Criminal Procedure Code of Thailand(Thai: ประมวลกฎหมายวิธีพิจารณาความอาญาไทย) — Table of contents

the Government of Thailand

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DIVISION 1

PRELIMINARY PROVISIONS

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Title 1

General Rules

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§ 1

Any term in the present Code whose definition is provided shall, save where the context of such provision is inconsistent therewith, be construed in pursuance thereof.

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§ 2

In the present Code:

(1) **“COURT”** denotes a court of justice or judge having the power to exercise criminal jurisdiction.

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(2) **“ACCUSED”** denotes a person who is alleged to have committed an offence, but not yet charged in court.

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(3) **“DEFENDANT”** denotes a person who is charged in court with the commission of offence.

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(4) **“VICTIM”** denotes a person who has been caused by the commission of offence to sustain injury, and includes a person entitled to represent the victim according to sections 4, 5 and 6.

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(5) **“PUBLIC PROSECUTOR”** denotes an official whose duty is to institute a prosecution in court against an accused, whether he be an official subsidiary to the Public Prosecution Department[1] or any other official having the same power.

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(6) **“INQUIRER”** an official who is invested by law with the power and duty of inquiry.

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(7) **“COMPLAINT”** denotes an act whereby a victim makes before an official under the provisions of the present Code an allegation that any person, whether identifiable, has committed an offence and thereby caused him to suffer with injury; prescribed that such allegation is made with the intention to bring the offender to punishment.

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(8) **“DENUNCIATION”** denotes an act whereby any person other than the victim makes before an official an allegation that any person, whether identifiable, has committed an offence.

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(9)[2] **“CRIMINAL WARRANT”** denotes a document issued by virtue of the provisions of the present Code directing the officials to carry out an arrest, detention, imprisonment or release of an accused, defendant or convict or to conduct a search, and includes a certified copy of a warrant of arrest or search, a telegraphic information of the issuance of a warrant of arrest or search, as well as a copied warrant of arrest or search sent by means of facsimile, electronics or other means of information technology in accordance with section 77.

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(10) **“INVESTIGATION”** denotes an act whereby an administrative or police official seeks for the facts and evidence by virtue of his power and duty to maintain public order and ascertain the particulars of an offence.

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(11) **“INQUIRY”** denotes an act whereby an administrative or police official, in respect of an offence charged, collects evidence and carries out all other activities under the

provisions of the present Code in order to verify the facts or establish the guilt and secure the punishment of the offender.

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(12) **“PRELIMINARY HEARING”** denotes a procedural act whereby a court hears a case in order to decide whether a charge against the defendant is well-grounded.

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(13) **“PRIVATE PLACE”** ” denotes any place other than a public place as defined in the Penal Code[3].

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(14) **“PROSECUTOR”** denotes a public prosecutor or victim who has instituted a prosecution in court, or, where a public prosecutor and an victim are joint prosecutors, both.

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(15) **“PARTIES”** denotes the prosecutor on one side, and the defendant on the other side.

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(16) **“ADMINISTRATIVE OR POLICE OFFICIAL”** denotes an official who is invested by law with the power and duty to maintain public order, and includes a prison official, an official of the Excise Department, Customs Department or

Harbour Department, an immigration official and other official, when arresting offenders and suppressing offences by virtue of his office.

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(17)[4] **"SUPERIOR ADMINISTRATIVE OR POLICE OFFICIAL"** denotes any of the following officials:

(1) The Permanent Secretary for Interior.
(2) The Deputy Permanent Secretary for Interior.
(3) The Inspector for Interior.
(4) The Assistant Permanent Secretary for Interior.
(5) The Director-General of the Department of Provincial Administration.
(6) The Deputy Director-General of the Department of Provincial Administration.
(7) The Director of the Investigation and Legal Affairs Bureau, Department of Provincial Administration.
(8) The Heads of the Divisions and the Heads of the Sections in the Investigation and Legal Affairs Bureau, Department of Provincial Administration.
(9) The Inspector for Provincial Administration.
(10) The Governor of Changwat.
(11) The Deputy Governor of Changwat.
(12) The Clerk of Changwat.
(13) The Chief Officer of Amphoe.
(14) The Chief Officer of King Amphoe.
(15) The Director-General of the Police Department.[5]

(16) The Deputy Director-General of the Police Department.[6]
(17) The Assistant Director-General of the Police Department.[7]
(18) The Police Commissioner.
(19) The Police Deputy Commissioner.
(20) The Police Assistant Commissioner.
(21) The Police Commander.
(22) The Police Deputy Commander.
(23) The Provincial Police Chief.[8]
(24) The Provincial Police Deputy Chief.[9]
(25) The Police Superintendent.
(26) The Provincial Police Superintendent of Region.[10]
(27) The Police Deputy Superintendent
(28) The Provincial Police Deputy Superintendent of Region.[10]
(29) The Senior Police Inspector[10]
(30) The Police Inspector
(31) The Police Troop Leader[11]
(32) The Police Station Leader ranking as from Police Sub-Lieutenant or equivalent.
(33) The Police Sub-Station Leader ranking as from Police Sub-Lieutenant or equivalent.
The term also includes a person serving *ad interim* as the above mentioned official, but the one serving *ad interim* as the official under (31), (32) and (33) is required to rank as or from police sub-leutenant.

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(18) **“ARTICLE”** denotes any movable which bears witness as to a criminal case, and includes letters, telegraphs and other documents.

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(19) **“MEMORANDUM”** denotes any writing made by a court as evidence of all particulars as to its criminal proceedings.

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(20) **“NOTE”** denotes any writing made by an administrative or police official as evidence of his criminal inquiry, and includes written records of complaints and denunciations.

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(21) **“RESTRIANT”** denotes an act whereby an administrative or police official holds in custody or confines an arrestee in the course of his investigation and inquiry.

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(22) **“DETENTION”** denotes an act whereby a court confines a defendant or accused.

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§ 3

The persons set forth in sections 4, 5 and 6 shall be entitled to represent the victim in the following activities, subject to the criteria prescribed in those sections:

(1) Making a complaint.

(2) Instituting a prosecution or associating himself as prosecutor with the public prosecutor.

(3) Entering a penal action.

(4) Entering a *nolle prosequi* in a criminal case or penal action.

(5) Compromising a compoundable offence.

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§ 4

In a criminal case, if victim is a *femme couverte*, she shall be entitled to institute a prosecution by herself without having to obtain permission of her husband.

Subject to section 5 (2), a husband shall be entitled to bring a criminal case on behalf of his wife only with her express permission.

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§ 5

The followings are entitled to represent the victim:

(1) The statutory agent or custodian, only in respect of the offences against the minor or incompetent person under his care.

(2) An ascendant, descendant or spouse, only in respect of the offences causing the victim to sustain bodily harm to such an extent that he ceased to live or is unable to act by himself.

(3) The manager or other representative of the juristic person, only in respect of the offences against the juristic person.

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§ 6

In a criminal case, if a victim is a minor without any statutory agent, or is insane or is incompetent without any custodian, or if the statutory agent or custodian is unable to perform his duty by any reason which includes a conflict of interest with the minor or incompetent person, a relative of such person or any interested person may file a motion to the court for appointing him as a representative *ad litem*.

Having heard, the court shall appoint as representative *ad litem* the movant or other person agreeing thereto, as it may deem appropriate. Where no one is willing to serve as a representative *ad litem*, an administrative official shall be appointed.

In respect of the procedural acts performed for the purpose of such appointment, no costs may be levied.

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§ 7

In an inquiry, preliminary hearing or trial, if an accused or defendant is a juristic person, a manager or other representative of such juristic person shall be summonsed to attend the inquiry or court, whichever applies.

Had the manager or representative failed to abide by the summons, a warrant of arrest may be directed against him. However, in respect of the status of the juristic person as the accused or defendant, the provisions governing provisional release, detention or imprisonment shall not apply to the manager or representative.

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§ 7/1[12]

An arrestee or accused who is restrained or detained shall be entitled to, at the earliest occasion, inform or request the inquirer to inform his relative or a person in whom he reposes of the fact that he is under arrest and the place of his restraint. Also, the arrestee or accused shall be entitled to:

(1) Meet with and take advice of a person to become his counsel *tête-à-tête*.

(2) Have his counsel or the person in whom he reposes attending his interrogation during the inquiry.

(3) Receive visitation of or contact with his relative in appropriate manner.

(4) Have expeditious medical treatment provided for in the time of illness.

The administrative or police official receiving the arrestee or accused shall bear the duty to, at the earliest occasion, enlighten him on the rights set forth in paragraph 1.

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§ 8[13]

From the moment the charge is preferred, the defendant shall be entitled to:

(1) Access to an expeditious, regular and fair trial.

(2) Appoint a counsel to represent him in the course of a preliminary hearing or trial in the first instance, as well as in the second instance and the last resort.

(3) Take advice of a counsel or a person to become his counsel *tête-à-tête.*

(4) Inspect any article adduced as evidence and make a copy or take a photograph thereof.

(5) Inspect the court’s file of preliminary hearing or trial and make a copy thereof or request for a certified copy thereof

with payment of costs, save where such costs are exempted by a judicial order.

(6) Inspect or copy the plea he has given during the inquiry or the supplementary document thereof.

Should the defendant be represented by a counsel, the counsel shall be entitled to the same aforementioned rights as the defendant.

From the moment the charge is entered by the public prosecutor in court, the victim shall be entitled to paragraph 1 (6) as on a par with the defendant.

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§ 9

A note shall specify the place and date thereof as well as the name and office of the official making it.

Where a note is made by an official by cause of a judicial order or an order or application of another official, the receipt and observance of such order or application shall also be mentioned.

The official making the note shall affix his signature thereto.

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§ 10

A memorandum shall specify the name of the court making it as well as the place and date thereof. If it is made by virtue of an order or commission of other court, the receipt and execution of the said order or commission shall also be mentioned.

The judge making the note shall set his hand thereto.

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§ 11

With respect to a note or memorandum, the official or court shall read it to the person giving the statement. Any alteration, expostulation or addition may be made thereto or noted therein with the signature of the person giving the statement in approval thereof.

Where a person required to sign a note or memorandum is unable to or refuses to so sign, this fact shall be noted down

or reported.

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§ 12

With regard to a document drawn up by a court or official, or a complaint, denunciation, plea or motion submitted to the same, it shall be written in ink or typewritten or printed. Any mistake shall not be expunged, but merely redacted and rewritten with the initials of the judge, official or person making such correction in the margin of the paper.

Any addition made to the document described in this section must be initialed by the judge, official or person making it.

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§ 12 *bis*[14]

Where any legal provision requires a psychologist or social worker to participate in the lodging of a complaint or the holding of an inquiry, preliminary hearing or trial, the

psychologist or social worker shall be qualified according to the ministerial regulations.

The psychologist or social worker under paragraph 1 shall be entitled to remuneration in conformance with the rule issued by the Ministry of Justice with approval of the Ministry of Finance.

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§ 13[15]

An inquiry, preliminary hearing or trial shall be conducted in Thai language. Where it is necessary to translate a Thai dialect, vernacular or foreign language into Thai language or vice versa, an interpreter shall be required.

Where the victim, accused, defendant or witness cannot speak or understand Thai language or can speak or understand only a Thai dialect or vernacular and is not yet represented by any interpreter, the inquirer, public prosecutor or court shall without delay furnish him with an interpreter.

Where the victim, accused, defendant or witness sustains speech disorder or hearing impairment or cannot express meaning and is not yet represented by any sign language interpreter, the inquirer, public prosecutor or court shall

provide one for him or may organise other appropriate means of questioning, answering or meaning expression for him.

Where the interpreter is required to make a translation or interpretation of a plea, testimony or others, he shall make it accurately and shall take an oath or make an affirmation that he shall perform the duty in all sincerity without adding anything to or reducing anything from the translation or interpretation. The interpreter shall set his hand to the translation or interpretation.

In pursuance of the rule issued by the National Police Headquarters, Ministry of Interior, Ministry of Justice, Office of the Attorney-General or Office of Courts of Justice, as the case may be, with approval of the Ministry of Finance, the inquirer, public prosecutor or court shall, by order, pay to the interpreter under this section allowances, travel expenses and residence outlays.

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§ 13 *bis*

(Repealed)[16]

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§ 14

In the course of an inquiry, preliminary hearing or trial, should there be a reasonable belief that the accused or defendant is insane and therefore unfit to plead, the inquirer or court, as applicable, shall order a medical official to hold a psychiatric evaluation of the person in question and thereafter make a personal appearance to give statement or testimony as to the outcome of the evaluation.

In the event that the inquirer or court finds the accused or defendant insane and unfit to plead, the inquiry, preliminary hearing or trial shall be suspended until the person in question recovers his sanity or is fit to plead. Where appropriate, the inquirer or court shall also be authorised to deliver the person in question to a lunatic asylum, custodian, Commissioner of Changwat[17] or other person willing to take charge of him.

In the event that the preliminary hearing or trial has been suspended pursuant to the foregoing paragraph, the case may be disposed of by the court for a provisional period.

