4.07. Determination of Irresponsibility on Basis of Report; Access to Defendant by Psychiatrist of His Own Choice; Form of Expert Testimony When Issue of Responsibility Is Tried

(1) If the report filed pursuant to Section 4.05 finds that the defendant at the time of the criminal conduct charged suffered from a mental disease or defect which substantially impaired his capacity to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law, and the Court, after a hearing if a hearing is requested by the prosecuting attorney or the defendant, is satisfied that such impairment was sufficient to exclude responsibility, the Court on motion of the defendant shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

(2) When, notwithstanding the report filed pursuant to Section 4.05, the defendant wishes to be examined by a qualified psychiatrist or other expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purposes of such examination.

(3) Upon the trial, the psychiatrists who reported pursuant to Section 4.05 may be called as witnesses by the prosecution, the defendant or the Court. If the issue is being tried before a jury, the jury may be informed that the psychiatrists were designated by the Court or by the Superintendent of the _____ Hospital at the request of the Court, as the case may be. If called by the Court, the witness shall be subject to cross-examination by the prosecution and by the defendant. Both the prosecution and the defendant may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by, another witness.

(4) When a psychiatrist or other expert who has examined the defendant testifies concerning his mental condition, he shall be permitted to make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at he time of the commission of the offense charged and his opinion as to the extent, if any, to which the capacity of the defendant to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law or to have a particular state of mind which is an element of the offense charged was impaired as a result of mental disease or defect at that time. He shall be permitted to make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

4.08. Legal Effect of Acquittal on the Ground of Mental Disease or Defect Excluding Responsibility; Commitment; Release or Discharge

(1) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the Court shall order him to be committed to the custody of the Commissioner of Mental Hygiene [Public Health] to be placed in an appropriate institution for custody, care and treatment.

(2) If the Commissioner of Mental Hygiene [Public Health] is of the view that a person committed to his custody, pursuant to paragraph (1) of this Section, may be discharged or

released on condition without danger to himself or to others, he shall make application for the discharge or release of such person in a report to the Court by which such person was committed and shall transmit a copy of such application and report to the prosecuting attorney of the county [parish] from which the defendant was committed. The Court shall thereupon appoint at least two qualified psychiatrists to examine such person and to report within sixty days, or such longer period as the Court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate such examination and the proceedings thereon, the Court may cause such person to be confined in any institution located near the place where the Court sits, which may hereafter be designated by the Commissioner of Mental Hygiene [Public Health] as suitable for the temporary detention of irresponsible persons.

(3) If the Court is satisfied by the report filed pursuant to paragraph (2) of this Section and such testimony of the reporting psychiatrists as the Court deems necessary that the committed person may be discharged or released on condition without danger to himself or others, the Court shall order his discharge or his release on such conditions as the Court determines to be necessary. If the Court is not so satisfied, it shall promptly order a hearing to determine whether such a person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the committed person to prove that he may safely be discharged or released. According to the determination of the Court upon the hearing, the committed person shall thereupon be discharged or released on such conditions as the Court determines to be necessary, or shall be recommitted to the custody of the Commissioner of Mental Hygiene [Public Health], subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(4) If, within [five] years after the conditional release of a committed person, the Court shall determine, after hearing evidence, that for the safety of such person or for the safety of others his conditional release should be revoked, the Court shall forthwith order him to be recommitted to the Commissioner of Mental Hygiene [Public Health], subject to discharge or release only in accordance with the procedure prescribed above for the first hearing.

(5) A committed person may make application for his discharge or release to the Court by which he was committed, and the procedure to be followed upon such application shall be the same as the prescribed above in the case of an application by the Commissioner of Mental Hygiene [Public Health]. However, no such application by a committed person need be considered until he has been confined for a period of not less than [six months] from the date of the order of commitment, and if the determination of the Court be adverse to the application, such person shall not be permitted to file a further application until [one year] has elapsed from the date of any preceding hearing on an application for his release or discharge.

4.09. Statements for Purposes of Examination or Treatment Inadmissible Except on Issue of Mental Condition

A statement made by a person subjected to psychiatric examination or treatment pursuant to Sections 4.05, 4.06 or 4.08 for the purposes of such examination or treatment shall not be admissible in evidence against him in any criminal proceeding on any issue other than that of his mental condition but it shall be admissible upon that issue, whether or not it would otherwise be deemed a privileged communication [, unless such statement constitutes an admission of guilt of

the crime charged].

