (b) he has obtained a pardon for his offence.

(2) Where a plea in subsection (1) is raised in a case and it is denied to be true

in fact, the Court shall determine whether the 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, pursuant to the provision of any other law, he is not liable to be prosecuted or tried for an offence with which he is charged.

PART 29 - PERSONS OF UNSOUND MIND

285(1) Where the Court or by an application from:

- (a) the Attorney General of the state;
- (b) counsel to a party involved in the case; or
- (c) a law officer,

has reason to doubt the capacity of a defendant to stand trial or to defend himself as a result of his mental capacity or soundness of mind, the Court shall order a medical examination of the defendant's mental state or soundness of mind.

- (2) Where the result of a medical examination ordered in subsection (1) is inconclusive or unsatisfactory, the Court shall adjourn the trial or proceedings and remand the person for a period not exceeding 1 month for observation in a suitable place by a qualified specialist medical personnel and before the expiration of the Court ordered detention, the medical personnel shall:
 - (a) provide the Court, in writing, his medical opinion on the state of mind of the accused; and
 - (b) where he is unable within the period, to form a definite opinion, he shall notify the Court, and ask for a further remand which shall not exceed 2 months.
- (3) Where a further period of remand is granted in subsection (2), the case shall be fixed returnable by the Court at the expiration of the period granted in subsection (2) (b).

286. Where a medical officer or such officer in charge of the asylum or other suitable place to which the defendant is referred for observation in accordance with the provisions of this section fails to submit a report under section 285 (2) and (3) within the period stipulated in the subsections, the

Procedure when defendant is suspected to be of unsound mind.

Report from medical officer.

Court may discharge the person, or shall release him on bail in accordance with the provisions of this Law relating to bail.

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

Certificate of
medical officer.

- (a) sound mind and capable of making his defence, the Court shall, unless it is satisfied by the defence that the defendant is of unsound mind, proceed with the trial; or
- (b) unsound mind and incapable of making his defence, the Court shall, where it is 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 in 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 in this section.

288.(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, the Court may in its discretion, release him on bail if sufficient security is given:

Release of
defendant of
unsound mind
pending
investigation or
trial.

- (a) that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person; and
- (b) for his appearance when required before the Court or any 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 refuses to grant bail, the Magistrate shall inform the defendant of his right to apply to a Judge for bail.

(3) Where:

- (a) the offence charged is not bailable by the High Court;
- (b) the judge has refused bail:
 - (i) in subsection (1); or

- (ii) after an application made in subsection (2);
- (c) sufficient security is not given; or
- (d) no application is made for bail,

the judge may, in his discretion, order the defendant to be confined in a lunatic asylum or a suitable place of safe custody.

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

289. 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 in section 288. Dispensing with the presence of a defendant with an unsound mind.
290. Where a defendant is released in section 288, the Court may at any time require the defendant to appear or be brought before it and may proceed with the proceedings or trial, if there is evidence before the Court that the defendant is now of sound mind. Resumption of proceedings after release under section 288.
291. Where a defendant appears to be of unsound mind at the time of any remand or similar pre-trial proceedings before a Court, and the state of soundness of mind of the defendant is in issue, being a defence to the main offence for which he is arrested relating to insanity or intoxication, the Court shall proceed to deal with the defendant in accordance with sections 285 to 298 and shall not make any finding of fact in relation to the defence that the defendant is open to plead at his trial for the offence. Where defendant appears to be of unsound mind.
292. Where the finding states that the defendant committed the act alleged, the Court before which the trial has been held shall, where the act would have but for the finding of incapacity constitutes an offence, order the person to be kept in safe custody in a place and in a manner as the Court thinks fit. Safe custody of defendant discharged.
- 293.(1) The Court may at its discretion order the defendant to be confined pursuant to section 292 in a mental health asylum, prison or any suitable place of safe custody Order of the Court in pursuance to section 292.
- (2) In the exercise of this discretion, the Court shall ensure that the defendant is placed in a facility as to afford him adequate care at the expense of the State.
294. Where a defendant is confined pursuant to sections 288 (3), 292 or 293, the medical officer of the prison, where the defendant is confined or the medical officer attached to the asylum or the facility, where the defendant is confined Observation of prisoners of unsound mind.

shall keep him under observation in order to ascertain his state of mind and that medical officer shall make a special report for the information of the Court or the Chief Judge as to the state of mind of the defendant at the time or times as the Court or the Chief Judge shall require.

295. Where a defendant is, pursuant to section 286, confined in any prison, asylum or other facility and is certified by the medical officer to whom the case is referred for his report to be capable of making his defence, the defendant shall be taken before the Court at a time as the Court appoints, and the Court shall proceed with the trial or proceeding, and the certificate shall be receivable as evidence.

Procedure when defendant of unsound mind is reported to be able to make his defence.

296.(1) Where the medical officer of a prison or the medical officer attached to an asylum or any facility in which a defendant is confined pursuant to sections 288, 292 or 293 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 Chief Judge or the Court that gave the remand order, may, on the receipt of that report, order the defendant to be discharged or to be detained in custody or in prison or be transferred to an asylum where he has not already been sent to an asylum.

Procedure where defendant of unsound mind is reported fit for discharge.

(2) Where the Chief Judge or the Court 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 fact the Court may require, and on receipt of the report, the Court may order his discharge or detention as it thinks fit.

297. Where a defendant is confined in a prison or an asylum, the Chief Judge may direct his transfer from one prison or asylum to any other prison or asylum as often as may be necessary or may at any time order for his release from detention as he may consider necessary.

Transfer from one place of custody to another.

298.(1) Where a relative or friend of a defendant confined under section 288 or 293 desires that the defendant be delivered over to his care and custody:

Delivery of defendant of unsound mind to care of relative.

- (a) on the application of the relative or friend to the Court;
- (b) on the relative or friend giving security to the satisfaction of the Court that the defendant delivered shall be:
 - i. properly taken care of; and
 - ii. prevented from doing injury to himself or to any other person;
- (c) provided that the qualified medical personnel in charge of the defendant certifies that the mental health of the defendant has improved and it is safe to release the defendant,

the Chief Judge or the Court may, in its discretion, order the defendant to be delivered to the relative or friend on condition that the defendant shall be produced for the inspection of such medical officer and at any time as the Court may direct.

- (2) Where a defendant delivered to a relative or friend pursuant to subsection (1) is confined in accordance with section 292, the Court may further require the relative or friend to give satisfactory security that if at any time it appears to the Court that, the defendant is capable of making his defence, the relative or friend shall produce the defendant for trial.
- (3) Sections 288 and 294 shall apply, with necessary modifications, to a defendant delivered to the care and custody of a relative or friend in this section.

299. Where it is necessary to remove a prisoner to a prison or asylum under this Part, an order for the removal given under this Part is sufficient authority for the removal and the detention of the prisoner in a prison or any other place of detention in the State. Removal to another State.

PART 30 - DETENTION TIME LIMITS

300.(1) A suspect arrested for an offence which a Magistrate Court has no jurisdiction to try shall, within a reasonable time of arrest but not later than 48 hours, be brought before a Magistrate Court for remand. Application for remand or other interlocutory proceedings.

- (2) An application for remand under this section shall be made *ex parte* and shall:
 - (a) be in the prescribed “Report and Request for Remand Form” as contained in Form 8, in the 1st Schedule; 1st Schedule
 - (b) contain reasons for the remand request; and
 - (c) be verified on oath.

301.(1) Where the Court, after examining the reason for the arrest and the request for remand, in accordance with section 300, 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 and arraignment of the suspect before the appropriate Court, may remand the suspect in custody. A Court may remand in prison custody.

- (2) In considering whether “probable cause” has been established for the remand of a suspect pursuant to subsection (1), the Court may take into consideration the following:
 - (a) the nature and seriousness of the alleged offence;

- (b) reasonable grounds to believe 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 offences where he is not committed to custody; and
- (d) any other circumstance of the case that justifies the request for remand.

302. The Court may, in an application for remand brought pursuant to section 300, grant bail to a suspect brought before it, taking into consideration the provisions of sections 165 to 195 relating to bail. Court may grant bail in remand proceedings.

303.(1) Where an order of remand of the suspect is made pursuant to section 300, the order shall be for a period not exceeding 10 days in the first instance, and the case shall be returnable within the same period of 10 days. Time and protocol for remand orders.

- (2) Whether or not an order of remand is made, the Magistrate shall:
 - (a) where section 105(2) is complied with, make a duplicate of the case file; and
 - (b) within 24 hours of giving the remand order forward the duplicate case file to the Attorney-General electronically or by any other means possible, for legal advice and arraignment of the accused in the appropriate Court.
- (3) The Attorney-General shall, within 8 days of receiving the case file, issue a legal advice to the Chief Judge and where appropriate, file a charge in a Court with appropriate Jurisdiction.
- (4) At the expiration of the remand order made pursuant to subsection (1) 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:
 - (a) issue a hearing notice on the Commissioner of Police of the State or Attorney-General, or any relevant authority in whose custody the suspect is or at whose instance the suspect is remanded; and
 - (b) adjourn the matter within a period not exceeding 10 days of the expiration of the period of remand order made in subsection (1) to inquire as to the position of the case and for the Commissioner of Police and the Attorney-General to show why the suspect remanded should not be unconditionally released.
- (5) Where the Commissioner of Police and the Attorney-General show good cause pursuant to subsection (4) and make a request to that effect, the Court:
 - (a) may extend the remand of the suspect for a final period not exceeding

- 5 days for the suspect to be arraigned for trial before an appropriate Court; and
- (b) shall make the case returnable within the period of 5 days from the date the hearing notice was issued pursuant to subsection (4).
- (6) Where a good cause is not shown for the continued remand of the suspect pursuant to subsection (4) or where the suspect is still on remand custody after the expiration of the extended period in subsection (5), the Court shall, with or without an application to that effect, discharge the suspect and the suspect shall be immediately released from custody.
- (7) No further application for remand shall be entertained by a Court after the proceedings in subsection (6).
- 304.(1) The powers conferred on the Court in this Part may be exercised by the Court:
- When Court may exercise power of remand.
- (a) whether the suspect remanded is present in Court or not; and
- (b) on its own motion or on application, including an application by a person in charge of the prison or any other place of custody where the suspect remanded is detained.
- (2) The legal advice of the Attorney-General shall in all cases be copied to the Court, and the Court may act only on the copy or edited copy of the legal advice to make an order that may be necessary in the circumstance.
- (3) Where the legal advice of the Attorney-General indicates that the suspect remanded has no case to answer, he shall within 24 hours serve a copy of the legal advice on the:
- (a) police or the Head of the police legal unit through whom the police case file was sent to the Attorney-General;
- (b) Court before whom the suspect was remanded in prison where he is in remand custody, or before whom the suspect was granted bail, where he is on bail, and if he is in custody, the Court shall on receipt of the legal advice, dismiss the charge against the suspect, discharge the suspect and order the release of the suspect immediately; and
- (c) suspect in respect of whom legal advice is preferred through the prison authority, where the suspect is remanded in custody, or through his legal representative, if any.
- (4) The Attorney-General shall send a Law Officer in his office to the Court where the order of remand was made and ensure the discharge of the remand order and of the suspect.

- (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 in subsection (3), release the suspect immediately from detention where there is no case to answer.
- (6) Where the Attorney-General considers in his legal advice that there is a prima facie case against a suspect, he shall:
- (a) within 24 hours of his legal advice or decision that there is a prima facie case whichever is earlier, file and serve the charge or information in accordance with this Law; and
 - (b) at the time of filing the charge or no later than 7 days before the arraignment of the defendant, serve on the defendant the statements, documents and any other accompaniment listed in subsection (7).
- (7) Where the offence is one for which a Magistrate Court has jurisdiction to try, the prosecutor shall file the charge at the Magistrate Court, accompanied with:
- (a) the list of witnesses;
 - (b) the list of exhibits;
 - (c) statements of the witnesses and defendant; and
 - (d) any report, document or material that the prosecution intends to rely on at the trial, and the prosecution may, with leave of the Court, file and serve any additional document.
- (8) A form as prescribed in the 1st Schedule indicating a desire to be represented by a legal representative of his choice or from the Legal Aid Council, or any other organisation providing free legal representation to the defendant shall be attached to each legal advice for the purpose of endorsement by the person in respect of whom legal advice is preferred and against whom the information is filed.
- (9) Where the defendant indicates in the form in subsection (8) that he wishes to be represented by a legal representative 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 is filed and the Chief Registrar shall, within 5 days of receipt of the form, ensure that a legal representative of the Legal Aid Council or any other organization providing free legal representation for the defendant, and by notice in writing inform the defendant of the particulars of the legal representation arranged for him.

(10) The Chief Registrar shall, upon receipt of the form, forward the form to the Director of the State Legal Aid Council or to the nearest Legal Aid Council office where the Court is located or to the office of the Public Defender.

305.(1) During remand, the Court may order the suspect remanded to be brought before it.

Court may bring up person remanded or make any order during remand.

(2) The Court may order that the suspect in remand be transferred to a hospital, asylum or any suitable place for the purpose of giving him medical treatment, or may make any order that it considers necessary to make at any time during the remand period.

306. A suspect committed to prison pursuant to this Law shall be remanded in prison or a place of safe custody.

Place of remand.

PART 31 - PRESENTATION OF CASE BY PROSECUTION AND DEFENCE, AND CONCLUSION OF TRIAL.

307.(1) Where a plea of not guilty is taken or no plea is made, a prosecutor may open the case against a defendant by stating briefly the evidence he expects to prove the guilt of the defendant.

Presentation of case for prosecution.

(2) The prosecutor shall examine a witness for the prosecution who may be cross-examined by the defendant or his legal representative, and thereafter re-examined by the prosecutor, where necessary.

308. After the case of the prosecution is concluded, the defendant or his legal representative if any, is entitled to address the Court to present his case and to adduce evidence where required.

Defendant's case.

309. The Court may, on its own motion or on an application by the defendant after hearing the evidence for the prosecution, where it considers that the evidence against any of the defendant is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of that defendant without calling on him to enter his defence and that defendant shall be discharged and acquitted and the Court shall call on the remaining defendant, if any, to enter his defence.

No case submission at the instance of the Court.

310(1) Where the defendant or his legal representative makes a no case submission in accordance with this Law, the Court shall call on the prosecutor to reply.

No case submission by the defence and replies.

(2) The Court may allow the defendant or his legal representative to reply to

any new point of law raised by the prosecutor, after which, the Court shall give its ruling.

- (3) In considering the application of the defendant in section 303, the Court shall, in the exercise of its discretion, have regard to whether:
- (a) an essential element of the offence has not been proved;
 - (b) there is an absence of evidence linking the defendant with the commission of the offence with which he is charged; and
 - (c) the evidence so far led is such that no reasonable Court or tribunal could convict on it.

311.(1) After the case for the prosecution is concluded, the defendant or his legal representative, if any, is entitled to address the Court at the commencement or conclusion of his case, and if no witness was called for the defence other than the defendant or a witness solely as to the character of the defendant and no document is put in as evidence for the defence, the prosecution may not be entitled to address the Court for a second time but if, in opening the case for the defence, the defendant or his legal representative introduces a new matter without supporting it by evidence, the Court in its discretion may allow the prosecution to reply.

Defence and
prosecutor's
right of reply.

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

- (3) This section shall not affect the right of reply by a law officer.

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

Reference to
the Court of
Appeal.

- (a) conclude the trial and postpone the verdict until such a time the question is considered and decided; or
 - (b) conclude the trial and pass sentence but suspend execution until the question has been considered and decided,
- and in any such case the Court in its discretion shall commit the defendant or convict to prison or admit him to bail in accordance with Part 19.

- (2) Where the question in subsection (1) is decided by the Court of Appeal, the Court shall:
- (a) acquit or convict the defendant; or

- (b) order the execution of the sentence as the circumstance may require.
313. A grant for stay of proceedings in criminal matters shall be at the discretion of the Court. Stay of proceedings.
- 314.(1) Where the case for both sides is closed, the Court shall consider its verdict and for this purpose may retire or adjourn the trial. Consideration of case by Court and announcement of finding.
- (2) The Court shall pronounce its finding in the open Court after it has made the finding.
- 315.(1) A Judge or Magistrate shall record his judgment in writing and every judgment shall contain the point for determination, the decision and the reasons for the decision and shall be dated and signed by the Judge or Magistrate at the time of pronouncing it. Judgment to be in writing.
- (2) The Magistrate, instead of writing the judgment, may record briefly in the Court record his decision or finding and his reason for the decision or finding, and deliver an oral judgment.
316. Where the Court finds a defendant not guilty, it shall immediately discharge him and record an order of discharge and acquittal. Defendant to be discharged where found not guilty.
- 317.(1) Where the finding is one of guilty, the convict shall, where he has not previously called any witness as to his character, be asked whether he wishes to call any witness and, after the witness, if any, is heard, he shall be asked whether he desires to make a statement or produce any necessary evidence or information in mitigation of punishment in accordance with section 318 (3). Procedure on finding of guilty.
- (2) Where the defendant makes a statement in mitigation of punishment, the prosecution shall, unless evidence has been given:
- (a) produce evidence of any previous conviction of the defendant; and
- (b) give a detailed account of the impact of the defendant's offence or criminality on the identified victims, family members of the victims, organisations, other persons and the community at large.
- 318.(1) Where section 317 is complied with, the Court may pass sentence on the convict or adjourn to consider and determine the sentence and shall announce the sentence in open Court. Sentence and sentencing hearing.
- (2) The Court shall, in pronouncing sentence, consider the following factors

in addition to sections 246 and 247:

- (a) the objectives of sentencing, including the principles of reformation and deterrence;
- (b) the interest of the victim, the convict and the community;
- (c) appropriateness of non-custodial sentence or treatment in lieu of imprisonment; and
- (d) any previous conviction of the convict.

- (3) The Court, after conviction, shall consider every necessary aggravating and mitigating factor, circumstances and information in respect of a convict that may guide it in deciding the nature and extent of sentence to be passed on the convict in a particular case, including where convicts may have been charged and tried together.

319. The Court may, in recording sentence, make a recommendation for mercy and shall give the reasons for its recommendation. Recommendation for mercy.

320.(1) Where a defendant is found guilty of an offence, the Court may, in passing sentence, consider any other charge pending against him, where the defendant admits the other charge and desires that it be taken into consideration and if the prosecutor of the other charge consents. Conviction on other charges pending.

- (2) Where a desire is expressed in subsection (1) and consent given, the Court shall make an entry to that effect on the Court record book.