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§ 15

Where no provisions of the present Code is specifically applicable to any procedural act, the provisions of the Civil Procedure Code shall apply to the extent possible.

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Title 2

Powers of Inquirers and Jursidictions of Courts

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§ 16

The jurisdictions of courts, the powers of judges, the powers of public prosecutors and the powers of administrative or police officials in executing the provisions of the present Code shall be in accordance with the laws and rules governing the establishment of courts of justice and determining the powers and duties of judges or governing the powers and duties of public prosecutors or administrative or police officials.

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Chapter 2

Powers of Investigation and Inquiry

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§ 17

The administrative or police officials shall be invested with the power to conduct investigations as to the criminal offences.

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§ 18[18]

In any Changwat other than Changwat Phra Nakhon and Changwat Thon Buri[19], the superior administrative or police officials, the Assistant Chief Officers of Amphoes and the police officials ranking as or from police sub-lieutenant shall be empowered to conduct inquiries as to the criminal offences which have, or are alleged or believed to have, been committed inside their districts or the persons accused of which are residing or have been arrested inside their districts.

In Changwat Phra Nakhon and Changwat Thon Buri, the police officials ranking as or from police sub-lieutenant shall be empowered to hold inquiries as to the criminal offences which have, or are alleged or believed to have, been committed inside their districts or the persons accused of which are residing or have been arrested inside their districts.

Subject to the provisions of sections 19, 20 and 21, the inquirers inside whose districts the criminal offences have been committed shall, in general, bear the duty to carry out inquiries as to those offences for the sake of the prosecutions. However, in case of necessity or in the interest of convenience, the inquirers of the venues wherein the accused are residing or have been arrested shall be the responsible inquirers.

If there are several inquirers in the same venue, the chief inquirer of such venue or the person serving *ad interim* as the

chief inquirer shall be the responsible inquirer.

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§ 19

On the following grounds:

(1) Where it is uncertain in which of several venues an offence has been committed;

(2) Where an offence has been committed partly in one venue and partly in another;

(3) Where it is a serial offence committed continuously in more than one venue;

(4) Where an offence comprises of several acts committed in different venues;

(5) Where an offence has been committed by the accused in the course of his journey;

(6) Where an offence has been committed against the victim in the course of the victim’s journey;

The inquirers of the venue concerned may exercise the power of inquiry.

On the abovementioned grounds, the following shall become the responsible inquirer:

(a) Had the accused been arrested, the inquirer in whose district the arrest has been conducted first.

(b) Had the accused not yet been arrested, the inquirer in whose district the offence has been discovered first.

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§ 20[20]

Where an offence punishable under Thai law has been committed outside the Kingdom of Thailand, the Attorney-General or the person serving *ad interim* as the Attorney-General shall be the responsible inquirer, but he may entrust any public prosecutor or inquirer to exercise the power of inquiry on his behalf.

In the event that an inquirer has been entrusted by the Attorney-General or the person serving *ad interim* as the Attorney-General to exercise the power of inquiry, a public prosecutor may be assigned by the same to partake in such exercise.

The public prosecutor entrusted to exercise the power of inquiry or assigned to partake in an inquiry of the entrusted inquirer shall, in conjunction with all other powers and duties invested with him by law, have the same powers and duties of inquiry as the inquirer.

In the event that the power of inquiry is exercised by a public prosecutor together with an inquirer, the inquirer shall, with respect to the collection of evidence, abide by the orders and instructions of the public prosecutor.

In case of necessity, the following inquirers shall be accredited to exercise the power of inquiry pending an order of the Attorney-General or the person serving ad interim as the Attorney-General:

(1) The inquirer in whose district the accused has been arrested.

(2) The inquirer requested by the government of the foreign state or victim to prosecute the accused.

Deeming the inquiry is completed, the public prosecutor or inquirer responsible for such inquiry, as the case may be, shall make an opinion pursuant to section 140, 141 or 142 and submit it together with the file to the Attorney-General or the person serving *ad interim* as the Attorney-General.

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§ 21

Where it is uncertain that which of the inquirers of the same Changwat shall be the responsible inquirer, the matter shall be referred to the Commissioner of Changwat[17] or, in Changwat Phra Nakhon and Changwat Thon Buri[19], to the chief inquirer ranking as from Deputy Director-General of the Police Department[6] for decision.

Where it is uncertain that which of the inquirers of several Changwats shall be the responsible inquirer, the matter shall be referred to the Director-General of the Public Prosecution Department[21] or the person serving *ad interim* as the Director-General of the Public Prosecution Department for decision.

The fact that such decision is impending shall not cause the inquiry to be suspended.

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Chapter 3

Jurisdictions of Courts

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§ 22

When an offence has, or is alleged or believed to have, been committed inside the district of any court, the offence shall be subject to jurisdiction of such court, save:

(1) Where the defendant is residing or has been arrested, or the inquiry has been held, in any locality outside the district of such court, in which event may the offence be tried and adjudicated by the court having jurisdiction over such locality.

(2) Where the offence has been committed outside the Kingdom of Thailand, in which event shall the offence be tried and adjudicated by the Criminal Court and, had the inquiry been held in a locality subject to the jurisdiction of any court, by such court also.

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§ 23

When two or more courts are jurisdictional in respect of the same case, if the charge has been preferred to one inside whose district the offence had not been committed according to the charge, the prosecutor or defendant may enter in such court a motion for transferring the case to the other inside whose district the commission of such offence had occurred.

Where the charge has been preferred before the court inside whose district the offence had been committed and it later appears to the prosecutor that the trial would become more convenient if it be held by the other court which is also jurisdictional, the prosecutor may enter in the court before which the case is pending a motion for transferring the case to such other court. Notwithstanding any objection by the defendant, if the court deems appropriate, it may grant or dismiss the motion.

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§ 24

When several offences are connected by any reason, for instance:

(1) When it appears that several offences have been committed by the same offender or that several offenders are connected in the commission of one or more offences, whether as principals, accessories or recipients of stolen property;

(2) When it appears that several offences have been committed with the same intention or that several offenders have previously conspired;

(3) When it appears that any offence has been committed for the purpose of assisting an offender to evade the clutches of the law in respect of another offence committed by the latter;

The prosecutions against all of the said offences may be instituted in, or all of the said offenders may be charged before, the court having jurisdiction over the offence wherefor the higher maximum punishment is provided.

Should the connected offences be liable to equal maximum punishment, the court wherein the prosecution against any of the said connected offences has been entered first shall enjoy jurisdiction over all of such offences.

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§ 25

The court admitting the connected cases may try and adjudicate them jointly.

In the event that the court admitting the connected cases deems appropriate to have any of the cases tried and adjudicated by a court with ordinary jurisdiction if it is not connected with each other, it may, with the consent of the other court, order the charge against such offence to be entered in that other court.

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§ 26

Should a preliminary hearing or trial be obstructed, or should it be feared that an unrest or any other danger would occur, by reason of the nature of the offence, the status of the defendant, the number of the defendants, the sentiment of the most citizens of the locality or by any other reason, the prosecutor or defendant may file to the Chief Judge of the Supreme Court of Justice[22] a petition for having the case transferred to another court. If the Chief Judge of the Supreme Court of

Justice grants the petition, he shall, by order, transfer the case to a court designated by him.

Any order of the Chief Judge of the Supreme Court of Justice shall be final.

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§ 27

A challenge may be made against any judge of a court trying a criminal case pursuant to the provisions of the Civil Procedure Code concerned.

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Title 3

Criminal Prosecutions and Penal Actions

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Chapter 1

Criminal Prosecutions

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§ 28

The followings are entitled to institute criminal prosecution in court:

(1) The public prosecutor.

(2) The victim.

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§ 29

If the victim dies following having instituted a prosecution, the deceased's ascendant, descendant or spouse may proceed with the case in his stead.

If the victim who is a minor, insane person or incompetent person dies following his statutory agent, custodian or representative *ad litem* having brought a prosecution on his behalf, the latter may proceed with the case.

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§ 30

In respect of a public prosecution, the victim may, by motion, associate himself as prosecutor at any stage of the trial before

the court of first instance but prior to the delivery of judgment.

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§ 31

In regard to a private prosecution against non-compoundable offence, the public prosecutor may, by motion, associate himself as prosecutor at any stage prior to the finality and absoluteness of the case.

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§ 32

Where the public prosecutor and the victim are joint prosecutors, if the public prosecutor is of an opinion that the case would be jeopardised on account of the victim’s performance of or omission to perform any procedural act, he shall have the power to apply to the court for an order instructing the victim to perform or not to perform such act.

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§ 33

Where the prosecutions against the same offence have been instituted by the public prosecutor and the victim either in the same court of first instance or in different courts of first instance, any of such courts may, either *proprio motu* or upon motion filed by the prosecutor at any stage but prior to the delivery of judgment, order the prosecutions to be joined.

On pain of nullity, the said order must be rendered with the consent of the other court(s).

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§ 34

An order of non-prosecution does not prejudice the victim’s right to institute a prosecution by himself.

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§ 35

A *nolle prosequi* may be entered at any time prior to the court of first instance's delivery of judgment. The court may, by order, grant or dismiss it as deemed appropriate. If the *nolle prosequi* is entered after the defendant's responsive plea has been filed, the court shall ask the defendant whether he would raise any objection thereagainst and note down his statement. The *nolle prosequi* must be dismissed if it meets with any objection by the defendant.

As for a compoundable case, a nolle prosequi may be entered or the case may be compromised at any time prior to its finality. The *nolle prosequi* must be dismissed if it meets with any objection by the defendant.

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§ 36

A case having been withdrawn from the court may not be reinstituted, save:

(1) Where a non-compoundable case brought by the public prosecutor has been withdrawn by the same, the victim's right of reinstitution is not thereby prejudiced.

(2) Where a compoundable case instituted by the public prosecutor has been withdrawn by the same without a written consent of the victim, the victim's right of reinstitution is not thereby prejudiced.

(3) Where a non-compoundable case filed by the victim has been withdrawn by the same, the public prosecutor's right of reinstitution is not thereby prejudiced.

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§ 37[23]

A criminal case shall terminate as follows:

(1) A case only liable to a fine shall terminate when the offender willfully pays the maximum fine prescribed for the offence to the competent official prior to a judicial trial taking place.

(2) A case of petty offence, offence whose rate of penalty exceeds not that of a petty offence, offence only liable to the maximum fine of not exceeding one hundred thousand baht or offence against the law on revenue liable to the maximum fine of not exceeding one hundred thousand baht shall terminate when the accused pays the fine in the amount fixed by the inquirer.

(3) A case of petty offence, offence whose rate of penalty exceeds not that of a petty offence or offence only liable to a fine which has taken place inside Krung Thep Mahanakhon shall terminate when the accused pays the fine in the amount fixed by the police official of the locality who ranks as from inspector or by a commissioned police official in charge of such function.

(4) A case of offence which may be settled in accordance with other laws shall terminate when the accused pays the fine in the amount fixed by the competent official.

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§ 38

As for the case pursuant to subsections (2), (3) and (4) of the foregoing section, if the official under such section entertains an opinion that the accused should not be punished with imprisonment, he shall be empowered to settle the case as follows:

(1) The official may fix an amount of the fine to be paid by the accused. If the accused and the victim agree thereto, the case shall become finale and absolute upon payment of the fine by the accused within a reasonable period of time but not later than fifteen days.

The case shall be proceeded with if the accused does not agree to the settlement or, following such agreement, fails to pay the fine within the period of time pursuant to the foregoing paragraph.

(2) With respect to a case involving a claim for compensation, if the victim and the accused agree to have the claim settled, the official shall fix an amount of the compensation as deemed appropriate by him or as agreed upon by the parties.

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§ 39

The right to prosecute shall be extinguished:

(1) When the offender ceases to live.

(2) When, in respect of a compoundable offence, the complaint or charge is withdrawn or the compromise is lawfully adopted.

(3) When the case terminates pursuant to section 37.

(4) When, in respect of the offence charged, a final judgment is rendered.

(5) When the offence charged is abolished by a law coming into force following its commission.

(6) When the prescription does lapse.

(7) When an amnesty is granted by law.

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Chapter 2

Penal Actions

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§ 40

A penal action may be entered in the court where the criminal case is being tried or brought separately before the court empowered to exercise civil jurisdiction; prescribed that the civil proceedings must be in conformity with the provisions of the Civil Procedure Code.

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§ 41

Where the civil proceedings would delay or interrupt the criminal proceedings, the court shall have the power to, by order, rule that the civil part be separated from the criminal part and be independently tried by a jurisdictional court.

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§ 42

In the civil proceedings, if the court does not satisfy with the evidence adduced in the criminal proceedings, it may order further evidence to be taken.

In such respect, a judgment as to the criminal part may be rendered in the first place, whereas that concerning the civil part may be passed afterwards.

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§ 43

As for a case of theft, snatching, robbery, brigandage, piracy, extortion, swindling, misappropriation or receipt of stolen property, if the victim is entitled to claim the restitution of the property he has been deprived of through the commission of such offence or claim the value of such property, the public prosecutor, when instituting a prosecution, shall also enter such claim on behalf of the victim.