4.10. Immaturity Excluding Criminal Conviction; Transfer of Proceedings to Juvenile Court

(1) A person shall not be tried for or convicted of an offense if:

(a) at the time of the conduct charged to constitute the offense he was less than sixteen years of age [, in which case the Juvenile Court shall have exclusive jurisdiction*]; or

(b) at the time of the conduct charged to constitute the offense he was sixteen or seventeen years of age, unless;

(i) the Juvenile Court has no jurisdiction over him, or,

(ii) the Juvenile Court has entered an order waiving jurisdiction and consenting to the institution of criminal proceedings against him.

(2) No court shall have jurisdiction to try or convict a person of an offense if criminal proceedings against him are barred by Subsection (1) of this Section. When it appears that a person charged with the commission of an offense may be of such an age that criminal proceedings may be barred under Subsection (1) of this Section, the Court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the Court that the criminal proceeding is not barred upon such grounds. If the Court determines that the proceeding is barred, custody of the person charged shall be surrendered to the Juvenile Court, and the case, including all papers and processes relating thereto, shall be transferred.

ARTICLE 5

INCHOATE CRIMES

5.01. Criminal Attempt

(1) Definition of Attempt. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or

(b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or

(c) purposely does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(2) Conduct Which May Be Held Substantial Step Under Subsection (1)(c). Conduct shall not

be held to constitute a substantial step under Subsection (1)(c) of this Section unless it is strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

(a) lying in wait, searching for or following the contemplated victim of the crime;

(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(c) reconnoitering the place contemplated for the commission of the crime;

(d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(e) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;

(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(3) Conduct Designed to Aid Another in Commission of a Crime.

A person who engages in conduct designed to aid another to commit a crime which would establish his complicity under Section 2.06 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

(4) Renunciation of Criminal Purpose. When the actor's conduct would otherwise constitute an attempt under Subsection (1)(b) or (1)(c) of this Section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this Article, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

5.02. Criminal Solicitation

(1) Definition of Solicitation. A person is guilty of solicitation to commit a crime if with purpose of promoting or facilitating its commission he commands, encourages or requests another

person to engage in specific conduct which would establish his complicity in its commission or attempted commission.

(2) Uncommunicated Solicitation. It is immaterial under Subsection (1) of this Section that the actor fails to communicate with the person he solicits to commit a crime if his conduct was designed to effect such communication.

(3) Renunciation of Criminal Purpose. It is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

5.03. Criminal Conspiracy

(1) Definition of Conspiracy. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:

(a) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

(2) Scope of Conspiratorial Relationship. If a person guilty of conspiracy, as defined by Subsection (1) of this Section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

(3) Conspiracy With Multiple Criminal Objectives. If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) Joinder and Venue in Conspiracy Prosecutions.

(a) Subject to the provisions of paragraph (b) of this Subsection, two or more persons charged with criminal conspiracy may be prosecuted jointly if:

(i) they are charged with conspiring with one another; or

(ii) the conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(b) In any joint prosecution under paragraph (a) of this Subsection:

(i) no defendant shall be charged with conspiracy in any county [parish or district] other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired; and

(iii) the Court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence, and shall take any other proper measures to protect the fairness of the trial.

(5) Overt Act. No person may be convicted of conspiracy to commit a crime, other than a felony of the first or second degree, unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

(6) Renunciation of Criminal Purpose. It is an affirmative defense that he actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(7) Duration of Conspiracy. For purposes of Section 1.06(4):

(a) conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired; and

(b) such abandonment is presumed if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and

(c) if an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

5.04. Incapacity, Irresponsibility or Immunity of Party to Solicitation or Conspiracy

(1) Except as provided in Subsection (2) of this Section, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:

(a) he or the person whom he solicits or with whom he conspires does not occupy a particular position or have a particular characteristic which is an element of such crime, if he believes that one of them does; or

(b) the person whom he solicits or with whom he conspires is irresponsible or has an immunity to prosecution or conviction for he commission of the crime.

(2) It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under Section 2.06(5) or 2.06(6)(a) or (b).

5.05. Grading of Criminal Attempt, Solicitation and Conspiracy; Mitigation in Cases of Lesser Danger; Multiple Convictions Barred

(1) Grading. Except as otherwise provided in this Section, attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or

solicited or is an object of the conspiracy. An attempt, solicitation or conspiracy to commit a [capital crime or a] felony of the first degree is a felony of the second degree.