- (3) Pursuant to subsection (2), the prosecution shall state the facts of the case in accordance with section 307.

- (4) Where the other charge pending against the defendant is considered in accordance with subsections (1) and (2) and sentence passed on the defendant in respect of the other pending charge, the defendant shall not, subject to sections 243 to 244, or unless the conviction is set aside, be liable to be charged or tried in respect of any such offence.

321.(1) Notwithstanding the limit of its civil or criminal jurisdiction, a Court has power, in delivering its judgment, to award to a victim reasonable compensation by the defendant, any other person or the State. Compensation to victim in judgment.

- (2) The Court in considering the award of compensation to the victim may consider additional evidence to enable it determine the appropriate quantum of compensation to be awarded in accordance with subsection (1).

322. Where a Judge or Magistrate having tried a case is prevented by illness or Delivery of judgment when

other unavoidable cause from delivering his judgment or sentence, the judgment or the sentence, if it has been reduced into writing and signed by the Judge or Magistrate, may be delivered and pronounced in open Court by any other Judge or Magistrate in the presence of the defendant.

Judge or Magistrate is unavoidably absent.

323. Where a sentence or conviction does not order the payment of money but orders the convict to be imprisoned, the Court shall issue a warrant of commitment.

Warrant of commitment.

324. A warrant under the hand of the Judge or Magistrate by whom a convict is sentenced or committed to prison for non-payment of a penalty or fine, grants full authority to the officer in charge of any prison and to any other person for carrying into effect the sentence described in the warrant not being a sentence of death.

Authority for carrying out sentence other than of death.

325. The Court may, at any time, amend a defect in an order or warrant of commitment and no:

Error or omission not to affect legality of act

- (a) omission or error as to time and place; or
- (b) defect in form in any order or warrant of commitment given under this Law,

shall render void or unlawful an act done or intended to be done by virtue of the order or warrant if it is mentioned or may be inferred that it is founded on a conviction or judgment sufficient to sustain it.

PART 32 - COSTS, COMPENSATION, DAMAGES AND RESTITUTION

326.(1) Notwithstanding this Law or any other enactment, and without prejudice to Section 321, a Court may in the course of the proceedings or judgment order a defendant or convict to pay a sum of money:

Power of Court to order payment of expenses or compensation.

- (a) as compensation to a person who suffers injury or loss by the action or omission of the defendant or by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict;
- (b) to compensate a bona fide purchaser for value without notice of the defect of title in a property in respect of which the offence was committed and has been compelled to give it up; and
- (c) to defray expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.

(2) Where the fine in subsection (1) is imposed in a case which is subject to appeal, no additional payment to the fine shall be made before the period

allowed for presenting the appeal has elapsed or where an appeal is presented, before the decision on the appeal.

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

327.(1) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court deciding on the civil suit shall take into consideration any sum paid or recovered as compensation under this section.

Payment to be taken into consideration in subsequent civil suit.

- (2) The pendency of criminal proceedings shall not be a bar to a civil action in respect of the same subject matter but where criminal proceedings has commenced, they shall conclude before any civil suit can be litigated upon.

328. The Court, after conviction, may adjourn proceedings to consider and determine the sentence appropriate for each convict and the Court may:

Power of Court to order restitution.

- (a) in addition to or in lieu of any other penalty authorised by law, order the convict to make restitution or pay compensation to a victim of the crime for which the offender was convicted, or to the victim's estate; or
- (b) order for the restitution or compensation for the loss or destruction of the Victim's property and in doing so the Court may direct the convict to:
- (i) return the property to the owner or to a person designated by the owner;
 - (ii) pay an amount equal to the value of the property, where the return of the property is impossible or impracticable; or
 - (iii) pay an amount equal to the property calculated on the basis of what is fair and just where the property to be returned is inadequate or insufficient.

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

Cost against private prosecutor.

- (2) No order as to costs may be made by the Court if it considers that the private prosecutor had reasonable grounds for making his complaint.
- (3) In this section, "private prosecutor" does not include a person prosecuting on behalf of the State, a public officer prosecuting in his

official capacity or a police officer.

- (4) Notwithstanding this Law or in any other law, a Judge or Magistrate may order:
- (a) a party to criminal proceedings to pay another party's costs incurred as a result of an unnecessary or improper act or omission;
 - (b) a legal representative or other representative to pay costs incurred as the result of an improper, unreasonable or negligent act or omission by them or any of their employee.

330.(1) Where a person causes the arrest, or arrest and charge of a defendant and it appears to the Court that there was no sufficient ground for causing the arrest, or that the accusation is false, vexatious or frivolous, it may for reasons to be recorded, order the person to pay reasonable compensation to the defendant.

Compensation in cases of false and vexatious accusation.

(2) The Court may, in default of payment of the compensation or a part of it, award a term of imprisonment against the person the order was made, for a term not exceeding the term prescribed in respect of a like sum in the scale of imprisonment set out in this Law or the Court may sentence the person to Community Service in accordance with section 472.

(3) Subject to the provisions of the Constitution relating to appeals, a person against whom an order for payment of compensation is made may appeal against the order as if he had been convicted after trial by the Court that issued the order.

331(1) A person to whom compensation is awarded may refuse to accept the compensation.

Injured person may refuse to accept compensation, but payment of compensation may bar further liability.

(2) Where the person receives the compensation or where the convict, having been ordered to pay compensation, suffers imprisonment for non-payment, the receipt of the compensation, or the undergoing of the imprisonment, may act as a bar to any further action for the same loss or injury, except further evidence reveals that the scale of injury or loss is significantly greater than what was initially believed to be the case at the time of the award of compensation.

(3) A Court shall explain the effect of this section to the person to whom compensation is payable and to the defendant before making an order for compensation.\

332. A compensation ordered to be paid in this Law or any other Law relating to any criminal proceeding may be enforced as if it is a fine. Monies paid as compensation, recoverable as fines.
333. (1) Where a convict is ordered to pay a fine, or a defendant is ordered to pay compensation to another person in section 326, or a person is subject to recover penalty for forfeiture of a bond under this Law, the Court passing the sentence or making the order may, notwithstanding that, in default of the payment of the fine or compensation or penalty, the convict or defendant may be imprisoned, issue a warrant for the levy of the amount by any means permitted by law, including the: Warrant for levy of fine.
- (a) seizure and sale of any movable property belonging to the defendant or convict;
 - (b) attachment of a debt due to the defendant or convict; or
 - (c) attachment and sale of any immovable property of the convict situate within the jurisdiction of the Court, subject to the Land Use Act.
- (2) A warrant for seizure and sale of the movable property of a person in 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 a debt or sale of immovable property, the warrant shall be sent for execution to a court competent to execute an order for the payment of money in civil suit and the Court shall follow the procedure in force for the execution of the order. Cap. L5 LFN 2004.
334. (1) Where a Court orders a convict to pay a fine with or without a sentence of imprisonment in default of payment of the fine, the Court authorised by section 333 to issue a warrant may exercise any of the following powers: Powers of Court when convict is sentenced to only fine.
- (a) allow time for payment of the fine;
 - (b) direct that the fine be paid by instalments;
 - (c) postpone the issue of a warrant in section 333;
 - (d) without postponing the issue of a warrant in section 333, postpone the sale of a property seized under the warrant; or
 - (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 in subsection (1) may be made subject to the convict giving 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, in the exercise of the powers in subsection (1), order that the execution of the sentence of imprisonment on a convict, who is committed to prison in default of payment of a fine, be suspended and he be released subject only to the convict giving security as specified in subsection (2).
- (4) Where the fine or an instalment of the fine is not paid in accordance with an order in this section, the Court making the order may enforce payment of the fine or of the balance outstanding, by a means authorised in this Law and may cause the offender to be arrested, and may commit or recommit him to prison under the sentence of imprisonment in default of payment of the fine.
- 335.(1) Where a defendant is charged with the commission of an offence relating to property and the Court is of the opinion that the evidence is insufficient to support the charge, but the evidence establishes wrongful conversion or detention of the property, the Court may order that the property be restored to the person entitled to the property and may also award reasonable damages to that person. Wrongful conversion or detention of property and award of damages.
- (2) The damages awarded under this section, shall be recovered in the same manner as prescribed in section 332.
- PART 33 - CUSTODY, DISPOSAL, RESTORATION OF PROPERTY**
336. In this Part, the definition of “property” in the case where an offence appears to have been committed, includes, not only the property as was originally in the possession or under the control of a party, but also a property into which it has been converted or for which it has been exchanged and anything acquired by the conversion or exchange, whether immediately or otherwise. Meaning of “property”.
337. Where a 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 may: Order for custody and disposal of property pending trial.

- (a) make an order as it thinks fit for the proper custody of the property pending the conclusion of the proceedings or trial; and
- (b) where the property is perishable or subject to speedy decay, after recording any evidence as it thinks necessary, order for it to be preserved as far as possible in its original form and where this is not possible, the Court may order other means of disposal that will not prejudice or undermine any of the potential outcomes of the instant or other Court proceedings.

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

Order for disposal of property after trial.

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

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

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

Custody or sale of property

- (2) Where no person establishes a right within 6 months from the date of forfeiture or confiscation of the property, the proceeds of the sale shall be paid into the State Treasury or any other appropriate account.
- (3) Where an order is made in this section in a case which an appeal lies, the order shall not, except where the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting the appeal has passed or when the appeal is entered, until the disposal of the appeal.

**PART 34 - SEIZURE, FORFEITURE, CONFISCATION AND
DESTRUCTION OF INSTRUMENTALITY OF CRIME**

340.A Court may:

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

- (a) order the seizure of any instrument, material or thing which there is reason to believe is provided or prepared, or being prepared, with a view to commit 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 in section 343.

341.(1) Where a person is convicted for an offence relating to obscene publication, the Court may order the confiscation and destruction of every copy of the publication or thing, including those that remain in the possession or power of the convict.

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

- (2) Where a person is arrested for an offence relating to adulterated or unfit food, drink or drug, the Court shall order the confiscation and destruction of the food, drink or drug, including any other adulterated or unfit item in the possession or power of the defendant.

- (3) The Court shall, where appropriate, allow samples of the confiscated items in subsection (2) to be taken to the relevant laboratory for testing.

342. Where a Court is satisfied, by information on oath, that there is reasonable ground for believing that there is in the State in a building, ship, carriage, receptacle or place, anything in respect of which an order may be made in section 340 or 341, 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 or the Court may direct that an investigator or any other law enforcement officer retains the thing or things found for the purpose of detection or investigation of crime.

Search warrant may be used to search for things subject to section 340 or 341.

343.(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 an immovable property, the Court may, where it deems fit, order the possession of the property to be restored to the victim.

Restoration of possession of immovable property.

- (2) An order in 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.

- 344.(1) The seizure by the police of a property taken during arrest or investigation under this Law, or alleged or suspected to have been stolen or found in circumstances which create a suspicion of the commission of an offence, shall, within a period not exceeding 48 hours of the taking of the property or thing, be reported to a Court, and the Court shall make an order in respect of the disposal of the property or its delivery to the person entitled to its possession or any other order as it may deem fit in the circumstances.
- (2) In considering an order of disposal in subsection (1), the Court shall have regard to the possibility that the property could be required as an exhibit in a potential trial.
- (3) Where the person entitled to the possession of the property in subsection (1) 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 6 months from the date of the notice.
- 345.(1) Where no person within the period in section 344 establishes his claim to the property referred in that section and where the person in whose possession the property is 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 from there forfeited to the State Government.
- (2) Within 6 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 a person proving his title to it, on payment by the person of any expense incurred by the Court in the matter.
346. Where the person entitled to the possession of the property in section 344 is unknown or absent and the property is subject to speedy decay, or for the benefit of the owner, the Court may direct it to be sold and sections 344 and 345 shall, as it may be practicable, apply to the net proceeds of the sale.
347. 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 is stolen, and that money has, on the arrest of the convict, been taken out of his possession, the Court may on the:
- (a) application of the purchaser; and
- (b) restitution of the stolen property to the person entitled to the possession,
- Procedure on seizure of property taken during arrest or investigation or stolen.
- Procedure where owner of property seized is unknown.
- Power to sell perishable property.
- Payment to innocent person of money found on defendant.

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

348. Where, on the arrest of a defendant charged with an offence, a 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 any other person as he may direct; or
 - (b) applied to the payment of any costs or compensation directed to be paid by the defendant.
- 349.(1) Where a defendant is convicted of an offence relating to property, the Court may order that the property or a part of it be returned to the person who appears to the Court to be the owner of the property, 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 a sum named in the order.
- (2) This section does not apply to a:
- (a) valuable security which is paid or discharged in good faith by a person liable to pay or discharge the instrument; or
 - (b) negotiable instrument which is received in good faith by transfer or delivery by a person for a just and valuable consideration without notice or any reasonable cause to suspect that it had been stolen.
- (3) Where a person is arrested for an offence of kidnapping, cultism or militancy, the investigating authority shall liaise with the Attorney-General or an officer from his department and shall immediately identify, trace, attach, seize and freeze the person's assets and properties and shall cause to be obtained an interim attachment order from the Court.
- (4) Where the asset or property of the person arrested for kidnapping, cultism or militancy is seized, the Attorney-General or an officer from his department shall make an ex-parte application to the Court for an interim order forfeiting that property to the State Government and the Court shall, if satisfied that there is prima facie evidence that the property is liable to forfeiture, make an interim order forfeiting the property to the State Government.
- (5) Notwithstanding the provision of any other law, the Attorney-General, if satisfied that the money in an account of a person was made through the

Restitution and disposition of property found on defendant.

Restitution of stolen property.

Disposal of property connected with kidnapping.

commission of offence of kidnapping, cultism or militancy, shall apply to the Court ex-parte for an order to instruct the bank to freeze the account.

- (6) (a) In a case of kidnapping, cultism or militancy, the Court may order the seizure of a property used for that purpose or in the course of committing the crime.
- (b) Property in this section includes any item, material, landed property, cash, bank accounts, negotiable instruments and any other physical thing.
- (7) No disposal, alteration, destruction or transfer of a property confiscated or seized by virtue of subsection (6) shall be made during a trial without an order of Court issued by the trial judge.
- (8) At the end of the trial, the judge shall deal with the property in the interest of justice.
- (9) Notwithstanding that a defendant charged in connection with the property is acquitted or a person with a title or right over the property is neither charged nor convicted, the Court may order the confiscation of the property after trial.
- (10) In determining how to deal with the property at the end of the trial, the judge shall take into consideration:
 - (a) the significance of the property in the commission of the offence;
 - (b) the extent to which the property was used in the kidnapping or the activity complained of;
 - (c) representations from a person who claims to have a superior title to the property;
 - (d) whether the defendant asserted any legal title over the property;
 - (e) evidence that the property is joint, family or matrimonial property;
 - (f) evidence of complicity in the kidnapping or activity complained of by any other person claiming a title or right over the property;
 - (g) any evidence of acquiescence in the kidnapping or activity complained of by the person claiming a title or right over the property;
 - (h) where the property is landed property or a family home, the occupation and length of occupation by vulnerable persons including, children, the elderly and disabled persons;
 - (i) whether it is the only available or suitable residence or accommodation for the category of people in paragraph (h); and
 - (j) the existence of any other court order or agreement in relation to the use or ownership of the property.

(11) The judge may in his discretion order the destruction or demolition of any landed property, vessel, item or any other property.

(12) The judge may, in this section, make an order of forfeiture for the property to be vested in the State.

(13) Where a judge intends to make an order for forfeiture or destruction in relation to landed property, he shall:

- (a) publish his intention for 30 days from the date of his intention;
- (b) request all possible interested parties to make representations or show cause within 30 days why the property should not be forfeited or destroyed;
- (c) not take an action that may lead to the disposal, alteration or destruction of the property within the 30 days; and
- (d) give reasonable opportunity to anyone claiming a title or right over the property to be heard.

(14) The judge shall hear the parties and make his ruling at the end of the 30 days.

350. Where a defendant is charged with an offence relating to counterfeit currency and in the defendant's possession, actual or constructive, is found a counterfeit currency or thing intended to be used for the purpose of making counterfeit currency, 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 a manner as the Court may order.

Destruction of articles relating to counterfeiting where charge is laid.

351.(1) Where a person is in possession of a currency or thing 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:

Destruction of articles relating to counterfeiting where no charge is laid

- (a) an officer of the Central Bank of Nigeria designated by the Bank to receive it; or
- (b) a police officer not below the rank of an Inspector.

(2) Where the officer of the Central Bank of Nigeria or police officer is satisfied that the currency or thing is:

- (a) not counterfeit or is not intended to be used for the purpose of making counterfeit currency, he shall return the currency or thing to the person purporting to be the owner of it, if known; or
- (b) counterfeit or is intended to be used for the purpose of making counterfeit currency and if no charge is preferred against a person in connection with the currency or thing, may destroy, or cause to be destroyed the currency or thing in a manner and by a person as may

be approved by the Central Bank of Nigeria.

- (3) A notice of an action to be taken in subsection (2) (a) shall be given to the person who appears to be the owner of the currency or thing, where the person is known and can be easily found, that the currency 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.
- (4) A reasonable time shall be given to the person to prove that the currency is not counterfeit or that the thing is not intended to be used for the purpose of making counterfeit currency and the person who alleges that he is the owner of or otherwise entitled to the currency or thing shall have no claim against the officer of the Central Bank of Nigeria, the police officer or the Federal Government in respect of the currency or thing destroyed.

352.(1) Subject to this section, sections 350 and 351 shall apply in relation to notes purporting to be legal tender in Nigeria as they apply in relation to currency.

Detention and
destruction of
counterfeit
currency, etc

- (2) No currency, matter or thing shall 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 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; 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) is voluntarily surrendered by the person having possession of it, to the proper official of the Central Bank of Nigeria or a superior police officer; or
 - (ii) is discovered in a lodgement made with the Central Bank by a commercial bank.

353. Subject to the 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 a Court may be sold or disposed of in a manner as the Court may direct, and the proceeds of the sale shall be

Mode of
dealing with
forfeiture not
pecuniary

applied as if the proceeds were a penalty imposed under the law on which the proceedings for the forfeiture is founded.

PART 35 - SUMMARY PROCEDURE IN PERJURY

354.(1) Where it appears to a Court that a person has committed perjury in a proceeding before it, the Court, subject to subsection (2) and in addition, in the case of a Magistrate, to subsection (3) may:

Summary
procedure in
perjury.

(a) commit him for trial on information for 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, commit him to prison for a period not exceeding 6 months or fine him in a sum in accordance with the scale of fine in the 4th Schedule.