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§ 44

A claim for restitution of property or value thereof in pursuance of the foregoing section may be exercised by the public prosecutor together with the institution of a prosecution or by way of motion subsequently submitted at

any stage of the criminal proceedings of the court of first instance.

A judgment as to the claim for restitution of property or value thereof shall be rendered as part of that as to the criminal case.

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§ 44/1[24]

As for a public prosecution, if the victim is entitled to claim compensation in as much as the commission of offence by the defendant has caused him to lose his life, or sustain bodily or mental harm, personal liberty injury, reputation impairment or proprietary damage, he may submit to the court trying the criminal case a motion for coercively directing the defendant to make compensation for such loss.

The motion under paragraph 1 must be submitted before the taking of evidence takes place or, where the taking of evidence is not required, before the case is adjudicated. Such motion shall be deemed as a plaint under the provisions of the Civil Procedure Code, and the victim, the plaintiff. In this respect, the motion must contain reasonable particulars as to the loss and the amount of compensation claimed. Viewing

that any gravamen in the motion is inadequate, the court may order the movant to correct the motion.

The motion under paragraph 1 may not include any application other than that for coercively directing the defendant to make compensation for the loss arisen through his commission of offence, and may not be contrary to or inconsistent with the charge entered by the public prosecution in the criminal case. With the condition that that the public prosecutor has complied with the provisions of section 43, the victim is no more entitled to submit the motion under paragraph 1 claiming for the restitution of property or value thereof.

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§ 44/2[25]

Upon receipt of the motion under section 44/1, the court shall inform the defendant of it. Any statement of the defendant shall be noted down. Should the defendant wish to submit a statement in writing, the court shall fix a period of time therefor as deemed appropriate. And when the public prosecutor has completely adduced evidence, the court may allow the victim to introduce any evidence concerning compensation as necessary, or may in the first place render a

judgment as to the criminal part and afterwards deliver that as to the civil part.

If it appears to the court that the movant under section 44/1 cannot furnish himself with a counsel by cause of pauperism, the court shall be invested with the power to appoint one for him. The counsel appointed shall be entitled to the gratuity and outlays in pursuance of the rule laid by the Judicial Administration Commission.

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§ 45

The fact that a prosecution against any offence has been instituted does not prejudice the victim’s right to bring a penal action on the basis of such offence also.

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§ 46

In adjudicating the civil part, the court shall adhere to the facts as appeared in the judgment as to the criminal part.

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§ 47[26]

A judgment as to the civil part shall be rendered in conformity with the legal provisions governing civil liabilities, irrespective of whether the defendant has been convicted.

The value of the property to be paid to the victim by the defendant shall be determined in accordance with the actual value of such property, whereas the amount of compensation to be received by the victim shall be fixed according to the loss sustained, but not exceeding the amount claimed.

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§ 48

The property, in respect of which a judgment for the restitution is passed and the owner is not yet known, shall remain in possession of the depositary official. Whenever the owner becomes known, the depositary official shall return the property to him.

In the event that the owner is known, the court, in rendering such judgment, shall order the depositary official to return the property to him.

In case of dispute, the person claiming to be the true owner shall enter an action before the jurisdictional court.

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§ 49

Even no penal action is brought, the court may, when adjudging the criminal case, order an exhibit to be returned to the owner.

(Table of contents)

§ 50[27]

If the court grants the restitution of property or value thereof or the compensation to the victim in pursuance of section 43, 44 or 44/1, the victim shall be regarded as judgment creditor.

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§ 51[28]

Where no prosecution has been brought against any offence, the victim’s right to enter a penal action on the basis of such offence shall be extinguished when the period of prescription fixed by the Criminal Code for such prosecution does lapse, event the action would be commenced by a minor or insane person under section 193/20 of the Civil and Commercial Code or be filed separately from the prosecution.

Where a prosecution has been instituted against any offence and the offender has been brought before the court also, but the case is not yet final, the prescription governing the victim’s right to enter a penal action on basis of that offence shall be interrupted by virtue of section 95 of the Criminal Code.

Where a prosecution had been entered and a final judgment of conviction has been delivered prior to the entry of a penal action, the prescription governing the victim’s right to institute such action shall be regulated by section 193/32 of the Civil and Commercial Code.

Where a prosecution had been instituted and a final judgment of acquittal has been delivered prior to the entry of a penal action, the prescription of the victim’s right to file such action shall be regulated by the Civil and Commercial Code.

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Title 4

Summonses and Criminal Warrants

(Table of contents)

Chapter 1

Summonses

(Table of contents)

§ 52

In order to require for a personal appearance of any person before a superior administrative or police official or court in the interest of an inquiry, preliminary hearing, trial or any other act under the present Code, a summons shall be directed for such person by the inquirer, superior administrative or police official or court, as the case may be.

In the event that an inquirer or superior administrative or police official holds an inquiry in person, he shall enjoy the power to require an accused or witness to make presence without issuing any summons.

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§ 53

A summons shall be made in writing and shall contain the following items:

(1) The place of issuance.

(2) The date of issuance.

(3) The name and address of the summonsed.

(4) The requirement in the interest of the summonsed.

(5) The place, date and time for appearing.

(6) The signature of the judge and the seal of the court, or the signature and the position of the official issuing it.

(Table of contents)

§ 54

In fixing the date and time for the summonsed to make a personal appearance, the distance shall be taken into consideration, so that he would enjoy the opportunity to timely appear according to the date and time fixed in the summons.

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§ 55

Apropos a summons directed for the accused, no person other than a spouse, relative or guardian of the summonsed may receive the summons on his behalf.

(Table of contents)

§ 55/1[29]

As for a public prosecution, should a summons be directed by the court to a prosecution witness without any means of service specified, the public prosecutor shall be charged with the duty to entrust the chief inquirer of the locality to serve the summons upon the witness, secure appearance of the witness on the date designated and without delay report the outcome of the service to the court and the public prosecutor. Fearing that the witness would be unable to attend court or that it would be difficult to bring the witness to the court on the date fixed, the public prosecutor shall apply to the court for the taking of evidence in advance pursuant to section 173/2, paragraph 2.

The official undertaking the service shall be entitled to have his outlays recompensed according to the rule issued by the Ministry of Justice with approval of the Ministry of Finance.

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§ 56

If the summonsed is residing in any locality other than the place where the summons is issued, the summons shall be sent over, if issued by any court, to the other court or, if issued by any administrative or police official, to the other administrative or police official empowered to issue summonses in the locality where the summonsed is. The court or administrative or police official receiving the summons shall endorse it and serve it upon the summonsed.

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Chapter 2

Criminal Warrants

(Table of contents)

Part 1

General Rules

(Table of contents)

§ 57[30]

An arrest, detention or imprisonment of a person as well as a search for a person or article in a private place may only be conducted upon a judicial order or warrant thereof, subject to

the provisions of sections 78, 79, 80, 82 and 94 of the present Code.

A person who is detained or imprisoned by virtue of a judicial warrant may only be released upon a judicial warrant of release.

(Table of contents)

§ 58[31]

The courts shall be given the power to issue the orders or criminal warrants inside their districts, subject to the criteria and procedure prescribed in the regulation of the President of the Supreme Court of Justice.

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§ 59[32]

An order or warrant of arrest, search or detention may be issued by the court either *proprio motu* or upon application.

In the event that an application is to be made by an administrative or police official, only an administrative official ranking as or from third class or a police official ranking as or from police sub-lieutenant shall be competent to make the application.

In the case of urgent need where the applicant for a warrant of arrest or search is unable to make his presence before the court, he may make the application by means of telephone, facsimile, electronics or other appropriate means of information technology. In this respect, when the court questions the applicant until it ensures that there are grounds for issuing a warrant of arrest or search pursuant to section 59/1, and the court issues such warrant, the court shall then submit to the applicant by means of facsimile, electronics or other appropriate means of information technology a copy of the warrant. All of these shall be subject to the criteria and procedure prescribed in the regulation of the President of the Supreme Court of Justice.

Upon having issued the warrant according to paragraph 3, the court shall straightaway require the person concerned to make his personal appearance in order to administer an oath before it. In this respect, the oath may be recorded in a form of memorandum signed by the court issuing the warrant, or recorded by a device with a transcription signed by the court issuing the warrant. The record signed shall be kept in the court’s archive. If it later appears to the court that the issuance has been made in violation of the legal provisions, the court may, by order, revoke or alter the warrant issued and, where

appropriate, direct the applicant to remedy such an injury the person concerned has undergone.

(Table of contents)

§ 59/1[33]

Prior to the issuance of any warrant, there shall be justifiable evidence to ensure the court that the reasonable grounds for issuing such warrant are established in accordance with section 66, 69 or 71.

A judicial order issuing a warrant or dismissing an application must contain the grounds therefor.

The application, consideration and issuance shall be in conformity with the criteria and procedure prescribed in the regulation of the President of the Supreme Court of Justice.

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§ 60[34]

A warrant of arrest, search, detention, imprisonment or release shall be made in writing and shall contain the following items:

(1) The place of issuance.

(2) The date of issuance.

(3) The grounds for issuance.

(4) (a) As for a warrant of arrest, the name or identity of the person to be arrested.

(b) As for a warrant of detention, imprisonment or release, the name of the person to be detained, imprisoned or released.

(c) As for a warrant of search, the place to be searched, the name or identity of the person or the description of the article to be searched for, the date and time of searching and the name and position of the official to conduct the search.

(5) (a) As regards a warrant of arrest, detention or search, the offence charged or the measure for safety directed.

(b) As regards a warrant of imprisonment, the offence and the terms of punishment pursuant to the judgment.

(c) As regards a warrant of detention or imprisonment, the place of detention or imprisonment.

(d) As regards a warrant of release, the grounds for release.

(6) The signature of the judge and the seal of the court.

(Table of contents)

§ 61[35]

Subject to section 97, the administrative or police officials shall have the power and bear the duty to enforce the criminal warrants delivered or forwarded to them.

A criminal warrant issued by a court may be delivered or forwarded to an administrative or police official who is inside the district of the court and is designated in the warrant, or to the chief administrative or police official of such Changwat, Amphoe, King Amphoe or Tambon to further enforce the warrant.

In the latter respect, the official receiving the warrant shall be responsible for the enforcement of the same, he may perform such duty in person or deliver or forward a certified copy thereof to his inferior administrative or police official whose duty is to enforce the warrants so delivered or forwarded. If the warrant is delivered or forwarded to two or more officials, they may enforce the warrant independently or jointly.

(Table of contents)

§ 62

Subject to the provisions of the present Code governing arrest and search, the official enforcing a warrant of arrest or search must inform the person concerned about the contents thereof and, if requested, allow such person to inspect the warrant.

The information, the inspection and the date thereof shall be noted down in the warrant.

(Table of contents)

§ 63[36]

Upon completion of the enforcement of a criminal warrant, the official shall make a detailed note thereof. If the enforcement was unsuccessful, a note of the circumstances concerned shall be made and forwarded to the court issuing the warrant without hesitation.

(Table of contents)

§ 64[37]

Had the person designated in a criminal warrant been under arrest or the person or article searched for by virtue of a warrant of search been discovered, such person or article shall, if possible, be sent without delay to the court issuing the warrant or to the official designated in the warrant, whichever applies, save where the court shall elsewise order.

(Table of contents)

§ 65

Should the person arrested by virtue of a warrant abscond or be rescued, the official making the arrest may pursue and arrest him without having to obtain another warrant.

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Part 2

Warrants of Arrest

(Table of contents)

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§ 66[38]

A warrant of arrest shall be issued on the following grounds:

(1) When there is justifiable evidence supporting that any person is likely to have committed an offence liable to the maximum imprisonment for a term surpassing three years; or

(2) When there is justifiable evidence supporting that any person might have committed an offence and there is reasonable belief that he may abscond, tamper with evidence or cause another danger.

If the person has no fixed residence or has, without reasonable excuse, failed to appear as summonsed or designated, it shall be presumed that he is about to abscond.

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§ 67[39]

A warrant of arrest may be issued against a person whose name is unknown, but the identity of that person must be described as far as possible.

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§ 68

A warrant of arrest shall remain in effect until the prescription of the offence therein mentioned lapses or the court issuing it revokes it.

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Part 3

Warrants of Search

(Table of contents)

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§ 69

A warrant of search may be directed for any of the following purposes:

(1) Discovering and seizing an article which may be used as evidence for the sake of an inquiry, preliminary hearing or trial.

(2) Discovering and seizing an article whose possession constitutes an offence, or which has been obtained by unlawful means or which is reasonably suspected to have been used or intended to be used for committing an offence.

(3) Discovering and rescuing a person who is unlawfully detained or confined.

(4) Discovering any person against whom a warrant of arrest is issued.

(5) Discovering and seizing an article pursuant to a judicial judgment or order, in the event where such discovery or seizure cannot be elsewise implemented.

(Table of contents)

§ 70

A warrant of search may not be issued for the purpose of discovering and arresting any person, save where a warrant of arrest is also directed against the person and the official enforcing the warrant of search has in his possession both the warrant of search and the warrant of arrest.