(2) Mitigation. If the particular conduct charged to constitute a criminal attempt, solicitation or conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither such conduct nor the actor presents a public danger warranting the grading of such offense under this Section, the Court shall exercise its power under Section 6.12 to enter judgment and impose sentence for a crime of lower grade or degree or, in extreme cases, may dismiss the prosecution.

(3) Multiple Convictions. A person may not be convicted of more than one offense defined by this Article for conduct designed to commit or to culminate in the commission of the same crime.

5.06. Possessing Instruments of Crime; Weapons

(1) Criminal Instruments Generally. A person commits a misdemeanor if he possesses any instrument of crime with purpose to employ it criminally. "Instrument of crime" means:

(a) anything specially made or specially adapted for criminal use; or

(b) anything commonly used for criminal purposes and possessed by the actor under circumstances which do not negative unlawful purpose.

(2) Presumption of Criminal Purpose from Possession of Weapon. If a person possesses a firearm or other weapon on or about his person, in a vehicle occupied by him, or otherwise readily available for use, it is presumed that he had the purpose to employ it criminally, unless:

(a) the weapon is possessed in the actor's home or place of business;

(b) the actor is licensed or otherwise authorized by law to possess such weapon; or

(c) the weapon is a type commonly used in lawful sport.

"Weapon" means anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have; the term includes a firearm which is not loaded or lacks a clip or other component to render it immediately operable, and components which can readily be assembled into a weapon.

(3) Presumptions as to Possession of Criminal Instruments in Automobiles. Where a weapon or other instrument of crime is found in an automobile, it shall be presumed to be in the possession of the occupant if there is but one. If there is more than one occupant, it shall be presumed to be in the possession of all, except under the following circumstances:

(a) where it is found upon the person of one of the occupants;

(b) where the automobile is not a stolen one and the weapon or instrument is found out of view in a glove compartment, car trunk, or other enclosed customary depository, in which case it shall be presumed to be in the possession of the occupant or occupants who own or have authority to

operate the automobile;

(c) in the case of a taxicab, a weapon or instrument found in the passengers' portion of the vehicle shall be presumed to be in the possession of all the passengers, it there are any, and if not, in the possession of the driver.

5.07. Prohibited Offensive Weapons

A person commits a misdemeanor if, except as authorized by law, he makes, repairs, sells, or otherwise deals in, uses, or possesses any offensive weapon. "Offensive weapon" means any bomb, machine gun, sawed-off shotgun, firearm specially made or specially adapted for concealment or silent discharge, any blackjack, sandbag, metal knuckles, dagger, or other implement for the infliction of serious bodily injury which serves no common lawful purpose. It is a defense under this Section for the defendant to prove by a preponderance of evidence that he possessed or dealt with the weapon solely as a curio or in a dramatic performance, or that he possessed it briefly in consequence of having found it or taken it from an aggressor, or under circumstances similarly negativing any purpose or likelihood that the weapon would be used unlawfully. The presumptions provided in Section 5.06(3) are applicable to prosecutions under this Section.

ARTICLE 6

AUTHORIZED DISPOSITION OF OFFENDERS

6.01. Degrees of Felonies

(1) Felonies defined by this Code are classified, for the purpose of sentence, into three degrees, as follows:

(a) felonies of the first degree;

(b) felonies of the second degree;

(c) felonies of the third degree;

A felony is of the first or second degree when it is so designated by the Code. A crime declared to be a felony, without specification of degree, is of the third degree.

(2) Notwithstanding any other provision of law, a felony defined by any statute of this State other than this Code shall constitute for the purpose of sentence a felony of the third degree.

6.02. Sentence in Accordance with Code; Authorized Dispositions

(1) No person convicted of an offense shall be sentenced otherwise than in accordance with this Article.

[(2) The Court shall sentence a person who has been convicted of murder to death or imprisonment, in accordance with Section 210.6.]

(3) Except as provided in Subsection (2) of this Section and subject to the applicable provisions of the Code, the Court may suspend the imposition of sentence on a person who has been convicted of a crime, may order him to be committed in lieu of sentence, in accordance with Section 6.13, or may sentence him as follows:

(a) to pay a fine authorized by Section 6.03; or

(b) to be placed on probation [, and, in the case of a person convicted of a felony or misdemeanor to imprisonment for a term fixed by the Court not exceeding thirty days to be served as a condition of probation]; or

(c) to imprisonment for a term authorized by Sections 6.05, 6.06, 6.07, 6.08, 6.09, or 7.06; or

(d) to fine and probation or fine and imprisonment, but not to probation and imprisonment [, except as authorized in paragraph (b) of this Subsection].