4th Schedule

(2) Where a Court decides to try a person summarily in subsection (1) for contempt of Court or perjury, the Court shall:

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

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

(3) Where a Court orders a person to be imprisoned or to pay a fine in subsection (1), 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 appear before the Court when called upon; and

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

(4) The Chief Judge or Judge to whom a certified copy of the proceedings is forwarded pursuant to subsection (3):

(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.

(6) An imprisonment or a fine ordered or imposed in this section is a bar to

any other proceedings for the same offence except where the order of the Court is wholly set aside.

PART 36 - TRIALS AND SUMMARY TRIALS GENERALLY

- 355.**(1) A High Court shall hold a trial on an information filed: Trials.
- (a) by the Attorney General or a law officer in his office;
 - (b) by a Legal Officer of a prosecuting agency;
 - (c) by a private prosecutor subject to section 109; or
 - (d) in accordance with this Law.
- (2) A Magistrate Court or any other Court or tribunal exercising criminal jurisdiction shall hold trials in accordance with the provisions of this Law relating to summary trials.
- 356.**(1) Where a defendant charged before a Court is not represented by a legal representative, the Court shall: Non-appearance and non-representation by legal representative
- (a) inform him of his right to a legal representative of his choice; and
 - (b) enquire from him whether he wishes to engage his own legal representative or if he would want a legal representative engaged for him by way of legal aid.
- (2) Where the legal representative who had appeared on behalf of the defendant ceases to appear in Court on two consecutive sessions of the Court, the Court shall enquire from the defendant if he wishes to engage another legal representative or if he would want a legal representative engaged for him by way of legal aid.
- (3) Where the defendant wishes to engage another legal representative of his choice, the Court shall allow him reasonable time but not exceeding 14 days to do so.
- (4) Where the defendant fails or is unable to secure a legal representative arranged by him after a reasonable time, the Court may direct that a legal representative be arranged by way of legal aid to represent the defendant.
- (5) The Court may assign to a legal representative whose place of practice is within the jurisdiction of the Court a case of a defendant who has no legal representation, and the legal representative shall undertake the defence of the defendant with due diligence and shall not pay any filing fee or service fee in respect of the case assigned.

- (6) (a) Where the defendant chooses to represent himself, the Court shall:
- (i) inform him of his rights under the Constitution of the Federal Republic of Nigeria, 1999 and this Law; and
 - (ii) indicate the fact of having informed the defendant on the Court record.
- (b) 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 representative, other than a law officer, engaged in a matter shall be bound to conduct the case on behalf of the prosecution or defendant until final judgement, unless allowed for any special reason to cease from acting by the Court of its own motion or on application by the legal representative.
- (8) Where a legal representative intends to disengage from a matter, he shall notify the Court not less than 5 working days before the date fixed for hearing and the notice shall be served on the Court and all parties.
- (9) A legal representative who fails to comply with subsection (8) may be liable to the orders in section 260 and or section 329 (4).

357.(1) A trial shall hold summarily in:

When summary trials shall be held.

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

- (2) In a trial in the Magistrate Court or Tribunal, the prosecution shall, provide the defendant any material that the prosecution intends to rely on at the trial, not less than 7 days before the commencement of the trial.

358.(1) When a case is called and a defendant appears voluntarily in obedience to the summons or is brought before a Court under a warrant, and a 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 a manner authorised by a written law, the Court may strike out the complaint.

Non-appearance of complainant.

- (2) Where the Court receives credible information or evidence that the complainant or his representative is unavoidably absent from Court, it may adjourn the hearing of the complaint to a future date on terms as the

Court may deem just.

- 359(1) Where a case is called in which a summons is issued and the defendant does not appear, and no sufficient excuse is offered for his absence, the Court may where it is: Non-appearance of defendant.

- (a) satisfied that the summons has been issued and duly served, issue a bench warrant for his arrest; or
- (b) not satisfied that the summons was duly served or warrant in the first instance issued, issue a fresh summons to secure his attendance in Court,

and the Court shall adjourn the hearing of the case to a future day, in order that proper service may be effected or until the defendant is arrested.

- (2) Where the defendant is arrested on a bench warrant, he shall be brought before the Court immediately which may then commit him by warrant to prison or to any 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 Court shall direct that the complainant be served due notice of the time and place ordered in subsection (2).

- (4) Where the Court, in exercise of its discretion, has granted bail to the defendant and the defendant, in disregard of the Court order, fails to surrender to the order of the Court or fails to attend Court without reasonable explanation, provided that at the time of fixing the trial or at any other time before the date of the trial at which he failed to attend, the defendant was warned or informed in open Court that the trial may proceed in his absence, the Court: Trial in absence
- (a) shall continue with the trial in his absence after allowing for a maximum of 2 adjournments;
 - (b) may convict him in his absence; and
 - (c) shall adjourn for sentence.

- (5) Where a defendant is convicted in his absence in subsection (4), the Court shall issue a bench warrant for his arrest.

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

- 360(1) Where a case is called and neither the prosecutor nor defendant appears or the defendant appears but the prosecutor does not appear, the Court shall make an order as the justice of the case requires, including the orders in section 329 (4). Non-appearance of both parties.

- (2) The Court may, in the order, include a direction as to the payment of costs as it considers fit, and the payment of the costs may be as if it is a fine.
361. Where a case is called and both the complainant and the defendant appear, the Court shall proceed to hear and determine the case. Appearance of both parties.
362. Where a complainant, at any time before a final order is made in a case, satisfies a court that there is sufficient grounds for permitting him to withdraw his complaint, the Court shall permit him to withdraw the complaint and shall discharge the defendant. Withdrawal of complaint.
- 363.(1) At the commencement of a 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. Manner of hearing.
- (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, section 212 of the Evidence Act shall apply, but failure to comply with this subsection shall not invalidate the proceedings but may affect the weight of evidence given by the witness who fails to leave the Court on the direction being given.
- (4) Notwithstanding subsections (1), (2) and (3), in a capital offence the Court shall proceed with the trial irrespective of the plea by the defendant.
- (5) The Court shall proceed:
- (a) to hear the prosecutor, any witness he may call and any other evidence he may adduce in support of the charge;
 - (b) to hear the defendant, any witness he may call and any other evidence he may adduce in his defence; and
 - (c) where it deems fit, to hear any witness the prosecutor may call in reply if the defendant calls a witness or gives 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 representative, the Court shall, at the close of the examination of each witness for the prosecution, ask the defendant whether he wishes to put any question to that witness, and shall record the defendant's answer.

- (8) The defendant shall take his plea in the dock, except the Judge directs otherwise.
364. 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 in accordance with section 309. Discharge of defendant when no case to answer.
365. Where at the close of the evidence in support of the charge, 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: Defence.
- (a) is not represented by a legal representative, the Court shall inform him of the alternatives open to him, that he may:
- (i) make a statement, without being sworn, from the place where he is, and so he will not be liable to cross-examination; or
- (ii) give evidence in the witness box, after being sworn as a witness, and so will be liable to cross-examination; or
- (iii) he may call a witness or adduce any other evidence in his defence;
- (b) is represented by a legal representative, the Court shall call on the legal practitioner to proceed with the defence.
- 366(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. Process for compelling production of evidence at instance of defendant.
- (2) On an application by the defendant in subsection (1), 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 for any other purpose which is likely to lead to the defeating of the aims of justice.
367. Failure to comply with section 365 (1) (a) shall not of itself vitiate the trial where the Court:
- (a) called on the defendant for his defence; Saving as to section 365 (1) (a).

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

368. Where a defendant adduces in his defence a new matter which the prosecution could not have foreseen, the prosecution may, with the leave of the Court, adduce evidence to rebut the new matter or evidence. Evidence in reply.

369(1) In an exceptional circumstance, where the evidence of a technical, professional or expert witness will not ordinarily be contentious as to require cross-examination, the Court may on an application of the prosecutor or the defendant grant leave for the evidence to be taken in writing or by an electronic recording device, on oath or affirmation of the witness referred to as a deposition. Power to take deposition in certain cases.

(2) The deposition shall form part of the record of the Court if the prosecutor and the defence agree on the contents.

(3) 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 this Law, the Judge or Magistrate shall:

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

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

(4) The Court shall cause reasonable notice of the application to take the deposition in accordance with subsections (1), (2) and (3), 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.

(5) Notwithstanding anything contained in this Law or any other enactment, subject to this section, any fact of which oral evidence may be given in a criminal proceeding may be admitted for the purpose of that proceeding by or on behalf of the prosecutor or defendant, and the admission by a party of any such fact in this section shall, against that party, be conclusive evidence in that proceedings of the fact admitted.

(6) An admission in subsection (5):

Proof by formal

admissions

- (a) may be made before or at the proceedings;
 - (b) if made during the proceedings, the Magistrate or Judge shall cause it to be recorded in the record of proceedings;
 - (c) if made in any other place other than in Court, shall be in writing;
 - (d) if made in writing by an individual, shall be signed by the person making it and if made by a body corporate, it shall be signed by a director or company secretary or clerk, or a person with the mandate of the board of directors of that body corporate to sign;
 - (e) if made on behalf of a defendant who is an individual, shall be made by his legal representative.
- (7) An admission in subsection (5) for the purpose of a proceeding relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter including an appeal or a retrial.
- (8) An admission in this section may, with the leave of the Court, be withdrawn in the proceeding for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.
- 370(1) A statement taken in section 369 may be used in evidence in the trial of a defendant accused of an offence to which the statement relates in accordance with section 46 of the Evidence Act. When statement may be used in evidence.
- (2) The signature and attestation of a Judge or Magistrate shall be sufficient *prima facie* proof of the content of that statement, and that the statement was taken in accordance to the law and the attestation and signature shall be admitted without further proof unless the Court sees reason to doubt its genuineness.
- (3) Notwithstanding anything in this Law or in any other law, in a criminal proceeding, a written statement by a person shall be admissible as evidence to the same extent as oral evidence to the like effect by that person if:
- (a) the purported statement is signed by the person who made it;
 - (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it is tendered in evidence, he will be liable to prosecution if he wilfully states in it anything which he knows to be false or does not believe to be true; Proof by written statements
 - (c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served by or on behalf of the party proposing to tender it on each of the other parties to the proceedings; and

- (d) after a copy of the statement is served under paragraph (c), none of the other party or its representatives, within 7 days from the service of the copy of the statement, serves a notice on the party proposing to tender it, objecting to the statement being tendered in evidence under this section.

Provided that the conditions in paragraphs (c) and (d) shall not apply if the parties agree before or during the hearing that the statement shall be tendered.

- (4) The following provisions shall apply in relation to a written statement tendered in evidence in subsection (3) if:
 - (a) the statement is made by a person under the age of 18, the person shall give his or her age but the statement shall not be invalidated by reason of the age of the maker of the statement or on whose behalf it was taken;
 - (b) the statement is made by a person who cannot read, the statement shall be read to him before he signs and shall be accompanied by a declaration by the person who read the statement to the effect that it was read; and
 - (c) it refers to any other document as an exhibit, the copy served on any other party to the proceedings in subsection 3(c) shall be accompanied by a copy of that document or by any information as may be necessary in order to enable the party on whom it is served to inspect that document or the copy.
- (5) Notwithstanding that a written statement made by a person may be admissible as evidence by virtue of subsection (3):
 - (a) the party by whom or on whose behalf a copy of the statement was served may call the maker of the statement to give evidence;
 - (b) the Court may, of its own motion or on the application of a party to the proceedings, require that person to attend before the Court and give evidence; or
 - (c) in determining the need for the maker of a statement under subsection (3) to attend Court and give evidence, the Court shall consider the appearance of ambiguities, inconsistencies or vagueness in the contents of the statements made by the maker and the need for clarification.
- (6) An application under paragraph (b) to a Court shall be made not less than 28 days before the date fixed for trial, and in such an application the

powers of the Court shall be exercised by a judge or Magistrate.

- (7) Where a statement is admitted in evidence in this section:
 - (a) a portion of it shall be read aloud at the hearing, unless the Court otherwise directs; and
 - (b) where the Court directs, an account or summary shall be given orally of the portion that is not read aloud.
- (8) A document or an object referred to as an exhibit and identified in a written statement tendered in evidence in this section shall be treated as if it had been produced as an exhibit and identified in Court by the maker of that statement.
- (9) A statement or document required in this section to be served on a person may be served by:
 - (a) delivering it to him or to his legal representative;
 - (b) addressing it to him and leaving it at his usual or last known place of abode or place of business or by addressing it to his legal representative and leaving it at his office;
 - (c) sending it in a registered letter or by recorded delivery service or by a courier service addressed to him at his usual or last known place of abode or place of business or addressed to his legal representative at his office; or
 - (d) delivering it to the secretary or clerk in the case of a body corporate or a partnership, at its registered or principal office or a head of a branch or by sending it in a registered letter or by a recorded delivery service or by a courier service addressed to the secretary or clerk of that body at that office or to a head of a branch.
- (10) References to the secretary, in subsection (9) (d) in relation to a partnership, is to a member of the partnership.
- (11) Where a prosecutor in a criminal proceeding intends to call a witness to give live evidence in person as it applies in subsection (5), a judge having read the statement of the witness in this section may determine and rule that there is no need for that witness to attend Court to repeat the contents of his statement by giving live evidence in person through examination-in-chief in court.
- (12) Where a judge in subsection (11) determines and rules that there is no need for the witness to attend to repeat the contents of his statement through examination-in-chief, the judge shall:
 - (a) ask for the witness to be sworn;

- (b) ensure that the witness confirms and adopts the statement as his own; and
- (c) ask the witness in paragraphs (a) and (b) to be tendered to the other party for cross-examination.
- (13) At the close of the prosecution's case, if the defendant does not intend to make a no case submission, he shall submit to the Court a list of witnesses he intends to call in support of his defence and their statements, and serve them on the prosecution within 7 days.
- (14) Where in subsection (13), a defendant fails or refuses to submit the list and statements of witnesses he intends to call in support of his defence, the Court may grant leave for him to submit out of time within another 3 days and may award costs against the defendant under section 329(4).
- 371(1) Without prejudice to section 355 (2), court proceedings may be recorded electronically and verbatim such that at the end of each day's proceedings, a transcript of the recording shall be printed to enable certification or authentication by the Judge or Magistrate who conducted the proceedings. Notes of evidence to be recorded electronically or in writing.
- (2) Where court proceedings are not recorded as provided in sub-section (1), the Court shall take note in writing in a Court record book kept for that purpose, the oral evidence presented and the Court shall sign the record book at the conclusion of each day's proceeding.
- (3) The transcript of the Court's recordings shall be signed or authenticated by the presiding Judge at the end of each hearing of the case or at the conclusion of the day's hearing in a manner authorised periodically by the Chief Judge in accordance with any 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) No person is entitled, as of right, to inspect or to a copy of the record of proceedings kept, except as may be expressly provided for by the rules of the Court or by any other law.
- (5) The record kept or a copy of it signed and certified as a true copy by the Court shall, without further proof, be admitted as evidence of the proceedings as statement made by the witnesses.
- 372(1) Where a Court tries a case summarily, it shall make or cause to be made in the Court record book the records of the proceedings for local inspection. Local inspection.

as the circumstances of the case may require.

- (2) A Magistrate before whom a charge against an accused person is read or before whom an accused person elects to be tried by a High Court may, if he considers it necessary, make or cause to be made a local inspection regarding documents or scene of crime as the circumstances of the case may require.
- (3) In the case of homicide or serious injury to the person, the Court or Magistrate may, if he considers it necessary, order that the body of the person killed or, if the injured person consents, order that the body of the injured person be examined by a qualified medical practitioner.
- (4) Where it is not possible for a qualified medical practitioner to carry out the examination in subsection (3), the Court or Magistrate may, if he considers it necessary, order that the examination be carried out by the most competent person that can be obtained, and the deposition of the medical practitioner or other person shall afterwards, if necessary, be taken.
- (5) A qualified medical practitioner or other person in subsections (3) and (4) who refuses or neglects without reasonable excuse to comply with any order or direction given by a Magistrate commits an offence and is liable on conviction to a fine of N50,000.00.

373. 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 and the circumstances of the case allow, hear and determine the complaints in the same proceedings.

Cross
complaints.

374. Where two or more complaints are made by one or more parties against another party or parties and the complaints refer to the same matter, the Court may, where it deems fit, hear and determine the complaints in the same proceedings.

Joinder of
complaints

375. When the Court concludes the hearing, it 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 any other order as it may deem just.

Giving of
decision upon
conclusion of
hearing.

376(1) In a summary trial, the Court may, whether the complaint is dismissed or not, by order bind over either the complainant or defendant, or both, with or without a surety or sureties, to be of good behaviour.

Power to bind
parties to be of
good behaviour.

- (2) A person who breaches an order made pursuant to subsection (1), may be imprisoned for a term not exceeding 3 months in addition to any other punishment to which the person is liable.

- (3) Before a binding order in subsection (1) or an order for imprisonment, or any other punishment in subsection (2) is made, the person to be affected by the order shall be given an opportunity to be heard.
- 377(1) Where a charge is dismissed on merits, the dismissal has the same effect as an acquittal. Effect of judgment of dismissal on merits, not on merits and without prejudice.
- (2) Where a charge is dismissed but not on merits, or stated to be dismissed without prejudice, the dismissal does not have the same effect as an acquittal.
378. Where a child is brought before a Court for an offence, the Court shall have regard to the Child Rights Law. Summary trial of child by Magistrate.
379. Without prejudice to any other power which a Magistrate may possess, he may, for the purposes of ascertaining whether it is expedient to deal with a case summarily, either before or during the hearing of the case, adjourn the case and remand the person charged for a period not exceeding 48 hours or release him on bail. Power to remand.
- 380(1) A law officer in a case where a charge of an indictable offence is being proceeded with summarily by a Magistrate, may, at any time before judgment, request the Magistrate to deal with the case as one for trial on information. Law officer may require case to be adjourned or dealt with specially.
- (2) On receipt of the request, the Magistrate shall adjourn the proceedings until such a time as the information or charge is filed in the High Court, provided that the information shall be filed within a period of 10 days from the date of the order granting the request.
- (3) The Magistrate shall make the case returnable for a period not exceeding 10 days from the date of the grant of the request.
- (4) Where at the end of the 10 days provided in subsection (2), the information or charge against the defendant is not 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.