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Part 4

Warrants of Detention, Imprisonment or

Release

(Table of contents)

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§ 71[40]

A warrant of detention of any accused or defendant may be issued by the court at any stage of an inquiry, preliminary hearing or trial pursuant to section 87 or 88 after the accused or defendant is brought before it, and the provisions of section 66 shall *mutatis mutandis* apply.

A warrant of detention shall remain in effect until the court replaces it with a warrant of release or imprisonment.

A warrant of detention may be withheld or replaced with a warrant of release, when it appears to the court that the accused or defendant has not yet attained his eighteenth year, is conceiving a child, has given birth to a child for a period not yet over three months or is ill to the extent that, if

detained, he would confront with fatal danger, without prejudice to the court's power to, by order, rule that the accused or defendant is to be under the care of an official or person agreeing to take charge of him or that certain measures are to be undertaken in order to prevent his abscondence or any possible injury. Should such order be delivered during the inquiry, it shall be effective for a period of six months as from the date of its delivery. Had such order been delivered during the trial, it shall take effect until the trial is over. If, following the delivery of the said order, the accused or defendant fails to comply with the measures ruled or the circumstances have changed, the court may alter the order or replace it with a warrant of detention as deemed appropriate.

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§ 72

A warrant of release of an accused or defendant detained by virtue of a judicial warrant shall be directed in any of the following cases:

(1) When the court provisionally releases the person.

(2) When the public prosecutor or inquirer, viewing the detention is no longer necessary for the purpose of the inquiry, applies to the court for such release.

(3) When the public prosecutor makes submission to the court that the inquiry has been closed by an order of non-prosecution.

(4) When the public prosecutor fails to prefer a charge against the accused within a period of time fixed by the court.

(5) When the court concludes its preliminary hearing by an order of acquittal on account of ungroundness, save where the court, both *proprio motu* and at the request of the prosecutor, rules that the defendant is to be detained pending appeal to the court of second instance or final appeal.

(6) When the *nolle prosequi* is granted, when the compoundable case is settled or when the court concludes its trial by a judgment or order of acquittal, save where the court rules that the defendant is to be detained pending appeal to the court of second instance or final appeal.

(7) When the court has inflicted upon the defendant any punishment other than capital punishment, imprisonment or house arrest, if such punishment was an amount of fine, and the defendant has paid the fine or has been provisionally released for a fixed period of time to enable him to obtain money for the payment.

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§ 73

A warrant of release of a defendant shall be issued when, in relation to a case pending in the court of second instance or court of last resort, the defendant has been restrained or detained for a period of time equivalent to or longer than a term of imprisonment to which he has been sentenced or which he must undergo for non-payment of fine, save where the court entertains otherwise opinion in the event that the prosecutor has lodged with the court of second instance or court of last resort an appeal for a more severe sentence.

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§ 74

A warrant of imprisonment of any person shall be issued when the person is sentenced to a term of imprisonment, or to capital punishment or to a term of imprisonment in lieu of fine, subject to sections 73 and 185, paragraph 2.

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§ 75

A warrant of release of a person sentenced to a term of imprisonment shall be issued when the person has fully served his term, has been pardoned by the King, has been released conditionally or amnestied, or when his term of imprisonment has come to an end on any other account.

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§ 76

A warrant of detention, imprisonment or release shall be enforced at once.

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Title 5

Arrest, Detention, Imprisonment, Search and Provisional Release

(Table of contents)

Chapter 1

Arrest, Detention and Imprisonment

(Table of contents)

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§ 77[41]

A warrant of arrest is enforceable throughout the Kingdom.

A warrant of arrest may be carried upon any of the following documentary evidence:

(1) A certified copy of the warrant.

(2) A telegraphic information of the issuance.

(3) A copied warrant delivered by means of facsimile, electronics or other means of information technology, subject to the criteria and procedure prescribed in the regulation of the President of the Supreme Court of Justice.

In carrying out the enforcement pursuant to (2) and (3), the warrant or a certified copy thereof shall be delivered to the enforcing official without delay.

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§ 78[42]

An administrative or police official may not arrest any person without a warrant of warrant or order directed by a court, save:

(1) Where the person in question commits a flagrant offence pursuant to section 80.

(2) Where the person in question is discovered under the suspicious circumstances that he is likely to cause harm and danger to another person or property of another person, by having in his possession implement, weapon or other object which may be used for the commission of an offence.

(3) Where the grounds for issuing a warrant of arrest of the person in question are established under section 99 (2), but, by reason of urgent need, an application therefor cannot be made to the court.

(4) Where the administrative or police official is about to arrest the accused or defendant who has absconded or is about to abscond following have been provisionally released under section 117.

(Table of contents)

§ 79

A private citizen may not arrest another person, save where section 82 is satisfied or where the person in question commits a flagrant offence and such offence is one of those listed in the Schedule hereto annexed.

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§ 80

A person who is in the very act of committing or is discovered under the circumstances whereby it could be decidedly concluded that he has just committed an offence commits a flagrant offence.

However, when any person who falls under one of the following items has committed any of the offences listed in the Schedule hereto annexed, he shall be deemed to commit a flagrant offence:

(1) The person being engaged in fresh pursuit with *hutesium et clamor.*

(2) The person being discovered almost immediately following the commission of the offence in the vicinity of the offence scene, and carrying with him an article obtained through the offence or a weapon or other object which is manifestly believed to have been used in the commission, or with visible traces of the guilt on his dress or body.

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§ 81[43]

Irrespective of whether a warrant of arrest has been obtained, an arrest may not be conducted in a private place, save where the provisions of the present Code governing search in private place are abided by.

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§ 81/1[44]

Irrespective of whether a warrant of arrest has been obtained, an arrest may not be conducted within the site of the Phra Borom Maha Ratchawang[45], a Phra Ratchawang[46], a Wang[47] of the Heir Apparent or senior member of the royal household ranking from Somdet Chao Fa, a Phra Ratchaniwet[48], a Phra Tamnak[49], or a place where the King, the Queen, the Heir Apparent, a senior member of the royal household ranking from Somdet Chao Fa or the Regent resides, save:

(1) Where the arrest is permitted by the Prime Minister or a Minister entrusted by the Prime Minister, and is informed to the Lord Chamberlain or royal aide-de-camp.

(2) Where the arrest is conducted by a guard of the King, the Queen, the Heir Apparent, a senior member of the royal household ranking from Somdet Chao Fa or the Regent in pursuance of the law on royal aides-de-camp or the laws, bylaws or ordinances on royal guarding.

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§ 82

An official enforcing a warrant of arrest may request assistance from any person nearby. But, the official may not compel such person to give assistance in a manner likely to imperil himself.

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§ 83[50]

In conducting an arrest, the official or private citizen shall enlighten the arrestee that he shall be under arrest, and order him to make his presence at the local office of inquiry together with the person conducting the arrest, save where the arrestee may be brought to the office of the responsible

inquirer at that very time. In case of necessity, the arrestee may be apprehended.

Where the arrest is conducted by the official, such official shall inform the arrestee of the charge and, if any, produce the warrant of arrest to the arrestee. The arrestee shall then be enlightened that he is entitled to remain silent and his statement may be used as evidence in a trial, and that the he is also entitled to meet with and take advice of a counsel or a person to become his counsel. If the arrestee wishes to inform his relative or a person in whom he reposes of the fact that he is under arrest, and such information can be made facilely, and it would not obstruct the arrest or restraint of the arrestee or endanger any person, the official shall allow the arrestee to fulfill his wish as suitable to the circumstances. In this respect, the official shall make an arrest note.

Where the arrestee does or is likely to resist the arrest, or does or attempts to abscond, the person conducting the arrest may undertake any measures for prevention as far as suitable to the circumstances of the event.

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§ 84[51]

The official or private citizen conducting the arrest shall without hesitation bring the arrestee to the local office of inquiry pursuant to section 83 where the arrestee shall be delivered to an administrative or police official attached to such office. The following actions shall then be taken:

(1) In case of the official's arrest, the official conducting the arrest shall inform the arrestee of the allegation and the essential facts of the offence alleged. If any, the warrant of arrest shall be produced and read to the arrestee. Also, a copied arrest note shall be given to the arrestee.

(2) In case of the citizen's arrest, the administrative or police official receiving the arrestee shall make a note of the name, profession and residence of the person conducting the arrest, as well as the information and circumstances as to the arrest, with the signature of the person conducting the arrest affixed. The arrestee shall, then, be informed of the allegation and the essential facts of the offence alleged, and the fact that he is entitled to remain silent and his statement may be used as evidence in a trial.

At the earliest occasion from the time the arrestee appears at the office of inquiry under paragraph 1, the administrative or police official receiving the arrestee shall, upon having complied with paragraph 1, enlighten the arrestee on the rights set forth in section 7/1, and allow him to contact with his relative or a person in whom he reposes, so that he would inform such person about the fact that he is under arrest and the place of his restraint. If the arrestee requests the

administrative or police official to make such information on his behalf, this request must be fulfilled without delay and be noted down by the administrative or police official. In this respect, no costs may be demanded from the arrestee.

In case of necessity, the official or private citizen conducting the arrest may have the arrestee medically aided prior to bringing him to the responsible official under this section.

Any statement given by the arrestee to the official conducting the arrest, or to the administrative or police official in the course of the arrest or receipt of the arrestee, shall be excluded from evidence if it be an admission of guilt regarding the offence alleged. If the statement is not the said admission, it may be adduced as evidence for proving the guilt of the arrestee only when the rights under paragraph 1 or section 83, paragraph 2, whichever applies, have been informed to the arrestee.

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§ 84/1[52]

The administrative or police official receiving the arrestee may provisionally release or restrain the arrestee. Had the arrest been conducted upon the warrant directed by the court, section 64 shall be observed without delay. In the event that it

is necessary to bring the arrestee to the court but it is impossible for the court is shut or is about to be shut, the administrative or police official receiving the arrestee may provisionally release him or restrain him until the court is open.

(Table of contents)

§ 85

The official conducting the arrest or receiving the arrestee shall be invested with the power to search the person of the arrestee and seize all articles which may be used as evidence.

The search shall be conducted in a respectful manner. The search on the person of a female must be made by another female.

The official shall have the power to retain the article seized until the finality of the case. Upon the case becoming final, the article shall be returned to the accused or other person entitled to claim its return, save where the court shall elsewise order.

(Table of contents)

§ 85/1[53]

In so far as the article seized by the official and not being the property whose creation or possession constitutes an offence pursuant to law is not yet adduced or produced as evidence in the trial, the owner or person entitled to claim return thereof may, during the inquiry, submit to the inquirer or public prosecutor, whichever applies, an application for return of such article, so that he would maintain or enjoy that article. In this respect, the applicant may also offer bail or both bail and security.

The return ordered under paragraph 1 must not affect the subsequent use of such article as evidence for proving the facts. In this respect, the inquirer or public prosecutor shall deliver any related order without delay, and may require the applicant to offer bail or to comply with any condition stipulated. If the applicant has breached the condition or refused to return the article upon an order thereof, the inquirer or public prosecutor, as applicable, shall be empowered to seize the article and enforce the bail bond. The procedure for application, stipulation of condition and delivery of order shall be prescribed in the ministerial regulation.

If the application has been denied by the inquirer or public prosecutor, the applicant may lodge with the court of first instance having criminal jurisdiction over such case an appeal against the order of denial within thirty days as from the date

of receiving the order, and the court shall complete its examination within thirty days as from the date of receiving the appeal. Should the application be eventually granted by a judicial order, the court may also require the applicant to offer bail or may stipulate any condition as deemed appropriate. Any judicial order shall be final.

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§ 86

No means of custody may be applied to the arrestee in excess of the necessity for prevention against his abscondence.

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§ 87

An arrestee may not be restrained beyond the necessity according to the circumstances of the case.

In the case of petty offence, an arrestee may be restrained only for a period of time necessary for taking his statement and ascertaining his identity and residence.

In the event that the arrestee has not been granted a provisional release and it is necessary to have an inquiry or prosecution taking place, he shall be brought before the court within forty eight hours after he has been brought to the office of inquiry under section 83. By reason of *force majeure* or other unavoidable reasons, the inquirer or public prosecutor may apply to the court for a warrant of detention of the arrestee. In this respect, the court shall ask the arrestee whether he would raise any objection, and it may also require the inquirer or public prosecutor to demonstrate the necessity or to produce evidence for its consideration.

In the case of offence liable to the maximum imprisonment for a term not surpassing six months, or to a fine not exceeding five hundred baht or to both, the court shall have the power to order one detention for a period not exceeding seven days.

In the case of offence liable to the maximum imprisonment for a term not less than six months but not more than ten years, or to a fine not less than five hundred baht or to both, the court shall be authorised to order several successive detentions not exceeding twelve days each, but the total period shall not exceed forty eight days.

In the case of offence liable to the maximum imprisonment for a term not less than ten years, irrespective of whether it be liable to any rate of fine also, the court shall be permitted to order several successive detentions not exceeding twelve days

each, but the total period shall not be in excess of eighty four days.