(4) The Court may suspend the imposition of sentence on a person who has been convicted of a violation or may sentence him to pay a fine authorized by Section 6.03.

(5) This Article does not deprive the Court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgement or order may be included in the sentence.

6.03. Fines

A person who has been convicted of an offense may be sentenced to pay a fine not exceeding;

(1) $10,000, when the conviction is of a felony of the first or second degree;

(2) $5,000, when the conviction is of a felony of the third degree;

(3) $1,000, when the conviction is of a misdemeanor;

(4) $500, when the conviction is of a petty misdemeanor or a violation;

(5) any higher amount equal to double the pecuniary gain derived from the offense by the offender;

(6) any higher amount specifically authorized by statute.

6.04. Penalties Against Corporations and Unincorporated Association; Forfeiture of Corporate Charter or Revocation of Certificate Authorizing Foreign Corporation to Do Business in the State

(1) The Court may suspend the sentence of a corporation or an unincorporated association which has been convicted of an offense or may sentence it to pay a fine authorized by Section 6.03.

(2) (a) The [prosecuting attorney] is authorized to institute civil proceedings in the appropriate

court of general jurisdiction to forfeit the charter of a corporation organized under the laws of this State or to revoke the certificate authorizing a foreign corporation to conduct business in this State. The Court may order the charter forfeited or the certificate revoked upon finding (i) that the board of directors or a high managerial agent acting in behalf of the corporation has, in conducting the corporation's affairs, purposely engaged in a persistent course of criminal conduct and (ii) that for the prevention of future criminal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the certificate to be revoked.

(b) When a corporation is convicted of a crime or a high managerial agent of a corporation, as defined in Section 2.07, is convicted of a crime committed in the conduct of the affairs of the corporation, the Court, in sentencing the corporation or the agent, may direct the [prosecuting attorney] to institute proceedings authorized by paragraph (a) of this Subsection.

(c) The proceedings authorized by paragraph (a) of this Subsection shall be conducted in accordance with the procedures authorized by law for the involuntary dissolution of corporation or the revocation of the certificate authorizing a foreign corporation to conduct business in this State. Such proceedings shall be deemed additional to any other proceedings authorized by law for the purpose of forfeiting the charter of a corporation or revoking the certificate of a foreign corporation.

6.05. Young Adult Offenders

(1) Specialized Correctional Treatment. A young adult offender is a person convicted of a crime who, at the time of sentencing, is sixteen but less than twenty-two years of age. A young adult offender who is sentenced to a term of imprisonment which may exceed thirty days [alternatives: (1) ninety days; (2) one year] shall be committed to the custody of the Division of Young Adult Correction of the Department of Correction, and shall receive, as far as practicable, such special and individualized correctional and rehabilitative treatment as may be appropriate to his needs.

(2) Special Term. A young adult offender convicted of a felony may, in lieu of any other sentence of imprisonment authorized by this Article, be sentenced to a special term of imprisonment without a minimum and with a maximum of four years, regardless of the degree of the felony involved, if the Court is of the opinion that such special term is adequate for his correction and rehabilitation and will not jeopardize the protection of the public.

[(3) Removal of Disabilities; Vacation of Conviction.

(a) In sentencing a young adult offender to the special term provided by this Section or to any sentence other than one of imprisonment, the Court may order that so long as he is not convicted of another felony, the judgment shall not constitute a conviction for the purposes of any disqualification or disability imposed by law upon conviction of a crime.

(b) When any young adult offender is unconditionally discharged from probation or parole before the expiration of the maximum term thereof, the Court may enter an order vacating the judgment of conviction.]

[(4) Commitment for Observation. If, after pre-sentence investigation, the Court desires additional information concerning a young adult offender before imposing sentence, it may order that

he be omitted, for a period not exceeding ninety days, to the custody of the Division of Young Adult Correction of the Department of Correction for observation and the study at an appropriate reception or classification center. Such Division of the Department of Correction and the [Young Adult Division of the] Board of Parole shall advise the Court of their findings and recommendations on or before the expiration of such ninety-day period.]

6.06. Sentence of Imprisonment for Felony; Ordinary Terms

A person who has been convicted of a felony may be sentenced to imprisonment, as follows:

(1) in the case of a felony of the first degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than ten years, and the maximum of which shall be life imprisonment;

(2) in the case of a felony of the second degree, for a term the minimum of which shall be fixed by the Court at not less than one year no more than three years, and the maximum of which shall be ten years;

(3) in the case of a felony of the third degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than two years, and the maximum of which shall be five years.