- 381(1) Where a charge for an offence is being tried summarily by a Magistrate, the Magistrate shall, at the request of the person prosecuting, made at any time before judgment, adjourn the hearing of the charge for consultation with a law officer with a view of obtaining a request to proceed in accordance with section 380. Adjournment for law officer's decision.
- (2) Where the Magistrate grants an adjournment at the request in subsection (1), the adjournment shall be for a period not exceeding 8 days, and the Magistrate may grant the defendant bail.
- (3) The request of the law officer consulted in subsection (1) shall be filed within 4 days from the date the Magistrate grants the request of the person prosecuting, failing which the Magistrate shall proceed to try and conclude the case summarily.
- 382(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 recognizance, with or without sureties, in an amount as the Court thinks fit, that he shall keep the peace and be of good behaviour for a reasonable period fixed by the Court. Security for peace in cases tried summarily.
- (2) The convict may be ordered to be imprisoned until the recognizance is entered into, but the imprisonment shall not:
- (a) extend for a term longer than 1 year; and
- (b) together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine for the offence which he was convicted.
- 383(1) The Attorney-General shall, within 8 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. Case files, legal advice, and related proceedings
- (2) Subject to section 300, where the Attorney-General considers in his legal advice that there is a prima facie case against a suspect, he shall:
- (a) within 24 hours of his legal advice, file and serve the charge or information in accordance with this Law; and
- (b) at the same time of filing the charge or not later than 7 days before the arraignment of the defendant, serve on the defendant all the statements, documents and other accompaniments listed in subsection (3).
- (3) Where the offence is one for which a Magistrate Court has jurisdiction to try, the prosecutor shall file the charge at the Magistrate Court, accompanied with:

- (a) the list of witnesses;
 - (b) the list of exhibits;
 - (c) statements of the witnesses and of the defendant; and
 - (d) any report, document or material 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.
- (4) A form prescribed in the 1st Schedule, in which a defendant indicates a desire to be represented by a legal representative of his choice or by a legal representative from the Legal Aid Council, or any other organisation providing free legal representation to defendants shall be attached to each legal advice for the purpose of endorsement by the person in respect of whom legal advice is preferred and against whom the information is filed.
- (5) Where the defendant indicates in the form in subsection (4) that he wishes to be represented by a legal representative 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 is filed.
- (6) The Chief Registrar shall, within 14 days of receipt of the form in subsection (5), ensure that a legal representative of the Legal Aid Council or any other organization providing free legal representation for the defendant and by notice in writing informs the defendant of the particulars of the legal representation arranged for him.
- (7) The Chief Registrar shall, upon the receipt of the form, forward it to the Director of the State Legal Aid Council or to the nearest Legal Aid Council office where the Court is located or to the office of the Public Defender.

PART 37 - TRIALS BY WAY OF INFORMATION

384. An information shall be in the form set out in Form No. 11 in the 1st Schedule with such modifications as may be necessary to adapt it to the circumstances of each case.

Form of
information

385(1) An information shall contain:

Contents of
information.

- (a) a description of the offence charged in the information or where more than one offence is charged, each offence shall be set out in a separate paragraph known as count;
- (b) a count of an information which shall commence with a statement of offence charged;

- (c) the statement of offence which shall briefly describe the offence charged in an ordinary language, avoiding where possible the use of technical terms and where the offence charged is one created by a law, it shall contain a reference to that law;
 - (d) the particulars of offence which shall be set out in an ordinary language;
 - (e) the law and section of the law against which the offence is alleged to have been committed; and
 - (f) where the law that creates the offence does not give it any specific name, a definition of the offence may be made to give the defendant notice of the offence with which he is charged.
- (2) A charge is presumed to have fulfilled every condition required by law to constitute an offence but, 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 required.
- (3) Where an information contains more than one count, the counts shall be numbered consecutively.
- (4) The forms set out in the 3rd Schedule or forms conforming to them as nearly as possible may be used in every case to which they are applicable.
- (5) In other cases, forms similar to the forms in the 3rd Schedule or conforming to them as nearly as possible 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.
- 386(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:
- Contents of information, proof of evidence, etc.
- (a) the proof of evidence, consisting of:
 - (i) the list of witnesses;
 - (ii) the list of exhibits to be tendered;
 - (iii) statements of the witnesses;
 - (iv) 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 place of custody, where the defendant is in custody;
 - (vii) particulars of any plea bargain arranged with the defendant;
 - (viii) particulars of any previous interlocutory proceedings,

- including remand proceedings, in respect of the charge; and
- (ix) 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 in section 383(4)

- . (2) The prosecution may, at any time before judgment, file and serve notice of additional evidence.
- (3) The information and all accompanying processes listed in subsection (1) shall be served on the defendant or his legal representative, not later than 7 days before the date fixed for arraignment.

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

388. An information may be filed by: Filing of information.

- (a) the Attorney-General or an officer in his office;
- (b) a public officer acting in his official capacity;
- (c) a private legal practitioner authorised by the Attorney-General; or
- (d) a private person, provided the information is endorsed by a law officer that he has seen the 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.

389(1) Where an information is 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 10 working days of its filing. Assignment of information and issuance of notice of trial.

- (2) On assigning the information, the Court to which the information is assigned shall, within 5 working days of the assignment, issue a notice of trial to any witness and defendant and a production warrant properly endorsed by the Judge in respect of the defendant charged, where he is in custody, for the purpose of ensuring his appearance on the date of arraignment, and the Chief Registrar shall ensure the prompt service of the notice and information not more than 3 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 an 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 representative, if any, or on his surety or sureties, or on an adult in his household or in any other manner as the Court may deem fit and the service shall be deemed to be duly served on the defendant.
- (6) Nothing in this section shall prevent the trial of the defendant by reason only that the notice of trial and the information were served on him less than 3 days before the date of trial, unless the Court considers that the failure of service was not caused by an act or omission of the defendant and that due to the particular circumstances of the case and the late service of the notice, there could be significant prejudice to the defendant if the trial commenced immediately.
- 390(1) A registrar shall receive an information from a private legal practitioner where the: Information by private person.
- (a) information is endorsed by the Attorney-General 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) private legal practitioner shall enter into a recognizance to:
 - (i) a sum as may be fixed by the Court, with a surety, to prosecute the information to conclusion from the time the defendant is required to appear;
 - (ii) pay any costs as may be ordered by the Court; or
 - (iii) deposit in the registry of the Court, a sum of money as the Court may fix.
- (2) Where an application for consent to prosecute is made to the Attorney-General by a private legal practitioner and the Attorney-General declines to grant the consent, he shall give his reasons for doing so in writing within 15 working days from the date of the receipt of the application.
391. Where a private legal practitioner complies with section 390, the information shall be signed by that private legal practitioner who shall be empowered to prosecute the information. Conditions for private prosecutors.
392. The place of trial shall be determined in accordance with this Law. Venue.
393. Notwithstanding section 392: Change of venue

(a) where a cause is commenced in any other division than that in which it ought to have been commenced, it may, notwithstanding, be tried in that division in which it was commenced, but where the defendant objects, the Court may, where it considers the objection reasonable, transfer the case to the proper division in which it ought to have been commenced;

(b) the prosecutor or the defendant may, whenever he considers that the ends of justice so require in a 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; and

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

394. 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 is transferred; and any recognizance, subpoena and proceeding in or relating to the case are deemed to be returnable at the latter place or division and a witness who is to attend the trial or summoned to attend the trial shall be informed accordingly and shall attend at such latter place or division. Effect of change of venue.
395. A registrar or any other person directed by the Court shall endorse on or annex to every information delivered to a sheriff or proper officer, for service, a notice of trial and the 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. Form of notice of trial.
396. The registrar or any officer directed by the Court 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. Copy of information and notice of trial to be delivered to Sheriff.
397. The Sheriff or any proper officer shall, on receipt of the information and notice of trial, serve the person named in the notice not less than 7 working days before the date specified on the notice. Time and mode of summoning parties on information.
398. Notice of trial shall be served on all the witnesses at the same time and the service of the notice on the witnesses shall be in the same manner as service on a defendant who is not in custody. Service of notice of trial on witnesses.
399. The Chief Judge may engage the services of a reputable courier company for the purpose of undertaking service of criminal processes, and the company shall serve processes in accordance with this Law. Registered courier companies may serve processes.
400. An officer of the courier company serving the copy of information and Return of

notice shall immediately make to the registrar or any 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. service.

401. Where a defendant against whom an information is preferred and on whom the information and notice of trial is duly served does not appear to plead to the information, whether he is under recognizance to appear or not, the Court may issue a warrant for his arrest. Warrant where defendant does not appear.
402. Where a defendant is charged with a capital offence or offence punishable by life imprisonment, the State shall be represented by a law officer or a legal representative, and where the defendant is not defended by a legal representative, the Court shall assign a legal representative for his defence. Law officer or legal representative for State and defence in capital cases.
- 403.(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. Time for raising certain objections, daily trial and adjournments.
- (2) Without prejudice to section 228, after a plea is taken, the defendant may raise any other objection at any time before the final judgement, provided that the objection shall only be considered along with the substantive issues and the Court ruling made at the time of delivery of the judgement.
- (3) Upon arraignment, the trial of the defendant shall proceed daily until the conclusion of the trial unless it is impracticable to do so.
- (4) The Court shall vigorously scrutinise every application for an adjournment and an adjournment may only be granted in an exceptional case in the interest of justice and:
- (a) where daily trial is impracticable after arraignment, no party shall be entitled to more than three adjournments from arraignment to final judgment;
- (b) provided that the interval between each adjournment shall not exceed 14 working days.
- (5) Where it is impracticable to conclude a criminal proceeding after the parties have each exhausted their three adjournments, the interval between one adjournment to another shall not exceed 7 days, inclusive of weekends.
- (6) In every circumstance, where an application for an adjournment is made, the Court may award reasonable costs or make an order pursuant to

sections 260 and 329 (4).

(7) Notwithstanding the provision of any other law to the contrary, a Judge of the High Court who is 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 a reasonable time, provided that this subsection shall not prevent him from assuming duty as a Justice of the Court of Appeal.

404. A person who is summoned as a witness, whether for the prosecution or for the defence, is 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 is discharged by the Court from further attendance.

Attendance of witness bound by recognizance to attend.

405. Where a person who is summoned to attend as a witness, whether for the prosecution or for the defence, does not attend the Court on the day fixed for the trial of the case or on any further adjourned date, and he offers no reasonable excuse for his absence, despite the fact that he was duly served with the notice of the trial, the Court may issue a bench warrant that the person be arrested and be brought before the Court, at a time to be mentioned in the warrant, in order to give evidence on behalf of the prosecution or defence.

Warrant for arrest of witness not attending on recognizance.

406. Where a person named on a summons or writ of subpoena wilfully refuses 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.

Warrant for arrest of witness disobeying summons.

407.(1) A person who fails to appear as a witness in either of the cases in sections 404 and 405 is liable, on the summary order of the Court, to a fine of not less than N5,000.00.

Fine for non-attendance of witness.

(2) Where the person in subsection (1) defaults in paying the fine, he is liable to imprisonment for a term not exceeding 1 month.

408. Nothing in this Law shall prevent a prosecutor from giving evidence, during trial, regarding an admission, a confession or other statement of an accused person made at any time which is by law admissible in evidence.

Statement of prosecutor generally admissible.

PART 38 - PROVISIONS RELATING TO SENTENCE OF DEATH

409 (1) Subject to any law relating to a specific offence or class of offences and to the jurisdiction conferred on a Court or on person presiding over

Construction of provisions relating to

the Court, this part shall apply to a sentence of death, imprisonment, fine and non-custodial sentences. punishments

(2) The following objectives shall guide the Court in determining a sentence:

- (a) prevention, the objective of which is to persuade a convict to give up the commission of an offence in future because of the unpleasant consequences;
- (b) restraint, the objective of which is to keep a convict from the commission of another offence by isolating him from society;
- (c) rehabilitation, the objective of which is to provide a convict with treatment or training that will make him a reformed citizen;
- (d) deterrence, the objective of which is to warn others not to commit an offence by making an example of the convict;
- (e) education of the public, the objective of which is to make a clear distinction between good and bad conduct by the punishment of bad conduct;
- (f) retribution, the objective of which is to give a convict the punishment he deserves, and give society or a victim revenge; and
- (g) restitution, the objective of which is to compensate a victim or family of the victim of the offence.

410(1) Where a convict is sentenced to death, he shall be hanged by the neck till he is dead or be injected by lethal injection. Death sentence

(2) The Court shall pronounce the sentence of the death in this form:
“The sentence of the Court upon you is that you be hanged by the neck until you are dead or by lethal injection.”

411. Where sentence of death is passed, the sentence shall be carried out in accordance with the provisions of this Part. How death sentence is to be carried out.

412. 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. Sentencing in the case of pregnancy

413. Where a convict, who in the opinion of the Court had not attained the age of 18 years at the time the offence was committed, is found guilty of a Sentencing in the case of a child offender.

capital offence:

- (a) a sentence of death shall not be pronounced or recorded; and
- (b) in lieu of a sentence of death, the Court shall sentence the child to a term of life imprisonment or, in accordance with section 409, to another term of imprisonment as the Court may deem appropriate.

414. A certificate under the hand of the registrar or other officer of the Court:

- (a) that a sentence is passed; and
- (b) which names the convict against whom the sentence is passed, shall be sufficient authority for the detention of that convict.

Authority for detention of convict.

415.(1) A Judge who pronounces a sentence of death shall issue, under his hand and the seal of Court, a certificate to the effect that sentence of death has been pronounced upon the convict named in the certificate.

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

- (2) The certificate shall be sufficient and full authority in law for:
 - (a) the detention of the convict in safe custody until the sentence of death pronounced on him can be carried out; and
 - (b) effecting the sentence of death in accordance with the provisions of this Part.

416.(1) The Registrar of the Court by which the convict is sentenced to death shall, as soon as practicable, after the sentence is pronounced but on the same day:

Steps to be taken by the Registrar

- (a) deliver 2 copies of the certificate issued by the Judge in section 415 to the Commissioner of Police, who shall keep a copy and give the other copy to the superintendent or another officer in charge of the prison where the convict is to be confined;
- (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.

417(1) Where a convict:

Convict may send request to committee on prerogative of mercy.

- (a) is sentenced to death and has exhausted 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, an appellant has failed to perfect or prosecute the application or appeal within the

time prescribed by law; and

- (b) desires to have his case considered by the Committee on Prerogative of Mercy,

he shall forward his request in writing to the Committee on Prerogative of Mercy through his legal representative or officer in charge of the prison in which he is confined, and the Committee shall consider the request and forward its recommendation to the Governor.

- (2) The request shall contain detailed information on the case, evidence and grounds on which the convict is seeking the exercise of Prerogative of mercy.
- (3) The Governor shall constitute a 5 man committee on Prerogative of Mercy.
- (4) A member of the Committee shall:
 - (a) serve for 2 years and no more;
 - (b) be selected from but not limited to the legal profession, and shall also consist of a clergy, woman and academia who shall also be a practicing psychologist; and
 - (c) not be a member of a political party.
- (5) The Committee shall:
 - (a) consider the request of a convict to have his sentence commuted, pardoned or reprieved; and
 - (b) recommend to the Governor whether in all of the circumstances of the case, it would be appropriate and in the interest of justice for the Governor to:
 - (i) grant an absolute and unconditional pardon;
 - (ii) grant a conditional pardon or commute a sentence from one form to another;
 - (iii) authorise the remission or partial remission of a penalty;
 - (iv) order an inquiry; or
 - (v) leave the sentence as it is.
- (6) The Committee when considering a request from a convict:
 - (a) shall consider any factor it deems relevant;
 - (b) shall filter an application that is clearly unmeritorious, frivolous or vexatious;
 - (c) shall reject any repeat application that does not disclose new substantial grounds which were not available or existent at the time of the previous application;

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- (d) may seek further information from the applicant or seek any comment on the claims made in the application from agencies involved in the case; and
- (e) shall send the application and any supporting material to a relevant agency for its comment.
- (7) Pursuant to subsection (6) (d), where a comment raises a matter adverse to the application, the applicant will be advised and shall be given an opportunity to respond.
- (8) The Committee shall prepare a recommendation to the Governor on the application.
- 418.(1) The Governor, after considering the recommendation made under section 417 shall decide whether or not to order that the:
- (a) sentence should be commuted to imprisonment for life or any specific period; or
- (b) convict should be pardoned or reprieved.
- (2) Where, in subsection (1), the Governor is to decide in relation to a person sentenced to death, the Attorney-General shall prepare and submit a record of the case to the Governor, and the Governor shall, in reaching his decision, have regard to the matters set out in that record.
- 419(1) (a) Where the Governor decides that the sentence should be commuted or that the convict should be pardoned or reprieved, he shall issue an order directing that the execution should not be carried out.
- (b) A copy of the order shall be sent to the:
- (i) superintendent or other officer in charge of the prison in which the convict is confined; and
- (ii) sheriff.
- (2) The recommendation may be that the convict shall be imprisoned or released, subject to any conditions as may be specified.
- (3) The Sheriff and the superintendent or other officer in charge of the prison in which the convict is confined shall comply with every order issued in subsections (1) and (2).
420. The Attorney-General shall communicate the decision in section 419
- State at which the Governor is to consider report.
- Where a pardon or reprieve is granted.
- Copy of order

- (1) and (2) to the Judge who presided over the trial or to his successor in office and send to that Judge a copy of the order, and the Judge shall cause the order to be entered in the record of the Court. to be sent to Judge.
- 421(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 signed by him and sealed in one of the forms set out in the 4th Schedule or near it as circumstances may permit. Where pardon or reprieve is not granted.
4th Schedule
- (2) The order of the Governor:
- (a) shall state the place and time the execution will take place and give any direction as to the place of burial of the body; or
 - (b) may direct that the execution shall take place at a time and place and the body of the convict executed shall be buried at a place as shall be appointed by an officer specified in the order.
- (3) When the place or time of execution, or the place of burial is appointed by someone and is not stated in the order of the Governor, the specified officer shall endorse on the order over his signature the place and time of execution, and place of burial.
422. A copy of the order issued by the Governor shall be forwarded to the official in charge of the prison in which the convict is confined, and the official in charge of the prison shall give effect to the order of execution. Copy of order to be sent to prison official.
- PART 39 - PROCEDURE WHERE WOMAN CONVICTED OF CAPITAL OFFENCE IS ALLEGED TO BE PREGNANT**
- 423.(1) Where a woman convicted of an offence punishable with death alleges that she is pregnant, the Court shall determine the question whether or not she is pregnant before it passes a sentence on her. Procedure where woman convicted of capital offence is alleged to be pregnant or who becomes pregnant.
- (2) The question whether the woman is pregnant or not shall be determined by the Court on evidence as may be presented to the Court by the woman, or on her behalf or by the prosecutor.
- (3) Where in proceedings in this section the Court finds that the woman is not pregnant, the Court shall pronounce sentence of death on her.
- (4) Where in proceedings in this section, the Court finds the woman to be pregnant, the Court may sentence her to death subject to section 412.