In respect of paragraph 6, if, upon completion of forty eight days, the public prosecutor or inquirer applies to the court for further detention by reason of necessity, the court may grant the application only when the public prosecutor or inquirer has demonstrated such necessity and sufficiently introduced evidence for its hearing until it is satisfied.

In regard to the hearing under paragraphs 3 and 7, the accused shall be entitled to appoint a counsel in the interest of objection and direct examination. If the accused is not yet represented by any counsel for section 134/4 has not yet been proceeded with, the court shall, at his request, appoint one for him. The counsel appointed shall be entitled to the gratuity and outlays according to section 134/1, paragraph 3, *mutatis mutandis.*

In the event where an inquiry must take place in any locality other than that subject to the jurisdiction of the court ordering the detention of the accused, the inquirer may apply to the court for transferring such detention to the court of the locality where the inquiry is to be held. The court ordering the detention shall grant the application if it deems appropriate.

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§ 87/1[54]

If the public prosecutor applies for and the accused does not object, the court may allow the accused or evidence to be brought to any public agency office or other place as deemed appropriate where an inquiry or hearing may be organised by means of videoconferencing according to the regulation laid by the President of the Supreme Court of Justice with approval of the Plenary Session of the Supreme Court of Justice. Such regulation shall come into force upon its publication in the Government Gazette. Also, it shall contain the means whereby the inquiry or hearing may be implemented, as well as the eyewitnesses thereof.

The hearing under paragraph 1 shall be deemed as if it were conducted in a courtroom.

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§ 88[55]

As regards a private prosecution, when the charge is admitted and the defendant is brought before the court, or, in regard to a public prosecution, when the charge is entered in court, the court may, by order, detain the defendant or provisionally release him.

(Table of contents)

§ 89[56]

A warrant of detention or imprisonment shall be enforced inside the district of the court issuing it, save where the present Code or other law shall elsewise prescribe.

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§ 89/1[57]

In the case of necessity during an inquiry or trial, either upon application of the inquirer, public prosecutor, prison governor or official bearing the duty to enforce a warrant of imprisonment of the accused or defendant or *proprio motu*, the court may, by order, rule that such detention is to be carried in any place, other than a prison, as applied for by the mentioned person or as deemed appropriate by the court; prescribed that the detainee must be under the care of the applicant or official designated by the court. In this respect, the court may fix a period of time for such detention as deemed appropriate.

In exercising its discretion to adopt an order under paragraph 1, the court may, prior to the delivery of such order, hold a hearing or ask whether the victim or official in connection with the warrant of detention would raise any objection.

The place under paragraph 1 shall not be a police station or a place employed by an inquirer for restraining his accused. In this respect, the types of such place shall be determined by the ministerial regulation wherein the means of custody and the measures against any possible abscondence or injury must be indicated.

Upon rendering of the order pursuant to paragraph 1, if the accused or defendant later fails to comply with any of the means or measures according to paragraph 3 or if the circumstances have later changed, the court shall be empowered to alter such order or enforce the warrant of imprisonment.

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§ 89/2[58]

In the case of necessity, either upon application of the public prosecutor, prison governor or official bearing the duty to enforce a warrant of imprisonment of a person who has been sentenced by a final judgment to a term of imprisonment, and

has undergone it for a period not less than one-third of that determined in the warrant, or for a period not less than ten years if his term is more than thirty years or is for life, or *proprio motu,* the court may, by order, rule that such imprisonment is to further be carried in any of the following manners:

(1) The imprisonment may be continued in any place, other than a prison or institution designated in the warrant, as applied for by the mentioned person or as deemed appropriate by the court. In this respect, the types of such place shall be prescribed by the ministerial regulation wherein the means of custody and the measures against any possible abscondence or aggrievance must also be indicated.

(2) The imprisonment may be carried on in a prison or institution designated in the warrant or in any place pursuant to (1) only on the days fixed in connection with the criteria and procedure set forth in the ministerial regulation.

(3) The imprisonment may be enforced by any other means of house arrest in pursuance of the criteria and procedure regulated by the ministerial regulation.

In exercising its discretion pursuant to paragraph 1, the court shall be mindful of the guilt, behaviour and welfare of the person in question, as well as the welfare and safety of the victim and the social. In this respect, the court shall confer with the victim, the officials in connection with the warrant,

the administrative or police officials of the locality or the person concerned according to its opinion.

In delivering an order according to paragraph 1, the court shall entrust the official bearing the duty to enforce the warrant of imprisonment with the duty and responsibility to take charge of the order. Moreover, the provisions of section 89/1, paragraph 4 shall apply *mutatis mutandis.*

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§ 90[59]

Where any person is alleged to be unlawfully confined in a criminal case or in any other event, the following persons shall be entitled to submit a motion to the court empowered to exercise criminal jurisdiction over such locality for release of the person in question:

(1) The person in question himself.

(2) The public prosecutor.

(3) The inquirer.

(4) The prison governor or official.

(5) A spouse or relative of the person in question or any other person for his sake.

Upon receipt of such application, the court shall instantaneously hold a hearing *ex parte*. Deeming the motion is well-grounded, the court shall be authorised to, by order, direct the person carrying such confinement to bring the person in question before it without delay. And if the person carrying the confinement is unable to satisfy the court that such confinement is lawful, the court shall, by order, release the person in question at once.

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Chapter 2

Search

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§ 91[60]

The provisions of section 81/1 apply *mutatis mutandis* to search.

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§ 92[61]

A search may not be conducted in a private place without a warrant or an order thereof directed by a court, save where it is performed by an administrative or police official in any of the following events:

(1) Where there is a cry for help emanating from such private place, or there is any other sound or circumstance indicating that an unfavourable event is coming to pass in the same.

(2) Where a flagrant offence is being committed in such private place.

(3) Where the person having committed a flagrant offence is, whilst being pursued, taking refuge in such private place, or

there is a firm suspicion that the said person is concealing himself in the same.

(4) Where there is justifiable evidence supporting that an article whose possession constitutes an offence, or which has been obtained through the commission of an offence, or which has been or is to be used for the commission of an offence, or which may bear witness for proving the guilt of any person, is being concealed or would be discovered in such private place, and there is a reasonable belief that, by cause of the delay in obtaining a warrant of search, such article is likely to be removed or destructed.

(5) Where the person to be arrested is a householder of such private place and the arrest is to be carried on a warrant thereof or in pursuance of section 78.

In exercising his power pursuant to (4), the administrative or police official conducting the search shall deliver to the possessor of the place searched a copied note of search, a list of the articles obtained from the search as well as a written statement of searchable grounds. If the possessor is not there, the administrative or police official shall deliver such documents to him as earliest as possible, and shall without hesitation make and submit to his superior a written report as to the grounds for and the outcome of the search.

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§ 93

A search may not be conducted upon the body of any person in a public place, save where it is performed by an administrative or police official when there is a reasonable suspicion that such person is carrying with him any article which is likely to be used for or has been obtained through the commission of an offence or whose possession constitutes an offence.

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§ 94

An administrative or police official who is to conduct a search in a private place shall order the owner, inhabitant or keeper of such not to resist his admittance and to provide convenience in every respect for the purpose of enforcing the warrant of search. Also, the official shall produce the warrant of search or, if the search can be made without any warrant, state his name and position.

If the person mentioned in the foregoing paragraph resists the admittance of the official, the official shall be permitted to exercise physical force for the purpose of admitting the place and, where necessary, may force his way by opening or

destructing any gate, door, window, fence or other similar barricade.

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§ 95

In searching for a lost article, the official may, if possible, request the owner or possessor of such article or a representative of the owner or possessor to accompany with him.

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§ 96[62]

A search in a private place must be conducted *couchant et levant*, save:

(1) Where the search has been processed in daytime but it is not yet completed, in which case the search may be progressed in nighttime.

(2) Where there is utmost exigency or where it is exceptionally permitted by other law, the search may be operated in nighttime.

(3) Where the search is for the purpose of arresting an atrocious person or seriously wanted outlaw, it may be performed in nighttime, but special permission of the court must be obtained according to the criteria and procedure prescribed in the regulation of the President of the Supreme Court of Justice.

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§ 97[63]

Where a search is to be conducted upon a warrant thereof, the official designated therein, or the person serving *ad interim* as such official who shall only be an administrative official ranking from third class or a police official ranking from police sub-lieutenant, shall be the chief official responsible for the enforcement of such warrant.

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§ 98

A search in a private place can be conducted only for the purpose of discovering any person or article intended to be found, save:

(1) Where the search is allowed to be made without limitation to anything, in which case the official making the search shall be empowered to seize any article which may bear witness in favour of or *vis-à-vis* the accused or defendant.

(2) Where any other specific warrant has been obtained, or where a flagrant offence is committed, in which event the official making the search shall be empowered to arrest any person or seize any article discovered there.

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§ 99

In conducting a search, the official shall avoid causing any damage and disorder to the best of his ability.

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§ 100

Should there be a reasonable suspicion that any person present in the place searched or to be searched would cause obstruction to the extent that the search would be in vain, the official conducting the search shall be sanctioned to restrain such person or place him under the custody of another official during the search, in so far as it is necessary to prevent him from causing such obstruction.

Should there be a reasonable suspicion that such person has concealed on his body any article intended to be found, the official conducting the search shall be warranted to search his body in pursuance of section 85.

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§ 101

Any article seized in the course of a search shall be enveloped, packed up, sealed or marked.

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§ 102

Prior to searching a private place, the official conducting the search shall ensure the person concerned that he shall fairly perform his duty. And, as far as possible, the search shall be processed in presence of the possessor of the place or a member of his family or, failing such person, in presence of at least two other persons requested by the official to witness the search.

A search of a residence or office of the accused or defendant restrained or detained shall be conducted in presence of such accused or defendant. If such person is unable or does not wish to attend the search, he may appoint a representative or request any person to witness it in his lieu. Failing such representative or witness, the search shall be made before a member of the family of the accused or defendant or in presence of the witnesses pursuant to the foregoing paragraph.

The official shall allow the possessor of the place, member of the family, accused, defendant, representative or witness(es) to inspect any article seized for the purpose of acknowledgement. Had the acknowledgement been made or declined, this fact shall be noted down.

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§ 103

The official conducting the search shall make a detailed note of search and a list of the articles found.

The note of search and the list of the articles found shall be read to the possessor of the place, member of the family, accused, defendant, representative or witness(es), as applicable, and signed by such person(s).

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§ 104

In the event that a search has been conducted by virtue of a warrant thereof, the official conducting the search shall forthwith deliver the note and the list set forth in the foregoing section, as well as, if possible, the articles seized, to the person issuing the warrant or any other official designated in the same.

In the event that a search has been conducted without a warrant thereof and by an official who is not an inquirer, the note, the list and the articles as described shall altogether be delivered to any inquirer or official requiring them.

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§ 105

As for any letter, postcard, telegraph, printing or other document to be sent through a postal or telegraphic service by or to an accused or defendant, an official, in the interest of an inquiry, preliminary hearing, trial or any other act under the present Code, may apply for a judicial order demanding a post official to furnish him with the document required.

Should the Director-General of the Police Department[5] or Commissioner of Changwat[17] desire to use such document for the aforementioned purpose pending application for a judicial order, he shall be invested with the power to request the post officials to quarantine such document whilst pending such application.

The provisions of this section shall not apply to the correspondents between the accused or defendant and his counsel.

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Chapter 3

Provisional Release

(Table of contents)

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§ 106[64]

An application for provisional release, whether on own recognizance, with bail or with bail and security, of an accused or defendant, whether restrained or detained by virtue of a judicial warrant, may be made by the accused or defendant himself or by any interested person as follows:

(1) Where the accused is restrained and a charge against him is not yet entered in court, the application shall be made to the inquirer or public prosecutor, as the case may be.

(2) Where the accused is detained by virtue of a judicial warrant and a charge against him is not yet preferred in court, the application shall be made to such court.

(3) Where a charge has been brought against the accused, the application shall be made to the court of first instance trying such case.

(4)[65] Where a judgment of the court of first instance or court of second instance has been pronounced, even if any appeal is not yet lodged with the court of second or court of last resort, or where any appeal has been lodged with the court of second or court of last resort, but the file is not yet forwarded to such court, the application shall be made to the court of first instance having tried the case.

Deeming appropriate, the court of first instance shall, by order, grant the application. Otherwise, the court shall forthwith forward the file to the court of second or court of last resort, whichever applies, for its decision.

(5) Where the file has been forwarded to the court of second instance or court of last resort, the application may be made to the court of first instance having tried such case or to the court of second instance or court of last resort, as applicable.

Where the application is made to the court of first instance, such court of first instance shall straightway forward it to the court of second instance or court of last resort, as the case may be, for decision.

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§ 107[66]

Upon receipt of an application for provisional release, the official or court shall instantly deliver any order. A provisional release must be granted to every accused or defendant on the basis of the criteria set forth in sections 108, 108/1, 109, 110, 111, 112, 113 and 113/1.