Alternate Section 6.06. Sentence of Imprisonment for Felony; Ordinary Terms

A person who has been convicted of a felony may be sentenced to imprisonment, as follows:

(1) in the case of a felony of the first degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than ten years, and the maximum at not more than twenty years or at life imprisonment;

(2) in the case of a felony of the second degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than three years, and the maximum at not more than ten years;

(3) in the case of a felony of the third degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than two years, and the maximum at not more than five years.

No sentence shall be imposed under this Section of which the minimum is longer than one-half the maximum, or, when the maximum is life imprisonment, longer than ten years.

6.07. Sentence of Imprisonment for Felony; Extended Terms

In the cases designated in Section 7.03, a person who has been convicted of a felony may be sentenced to an extended term of imprisonment, as follows:

(1) in the case of a felony of the first degree, for a term the minimum of which shall be fixed

by the Court at not less than five years nor more than ten years, and the maximum of which shall be life imprisonment;

(2) in the case of a felony of the second degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than five years, and the maximum of which shall be fixed by the Court at not less than ten nor more than twenty years;

(3) in the case of a felony of the third degree, for a term the minimum of which shall be fixed by the Court at not less than one year nor more than three years, and the maximum of which shall be fixed by the Court at not less than five nor more than ten years.

6.08. Sentence of Imprisonment for Misdemeanors and Petty Misdemeanors and Petty Misdemeanors; Ordinary Terms

A person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the Court and shall not exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor.

6.09. Sentence of Imprisonment for Misdemeanors and Petty Misdemeanors; Extended Terms

(1) In the cases designated in Section 7.04, a person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to an extended term of imprisonment, as follows:

(a) in the case of a misdemeanor, for a term the minimum of which shall be fixed by the Court at not more than one year and the maximum of which shall be three years;

(b) in the case of a petty misdemeanor, for a term the minimum of which shall be fixed by the Court at not more than six months and the maximum of which shall be two years.

(2) No such sentence for an extended term shall be imposed unless:

(a) the Director of Correction has certified that there is an institution in the Department of Correction, or in a county, city [or other appropriate political subdivision of the State] which is appropriate for the detention and correctional treatment of such misdemeanant or petty misdemeanant, and that such institution is available to receive such commitments; and

(b) the [Board of Parole] [Parole Administrator] has certified that the Board of Parole is able to visit such institution and to assume responsibility for the release of such prisoners on parole and for their parole supervision.

6.10. First Release of All Offenders on Parole; Sentence of Imprisonment Includes Separate Parole Term; Length of Parole Term; Length of Recommitment and Reparole After Revocation of Parole; Final Unconditional Release

(1) First Release of All Offenders on Parole. An offender sentenced to an indefinite term of imprisonment in excess of one year under Section 6.05, 6.06, 6.07, 6.09, or 7.06 includes as a

separate portion of the sentence a term of parole or of recommitment for violation of the conditions of parole which governs the duration of parole or recommitment after the offender's first conditional release on parole. The minimum of such term is one year and the maximum is five years, unless the sentence was imposed under Section 6.05(2) or Section 6.09, in which case the maximum is two years.

(3) Length of Recommitment and Reparole After Revocation of Parole. If an offender is recommitted upon revocation of his parole, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the Board of Parole but shall not exceed in aggregate length the unserved balance of the maximum parole term provided by Subsection (2) of this Section.

(4) Final Unconditional Release. When the maximum of his parole term has expired or he has been sooner discharged from parole under Section 305.12, an offender shall be deemed to have served his sentence and shall be released unconditionally.

6.11. Place of Imprisonment

(1) When a person is sentenced to imprisonment for an indefinite term with a maximum in excess of one year, the Court shall commit him to the custody of the Department of Correction [or other single department or agency] for the term of his sentence and until released in accordance with law.

(2) When a person is sentenced to imprisonment for a definite term, the Court shall designate the institution or agency to which he is committed for the term of his sentence and until released in accordance with law.

6.12. Reduction of Conviction by Court to Lesser Degree of Felony or to Misdemeanor

If, when a person has been convicted of a felony, the Court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the view that it would be unduly harsh to sentence the offender in accordance with the Code, the Court may enter judgment of conviction for a lesser degree of felony or for a misdemeanor and impose sentence accordingly.