**PART 40 - SENTENCING GENERALLY OTHER THAN
CAPITAL SENTENCE**

- 424.(1) Where a Court convicts an accused person, it may sentence him to a term of imprisonment as prescribed by law. Court to determine term of imprisonment
- (2) Where a Court exercises its discretion of sentencing or review of sentence, in addition to the provisions of section 409, it shall take into consideration the following:
- (a) each shall be considered on its own merits;
 - (b) the objectives of sentencing, including the principles of reformation shall be borne in mind in sentencing a convict;
 - (c) an appeal Court may:
 - (I) reduce the sentence imposed by the trial Court where it considers that the sentence is excessive or based on wrong principles; or
 - (ii) increase the sentence imposed by the trial Court where it considers the sentence inadequate;
 - (d) a trial Court may 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) the trial Court shall conduct an inquiry into the convict's antecedents before sentencing;
 - (g) it may be desirable to adjourn for sentencing in order to have time to consider any evidence adduced at the hearing of the sentence in accordance with section 318;
 - (h) where there is a doubt as to whether the defendant or convict has attained the age of 18, the Court should resolve the doubt in his favour;
 - (i) a defendant may not be given consecutive sentences for two or more offences committed in the same transaction;
 - (j) an appeal Court may not increase the sentence of a lower Court beyond the maximum number of years the lower Court has power to impose; and
 - (k) sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and to whom other forms of punishment have failed or are likely to fail.
- 425(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 not later than 8 in the evening on the day he is convicted, as the Court may direct. Power to order detention for one day in precincts of the Court.
- (2) (a) Where a convict's abode is known to or ascertained by the Court, the Court shall, before making an order of detention in this section, take into consideration the distance between the place of detention and

the convict's abode.

- (b) The Court shall not make an order of detention in this section that will deprive the convict of a reasonable opportunity of returning to his abode on the day on which the order of detention is made.

426(1) Where a Court has passed a sentence of imprisonment on a convict, it may order that the sentence shall commence at the expiration of a term of imprisonment to which that convict has been previously sentenced by a competent Court in Nigeria. Consecutive sentence of imprisonment.

- (2) Where two or more sentences passed by a Magistrate Court are ordered to run consecutively, the aggregate term of imprisonment shall not exceed 4 years of the limit of jurisdiction of the adjudicating Magistrate.

427.A sentence of imprisonment takes effect from the day on which it was pronounced. Date from which sentence commences.

428.(1) Where there is a case of a conviction in the High Court and no amount of fine is stipulated: Default in payment of fine.

- (a) the amount of the fine shall be at the discretion of the Court, but must be commensurate with the offence; and

- (b) a term of imprisonment imposed in default of payment of the fine shall not exceed 2 years.

- (2) Where there is a case of a conviction in a Magistrate Court:

- (a) the amount of 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 term fixed in relation to the amount of fine by the scale specified in the 4th Schedule. 4th Schedule

- (3) A term of imprisonment imposed in default of payment of a fine which is imposed by virtue of the power in subsection (1), shall not exceed the maximum term authorised by law as punishment for the offence.

- (4) This section does not apply to a case where a law provides a minimum period of imprisonment to be imposed for the commission of an offence.

429. Where sentence of imprisonment is passed on a convict and he escapes, the sentence shall take effect after he has served a term of imprisonment for a further period equal to that which, at the time of his escape, remained unexpired. Execution of sentence on escaped convict.
430. A defendant convicted of an offence punishable by:
- (a) imprisonment and fine, and sentenced to pay a fine, whether with or without imprisonment; or
 - (b) imprisonment or fine, and sentenced to pay a fine, Fine in default of imprisonment. 4th Schedule
- may be ordered to serve imprisonment, in default of payment of the fine, for a certain term with reference to the 4th Schedule, which term of imprisonment shall be in addition to any other term of imprisonment which he may have been sentenced to.
- 431(1) The Chief Judge and President of the Customary Court of Appeal shall jointly review, on a 12 month basis, the provisions for the amount of fines, compensation or other sums of money prescribed in this Law. General provision on review of sums of money.
- (2) Where the amount of fines is reviewed in subsection (1), the Attorney-General shall be notified for the purpose of taking legislative action.
- (3) Where the review in subsection (1) relates to compensation or other sums of money prescribed in this Law, it shall be published in the Gazette and shall be effective from the date of publication.
432. Where in any law, the Court is empowered to impose a penalty for a summary conviction offence, it may, in the absence of express provisions to the contrary in the same or any other law, order a defendant who is convicted of that offence, in default of payment of the sum of money adjudged to be paid under the order, either immediately or at the time specified in the order, to be imprisoned, in accordance with the scale set out in the 4th Schedule. General power of awarding imprisonment in default of payment of penalty. 4th Schedule.
433. Subject to the law on which the order is established, the period of imprisonment imposed by the Court in respect of non-payment of a sum of money ordered to be paid by an order, shall be a period which in the opinion of the Court will satisfy the justice of the case but shall not exceed the maximum imprisonment fixed in the scale set out in the 4th Schedule. Scale of imprisonment for non-payment of money ordered to be paid. 4th Schedule.
434. A commitment for non-payment of a fine shall not be for more than 2 years, except where the law under which the conviction takes place prescribes a longer period. Limitation of imprisonment in default of payment of fine

- 435(1) A Court shall take into consideration, amongst other things, the means of a convict when fixing the amount of fine to be imposed on the convict. Payment and allocation of fines and fees.
- (2) Where a fine is imposed, the payment of the Court fees and other legal expenses in the case, up to and including conviction, shall not:
- (a) be taken into consideration when fixing the amount of the fine; or
 - (b) be imposed in addition to the fine;
- but the amount of the fine paid or recovered, shall apply as follows:
- (i) in the first instance, payment by an informant or a complainant of a Court fee or any other fee paid by him and ordered by the Court to be repaid to him;
 - (ii) in the second instance, payment of an outstanding Court fee not already paid by an informant or a complainant which may be payable under rules of Court; and
 - (iii) the balance, if any, remaining after payments have been made shall be paid into the revenue of the State.
436. Where an order is made against a defendant for payment of a sum of money and the defendant is in default of payment and liable to be imprisoned, the Court may: Power to commit defendant in certain cases.
- (a) issue a warrant of commitment;
 - (b) allow time for payment of the money; and
 - (c) direct that the defendant liable to pay the money shall be at liberty to give, to the satisfaction of the Court, security, either with or without a surety, for the payment of the money or any instalment.
- 437(1) Where time is allowed for the payment of a sum adjudged to be paid on conviction or order, the Court may direct that the sum be paid by instalments. Allowance of further time and payment by instalments.
- (2) Where time for payment of a sum is allowed in subsection (1), a Court having jurisdiction to issue a warrant of commitment in respect of the non-payment of that sum may allow further time on an application by or on behalf of the convict liable to pay the sum.
- (3) Where a sum of money is directed to be paid by instalments and default is made in the payment of one instalment, the same proceedings may be taken as if default has been made in the payment of all instalments remaining unpaid.
- (4) 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.

- (5) A warrant of commitment issued in this section may be executed on any day, including a Sunday or public holiday.

438. 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 responsible for executing the warrant the sum in the warrant together with the amount of the expenses of the warrant up to the date of the payment or tender, the person responsible for executing the warrant shall not execute the warrant.

Payment of
penalty to
person
executing
warrant

439. Where a convict is brought to a prison to be imprisoned by virtue of a warrant of commitment, the Court shall endorse on the warrant the day on which the convict was arrested under the warrant and the imprisonment shall be computed from that day.

Commencement
of imprisonment
pursuant to a
warrant.

440. Where a person is 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 someone acting on his behalf, inquire into the matter and if on new evidence produced to the Court or proof of a change of circumstances the Court deems fit, having regard to the circumstances of the case that it is just to do so, it may:

Varying or
discharging
order for
sureties

- (a) reduce the amount for which it was ordered that the surety or sureties should be bound;
- (b) dispense with the surety or sureties; or
- (c) deal with the case as it deems fit.

441(1) Where a person is committed to prison by the Court for non-payment of a sum of money adjudged to be paid by an order:

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

- (a) 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
- (b) pursuant to paragraph (a), the officer in charge of the prison shall receive the sums and discharge the person, unless the person is in custody for some other matter.

- (2) Where in subsection (1) a sum is received in part satisfaction of a sum due from a prisoner who is convicted by the Court, the sum shall be applied toward the:

- (a) payment in full or in part of any cost, damage or compensation which the Court may have ordered to be paid to the complainant; and
 - (b) payment of the fine, if any, imposed on the prisoner.
- (3) Subject to subsection (2), where an amount is paid towards a fine:
- (a) the imprisonment shall be reduced by a number of days almost proportionate to the total number of days for which the person is committed as the sum paid towards the fine bears to the amount of the fine for which the person is liable; and
 - (b) the superintendent or an officer in charge of a prison in which a person who has made the part payment is confined shall, not later than 24 hours, take the person before a Court which shall:
 - (i) certify the amount by which the term of imprisonment originally awarded is reduced by the payment in part satisfaction; and
 - (ii) make any order as the circumstances require.
- (4) Where, in the opinion of the superintendent or 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 the officer:
- (a) may release the person on the day which appears to the superintendent or the officer to be the correct day and endorse on the warrant accordingly; and
 - (b) shall, as soon as practicable after that, inform the Court of the action taken,
- and the Court shall make any order or record as it may consider to be required in the circumstances.
- (5) Where reckoning:
- (a) the number of days by which a term of imprisonment would be reduced in this section, the 1st day of imprisonment shall not be taken into account; and
 - (b) the sum which will secure the reduction of a term of imprisonment, fractions of the naira shall be omitted.
442. Where the Court imposes a fine or a pecuniary penalty under a law, 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
 - (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 4th Schedule.
- Fines may be ordered to be recoverable by distress.
- 4th Schedule.

443. Where the Court orders a sum to be recoverable by distress, it shall issue a warrant in writing and signed by the Court authorising a person charged with the execution of the warrant to take any money and goods of a person against whom distress is levied, and any money taken shall be treated as if it were proceeds of sale of goods taken under the warrant.

Warrant of distress.

444. Where a warrant of distress is being executed, the following shall have effect:

Procedure on the execution of distress warrant.

- (a) a warrant of distress shall be executed by or under the direction of a Sheriff;
- (b) where a person charged with the execution of the warrant is prevented from executing it because the door is locked or otherwise, the Magistrate may, by writing under his hand endorsed on the warrant, authorize him to use force as may be necessary to enable him execute the warrant;
- (c) the clothing and bedding of a person named in the warrant and his family, and to the value of N20,000.00, the tools and implements of his trade, shall not be taken;
- (d) except as provided in paragraph (e) and where 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 a public auction not less than 5 days and not more than 14 days after the making of the distress, but where consent in writing is given, the sale may be in accordance with the consent;
- (e) subject to paragraph (d), the goods distrained shall be sold within the time fixed by the warrant, unless the sum or charges, if any, of taking and keeping the goods distrained, for which the warrant was issued is earlier paid;
- (f) where a person charged with the execution of a warrant of distress:
 - (i) wilfully retains from the proceeds any property sold to satisfy the distress; or
 - (ii) exacts a greater cost or charge than that to which he is entitled by law or makes any improper charge;

he is liable, on summary conviction, to a penalty not exceeding N20,000.00, but nothing in this paragraph shall affect the liability of the person to be prosecuted for extortion or the return of the sum of money or value of the item extorted, by the person;

- (g) a written account of any cost and charge incurred in 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 1 month after the making of the distress, inspect the account, without payment of a 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:
- (i) shall sell the distress or ask someone to sell it on his behalf;
 - (ii) may deduct out of the amount realized by the sale costs and charges incurred in effecting the sale; and
 - (iii) shall pay to the Court or to another person specified by the Court, the remainder of the amount;

in order that the amount may be applied in payment of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant and surplus, if any, may be rendered to the person on whose movable property the distress was levied.

- 445.(1) Where a part of the amount ordered to be recovered by distress is recovered, the term of imprisonment imposed in default of the recovery of the amount shall :
- Part payment to reduce period of imprisonment in proportion.
- (a) be reduced;
 - (b) bear the same proportion to the full period as the amount recovered bears to the total amount ordered to be recovered.
- (2) Pursuant to subsection (1) the warrant of commitment in section 436 shall apply.

PART 41- DETENTION IN A SAFE CUSTODY OR SUITABLE PLACE OTHER THAN PRISON OR MENTAL HEALTH ASYLUM

- 446.(1) Notwithstanding anything in this Law or in any other law, where a person is ordered to be detained in a safe custody or a suitable place other than a prison or mental health asylum, he is liable to be detained in a prison, an asylum or any other place as provided in this Law or any other law as the Attorney-General may direct, and shall be deemed to be in legal custody while he is detained.
- Conditions attached to detention in a safe custody or suitable place other than prison or mental asylum.
- (2) A person detained in a safe custody or a suitable place other than prison or a mental health asylum may, at any time, be discharged by the Attorney-General on licence.
 - (3) The Attorney-General may at any time revoke or vary a licence and where a licence is revoked, the person to whom the licence relates shall proceed to a place as the Attorney-General may direct and if he fails to do

so may be arrested without warrant and taken to the place.

PART 42 - RECOMMENDATION FOR DEPORTATION

447. In this part, 'deport' or 'deportation' with its grammatical variations and cognate expressions, means the legal expulsion or removal from Nigeria of a person who is not a Nigerian citizen, to his country. Meaning of deport or deportation
448. Where a person 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, recommend to the Minister of Internal Affairs that he be deported if it appears to the Court to be in the interest of peace, order and good governance that an order of deportation should be made in this section. Court may recommend deportation for offences punishable by imprisonment without option.
449. Where, on an affidavit, it appears to a Court that there is reason to believe that a person in the State, who is not a Nigerian citizen, 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 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 Internal Affairs that he be deported. Recommendation for Deportation in default of security for the peace
450. Where it is shown by evidence on oath to the satisfaction of a Court that a defendant in the State, who is not a Nigerian citizen, is: Recommendation for deportation for threats to peace and order.
- (a) conducting or has conducted himself to constitute a threat to peace and order;
 - (b) endeavouring or has endeavoured to incite enmity between any section of the people of the Federal Republic of Nigeria; or
 - (c) intriguing or has intrigued against constituted power and authority in Nigeria,
- the Court may recommend to the Minister of Internal Affairs that he be deported.
451. Where a defendant required to give security under Section 449 defaults in doing so and the Court contemplates recommending to the Minister of Internal Affairs the deportation of the person in Section 450, before making the recommendation, the Court shall: Procedure prior to Court recommending deportation in sections 449 and 450
- (a) require the person concerned to appear before it; and
 - (b) inform him of the allegations made against him,
- after which he would be given an opportunity to show cause why he should not be recommended for deportation.
452. The Court, after it has considered the representations, if any, in section 451 Deliberation by

- and the facts on which the proceedings are founded, shall decide whether or not to recommend to the Minister of Internal Affairs that the person be deported. the Court.
453. Where the Court decides to recommend to the Minister of Internal Affairs the deportation of a person in Section 448, 449 or 450, it shall forward to the Minister of Internal Affairs the recommendation together with a report setting out the reasons why the Court considers it necessary to make the recommendation, and a certified true copy of any proceedings relating to it. Procedure for recommendation of deportation.
454. Where the Court recommends that a person in Section 448, 449 or 450 be deported, the person may be detained in custody pending the decision of the Minister of Internal Affairs and while in detention, shall be deemed to be in lawful custody. Detention of person concerned.
455. Where the Court makes a recommendation for deportation in respect of a person to whom Section 448, 449 or 450 relates, and the Court grants the person bail, the Court shall require the person recommended for deportation, as a condition of bail to report himself to the nearest Administrative Officer or Police Station at intervals of not more than 14 days. Bail where deportation is recommended.
456. Where the Minister of Internal Affairs, in the interest of peace, order, good governance or on any other ground: Where the Court receives the deportation order of the Minister of Internal Affairs.
- (a) decides that an order of deportation should be made; and
 - (b) issues a written order directing the person to be deported to his country,
- the Court, on receipt of the written order, shall effect the terms of the order.
457. Where the Minister of Internal Affairs decides that no order of deportation shall be made and issues a written order or memorandum to that effect, he shall inform the Court and the Court on receipt of the written order or memorandum shall proceed to make an order of imprisonment or other punishment as may be authorised by law. Where the Minister of Internal Affairs does not order deportation.
458. Where a defendant ordered to be deported has been sentenced to a term of imprisonment, the sentence of imprisonment shall be served before the order of deportation is carried into effect. Effect of a sentence of imprisonment and deportation.
459. 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 30 days. Deportation order may be limited

460.(1) An order of deportation by the Court confirming the order of the Minister of Internal Affairs shall be sufficient authority to a person to whom it is directed or delivered for execution to receive and detain the defendant named in the order, and take him to the place named in that order.

Execution of deportation order of the Minister of Internal Affairs

(2) Where a defendant leaves or attempts to leave the district or place to which he has been confined prior to the 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, that person is liable to imprisonment for 6 months and to be again deported on a fresh warrant under the original order or under a new order.

461. The provisions of this Law on deportation shall not apply to a Nigerian Citizen.

Citizens of Nigeria not to be deported.

PART 43 - CHILD OFFENDERS

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

Procedure for trying child offenders

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

PART 44 - PROBATION AND NON-CUSTODIAL ALTERNATIVES

463. In this Part, "probation order" means an order containing a condition specified in section 465.

Meaning of probation order

464.(1) Where a defendant is charged before a Court with an offence punishable by law and the Court finds the charge is proved but is of the opinion that having regard to the:

Conditional release of defendant and payment of compensation for loss or injury and of costs.

(a) character, antecedent, age, health or mental condition of the defendant charged;

(b) low level, simple or minor nature of the offence; or

(c) extenuating or mitigating circumstances under which the offence was committed,

It is:

(i) inexpedient to impose a punishment or any order other than a

- nominal punishment; or
- (ii) expedient to release the defendant on probation,

the Court may, after conviction and in sentencing, make an order specified in subsection (2).