Every person concerned shall, without hesitation, comply with an order granting a provisional release pursuant to paragraph 1.

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§ 108[67]

In deciding an application for provisional release, the followings must be taken into account:

(1) The gravity of the charge.

(2) The existence of the evidence.

(3) The circumstances of the case.

(4) The reliability of the applicant or of his bail or security.

(5) The likelihood of the accused or defendant absconding.

(6) The danger or injury which might ensue from the provisional release.

(7) Any objection by the inquirer, public prosecutor, prosecutor or victim, as the case may be, in the event that the accused or defendant is detained by virtue of a judicial warrant.

For the purpose of complying with paragraph 1, the official empowered to grant a provisional release or the court may, in conjunction with his or its consideration, hear the fact, report or opinion submitted by any official invested by law with the power and duty concerned.

In granting a provisional release, the official empowered to so grant or the court may stipulate any condition governing the residence of the person provisionally released or any other condition to be observed by such person, in order to prevent his abscondence or any possible danger or injury which might ensue from the provisional release.

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§ 108/1[68]

An application for provisional release may be dismissed only by virtue of any of the following reasonable beliefs:

(1) The accused or defendant may abscond.

(2) The accused or defendant may tamper with evidence.

(3) The accused or defendant may cause another danger.

(4) The applicant or his bail or security is unreliable.

(5) The provisional release would impede or imperil an official inquiry or judicial trial.

An order dismissing an application for provisional release must contain the grounds therefor. Moreover, the accused or defendant and the applicant shall be informed of the dismissal in writing without delay.

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§ 108/2[69]

Where a key witness would be imperiled on account of a provisional release of the accused or defendant, such witness

may submit to the inquirer, public prosecutor or court, as the case may be, a motion of objection.

Where any objection has been raised pursuant to paragraph 1, the inquirer, public prosecutor or court, whichever applies, shall consider it instantly. In this respect, he or it shall have the power to summons all persons concerned on both sides to give statement in conjunction with his or its consideration and for the purpose of making a decision, as deemed appropriate.

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§ 109[70]

Where an accused is accused of, or a defendant is charged with, an offence liable to the maximum imprisonment for a term exceeding ten years, if an application for his provisional release is made during an inquiry or during the court of first instance’s trial, the court shall ask the inquirer, public prosecutor or prosecutor whether he would raise any objection. If such asking cannot be made on justifiable grounds, it may be cancelled but the said grounds must be noted down.

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§ 110[71]

In a case of an offence liable to the maximum imprisonment for a term exceeding five years, a person to be provisionally released must provide bail and may also be demanded to provide security.

In other case, a provisional release may be granted whether on own recognizance, with bail or with bail and security.

The bail or security under paragraph 1 or 2 ought not to be demanded in excess of the necessity, subject to the criteria, procedure and condition prescribed in the ministerial regulation or regulation of the President of the Supreme Court of Justice, whichever applies.

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§ 111

Where a provisional release is to be granted on own recognizance, the accused or defendant shall be required, prior to being released, to administer an oath or make an affirmation that he shall make a personal appearance as designated or summonsed.

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§ 112

Where a provisional release is to be granted with bail or with bail and security, the bailor or bail bondsperson shall be required, prior to the granting of such release, to set his hand to the bail bond.

A bail bond shall, apart from any other necessary clauses, contain the followings:

(1) The person provisionally released or bailor, as the case may be, shall appear as designated or summonsed by the inquirer or court granting the provisional release.

(2) In case of breaching the bail bond, a specified sum of money shall be paid.

No excessive burden or condition requiring the observance of the person provisionally released or bailor may be included in the bail bond.

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§ 113[72]

Where a provisional release is granted by the inquirer or public prosecutor, whether with bail or with bail and security, such provisional release shall take effect in the course of the inquiry, or until the accused is detained by virtue of a judicial order during the inquiry, or until the charge against whom is admitted by the court, but it shall not be effective more than three months as from its first date. In case of necessity where the inquiry cannot be completed within such period of three months, the period may be extended to be more than three months but not exceeding six months.

Upon elapse of the period of time pursuant to paragraph 1, if it is still necessary to restrain the accused, such accused shall be delivered to the court and the provisions of section 87, paragraphs 4 to 9, shall apply.

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§ 113/1[73]

Where a provisionally release has been granted during the inquiry with cash or other financial security offered as the bail to the inquirer or public prosecutor, in so far as such bail is not yet returned to the person offering it, if the accused or

defendant wishes to have the provisional release continued, he or any interested person may submit to the public prosecutor or court, whichever applies, a motion to have the aforesaid property remaining as the security. Deeming appropriate, the public prosecutor or court may, by order, prolong the provisional release with such cash or financial security regarded as the security during the proceedings of the public prosecutor or court, as the case may be. In this respect, the public prosecutor or court shall request the inquirer or public prosecutor, as applicable, to forward such security to him or it within a proper period of time.

Where a provisional release has been granted with any person standing as a bail bondsperson before the inquirer or public prosecutor, the public prosecutor or court may, at the request of such person, have him remaining as a bail bondsperson in regard to the provisional release. In this respect, the public prosecutor or court shall require the inquirer or public prosecutor, whichever applies, to forward any document concerned to him or it within a proper period of time.

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§ 114

Where a provisional release is to be granted with bail and security, the applicant shall be required, prior to the granting

of such release, to provide the security demanded.

Security is of three kinds as follows:

(1) A deposit of cash.

(2) A deposit of other financial security.

(3) A person binding himself as a bail bondsperson by declaring his financial security.

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§ 115[74]

If, on account of subsequent information or by reason of detection of fraud or mistake, it appears that the bail bond has been made inadequately or insufficiently or the condition stipulated therein is inappropriate, the official or court shall be empowered to, by order, increase an amount of money in the bail bond, demand for additional security or alter the condition to become more suitable.

If, following an order granting a provisional release, the circumstances of the case have changed, the official or court shall be invested with the power to decrease the security as deemed appropriate.

If the case is appealed to a superior court after a provisional release has been granted, the superior court shall be authorised to alter an amount of money in the bail bond or modify any condition stipulated by the inferior court as deemed appropriate.

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§ 116

An application for cancelling a bail bond or withdrawing a security may be made when the bailor has delivered the accused or defendant back to the official or court.

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§ 117[75]

When the accused or defendant absconds or is about to abscond, the administrative or police official discovering such act shall be permitted to arrest the accused or defendant. However, had the act been discovered by the bailor or bail bondsperson, he may request the nearest administrative or police official to arrest the accused or defendant or, if

impossible to promptly obtain assistance from the official, may make the arrest by himself and deliver the accused or defendant arrested to the nearest administrative or police official. In such respect, the official shall without hesitation cause the accused or defendant to be brought to the official or court concerned, and levy his travel expenses upon the bailor or bail bondsperson.

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§ 118

When the case becomes final or the liability under the bail bond terminates according to section 116 or by any other cause, the security shall be returned to the person entitled thereto.

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§ 119[76]

In case of breaching a bail bond made with the court, such court shall be invested with the power to order enforcing the bail bond or deliver any other order as deemed appropriate

without having any claim entered in court. Such order may be appealed by the person against whom the bail bond is enforced or by the public prosecutor. Any decision of the court of second instance shall be final.

For the purpose of enforcement, the court of first instance trying and adjudicating such case shall be empowered to issue a warrant of enforcement against the property of the person liable under the bail bond as if he were a judgment debtor, and the chief of the court office shall be regarded as a judgment creditor in respect of the debt under such bail bond.[77]

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§ 119 *bis*[78]

Where an application for provisional release is dismissed by a judicial order, such order may be appealed by the applicant as follows:

(1) If it be the order of the court of first instance, the appeal shall be lodged with the court of second instance.

(2) If it be the order of the court of second instance, the appeal shall be lodged with the court of last resort.

The court of first instance receiving the appeal shall forthwith forward to the court of second instance or court of last resort for its consideration and decision such appeal and, as far as necessary, the file or a copy of the file.

An order of the court of second instance which affirms the order of the court of first instance dismissing the application for provisional release shall be final, without prejudice to the right of reapplication for provisional release.

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DIVISION 2

INQUIRIES

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Title 1

General Rules

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§ 120

A public prosecutor may not enter a charge against any offence in court without having conducted an inquiry as to such offence.

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§ 121

An inquirer shall be empowered to conduct inquiry in reference to all criminal offences.

An inquirer may not hold inquiry as to a compoundable offence, save where a regular complaint thereagainst is made.

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§ 122

An inquirer may not conduct inquiry in the following events:

(1) When the victim requests for assistance but declines to make a regular complaint.

(2) When the victim institutes a prosecution by himself without having made a complaint.

(3) When there is a written denunciation which is anonymous, or when the person making an oral denunciation refuses to disclose his identity or to set his hand in the denunciation or the note thereof.

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§ 123

A victim may complain to an inquirer.

Such complaint shall comprise of the name and address of the complainant, the nature of the offence, the circumstances whereunder the offence is committed, the injury sustained and the name or description of the offender as far as possible.

Such complaint may be made either in writing or orally. As for the written one, it shall contain the date thereof and the signature of the complainant. As regards the oral one, the inquirer shall make a note thereof containing its date and signed by both the inquirer and the complainant.

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§ 124

A victim may complain to an administrative or police official who has the position or duty either subordinate or superior to an inquirer, and is charged by law with the duty to maintain peace and order.

Upon receipt of a written complaint, the mentioned official shall forthwith forward it to an inquirer and may note any

information down for the inquirer’s sake.

Upon receipt of an oral complaint, the stated official shall without delay bring the complainant to an inquirer for the purpose of making a note of the complaint pursuant to the foregoing section. In case of urgent need, the official may make such note by himself, but he shall forthwith forward it to the inquirer and may note any information down in the interest of the inquirer.

(Repealed)[79]

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§ 124/1[80]

The provisions of section 133 *bis*, paragraphs 1, 2 and 3, shall *mutatis mutandis* apply to the noting of the complaint in the event that the victim is a child not yet over its eighteenth year, save where, by reason of necessity, a psychologist or social worker, a person applied for by the child and a public prosecutor cannot be found or awaited and the child does not require the presence of, or does not desire to await, such person anymore, in which case the person receiving the complaint pursuant to section 123 or 124, whichever applies, shall record the said fact down into the note.

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§ 125

When an inquirer or administrative or police official conducts the whole or part of an investigation or inquiry at the request for assistance, he shall bear the duty to cause a regular complaint to be made according to sections 123 and 124.

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§ 126

The complainant may, at any time, alter or withdraw his complaint.

In respect of a non-compoundable case, the withdrawal of the complaint does not prejudice the inquirer’s power of inquiry or the public prosecutor’s power of prosecution.

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§ 127

The provisions of sections 123 to 126 shall *mutatis mutandis* apply to denunciations.

An official bearing the duty to receive denunciations may not make a note of any denunciation in the following events:

(1) When the denunciator refuses to disclose his identity.

(2) When the denunciation is anonymous.

An official receiving the denunciation may not deal with such denunciation if the denunciator declines to set his hand to the note thereof.

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§ 128

An inquirer may delegate other officials as follows:

(1) As for any activity in connection with an inquiry but required to be fulfilled outside his district, he may commission any competent inquirer to deal with it on his behalf.

(2) As for any insignificant activity in relation to the inquiry, even required to be fulfilled inside his district, he may order his subordinate to deal with it on his behalf in so far as the present Code or other law does not require him to carry it out in person.

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§ 129

In the event that the death is a consequence of the commission of an offence, an inquiry, including inquest pursuant to the provisions of the present Code concerning inquest, shall be held in respect of such death. In so far as the inquest is not yet completed, no charge may be entered against the accused in court.

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Title 2

Inquiries

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Chapter 1

Ordinary Inquiries

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§ 130

An inquiry shall be opened without delay. It may be held at any place wherever or any time whenever as deemed appropriate without the accused being present.

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§ 131[81]

An inquirer shall, as much as possible, collect every kind of evidence for the purpose of ascertaining all facts and circumstances in respect of the offence alleged, identifying the offender and proving the guilt or innocence of the accused.

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§ 131/1[82]

Where scientific evidence is required for the purpose of proving the facts pursuant to section 131, the inquirer shall be empowered to order any person, object or document to be analysed by scientific means.

As regards an offence liable to the maximum imprisonment for a term exceeding three years, if the analysis pursuant to paragraph 1 requires a specimen of blood, tissue, skin, hair, saliva, urine, fæces, secreted substance, nucleic acid or bodily organ to be collected from the accused, victim or person concerned, the responsible inquirer shall be invested with the power to order a physician or expert to carry out such analysis to the extent necessary and appropriate and in a manner causing slightest suffering to the person and not being detrimental against that person's body or health. In this respect, the consent of the accused, victim or person concerned must be obtained. Should the accused or victim withhold his consent or perform any act to impede any person concerned from giving such consent without justifiable ground, it shall preliminarily be presumed that the fact is in line with the outcome of the analysis which, if having been held, would be noxious towards such accused or victim, as the case may be.