6.13. Civil Commitment in Lieu of Prosecution or of Sentence

(1) When a person prosecuted for a [felony of the third degree,] misdemeanor or petty misdemeanor is a chronic alcoholic, narcotic addict[or prostitute] or person suffering from mental abnormality and the Court is authorized by law to order the civil commitment of such person to a hospital or other institution for medical psychiatric or other rehabilitative treatment, the Court may order such commitment and dismiss the prosecution. The order of commitment may be made after conviction, in which event the Court may set aside the verdict or judgment of conviction and dismiss prosecution.

(2) The Court shall not make an order under Subsection (1) of this Section unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the

protection of the public.

ARTICLE 7
AUTHORITY OF COURT IN SENTENCING

7.01. Criteria for Withholding Sentence of Imprisonment and for Placing Defendant on Probation

(1) The Court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for protection of the public because:

(a) there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or

(b) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(c) a lesser sentence will depreciate the seriousness of the defendant's crime.

(2) The following grounds, while not controlling the discretion of the Court, shall be accorded weight in favor of withholding sentence of imprisonment:

(a) the defendant's criminal conduct neither caused nor threatened serious harm;

(b) the defendant did not contemplate that his criminal conduct would cause or threaten serious harm;

(d) there were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

(e) the victim of the defendant's criminal conduct induced or facilitated its commission;

(f) the defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained;

(g) the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(h) the defendant's criminal conduct was the result of circumstances unlikely to recur;

(i) the character and attitudes of the defendant indicate that he is unlikely to commit another crime;

(j) the defendant is particularly likely to respond affirmatively to probationary treatment;

(k) the imprisonment of the defendant would entail excessive hardship to himself or his

dependents.

(3) When a person who has been convicted of a crime is not sentenced to imprisonment, the Court shall place him on probation if he is in need of the supervision, guidance, assistance or direction that the probation service can provide.

7.02. Criteria for Imposing Fines

(1) The Court shall not sentence a defendant only to pay a fine, when any other disposition is authorized by law, unless having regard to the nature and circumstances of the crime and to the history and character of he defendant, it is of the opinion that the fine alone suffices for protection of the public.

(2) The Court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation unless;

(a) the defendant has derived a pecuniary gain from the crime; or

(b) the Court is of opinion that a fine is specially adapted to deterrence of the crime involved or to the correction of the offender.

(3) The Court shall not sentence a defendant to pay a fine unless:

(a) the defendant is or will be able to pay the fine; and

(b) the fine will not prevent the defendant from making restitution or reparation to the victim of the crime.

(4) In determining the amount and method of payment of a fine, the Court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

7.03. Criteria for Sentence of Extended Term of Imprisonment; Felonies

The Court may sentence a person who has been convicted of a felony to an extended term of imprisonment if it finds one or more of the grounds specified in this Section. The finding of he court shall be incorporated in the record.

(1) The defendant is a persistent offender whose commitment for an extended term is necessary for protection of the public.

The Court shall not make such a finding unless the defendant is over twenty-one years of age and has previously been convicted of two felonies or of one felony and two misdemeanors, committed at different times when he was over [insert Juvenile Court age] years of age.

(2) The defendant is a professional criminal whose commitment for an extended term is necessary for protection of the public.

The Court shall not make such a finding unless the defendant is over twenty-one years of age and:

(a) the circumstances of the crime show that he defendant has knowingly devoted himself to criminal activity as a major source of livelihood; or

(b) the defendant has substantial income or resources not explained to be derived from a source other than a legalone;

(3) The defendant is a dangerous, mentally abnormal person whose commitment for an extended term is necessary for protection of the public.

The Court shall not make such a finding unless the defendant has been subjected to a psychiatric examination resulting in the conclusions that his mental condition is gravely abnormal; that his criminal conduct has been characterized by a pattern of repetitive or compulsive behavior or by persistent aggressive behavior with heedless indifference to consequences; and that such condition makes him a serious danger to others.

(4) The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted.

The Court shall not make such a finding unless:

(a) the defendant is being sentenced for two or more felonies, or is already under sentence of imprisonment for felony, and the sentences of imprisonment involved will run concurrently under Section 7.06; or

(b) the defendant admits in open court the commission of one or more other felonies and asks that they be taken into account when he is sentenced; and

(c) the longest sentences of imprisonment authorized for each of the defendant's crimes, including admitted crimes taken into account, if made to run consecutively would exceed in length the minimum and maximum of the extended term imposed.