- (2) Pursuant to subsection (1), the Court may make an order:
 - (a) for supervision of the defendant;
 - (b) for an absolute discharge; or
 - (c) discharging the defendant conditionally on his entering a recognizance, with or without sureties, to be of good behaviour and to appear at any time during the period not exceeding 3 years as may be specified in the order.
- (3) The Court may, in addition to an order in subsection (2) order the:
 - (a) defendant to pay damages for injury or compensation for loss suffered by a person by reason of the conduct or omission of the defendant, and to pay costs of the proceedings as the Court thinks reasonable; or
 - (b) parent or guardian of the defendant to pay the damages and costs in paragraph (a), where:
 - (i) the defendant has not attained the age of 18 years; and
 - (ii) it appears to the Court that the parent or guardian of the defendant was involved in or brought about the commission of the offence.
- (4) Where an order is made in this section, the order:
 - (a) for the purpose of reverting or restoring stolen property and of enabling the Court to make orders as to the restitution or delivery of property to the owner; and
 - (b) as to the payment of money on, or in connection with, the restitution or delivery,shall have the same effect as a conviction

465.(1) A recognizance ordered to be entered into in this Part shall, where the Court orders, contain a condition that the defendant be under the supervision of a probation officer who shall be of the same sex as the defendant and the probation officer shall, subject to his consent, be named in that order.

Probation
orders and
conditions of
recognizance

- (2) A recognizance under this Part may contain an additional condition regarding residence, abstention from an intoxicating substance and any other matter 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.

- (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.

466. A probation officer may, at any time, be relieved of his duties or on 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.

Relieving probation officer of his duties.

467.(1) A probation officer shall, subject to the directions of the Court:

Duties of probation officers.

- (a) where he is not with the person on probation, visit or receive reports on the person under supervision at reasonable intervals as may be specified in the probation order or subject as the probation officer deems fit;
 - (b) see that the person on probation observes the conditions of his recognizance;
 - (c) report to the Court the behaviour of the person on probation; and
 - (d) advise, assist, and support the person on probation and when necessary, endeavour to find him suitable employment.
- (2) The Chief Judge shall make regulations with respect to the appointment of Probation Officers, including designation of persons of good character as Probation Officers from which list a Court within the district or division where the Probation Officer resides may make its appointment under section 465.
- (3) There is established at the judicial headquarters of the State, a Department of Probation and Community Services for the State, to be headed by an individual with the relevant specialised experience but within the grade of director cadre in the relevant State Ministry.
- (4) The Department of Probation and Community Services shall:
- (a) coordinate, monitor and evaluate Probation and Community Service Orders across the State;
 - (b) create in every judicial division, a Probation and Community Service Centre to be headed by a Registrar responsible for overseeing the execution of Probation and Community Service orders in that division;
 - (c) design and implement measures for effective execution and operation of Probation and Community Service Orders;
 - (d) document and keep detailed information of convicts sentenced to

Probation or Community Service including the:

- (i) name of the convict;
 - (ii) sentence and the date of the sentence;
 - (iii) duration of the Probation Order;
 - (iv) nature, duration and location of the Community Service;
 - (v) residential address of the convict;
 - (vi) height, photograph, full fingerprint impressions; and
 - (vii) other means of identification as may be appropriate;
- (e) provide assistance to the Court in arriving at an appropriate Community Service Orders in a case;
- (f) provide or facilitate counselling service to an offender with a view to bringing about his reformation at no cost to the convict;
- (g) recommend to the Court or assign a Probation and Community Service Officer to a convict, based on his proximity to the convict and nature of crime committed;
- (h) maintain an up to date record of ongoing, completed, suspended or cancelled probation activities in the state;
- (i) recommend to the Court a review of the sentence of an offender on probation or community service who has shown remorse;
- (j) ensure that its staff are adequately trained;
- (k) report to the Chief Judge and the Administration of Criminal Justice Monitoring Council under Part 46; and
- (l) perform any other function necessary for the effective administration of Probation and Community Service Orders.
- (6) The Department of Probation and Community Services may draw its personnel from the State's Department of Social Services.
- (7) A probation Officer or Community Service Officer shall not:
- (a) have a criminal record;
 - (b) be a judgement debtor;
 - (c) be a bankrupt; and
 - (d) be under 21 years of age.

468. The Court before which a defendant is bound by a recognizance in this Part to appear for conviction and sentence or for sentence may:

Variation of terms and conditions of probation.

- (a) at any time where it appears to it on the application of the probation officer that it is expedient that the terms or conditions of the 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 reducing the duration, which shall not exceed 3 years from the date of the original order; or
 - (ii) alter the conditions or insert additional conditions; or
- (b) on application 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.

469.(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:

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

- (a) issue a warrant for his arrest; or
 - (b) where it deems fit, instead of issuing a warrant in the first instance, issue a summon to the defendant and his sureties, if any, requiring him or them to appear in Court at a time 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 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 him to prison.
 - (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.

470.(1) Notwithstanding the provision of any other law creating an offence, where the Court sees reason, it may order that the sentence it imposed on a convict with or without conditions be suspended, in which case, the convict shall not be required to serve the sentence in accordance with the conditions of the suspension.

Suspended sentence and community service.

(2) The Court may, with or without conditions, sentence the convict to perform a specified service in his community, another community or any other place as the Court may direct.

(3) A sentence in subsection (2) is a Community Service Order.

(4) No convict shall have a term of imprisonment or other sentence suspended or be sentenced to a Community Service Order for an offence involving the use of firearms, offensive weapons, sexual offences or for an offence which the punishment exceeds imprisonment for a term of 3 years.

(5) The Court, in exercising its power in subsection (1) or (2) shall have regard to the need to:

- (a) reduce congestion in prisons;
- (b) rehabilitate a prisoner by making him to undertake productive work; and
- (c) prevent a convict who has committed a minor or low level offence from mixing with hardened and recidivist criminals.

471.(1) Where the Court makes an order committing a convict to community service, the community service may be in the nature of:

Arrangements for community service.

- (a) assisting in the maintenance of State properties;
- (b) environmental sanitation, including cutting of grasses, gardening, washing of drainages, cleaning the environment and washing public places;
- (c) assisting in the production of agricultural produce, construction, or mining; and
- (d) 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.

(2) 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.

(3) The Court shall consider the circumstances, character, antecedents of the

convict and other factors that may be brought to its attention by the Director of the Department of Probation and Community Service or any of its officers before passing a community service order.

- (4) 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.
- (5) Where a convict is sentenced to community service, he shall produce a guarantor who shall undertake to produce the convict if he absconds from community service.
- (6) The guarantor shall be a relation of the convict or any other responsible person of adequate means who shall produce the convict when required by the Court, failing which the guarantor commits an offence and is liable, on conviction, to a fine of not less than N100,000.00 as the circumstances of the case may require.

472.(1) The community service order shall be performed for a period of not more than 12 months and the convict shall not work for more than 5 hours a day. Performance of community service order.

- (2) The convict shall be under the supervision of a community service supervising officer or Non-Governmental Organization as may be designated by the Community Service Centre.
- (3) The community service order shall contain directives as the Court considers necessary for the supervision of the convict.
- (4) The Registrar of the Court that made the Community Service Order shall forward to the Director of Department of Probation and Community Service, a copy of the order with any document and information relating to the case.

473.(1) Where, during the community service period, the Director of Department of Probation and Community Service informs the Court of the default of the convict in complying with the directives of the Community Service Order, the Court may issue a summons requiring the convict to appear before it. Default of convict in complying with community service order.

- (2) Where the convict fails, 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;
 - (b) impose on him a fine not exceeding N100,000.00; or
 - (c) cancel the order and sentence the convict to any punishment which could have been imposed in respect of the offence, but the period of community service already performed may count in the reduction of the sentence.
- (4) A community service supervising officer shall not employ the convict for his own personal benefit.
- (5) Where a community service supervising officer employs the convict for his personal benefit, the officer commits an offence and is liable on conviction to a fine of N100,000.00, or any other punishment as the Court considers fit.

474. Where a convict is ordered to undergo community service on conviction by the Court in which he was first charged, but later commits another offence during the period of community service, the following shall apply: Commission of further offence.

- (a) the subsequent Court may add to the sentence or impose a term of imprisonment which might have been passed by the Court of first instance and cancel the original community service order;
- (b) the subsequent Court may take into account the period of community service served in reduction of the term of imprisonment;
- (c) where the Court of first instance 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, the High Court shall proceed under paragraphs (a) and (b); and
- (d) where the Court of first instance 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).

475.(1) A convict undergoing community service who intends to change his place of residence shall inform the Community Service Supervising Officer of his intention to do so. Amendment, review and discharge of community service orders.

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- (2) Where the supervising officer receives the information, he shall furnish the Director of Department of Probation and Community service with the information giving the details of the case.
- (3) Where the Director of Department of Probation and Community Service makes an application to Court, the Court shall make appropriate amendment in the community service order and inform the Court having jurisdiction in the area where the convict intends to reside.
- (4) The Court shall give the convict a copy of the amended community service order which the convict shall present to the subsequent Community Service Centre where he intends to reside.
- 476.(1) Where a convict is ordered to undergo community service for a period of more than 4 months, the supervising officer shall give a report to the Director of Department of Probation and Community Service on the convict's performance and general conduct. Discharge of community service order.
- (2) Where the convict is of good conduct, the supervising Court based on the report made by the department of probation and community service may reduce the period of the community service specified in the community service order by not more than one-third.
- (3) The community service supervising officer to be responsible for the supervision of a convict shall be the officer designated by the Director of Department of Probation and Community Service and where the officer dies or is unable for any reason to carry out his duties, another supervising officer shall be appointed by the Director of Department of Probation and Community Service.
- (4) Where the convict is a female, the Community Service Supervising Officer shall be a female.
- 477.(1) A defendant convicted of an offence triable summarily may, in lieu of imprisonment, be sentenced and ordered to serve the sentence at a Rehabilitation and Correctional Centre established by the State Government. Confinement in Rehabilitation and Correctional Centre
- (2) A Court in making an order of confinement at a Rehabilitation and Correctional Centre shall consider:
- (a) the age of the convict;
 - (b) the fact that the convict is a first offender; and
 - (c) any other relevant circumstance necessitating an order of confinement at a Rehabilitation and Correctional Centre.

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

PART 45 PAROLE

- 478.(1) Where the Comptroller of Prisons makes a report to the Administration of Criminal Justice Monitoring Council recommending that a prisoner:

Court may direct release of prisoner before completion of sentence.

- (a) who is serving a sentence in prison is of good behaviour; and
- (b) has served at least one-third of his prison term; or
- (c) has served 15 years of a life imprisonment term,

the council may, after hearing from the officer in charge of the prison where the prisoner is in custody and the prisoner or his legal representative, recommend to the sentencing Court that the remaining imprisonment term be suspended, with or without conditions, as the council considers fit, and the prisoner shall be released from prison on the order of the Court.

- (2) Where a prisoner who is sentenced to life imprisonment is considered for parole:
 - (a) where he is released, it shall be on licence; and
 - (b) the licence shall be on condition that he remains of good character and not engage in a criminal activity or be convicted of an offence.
- (3) Where a prisoner who is released on parole in subsection (2) is convicted of a criminal offence, he is liable to revocation of his licence and will be recalled to prison.
- (4) The Administration of Criminal Justice Monitoring Council shall set the procedure and guidelines for parole.
- (5) A prisoner released in subsection (1) shall undergo a rehabilitation programme in a government facility or another appropriate facility to enable him reintegrate properly into society.
- (6) The State shall:
 - (a) provide facilities and necessary resources for the rehabilitation of prisoners released from prison in subsection (1); and
 - (b) make adequate arrangements for proper running of the facilities.

PART 46 - THE ADMINISTRATION OF CRIMINAL JUSTICE
MONITORING COUNCIL

479.(1) There is established the Administration of Criminal Justice Monitoring Council (in this Law referred to as “the Council”).

Establishment of the Administration of criminal justice monitoring council.

- (2) The Council consists of:
- (a) the Chief Judge who is the Chairman;
 - (b) the Attorney-General;
 - (c) a Judge of the State High Court;
 - (d) the Commissioner of Police or his representative not below the rank of Assistant Commissioner of Police;
 - (e) the Comptroller of Prisons in the State;
 - (f) the head of the National Human Rights Commission in the State;
 - (g) the Chairman or representative of the State branch of the Nigeria Bar Association;
 - (h) the Director of the Legal Aid Council of Nigeria or Public Defender;
 - (i) a representative of a Civil Society working on human rights and access to justice or women rights, to be appointed by the Council to serve for a period of two years only; and
 - (j) the Director of Public Prosecutions.
- (3) A member who is not a public officer may resign his appointment by a letter addressed to the Chairman.
- (4) Members of the Council shall be paid allowances as are applicable to State Boards, Commissions and Agencies.

480. The Council is responsible for ensuring:

Functions of the Council.

- (a) the speedy and smooth running of the administration of criminal justice;
- (b) the effective and efficient application of this Law by the relevant agencies;
- (c) that criminal matters are speedily dealt with;
- (d) that congestion of criminal cases in Courts is drastically reduced;
- (e) that congestion in prisons is reduced to the minimum;
- (f) that decisions on parole are speedily and effectively dealt with;
- (g) that persons awaiting trial are not detained in prison custody;
- (h) that the relationship among the organs charged with the responsibility for administration of criminal justice is cordial and there exists maximum co-operation amongst the organs in the administration of criminal justice in the State;
- (i) the collating, analysing and publishing of information in relation to the administration of criminal justice sector in the State;

- (j) the submission of quarterly reports to the Chief Judge to keep him informed of developments requiring necessary action towards improved criminal justice delivery; and
- (k) that any other activity necessary for the effective and efficient administration of criminal justice is implemented.

481(1) The Council shall maintain a secretariat with the number of staff it considers necessary for the efficient running of its affairs. Secretariat of the Council

- (2) The Secretariat shall be headed by a Secretary who shall be appointed by the State Judicial Service Commission.

- (3) The Secretary shall:
 - (a) be a legal practitioner of not less than 12 years post call experience;
 - (b) possess sound knowledge of the practical functioning of the criminal justice system;
 - (c) have adequate experience in justice system administration;
 - (d) be responsible for the execution of the policy of the Council and the running of the affairs of the Council;
 - (e) hold office for a term of 4 years and may, subject to satisfactory performance of his functions, be re-appointed for another term of 4 years and no more; and
 - (f) hold office on terms as may be specified by the Council.

482(1) A fund is established for the Council into which shall be paid: Fund of the Council.

- (a) budgetary allocation;
- (b) monies provided to the Council by a public, private or an international organisation by way of grant, support or assistance on terms consistent with its functions; and
- (c) monies received by the Council consistent with its functions.

- (2) The Secretary of the Council is the accounting officer for the purpose of controlling and disbursing monies from the Fund established in this section.

483(1) The Secretary shall submit to the Council, not later than 30th September in each financial year, an estimate of its expenditure and income during the next financial year. Annual estimates and accounts.

- (2) The Council shall keep proper accounts and records in respect of each financial year and shall audit its accounts not later than 2 months from the end of each financial year.

- 484 The Council shall prepare and publish an annual report of its activities. Annual report.
- 485 (1) In exercise of its functions, the Council: Power to obtain information.
- (a) has a right of access to records of any organ in the administration of justice sector to which this Law applies; and
 - (b) shall by notice in writing served on a person in charge of any organ, require that person to furnish information on matters specified in the notice.
- (2) A person required to furnish information in subsection (1) (b) shall comply with the notice within the time stipulated.
- 486 (1) The Council may make standing orders regulating its proceedings. Proceedings and quorum of the Council.
- (2) The quorum at a meeting of the Council shall consist of the Chairman or his representative and four other members of the Council.
 - (3) Subject to the provisions of the applicable standing order, the Council shall meet at least once a month.
 - (4) At a meeting of the Council, the Chairman, or in his absence, his representative shall preside.
 - (5) The validity of proceedings of the Council shall not be affected by:
 - (a) a vacancy in the membership of the Council; or
 - (b) a defect in the appointment of a member of the Council.
 - (6) A member of the Council who has a personal interest in any arrangement entered into or proposed to be considered by the Council shall disclose his interest to the Council and shall not vote on any question relating to the arrangement.

PART 47 - TRIAL OF CORPORATION

487. (1) In this Part "corporation" means a body corporate, incorporated in Nigeria or elsewhere. Interpretation in this Part.
- (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 an act or thing which the representative of a corporation is by this Part authorised to do, but a person appointed shall not, by virtue of being 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.
- (4) A statement in writing purporting to be signed by a managing director of the corporation or by any person in the management of the corporation being one of the persons having the management of the affairs of the corporation, that a person named in the statement has been appointed as the representative of the corporation for the purposes of this Part, shall be admissible as prima facie evidence without further proof that the person has been appointed.
- 488.(1) Where a corporation is called upon to plead to a charge or an information including a new charge or information framed in this Law, or charge or information added to or altered under this Law, it may enter in writing by its representative a plea of guilty or not guilty or any plea which may be entered in this Law. Plea by corporation.
- (2) Pursuant to subsection (1), where the corporation does not appear by a representative or appears but fails to enter a 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.
489. An information may be preferred against a corporation after preparation of the proofs of evidence relating to the charge. information against a corporation.
490. An information in section 489 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. Joinder of counts in same information.
491. A representative may, on behalf of a corporation: Power of representative.
- (a) state, whether the corporation is ready to be tried on a charge or information, or altered charge or information to which the corporation is called on to plea;
 - (b) consent to the hearing and determination of a complaint before the return date of a summons; or
 - (c) 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 at least 3 days or more before the date on which the corporation is to be tried.
492. Where a representative appears, a requirement of this Law that a thing shall be done in the presence of the defendant or read, said or explained to the Matters to be read, said or explained to

defendant, shall be construed as a requirement that the thing shall be done in the presence of the representative, read, said or explained to the representative.

493. Where a representative does not appear, any requirement in section 488 shall not apply. Non-appearance of representative

494(1) Subject to the preceding provisions of this part, any provision of this Law relating to the inquiry and trial of offences shall apply to a corporation as it applies to an adult. Saving in this Part and joint charge against corporation and individual.

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

PART 48 - APPEALS FROM MAGISTRATE COURTS TO HIGH COURTS

495.(1) An appeal from a Magistrate Court to the High Court in criminal matters shall be in accordance with the High Court Law of the State or any rule made under that Law. Appeals from Magistrates' Courts.

(2) Where a defendant is:

(a) acquitted or an order of dismissal made by a Magistrate Court, the prosecutor may appeal the acquittal or dismissal to the High Court on the ground that it is erroneous in law or that the proceedings, or a part of the proceedings, were in excess of the jurisdiction of the Magistrate; and

(b) convicted, the defendant may appeal the conviction to the High Court on the ground that it is erroneous in law or that the proceedings, or any part of the proceedings, were in excess of the jurisdiction of the Magistrate.