The outlays accruing from the analysis under this section shall be covered by the budget in pursuance of the rule issued by the National Police Headquarters, Ministry of Interior, Ministry of Justice or Office of the Attorney-General, as the case may be, with approval of the Ministry of Finance.

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§ 132

For the purpose of collecting evidence, the inquirer shall be invested with:

(1) The power to conduct a search on the person of the victim with his prior consent or on the person of the accused, and inspect all articles or places likely to bear witness, as well as take photographs, create maps or sketches, or take fingerprints, handprints or footprints, and record all particulars which may throw the light upon the case.

With respect to the search on the person of the victim or accused pursuant to paragraph 1, if such victim or accused is a female, the search shall be conducted by a female official or another female and, where reasonable, in presence of the person applied for by such victim or accused.[83]

(2) The power to search for any article whose possession constitutes an offence, or which has been obtained through, or used or suspected of having been used in, the commission of an offence, or which is likely to be used as evidence; prescribed that the provisions of the present Code governing search must be abided by.

(3) The power to, by summons, require for a personal appearance of a possessor of an article likely to be used as evidence; prescribed that the summonsed needs not to make his presence but he shall be deemed to have conformed to the

summons after having furnished the inquirer with the article required.

(4) The power to seize all articles discovered or delivered pursuant to subsections (2) and (3).

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§ 133

The inquirer shall be empowered to, by summons, require the victim or any person whose statement would light the case up to appear at the time and place designated in the summons. Upon his appearance, such person shall be interrogated.

In respect of such interrogation, the inquirer may require the person giving the statement to, before other things, administer an oath or make an affirmation in accordance with the provisions of the present Code governing parol evidence.

The inquirer shall not perform an act of reprehension or discouragement or employ any other deceit for the purpose of preventing any person from giving a statement which he is willing to give.

In a case of a sexual offence, if the victim to be interrogated is a female, such interrogation shall be conducted by a female

inquirer, save where the victim elsewise consents or there is any other necessity, in which event shall the said consent or necessity shall be noted down. Moreover, the victim may have any person attending her interrogation.[84]

Where the victim witness is required to determine the offender during the arrest proceedings or to identify the accused in the interest of a prosecution, the administrative or police official or inquirer shall, taking into account the safety of the victim or witness according to the circumstances of the case, organise such determination or identification at a proper place and by the means of preventing the offender or accused from laying his eyes onto the victim or witness, save where the victim or witness otherwise consents, in which event such consent shall be note down.[85]

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§ 133 *bis*[86]

In a case of a sexual offence, offence against life and body which is not in light of an affray, offence against liberty, offence of extortion, offence of robbery and offence of brigandage under the Criminal Code, a case of an offence under the law on protection and suppression of prostitution, a case of offence under the law on protection and suppression of women and children trafficking, a case of an offence under

the law on servicing houses or any other offence liable to a term of imprisonment, if the victim or witness is a child not yet over its eighteenth year, the inquirer shall, upon application of such child, interrogate it separately at a place suitable for it and in presence of a psychologist or social worker, a person applied for by it and a public prosecutor. Should the psychologist or social worker entertain an opinion that the interrogation of any child or any question would have a severe impact upon the mental condition of the child, the inquirer shall raise his questions through the psychologist or social worker in a manner that the child is prevented from hearing such questions. Nonetheless, the child shall not be questioned repeatedly without justifiable ground.[87]

It shall be the duty of the inquirer to inform the psychologist or social worker, the person applied for by the child and the public prosecutor, including the victim or witness being a child, of the rights set forth in paragraph 1.[88]

The victim or witness being a child may enter a challenge against the psychologist, social worker or public prosecutor participating in its interrogation. In this respect, the person so challenged shall be replaced.

Subject to section 139, the inquirer shall cause the interrogation of the child under paragraph 1 to be recorded audiovisually by the means allowing a continuous broadcasting in order to bear witness thereof.

In case of an urgent need where it is reasonably unable to await the participation of the psychologist or social worker, the person applied for by the child and the public prosecutor, the inquirer may interrogate the child in presence of any of the persons set forth in paragraph 1, but the grounds whereon such participation cannot be awaited shall be noted down in the inquiry file and the interrogation conducted in such manner shall be deemed lawful.

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§ 133 *ter*[89]

Where the inquirer deems it is necessary to have the victim or witness being a child not yet over its eighteenth year identifing any person, he shall organise such identification at a place suitable for the child, and by the means of preventing the person to be identified from directing any gaze towards the child, and in presence of a psychologist or social worker, a person applied for by the child and a public prosecutor, save the case of necessity where any of such persons cannot be found or awaited and the child does not require the presence or does not desire to await that person anymore, in which event the inquirer shall note such necessity down in the inquiry file.

Where the person to be identified is a child not yet over its eighteenth year, the inquirer shall organise such identification at a place suitable for the child and by the means of preventing the child from laying its eyes onto the identifier.

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§ 134[90]

Where the accused has been summoned by or delivered to or has surrendered himself to the inquirer, or where it appears that any person who makes a personal appearance before the inquirer is the accused, the information as to his given name, courtesy name, family name, nationality, parents, age, profession, residence and birthplace shall be extracted from him, and the facts as to the offence alleged and the charge shall then be informed to him.

The information under paragraph 1 shall be based on the reasonable evidence supporting that such person is likely to have committed the offence alleged.

The accused shall enjoy the right to an expeditious, regular and fair trial.

The inquirer shall allow the accused to enjoy opportunity to clear up the charge and to introduce any facts in his favour.

Upon information of the charge, if it is not necessary to arrest the accused and no warrant of arrest has been issued against him, but the inquirer deems that the grounds for issuing a warrant of his detention are established pursuant to section 71, the inquirer shall be empowered to order the accused to take his present before the court immediately for the purpose of applying for a warrant of detention. If the court is shut or is about to be shut, the inquirer shall order the accused to attend court at the earliest occasion that the court is open. In such respect, section 87 shall *mutatis mutandis* apply to the issuance of a warrant of detention as applied for. Had the accused failed to comply with such order of the inquirer, he may be arrested as if it were the case of an urgent need where he can put under arrest without a warrant thereof, and the inquirer shall have the power to provisionally release or to restrain him.

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§ 134/1[91]

In a case of an offence liable to capital punishment or a case wherein the accused is below eighteen years on the day the inquirer informs the charge to him, the inquirer shall, prior to the interrogation, ask him whether he is represented by a counsel. Failing such, the State shall furnish him with a counsel.

In a case of an offence liable to a term of imprisonment, the inquirer shall, prior to the interrogation, ask the accused whether he is represented by a counsel. Failing such, the State shall furnish him with a counsel.

As regards the furnishing of counsel pursuant to paragraph 1 or 2, the inquirer shall comply with the criteria, procedure and conditions prescribed by the ministerial regulation, and the counsel furnished shall be entitled to the gratuity and outlays in conformance to the rule issued by the Ministry of Justice with approval of the Ministry of Finance.

If the counsel, upon having been furnished to the accused pursuant to paragraph 1, 2 or 3, is unable to meet with the accused without informing his obstacle to the inquirer, or if the counsel has made such information but fails to meet with the accused within a reasonable time, the inquirer shall, by virtue of an urgent need, interrogate the accused without having to await such counsel, but he shall not this fact down in the inquiry file.

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§ 134/2[92]

The provisions of section 133 *bis* shall *mutatis mutandis* apply to the inquiry of an accused being a child not yet over

its eighteenth year.

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§ 134/3[93]

Every accused shall be entitled to have his counsel or a person in whom he reposes attending his interrogation.

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§ 134/4[94]

In interrogating an accused, the inquirer shall, before other things, enlighten him that:

(1) He is entitled to remain silent. His speech may be used as evidence in a trial.

(2) He is entitled to have his counsel or a person in whom he reposes attending his interrogation.

Should the accused give any statement of his own accord, such statement shall be noted down. Had the accused decided

to remain silent at all, such silence shall also be noted down.

Any statement given by the accused to the inquirer prior to the enlightenment of the rights set forth in paragraph 1, or prior to the observance of sections 134/1, 134/2 and 134/3, may not be admitted as evidence for proving his guilt.

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§ 135[95]

In interrogating an accused, the inquirer shall not perform or cause to be performed an act of promising, threatening, deceiving, torturing, forcibly compelling, or, by unlawful means, encouraging the accused to give any statement in respect of the charge against him.

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§ 136

(Repealed)[96]

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§ 137

Whilst holding an inquiry at a personal residence or elsewhere, the inquirer shall be invested with the power to order prohibiting any person from leaving such place for a period of time as necessary.

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§ 138

The inquirer shall be empowered to conduct an inquiry in person or by means of commission in order to obtain information as to the background and habitual conduct of the accused; prescribed that all the information obtained must be informed to the accused.

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§ 139

The inquirer shall make a note of his inquiry pursuant to the general rules under the present Code governing inquiry, and attach to the file such note and other documents obtained, including all notes and documents submitted by other relevant inquirers.

As regards the documentary exhibits, they shall be attached to the file. As for other exhibits, a detailed list thereof shall be drawn up and attached to the file.

For the purpose of securing an appearance of a witness before the court according to the court's designation, the inquirer shall make and keep at his office a note as to the witnesses' names, residences or addresses, telephone numbers or other means allowing communication with those witnesses.[97]

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§ 140

Deeming the inquiry is completed, the responsible inquirer shall carry out any of the followings:

(1) If the offender could not be identified and the offence is liable to the maximum imprisonment for a term not exceeding three years, the inquiry shall be stayed and a note of the grounds therefor shall be drawn up, then the note, together with the file, shall be forwarded to the public prosecutor.

Should the offence be liable to the maximum imprisonment for a term over three years, the inquirer shall submit to the public prosecutor the file together with his opinion as to the expediency of staying the inquiry.

Had the public prosecutor ordered the inquirer to be stayed or continued, the inquirer shall abide by such order.

(2) If the offender could be identified, the following four sections shall apply.

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§ 141

If the offender is identified, but it is unable to summons or arrest him, the inquirer shall, pursuant to the outcome of the inquiry, submit an opinion as to whether an order of prosecution or non-prosecution should be made, together with the file, to the public prosecutor.

Had the public prosecutor concurred in an order of non-prosecution, he shall conclude the inquiry by rendering an order of non-prosecution and inform the inquirer of such order.

Had the public prosecutor viewed that the inquiry should be continued, he shall order the inquirer to so perform.

Had the public prosecutor accorded with an order of prosecution, he shall undertake any measures in order to obtain the person of the accused or, where the accused is residing in a foreign state, make an application for extradition.

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§ 142

If the offender is identified and is restrained, detained or provisionally released, or it is believed that he would appear upon being summonsed, the inquirer shall, pursuant to the outcome of the inquiry, submit an opinion as to whether an order of prosecution or non-prosecution should be made, together with the file, to the public prosecutor.

Deeming an order of non-prosecution should be made, the inquirer shall render to the public prosecution the file and such opinion only. As for the accused, the inquirer shall be

empowered to release or provisionally release him or, if he is detained, may apply or request the public prosecutor to apply to the court for his release.

Deeming an order of prosecution should be made, the inquirer shall deliver to the public prosecution the file together with the accused, save where the accused is already detained.

If the offence may be settled by the inquirer and the offender has complied with the settlement, the inquirer shall draw up a note thereof and forward it together with the file to the public prosecutor.

(Table of contents)

§ 143[98]

Upon receipt of the opinion and the file submitted by the inquirer according to the foregoing paragraph, the public prosecutor shall comply with the followings:

(1) Had an order of non-prosecution been suggested, such order shall be directed. Otherwise, an order of prosecution shall be issued and informed to the inquirer in order to deliver the accused to the public prosecutor for further prosecution.

(2) Had an order of prosecution been proposed, such order shall be made and a prosecution shall be instituted against the accused in court. Otherwise, an order of non-prosecution shall be adopted.

In any of the aforementioned events, the public prosecutor shall be permitted to:

(a) Issue any order as deemed appropriate, so as to direct the inquirer to conduct additional inquiry or to deliver any witness to him for interrogation with a view to further making any order.

(b) Decide whether the accused should be released, provisionally released, restrained or detained by the court, as the case may be, as well as undertake any measures or issue any order for such purpose.

Where the death is the consequence of an act of an official who alleges that he himself has performed a public duty, or where the death has occurred during the restraint employed by such official, only the Director-General of the Public Prosecution Department[21] or the person serving *ad interm* as the Director-General shall be given the power to issue an order of either prosecution or non-prosecution.

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§ 144

Upon having directed an order of prosecution, the public prosecutor, by virtue of the fact that such offence may be settled, may, sua sponte, exercise the power as follows:

(1) Ordering the inquirer to make an effort to settle the case, instead of delivering the accused to him.

(2) Ordering the accused, and the file, to be sent back to the inquirer after they have been delivered to him, and directing the inquirer endeavour the settlement or, where appropriate, directing any other competent inquirer to so endeavour instead.