(3) An appeal, in this Part, shall be commenced by the appellant giving notice to the registrar of the Magistrate's Court from which the appeal is brought and to the High Court; and the notice of appeal shall be signed by the appellant.

(4) The notice of appeal shall be given in each case before the expiration of the 30th day after the day on which the Court made the decision appealed against.

(5) An appellant, in an appeal brought in this Part, shall, within 30 days of the pronouncement of the decision appealed against, file with the registrar of the Court from which the appeal is brought, a notice of

appeal stating the grounds of his appeal.

- (6) The notice of appeal in subsection (6) shall be signed by the appellant or his legal representative.
- (7) An appellant shall file as many copies of his notice of appeal, stating the grounds of appeal to the High Court, as there are parties to be served, in addition to the copies for the Court.
- (8) The appellant shall, in his grounds of appeal, state in a 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.
- (9) Without prejudice to the generality of subsection (8), the grounds of appeal may include and state all or any of the following:
 - (a) that the lower Court has no jurisdiction in the case;
 - (b) that the lower Court exceeded its jurisdiction in the case;
 - (c) that the decision was obtained by fraud;
 - (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;
 - (e) that admissible evidence has been rejected, or inadmissible evidence has been admitted by the lower Court and in the latter case, there is no sufficient admissible evidence to sustain the decision after rejecting such inadmissible evidence;
 - (f) that the decision is unreasonable or cannot be supported having regard to the evidence;
 - (g) that the decision is erroneous in point of law;
 - (h) that some other specific illegality, not 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.

Provided that these grounds are not to be considered to be exhaustive.

- (10) Where the appellant relies on the grounds in subsection (9) (d), the name of the Court shall be stated, and if it is alleged that a decision has been made, the date of the decision.
- (11) Where the appellant relies on the ground in subsection (9) (g), the nature of the error shall be stated and, where he relies on the ground mentioned in subsection (9) (h), the illegality complained of shall be clearly specified.

(12) A sentence by a Magistrate Court shall take effect notwithstanding an appeal unless:

- (a) a warrant is issued under section 333 that no sale of property shall take place until the sentence is 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 released shall be excluded in computing the period of sentence which he has to serve.

(13) A High Court exercising appellate jurisdiction shall not, in the exercise of its jurisdiction, interfere with the finding, sentence or other order of the lower Court on the ground only that:

- (a) evidence has been wrongly admitted or excluded; or
- (b) there has been a technical irregularity in procedure,

unless it is satisfied that a failure or miscarriage of justice has been occasioned by such admission, exclusion or irregularity.

PART 49 - FEES AND MISCELLANEOUS PROVISIONS

496. Subject to this Law, fees prescribed under this Law shall be paid in any proceedings before a Court. Payment of fees.
497. A Court may in any proceeding, where in its opinion there is good cause to, suspend payment of a fee payable, until the conclusion of the proceeding, and the Court may direct the fees to be paid as costs by a party to the proceeding by whom the Court has power to order costs to be paid, or remit the payment of the fees. Suspension of payment of fees.
498. The provisions of this Law relating to fees and the giving of security shall not apply to the State or to a public officer acting in his official capacity. State not required to pay fees.
499. Subject to the express provisions, if any, of the rules of Court, the forms and precedents contained in the Schedules may, in accordance with any instructions contained in the forms and with variations as the circumstances of a particular case may require, be used in any case to which they apply. Use of forms in Schedules.
- 500.(1) The Chief Judge may make rules in respect of: Power to make Rules of Court.
- (a) fees, costs or compensations to be paid in 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 a person under this Law;
 - (d) the method of issuing process under this Law, and the manner of

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- receipt and accounting for fees in respect of the process;
 - (e) prescribing anything or a person required to be prescribed under this Law;
 - (f) regulation and management of non-custodial punishments provided in this Law; and
 - (g) the effective performance of this Law.
- (2) The Chief Judge may make rules regulating the practice and procedure of Courts in Rivers State.
- (3) The Chief Judge may make Practice Directions governing the progression and management of criminal trials.
- (4) The power to make Practice Directions in this section includes power to make different provisions for different cases or different areas, including different provisions for:
- (a) a specified Court or description of Courts; or
 - (b) specified descriptions of proceedings or a specified jurisdiction.
- (5) The power to make Practice Directions is to be exercised with a view to ensuring that:
- (a) the criminal justice system is accessible, fair and efficient;
 - (b) the Practice Directions are both simple and simply expressed;
 - (c) at every Court hearing the prosecutor, the Court, the defendant and his legal representative deal with cases efficiently and expeditiously; and
 - (d) there is no delay in the conduct of trials and that parties to a trial are prepared and ready to conduct the trial on real issues in dispute on the day it is fixed for hearing.
- (6) Practice Directions made by the Chief Judge in subsection (2) shall:
- (a) be published in the State's Gazette; and
 - (b) come into force on the day the Chief Judge directs.
501. Where no other sanction is provided for in this Law, failure on the part of a person to discharge his responsibility under this Law without reasonable cause shall be treated as misconduct by the appropriate authority. Non-compliance
502. (1) Nothing in this Law shall affect the use or validity of any form in respect of a procedure or an offence specified in a written law or the validity of any other procedure provided by any other written law. Saving as to other forms and procedure.
- (2) Nothing in this Law shall affect the validity of any charge, information or proceeding initiated or commenced in any other law so far as the Savings and transition

proceeding was initiated or commenced before this Law came into force.

- (3) Where there are no express provisions in this Law, the Court may apply any procedure that will meet the justice of the case.

503, The Rivers State Criminal Procedure Law, Cap 38 and The Rivers State Criminal Procedure (Miscellaneous Provisions) Law, Cap 39, Laws of Rivers State 1999 are repealed. Repeals.

504. Interpretation

Interpretation

(1) In this Law:

“Absolute Discharge” means:

- (a) the lowest-level adult sentence that a Court can pass on a convicted defendant; and
(b) a situation where a defendant is found guilty, conviction is registered, but no punitive measures are imposed on the convicted defendant and he is not given any conditions to follow a probation order;

“adult” means a person who has attained the age of 18 years or above;

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

“Attorney General” means Attorney General of Rivers State;

“charge” means the statement of offence or 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 the Chief Judge of Rivers State;

“child” means a person who has not attained the age of 18 years;

“Council” means the Administration of Criminal Justice Monitoring Council established in section 479 (1);

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

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

“Court” includes High Courts, the Magistrates' Court and Customary Court of Appeal presided over by legal representatives;

“currency” means coins, notes and other legal tender;

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

“district” means a district into which the State is divided for the purposes of the Rivers State Magistrate's Court Law No. 2 of 2004;

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

“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, pecuniary forfeiture or pecuniary compensation payable in this Law;

“functions” include powers and duties;

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

“High Court” means the Rivers State High Court;

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

- (a) a term of imprisonment exceeding 2 years; or
- (b) a fine exceeding N40,000.00 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 7 years;

“Judge” includes a Judge of a High Court, a Judge of the Customary Court of Appeal or Customary Court presided by legal representatives;

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

“law officer” means the Attorney-General of the State and the Solicitor-General of the State, and includes the Director of Public Prosecutions and other legally qualified officers of their departments or offices, by whatever names designated, to whom any of the powers of a law officer are delegated to by law and a private legal practitioner authorised by the Attorney-General of the State to appear for and on behalf of the Attorney-General of the State;

“Legal Advice” means the written advice or decision of the Attorney-General or the Director of Public Prosecutions or any law officer from their offices on the evidence, facts and the results of investigation into an alleged crime, and includes the prosecutorial decisions of prosecutors;

“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;

“legal representative” means a person licensed to practice law in Nigeria;

“Magistrate” means a Magistrate appointed in accordance with the law of a State;

“Magistrates' Court” means Magistrates' Court established under Rivers State Magistrates' Court Law No. 2 of 2004;

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

“misdemeanour” means an offence punishable by imprisonment for not less than 6 months, but less than 3 years or which is declared by law to be a misdemeanour;

“member” includes a member of the Administration of Criminal Justice Monitoring Council established in section 479 (1) and includes the Chairman;

“offence” means an offence against a Law of the State;

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

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

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

“Part-heard criminal matter” means a trial in which the prosecution has closed its case;

“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 Force established by the Constitution or where the context so admits, includes an officer of a law enforcement agency established by an Act of the National Assembly;

“police officer” includes a member of the Nigeria Police Force established by the Police Act, Cap P19, Laws of the Federation of Nigeria 2004 or where the context so admits, includes an officer of a law enforcement agency established by an Act of the National Assembly;

“prescribed” means as provided by rules made in this Law;

“private prosecutor” excludes a person prosecuting on behalf of the State or a public officer prosecuting in his official capacity;

“Public nuisance” includes:

- (a) a conduct, an act or omission that interferes with the rights and enjoyment of the public; and
- (b) an unreasonable interference with a right common to the public such as:
 - (i) a condition dangerous to public health or offensive to the community moral standards;

- (ii) unlawfully obstructing or disturbing the public in the free use of public property or public places;
- (iii) obstructing or disturbing the public peace;
- (iv) disturbing the public in their enjoyment of public amenities;
- (v) offending public safety;
- (vi) causing other forms of unreasonable interference or inconvenience to the public;
- (vii) a threat to human or aquatic life;
- (viii) causing environmental degradation, atmospheric or noise pollution or environmental pollution or contamination;

“reasonable time” includes but is not limited to the definition given in section 35 (5) of the Constitution of the Federal Republic of Nigeria, 1999;

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

“rules” mean rules of Court relating to the practice and procedure of the High Court or Magistrates' Court in the exercise of its criminal jurisdiction;

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

“sheriff” means a Sheriff within the meaning of the Sheriffs and Civil Process Act, Cap 407, Laws of the Federation of Nigeria 2004, and includes a deputy sheriff and a person authorised by the sheriff or a deputy sheriff to execute process of a Court;

“State” means Rivers State;

“summary conviction offence” means an offence punishable by a High Court or a Magistrates' Court on summary conviction, and includes a matter in respect of which a High Court or a Magistrates' Court can make an order in the exercise of its summary jurisdiction;

“summary Court” means unless the same is expressly or by necessary 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 a matter within his power and jurisdiction either in this Law or another written law, and

the Judge when sitting and presiding, and the Magistrate when sitting, shall be deemed to be a “Court” or “summary Court” within the meaning of this Law;

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

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

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

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

“Young person” means a person who has attained the age of 14 but has not attained the age of 17 years.

(2) Unless the context otherwise requires, any word and expression used in this Law and defined in the Criminal Code has the meaning attributed to it by the Criminal Code.

505. This Law may be cited as the Rivers State Administration of Criminal Justice Law, 2015. Citation

FIRST SCHEDULE*Section 160 (2), 304(8) 383 (4), 384***FORMS****FORM NO. I - GENERAL FORM OF TITLE OF PROCEEDINGS***(For use in the High Court)*

In the High Court of Rivers State of Nigeria

In the Judicial Division

Holden at

Charge No.....20.....

Between

.....Complainant,

and

.....Defendant.

Complaint

*(For use in Magistrate Court or other Courts)***IN THE MAGISTRATE COURT**

In the Magistrate Court of Rivers State of Nigeria

In the Magisterial District

Holden at

Charge No.....20.....,

Between

.....Complainant,

and

..... Defendant.

Complaint

**FORM NO. 2 - ORDER OF RECOGNIZANCE TO KEEP THE PEACE,
AND BE OF GOOD BEHAVIOUR**

(General Title-Form No. 1)

Before the High/Magistrate Court of Rivers State of Nigeria

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 period of
unless he complies with the order.

If costs are ordered, add-

And it is ordered that the defendant pay to the said..... the sum of.....for
costs [by instalments of..... for every.....days, the first instalment to be paid]
forthwith [or on the.....day of20....]:

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 period of.....commencing at the termination of the
imprisonment earlier ordered, unless the said sum [and all costs and charges of the (distress
and) commitment] be quickly paid.

.....
Judge [or Magistrate]

FORM NO 3

Section 89

COMPLAINT

(General Title-Form N0. 1)

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

.....
Judge [or Magistrate]

FORM NO. 4

Section 124

SUMMONS TO DEFENDANT

(General Title-Form N0. 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 Court sitting at.....on theday 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 138***WARRANT FOR ARREST OF DEFENDANT WHO HAS DISOBEYED SUMMONS***(General Title-Form N0. 1)*

To.....Police Officer or to each and all Police Officers.

Complaint has been made on the.....day of.....20..... that A.B hereinafter called the defendant on the.....day of.....20.....in the *above-mentioned* did*

*State concisely the substance of the complaint

And the defendant was thereupon summoned to appear before the High/Magistrate's Court of Rivers State in the Judicial Division/Magisterial District sitting at.....on the day of at the hour of.....in the.....noon, to answer to the said charge:.....

An oath has been made that the defendant was duly served with the summons, but did not appear, and that the complaint is true.

You are hereby commanded to bring the defendant before High/Magistrate's Court of Rivers State in the..... Judicial Division/.....Magisterial District sitting at.....forthwith to answer to the said complaint or be further dealt with according to law

Dated the.....day of.....20.....

.....

Judge [*or Magistrate*]

FORM NO. 6

Section 139

WARRANT FOR ARREST OF DEFENDANT IN FIRST INSTANCE

(General Title-Form No. 1)

To.....Police Officer
 Complaint on oath has been made on the.....day of..... 20.....,
 by.....that A.B., hereinafter called the defendant on
 the..... day of 20.....
 at.....in the.....above-mentioned
 did*

*State concisely the substance of the complaint.

You are hereby commanded to bring the defendant before High/Magistrate Court of Rivers
 State in the Judicial Division/ Magisterial District sitting at
to answer to the complaint or be dealt with according to law.

Dated the.....day of..... 20.....

.....
 Judge [*or Magistrate*]

FORM NO. 7

Section 151

FORM D

SEARCH WARRANT

(TITLE OF PROCEEDING)

In the Magistrate Court of Rivers State in the..... Magisterial 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 section 151 (1) (a), (b) or (c) .

You are hereby commanded in the name of the Rivers State Government 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 of it is 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 151

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 theday of.....20.....

FORMS FOR REMAND PROCEEDINGS

(General Title Form No.1)

FORM NO. 8

Section 300

REPORT AND REQUEST FORM FOR REMAND

BETWEEN

COMMISSIONER OF POLICE
DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

AND

XYZ

Respondent

To: The Registrar of the Court

The Court is hereby informed that there is a probable cause to order the remand of XYZ (state particulars of the Respondent, namely age, sex, occupation) of (state details of the Respondent's street address or where there is no precise street address, as near and close description as possible of the location of the Respondent's last known place of abode) in remand custody in _____ (state the exact place of custody in which the applicant proposes to remand the Respondent such as the name and location of the prison or other detention place) who is reasonably suspected to have committed the offence of contrary to section.....of the Within High Court Division/Magisterial District on or about (state the date or approximate date or the period of commission of the alleged offence) on grounds stated below:.....
...
Dated this day of 20

GROUND(S) FOR THE REQUEST FOR REMAND

1. Place, time and circumstance of arrest:.....
.....
.....
.....
2. Arrested with Exhibit(s) Yes No (Tick appropriately)
(disregard (3) and (4) below if the Respondent was not arrested with Exhibit(s))
3. If arrested with Exhibit(s), state clearly the particulars of the Exhibit(s)
.....
.....
.....
4. If arrested with Exhibit(s), state clearly how the items are related to or linked with the
committal of the alleged offence:
.....
.....
5. State particulars of other evidence or report linking the Respondent to the committing of the
offence such as forensic evidence, marks or finger prints, etc.
6. Confessional statement Yes No
7. Any previous conviction for the same or similar offence Yes No
8. If (7) above is Yes, state the particulars of previous conviction(s)
.....
.....
Found in custody or possession of offensive weapon, object or substance:..... Yes
..... No
9. Identification by victim(s) or witness(es) Yes No
(State the particulars of such victim(s) or witness(es))

(I) Name:

Age

Sex

Address:

Occupation:

(ii) Name:

Age

Sex

Address:

Occupation:

(iii) Name:

Age

Sex

Address:

Occupation:

(iv) Name:

Age

Sex

Address:

Occupation:

(v) Name:

Age

Sex

Address:

Occupation:

(vi) Name:

Age

Sex

Address:

Occupation:

10. Need for further investigation Yes No

11. Period/duration required for further investigation (state approximate days/weeks/months required to complete investigation)

12. Any further relevant information
.....

Signed.....

(Commissioner of Police/ Director of Public Prosecution /
Law officer/Police officer)

FORM NO. 9*Section 383 (4)***INFORMATION ON LEGAL REPRESENTATION**

The office of the Director of Public Prosecutions has determined that proceedings shall continue against you as per the attached legal advice.

Indicate whether you wish to be represented by a legal representative 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 representative arranged by you, please indicate below the particulars of such legal representative:

Name of Legal representative:

Address of Legal representative:.....
.....

Telephone Number of Legal representative:

E-mail of Legal representative:

Signature of the Defendant:

Signature of the Prison official or police official in charge of place of custody of the Defendant:.....

(2) If you wish to be represented by a legal representative 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 representative 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 Defendant:

Signature of the Prison official or police official in charge of place of custody of the Defendant:.....

FORM NO. 10*Section 248***SUMMONS TO WITNESS***(General Title-Form No. 1)*

To E.F.....
 A.B has been charged byfor 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 on behalf of the informant [or complainant or defendant], and will not
 voluntarily appear for that purpose.

You are therefore summoned to appear before the High/Magistrate's Court of Rivers State in
 the.....Judicial Division/.....Magisterial District
 sitting at....., on the.....day of..... 20....., at the hour
 of.....in the.....noon, to testify what you know in the matter.

Dated the.....day of.....20.....

.....
 Judge [*or Magistrate*]

FORM OF INFORMATION**FORM NO. 11***Section 384*

AG Rivers State v C.D

In the High Court of Rivers State of Nigeria

In the Judicial Division

AG Rivers State v. C D

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

At the sessions holding at

On theday of.....20.....,
 the Court is informed by the Attorney- General of Rivers State on behalf of Rivers State that
 C.D is charged with the following offence or offences and statement of offence or offences.

FORM NO. 12*Section 189***FORFEITURE ON CONVICTION**

(General Title-Form No. 1)

Before the High/Magistrate Court of Rivers State of Nigeria
in the.....Judicial Division/.....Magisterial
District sitting on the.....day of.....20.....

A.B., hereinafter called the defendant, was by his recognizance entered into
the.....day of....., bound in the sum of....., and his
sureties C.D and F.F. in the sum ofeach, the condition of the recognizance
being that the defendant should

And it being proved that the defendant was on the..... day
of.....20.....convicted of the offence of having
....., the same being a breach of the condition:

It is therefore adjudged that the recognizance be forfeited, and that the
.....pay to.....the sum
of.....and the further sum of.....for costs [by
instalments of.....for every.....days, the first instalment to
be paid] forthwith [or on the.....day of.....20.....]:

And in default of payment it is ordered that the sum due from theunder
this order be levied by distress and sale of his goods, and in default of sufficient distress that he
be imprisoned in the prison atfor the
peace of.....unless the sum [and all costs and charges of the distress
and) commitment] be quickly paid.

.....
Judge [or Magistrate]

FORM NO. 13*Section 248***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 Rivers State in the Judicial
Division/.....Magisterial District sitting at
..... on the.....day of.....at the hour
of.....in the.....noon, to testify what he should know concerning a certain
complaint against A.B.

And he has neither appeared 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 commanded to bring him before the High Court of Rivers State in the.....
Judicial Division /..... Magisterial District
sitting at.....forthwith to testify what he knows concerning the matter.
Dated the.....day of.....20.....

.....
Judge [or Magistrate]

FORM NO. 14*Section 251***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 20.....at.....in the
.....aforesaid, did*.....

*State concisely the substance of the complaint

.....
And it appears to me by oath of..... that E.F. is likely to give
material evidence concerning the matter, and that it is probable he will not attend to give
evidence unless compelled to do so:

You are commanded to bring him before the High /Magistrate Court of Rivers State in the
.....Judicial Division/.....Magisterial District
sitting at.....forthwith to testify what he knows
concerning the matter.

Dated the.....day of.....20....

.....
Judge [or Magistrate]

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 Rivers State in theJudicial
Division/.....Magisterial District sitting at.....on the
.....day of20....., to testify what he should know
concerning a certain case against A.B., refused to take an oath [or having taken an oath] refused
to answer any [*or a certain*] question put to him concerning the case and did not offer any just
excuse for his refusal.

You, the Police Officer is commanded to convey E.F safely to the Prison, and there deliver him
to the Superintendent, together with this Warrant, and you, the Superintendent of the Prison, to
receive him into your custody, and keep him for the period 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 323

CONVICTION (IMPRISONMENT)

(General Title- Form No. 1)

Before the High/ Magistrate Court of Rivers State 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 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.....the sum
of.....for costs [by instalments of.....for every
.....days, the first instalment to be paid] forthwith [or on theday
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
prison at..... for the period of..... commencing at the termination of
the imprisonment before ordered, unless the sum [and all costs and charges of the distress and
commitment] be paid.

.....
Judge [or Magistrate]

FORM NO. 17*Section 326, 329 and 333***ORDER FOR MONEY (NOT A CIVIL DEBT)***(General Title- Form No. 1)*

Before the High/Magistrate Court of Rivers State 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
ofat.....within
the.....above-mentioned, did

On hearing the complaint, it is ordered that the defendant pay to 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 theday
of.....20.....]:

And in default of payment it is ordered that the sum due be levied by distress and sale of the
defendant's goods, and in default of sufficient distress that the defendant be remanded in the
prison at..... for
the period of unless the sum and all costs and charges of the distress
and commitment be paid.

.....
Judge [or Magistrate]

FORM NO. 18

Section 464

ORDER OF DISMISSAL WITH DAMAGES

(General Title- Form No. 1)

Before the High/Magistrate Court of Rivers State *in* the.....
Judicial Division/.....Magisterial District sitting at.....
On 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 the opinion that though the charge is proved, the offence is of trivial nature that it is inexpedient to impose any punishment, hereby dismisses the information.

But order that the defendant do pay the complainant for damages
and..... for costs [by instalments of..... for
everydays, the first instalment to be paid] forthwith [or on the
.....day of.....20.....]:

And in default of payment it is ordered that the 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 period of..... unless the sum [and all costs and charges of the distress and commitment] be paid.

.....
Judge [or Magistrate]

FORM NO. 19**ORDER FOR OTHER MATTERS***(General Title- Form No. 1)*

Before the High/ Magistrate Court of Rivers State in
Judicial Division /.....Magisterial District
sitting at.....on the.....day
of.....20.....

A. B., having made a complaint that C.D hereinafter called the defendant, on
the.....day of at.....in
theabove mentioned,
did.....

On hearing the complaint, it is ordered that the defendant.....

If imprisonment is ordered, add-

And it is adjudged that if the defendant neglects or refuses to obey this order, he be imprisoned
in the prison at.....
for the period of.....days [*or* unless the order be sooner
obeyed].

If costs are ordered, add-

And it is ordered that the defendant pay to thesum of
for costs [by instalments of.....for everydays, the first instalment to be paid]
forthwith [or on theday 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
prison for the period of.....commencing at the termination of the imprisonment before
ordered, unless the sum [and all costs and charges of the (said distress and) commitment] be
paid.

.....
Judge [or Magistrate]

FORM NO. 20*Section 377***ORDER OF DISMISSAL***(General Title- Form No. 1)*

Before the High/ Magistrate Court of Rivers State in theJudicial 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.....20.....,at.....in
the.....*above-mentioned*, did.

This Court having heard and determined the complaint do dismiss same:*

*On its merits or without prejudice to its being brought again

If costs are ordered, add-

And it is ordered that the complainant pay to the defendant the sum of.....for
costs [by instalments of.....for everydays, the first instalment to be paid]
forthwith [or on theday of.....20.....]:

And in default of payment it is ordered that the sum due be levied by distress and sale of the
complainant's goods, and in default of sufficient distress that the complainant be imprisoned in
the prison at..... for the period of....., unless the sum [and all costs and charges of
the (distress and) commitment be paid]

.....
Judge [or Magistrate]

FORM NO. 21

Section 443

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 Court sitting at..... that he on the.....day of.....at..... in the above-mentioned, did.....

And it was adjudged that the defendant for the 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.....20.....], and that in default the sum should be levied by distress,.....and default having been made in payment.

You are commanded 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 period of five clear days 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 distress, be not paid, then to sell the 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 the “Information on Legal Representation” Form which you must complete and return to the Registry of this Court within 14 days of service on you of this notice of trial.

SECOND SCHEDULE*Section 200***CHARGES****UNDER CRIMINAL CODE WITH ONE HEAD**

Criminal Code section 118

1. That you.....on the day of.....at.....being a witness upon the trial of a case in the Magistrate Court of the..... Magisterial District sitting at.....in which onewas complainant and onewas defendant, knowingly falsely swore that you saw one M.N. snatch a leather wallet from one Y. Z. in the..... on theday of, 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 contrary to section 120(1) of the Criminal Code.

Criminal Code Section 249(a)(i)

3. That you..... being a prostitute, on the.....day of.....20.....,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.....20....., 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.....20.....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.....
20..... at.....unlawfully wounded C.D with intent to maim, disfigure
or disable or to do some grievous harm or to resist the lawful arrest of yourself and thereby
committed an offence punishable under section 332(1) of the Criminal Code

Section 338(1)

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

Section 360

8. That you..... on the.....day of
20.....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 theday of.....20..... 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.....20..... 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 been sent by J.S to S.P for the cloth, and that you were authorised by J.S to
receive the cloth on behalf of 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.Bby falsely pretending that you were able to double money.

Section 430(1)

12. That youon 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.....20....., 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..... 20..... 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 youon the.....day of.....
20....., 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 or about the..... day
of.....20....., 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.....20.....,
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.....20.....,
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..... 20.....
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.....20.....
.....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 youon the.....day of.....20.....
..... 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
390(8) (c) of the Criminal Code

THIRD SCHEDULE**INFORMATION PRECEDENT***Section 385 (4)***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....., Rivers State, on the day of, 20.....

2

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 coin/note, knowing the same to be counterfeit.

3

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.

4

STATEMENT OF OFFENCE

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

Particulars of offence

A.B., knowing that one, H.C, did on theday 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 H.C.

5

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.

6

STATEMENT OF OFFENCE-FIRST COUNT

Wounding with intent, contrary to section 332 (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 A.B

STATEMENT OF OFFENCE-SECOND COUNT

Wounding, contrary to section 338 (1), of the Criminal Code

Particulars of offence

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

7

STATEMENT OF OFFENCE

Rape, contrary to section 358 of the Criminal Code

Particulars of offence

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

8

STATEMENT OF OFFENCE

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

Particulars of offence

A.B., on the.....day of.....,20..... in the division of..... published defamatory matter affecting E.F., in the form of a letter [book, pamphlet, picture, *or as the case may be*]
[*Innuendo should be stated where necessary*]

9

STATEMENT OF OFFENCE-FIRST COUNT

Stealing contrary to section 390, Criminal Code

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 theday of....., 20..... in the division of, did receive a bag, the property of C.D., knowing the same to have been stolen.

10

STATEMENT OF OFFENCE-FIRST COUNT

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

Particulars of offence

A.B., on the.....day of....., 20.....in the division of, stole N200.00 which had been entrusted to him by H.S., for 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 N200.00 which had been received by him for and on account of L.M.

11

STATEMENT OF OFFENCE

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

Particulars of offence

A.B., on theday of, 20.....in the division of, robbed C.D of a watch, and at, or immediately before or immediately after, the time of the robbery did use violence to C.D.

12

STATEMENT OF OFFENCE

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

Particulars of offence

A.B., on theday of, 20.....in the *division* of, with intent to extort money from C.D., caused C.D. to receive a letter containing threats of injury or detriment to be caused to E.F.

13

STATEMENT OF OFFENCE

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

Particulars of offence

A.B., on theday of, 20..... in the division of
with intent to extort money from C.C., accused or threatened to accuse C.D of an unnatural offence.

14

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 A.B., was a servant to J.S., and that he A.B., had been sent by J.S. to S.P. for the cloth, and that he A.B., was authorised by J.S. to receive the cloth on behalf of J.S.

15

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, namely to steal, and did steal one watch, the property of S.T.

16

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

17

STATEMENT OF OFFENCE FIRST COUNT

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

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 C.D., his employer, purporting to show that on day two, N200.00 had been paid to L.M.

STATEMENT OF OFFENCE-SECOND COUNT

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

Particulars of offence

A.B., on theday 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 C.D., his employer, a material particular, that is to say, the receipt on the said day of N100.00 from H.S.

18

STATEMENT OF OFFENCE

Arson, contrary to section 443, of the Criminal Code

Particulars of offence

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

19

STATEMENT OF OFFENCE

Arson, contrary to section 443, of the Criminal Code, accessory before the fact to same offence.

Particulars of offence

A.B., on the..... day of....., 20..... in the *division* of, wilfully and unlawfully set fire to a house. C.D., on the same day, in the *division* of, did counsel or procure A.B. to commit the offence.

20**STATEMENT OF OFFENCE-FIRST COUNT**

Offence under section 449 (1) of the Criminal Code

Particulars of offence

A.B., on theday of....., 20..... in the *division* of, with intent to obstruct the use of the Nigerian Railway, displaced a sleeper belonging to the 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 the Nigerian Railway, caused an engine or vehicle in use upon the railway to be obstructed in its passage.

21**STATEMENT OF OFFENCE**

Damaging trees, contrary to section 451 of the 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.

22**STATEMENT OF OFFENCE-FIRST COUNT**

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

Particulars of offence

A.B., on theday of 20..... in the *division* of..... forged a certain will purporting to be the will of C.D.

STATEMENT OF OFFENCE-SECOND COUNT

Uttering a false document, contrary to section 468 of the Criminal Code

Particulars of offence

A.B., on theday of, 20.....in the division of..... ,
knowingly and fraudulently uttered a certain forged will purporting to be the will of C.D.

23

STATEMENT OF PREVIOUS CONVICTION*

Prior to the commission of the offence, A.B. has been previously convicted of burglary on the
.....day of 20....., at the Sessions held at.....

FOURTH SCHEDULE

Sections 354 (1) (b), 421 (1), 428 (2) (b), 430, 433 and 442 (b)

Item 1

SCALE OF IMPRISONMENT FOR NON-PAYMENT OF MONEY ORDERED TO BE PAID

(Section 433)

Fine Bands	Where the fine or money amount to be paid as imposed at sentence;	The period of imprisonment shall not be less than;
Band A	Does not exceed N2,000.00	7 days
Band B	exceeds N2,000.00 but does not exceed N5,000.00	14 days
Band C	exceeds N5,000.00 but does not exceed N20,000.00	1 month
Band D	exceeds N20,000.00 but does not exceed N60,000.00	2 months
Band E	exceeds N60,000.00 but does not exceed N100,000.00	3 months
Band F	exceeds N100,000.00 but does not exceed N200,000.00	4 months
Band G	exceeds N200,000.00 but does not exceed N400,000.00	5 months
Band H	exceeds N400,000.00 but does not exceed N600,000.00	6 months
Band I	exceeds N600,000.00 but does not exceed N1,000,000.00	7 months
Band J	exceeds N1,000,000.00 but does not exceed N2,000,000.00	8 months
Band K	exceeds N2,000,000.00 but does not exceed N5,000,000.00	9 months
Band L	exceeds N5,000,000.00 but does not exceed N10,000,000.00	10 months
Band M	exceeds N10,000,000.00	To the discretion of the Judge but from 18 months and above

Section 421

ORDER FOR SENTENCE OF DEATH TO BE CARRIED OUT**ORDER FOR EXECUTION**

WHEREAS at the.....holding at.....on the.....day of.....20....., onewas 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 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.....be executed at.....at a time and by the person appointed by you and that the body of thebe buried in the usual place for internment for condemned criminals executed at the place of execution.

AND FOR SO DOING this shall be your Warrant.

GIVEN under my hand and the Public Seal of the Rivers State Government this.....day of.....20.....

.....

Governor

To the Sheriff at.....

Section 419

ORDER FOR COMMUNTATION OF SENTENCE

WHEREAS on theday 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 sentence be not
 carried out, and that in lieu thereof the.....be
 imprisoned for.....

GIVEN under my hand and the Public Seal of the Rivers 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 hereby authorise who brings me this warrant and
 all other persons to whom this warrant was originally directed and also all police officers of the
to execute this warrant within.....and to within
and to bring the
 if arrested
 within.....before me or before any 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 443

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 mentionedyouare ordered 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 period of the 5 clear days 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 distress, be not paid, then to sell the 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 191

**WARRANT TO ARREST A PERSON FAILING TO APPEAR PURSUANT
TO RECOGNIZANCE****(TITLE OF PROCEEDINGS)**

To.....
and.....
Whereas.....of..... is bound by
recognizance to appear before this Court on.....
.....(state when) but has failed so to
appear:

You are commanded to arrest the
.....and bring him before me at
.....without delay.

.....
Judge (or Magistrate)

FORM F

Section 324

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, Costs, or Strokes</i>	<i>Term in default</i>

The defendant has made default in payment of the above sum (or sums, or 1st and 2nd above-named sums, or as the case may be.)

The imprisonment is to commence [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 commanded to take the defendant and imprison him in accordance with the above sentence and the Law.

Dated the.....day of.....,20.....

.....

Judge (or Magistrate)

FORM G

Section 252

RECOGNIZANCE OF WITNESS

In the Magistrate Court of..... C.D.
of.....(*address and occupation or profession*) acknowledges that he/she owes to the Rivers State Government the sum ofpayment thereof to be enforced against him/her by due process of law if he/she fails to comply with the conditions endorsed herein.

Signature of C.D.....

Taken before me this.....day of....., 20.....

.....
Magistrate (Judge)

(*Endorsement*)

Conditions

The condition of this recognizance 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 C.D. appears at the High Court of Rivers 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 requirements of any notice which he/she may subsequently receive relating to this recognizance, then this recognizance shall be void but otherwise shall remain in full force.

FORM G1**RECOGNIZANCE OF WITNESS CONDITIONALLY BOUND OVER**

In the Magistrate Court of.....
C.D
(*address and occupation or profession*)

Signature of C.D.....

Taken before me this.....day of....., 20.....

.....
Magistrate

(*Endorsement*)

Conditions

Whereas A.B (hereinafter called the defendant) was this day charged before me (name of Magistrate), the above-mentioned Magistrate, with (state shortly particulars of offence): and Whereas C.D has been informed that he/she is only conditionally bound over to give evidence at the trial of A.B but that, after receiving a notice that he/she will be required to give evidence at the trial, he/she will then be firmly bound by the following conditions:

If C.D. appears at the High Court of Rivers 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 complies with the requirements of any notice which he may subsequently receive relating to this recognizance, then this recognizance shall be void but otherwise shall remain in full force.

FORM H

Notice to Witness that Defendant has not been Committed for Trial

In the Magistrate Court of.....

Whereas you C.D of.....were on the.....day of....., 20....., bound by a recognizance in the sum of..... to appear on a date to be notified to you at the High Court of Rivers State and give evidence upon the trial of A.B:

This is to give you notice that the Magistrate has determined not to commit 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 recognizance in the sum of..... to appear at the High Court of Rivers 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 A.B for trial at the High Court of Rivers 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 recognizance 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 Rivers State

Whereas you C.D of..... were on the.....day of....., 20....., bound over conditionally in the sum of..... to appear upon being given to you to give evidence upon the trial of A.B (or, whereas you C.D were given notice, after entering into a recognizance to give evidence upon the trial of A.B., that you would not be bound by such recognizance 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 Rivers State at the trial of A.B on the.....(or on a date to be subsequently notified) and that unless you do so the recognizance will be enforced against you.

Dated the.....day of.....,20.....

.....
Registrar of High/Magistrate's Court

FORM L**SECTION 111****COMPTROLLER OF PRISONS RETURNS OF PERSON(S) AWAITING TRIAL**

(Complete form in triplicate per individual)

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

The Chief Judge of Rivers 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 Rivers State for a period beyond 180 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 of Prisons

ADMINISTRATION OF CRIMINAL JUSTICE LAW, 2015

EXPLANATORY MEMORANDUM

This Law provides for the administration of a criminal justice system which promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of society from crimes and protection of the rights and interests of the suspect, defendant and victims in Rivers State.

This printed impression has been carefully compared by me with the Rivers State administration of criminal justice bill, (HA.7) 2015, which has been passed by the Rivers State House of Assembly and found by me to be a true and correctly printed copy of the said Bill.

.....
RT, HON. ADAMS DABOTORUDIMA

SPEAKER

RIVERS STATE HOUSE OF ASSEMBLY

.....
STANFORD OBA

CLERK

RIVERS STATE HOUSE OF ASSEMBLY