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§ 145[99]

Where an order of non-prosecution is issued not by the Director-General of the Public Prosecution Department[21], the inquiry file and such order shall forthwith be forwarded to, in Nakhon Luang Krung Thep Thon Buri[100], the Police Department's Director-General[5], Deputy Director-General[6] or Assistant Director-General or, in other Changwat, the Governor of such Changwat. However, in neither case shall

the public prosecutor be debarred from dealing with the accused according to section 143.

Had the order of the public prosecutor been opposed, in Nakhon Luang Krung Thep Thon Buri, by the Police Department's Director-General, Deputy Director-General or Assistant Director-General or, in other Changwat, by the Governor of such Changwat, the file, together with the opposing opinion, shall be submitted to the Director-General of the Public Prosecution Department for decision. If the prescription of such case is about to lapse or if there is any other necessity whereby a prosecution must take place straightway, the prosecution shall, in the meantime, be instituted pursuant to the opinion of the Police Department's Director-General, Deputy Director-General or Assistant Director-General or the Governor of Changwat.

The provisions of this section shall mutatis mutandis apply to the public prosecutor's filing an appeal to the court of second instance or court of last resort or entering a *nolle prosequi* in the court of first instance, court of second instance or court of last resort.

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§ 146

A final order of non-prosecution shall be informed to the accused and the victim. If the accused is being restrained or detained, any measures shall be undertaken to set him at liberty or an application shall be made to the court for discharging him, whichever applies.

Upon issuance of a final order of non-prosecution by the public prosecutor, the accused or any interested person shall be entitled to apply to the public prosecutor for the brief information as to evidence and the inquirer or public prosecutor's opinion in making such order, prescribed that this application shall be made within a period of prescription for such prosecution.[101]

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§ 147

Upon a final order of non-prosecution, no any inquiry may be conducted against the same person in respect of the same case, unless fresh evidence which is material to the case and would probably lead to the conviction of that person is obtained.

(Disapproved by the House of Representatives)[102]

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Chapter 2

Autopsies

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§ 148

Whenever it is manifested or reasonably suspected that any person has died an unnatural death or died while being restrained by an official, an autopsy shall be held, save where the person has been put to death lawfully.

Such unnatural death consists of:

(1) Suicide.

(2) Death by an act of another person.

(3) Death caused by an animal.

(4) Death by accident.

(5) Death from a cause not yet known.

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§ 149

Wherever an unnatural death occurs, a spouse, relative, friend or guardian of the deceased who is aware of such death shall be obliged to:

(1) As far as possible, keep the corpse at the very place where it has been discovered.

(2) As quickly as possible, inform an administrative or police official of the matter.

The obligations under the foregoing paragraph shall also extend to all other persons who discover the corpse at the place where none of the spouse, relatives, friends or guardians of the deceased is present.

Any person who fails to comply with the obligations under this section shall be liable to a fine not exceeding one thousand baht.[103]

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§ 150[104]

Whenever an autopsy is required, it shall be held without hesitation by an inquirer of the locality where the corpse is, together with a forensic pathologist upon whom a certificate or a Medical Council's letter of approval has been conferred. Where no such forensic pathologist could be found or where he is unable to perform the duty, a physician affiliated with a public hospital shall act in his place. Where no such physician affiliated with a public hospital could be found or where he is unable to discharge the duty, a physician subsidiary to a provincial public health office shall act in his lieu. Where no such physician subsidiary to a provincial public health office could be found or where he is unable to carry out the duty, a physician subordinate to a private hospital, or a medical practitioner having registered as a voluntary physician in compliance with the rule of the Ministry of Public Health, shall act instead of him. In engaging in such activity, the said physician subordinate to a private hospital or medical practitioner shall become an official under the Criminal Code.

In this respect, the inquirer and the physician shall together and without delay make a note of all particulars as to the autopsy, while the physician shall also make a report annexed to the note within a period of seven days as from the date of receiving the information. By reason of necessity, such period may be extended not more than twice for a period not exceeding thirty days each, but the grounds for each extension and the necessity of the same shall also be noted down in the autopsic file. The mentioned report shall be deemed to be part of the autopsic file. With the condition that the death is not the consequence of the commission of an offence, when the autopsy is over, the inquirer shall straightway forward the autopsic file to a public prosecutor and the public prosecutor shall then proceed with section 156.

The inquirer shall be charged with the duty to inform the persons concerned to hold an autopsy. Moreover, prior to such autopsy, the inquirer shall, as far as possible, enlighten a spouse, ascendant, descendant, statutory agent, guardian or relative of the deceased on the performance.

When the death is the consequence of an act of an official who alleges that such act has arisen through his performance of public duty, or when the death has occurred during the restraint employed by an official who alleges that such death has occurs in the course of his performance of public duty, a public prosecutor, an administrative official ranking as or from the Assistant Chief Officer of Amphoe of the locality where the corpse is, together with the inquirer and the

physician pursuant to paragraph 1, shall perform an autopsy and the provisions of paragraph 2 shall apply.

When the autopsy under paragraph 3 is over, the inquirer shall require the public prosecutor to accompany him in drawing up an autopsic file within a period of thirty days as from the date whereon the public prosecutor has received the information. In case of necessity, such period may be extended not more than twice for a period not surpassing thirty days each, but the grounds for each extension and the necessity of the same shall be noted down in the autopsic file.

Upon receipt of the autopsic file, the public prosecutor shall, within a period of thirty days as from the date of such receipt, enter in the court having jurisdiction over the locality where the corpse is a motion requesting such court to hold an inquest and render an order indicating, as far as possible, the information as to the name of the deceased, the place and time of the death, the cause and circumstances of the same and, if it is certain the death has been caused by an act of any person, such person. In case of necessity, such period may be extended not more than twice for a period not exceeding thirty days each, but the grounds for each extension and the necessity of the same shall be noted down in the autopsic file.

In regard to the duty pursuant to paragraphs 1, 3, 4 and 5, the inquirer shall abide by the instructions of the public prosecutor.

In respect of the inquest under paragraph 5, the court shall post up at its office a notification fixing the day of inquest, and the public prosecutor shall request the court to, for a period not less than fifteen days, serve a copied motion upon and inform the day of inquest to at least one of the spouse, ascendants, descendants, statutory agents, guardians or relatives of the deceased. Moreover, the public prosecutor shall produce before the court all the evidence in relation to the death.

After the court has posted up a notification fixing the date of inquest, any of the spouse, ascendants, descendants, statutory agents, guardians or relatives of the deceased shall be entitled to, before the inquest is completed, apply to the court for cross-examining any witness introduced by the public prosecutor and producing any other evidence. For such purpose, the spouse, ascendant, descendant, statutory agent, guardian or relative of the deceased may appoint a counsel to represent him. Failing such counsel, the court shall appoint one to stand on the side of the deceased's relative.

If the court, in the interest of justice, deems appropriate, it may summons any witness who has once been heard to be reheard or may order other evidence to be taken, and it may require a qualified person or expert to appear and give opinion in collaboration with the inquest and the rendering of order; without prejudice to the right of the person producing evidence under paragraph 8 to apply to the court for summonsing other qualified person or expert to give an

opinion for the purpose of refuting or supplementing the opinion given by the aforesaid qualified person or expert.

Any judicial order in pursuance of this section shall be final, without prejudice to the right of prosecution and the judicial trial and adjudication in the event that a prosecution in relation to such death has been or is to be instituted by the public prosecutor or other person. Upon having rendered any order, the court shall dispatch its inquest file to the public prosecutor for the purpose of further operation.

The physician under paragraph 1, the official performing the autopsy as well as the qualified person or expert who has made his presence before the court for giving opinion under this section shall be entitled to the remuneration or fees as well as travel expenses and residence outlays according to the rule issued by the Ministry of Justice with approval of the Ministry of Finance. The counsel appointed by the court under this section shall also be entitled to the gratuity and outlays as on a par with the counsel appointed by the court under section 173.

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§ 150 *bis*[105]

Any person performs any act to the corpse or a surrounding area where the corpse is discovered before the autopsy is completed, in a manner likely to cause the autopsy or the consequence of the case to be changed, save where the act is necessary for protecting public health or preserving other public interest, such person shall be liable to imprisonment for a term as from six months to two years, or to a fine as from one hundred thousand baht to four hundred thousand bath or to both.

Had the act under paragraph 1 been performed dishonestly or for the purpose of concealing the case, the person shall be liable to twice heavier penalties than those prescribed for the offence.

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§ 151

Where it is necessary to ascertain the cause of the death, the official performing the autopsy shall be invested with the power to order the corpse to be dissected and any portion thereof to be analysed, or the whole or part of the corpse to be delivered to a public physician or analyst.

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§ 152

The public physician or analyst shall:

(1) Draw up a report as to the condition of the corpse or any portion thereof as seen or made evident by the analysis, as well as an opinion thereon.

(2) Indicate the cause of the death to the best of his knowledge.

(3) Date and sign the report, and forward it to the official performing the autopsy.

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§ 153

Had the corpse been inhumed, the official performing the autopsy shall have it exhumed, save where it is unnecessary or it would be detrimental to the public health.

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§ 154

The official performing the autopsy shall render an opinion in writing as to, as much as ascertained, the cause and circumstances of the death, the name of the deceased, the place and time of the death and, if he ensures or suspects that the death has been caused by an act of any person, such person.

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§ 155

The provisions of the present Code governing inquiry shall *mutatis mutandis* apply to autopsy.

The provisions of section 172 *ter* shall *mutatis mutandis* apply to the inquest under section 150, if a witness therein is a child having not yet attained its eighteenth year.[106]

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§ 155/1[107]

In the event that the death is the consequence of an act of an official who alleges that such act has arisen through his performance of public duty, or the death has occurred during the restraint employed by an official who alleges that such death has occurs in the course of his performance of public duty or the deceased is said to have fought or resisted against an official who alleges that he himself performed a public duty, the inquirer shall require the public prosecutor to accompany with him in drawing up an inquiry file in relation to such event.

The inquirer shall be responsible for drawing up the inquiry file under paragraph 1. In this respect, from the most possible and earliest occasion reckoning from the commencement of the inquiry, the public prosecutor may render any advice to the inquirer, inspect all the evidence, interrogate the persons concerned, or order such interrogation to be held; subject to the criteria and procedure prescribed in the ministerial regulation.

In case of urgent need and on reasonable grounds, if the participation of the public prosecution cannot be awaited, the inquirer may solely draw up the inquiry file but he shall also note this fact down in the file. The file drawn up in such manner shall never be deemed unlawful.

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§ 156

In the event that the death is not the consequence of the commission of an offence, the autopsic file shall be delivered to the Commissioner of Changwat[17].

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DIVISION 3

COURT PROCEEDINGS IN FIRST INSTANCE

(Table of contents)

Title 1

Entry of Charge and Preliminary Hearing

(Table of contents)

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§ 157

A charge shall be filed to any jurisdictional court pursuant to the provisions of the present Code or other laws.

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§ 158

A charge shall be made in writing, and shall contain:

(1) The name of the court and the date of the charge.

(2) The names of the parties to the case and the offence alleged.

(3) In case of public prosecution, the position of the public prosecutor or, in case of private prosecution, the name, family name, age, nationality and protection of the private citizen.

(4) The name, family name, residence, nationality and protection of the defendant.

(5) To the extent giving the defendant a clear understanding of the charge, all acts alleged to have been committed by the defendant, the facts and particulars as to the times and venues of such acts, as well as the persons or articles concerned.

As for a case of a defamatory offence, the words, writings, pictures or other matters in connection with the offence shall fully be indicated in or annexed to the charge.

(6) A reference to the legal section prescribing that such act constitutes an offence.

(7) The signature of the prosecutor, as well as that of the person preparing, writing or typing the charge.

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§ 159

If the defendant has been convicted of an offence before and the prosecutor wishes to apply for enhancing the penalties on account of recidivism, he shall make such application in the charge.

If an application for enhancement is not indicated in the charge, the prosecutor may, prior to the court of first instance’s rendering of judgment, submit to the court a motion for supplementing the charge. Deeming appropriate, the court may grant the motion.

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§ 160

The multiple offences may be joined in the same charge, prescribed that they shall be arranged separately and consecutively.

They may be regarded independent from each other. Deeming appropriate, the court may order any of them to be tried

disjointly. Such order may be rendered either prior to the trial or in the course of the trial.

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§ 161

With the condition that the charge is preferred in conflict with law, the court shall, by order, direct the prosecutor to have the charge corrected, or dismiss or exclude the charge.

The prosecutor shall be entitled to appeal against such judicial order.

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§ 162

In the event that the charge is found to be in accordance with law, the court shall order as follows:

(1) If it be a private prosecution, a preliminary hearing shall be opened. Had a public prosecution been brought on account

of the same offence also, the court shall order according to subsection (2).

(2) If it be a public prosecution, a preliminary hearing is not necessary. However, the court, *proprio motu,* may order open such preliminary hearing.

In the event that the said preliminary examination is ordered, if the defendant pleads guilty, the court shall admit the charge for trial.

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§ 163

On appropriate grounds, the prosecutor shall be entitled to submit to the court of first instance prior to its delivery of judgment a motion for modifying or supplementing the charge. Deeming appropriate, the court may grant the motion or may order a preliminary hearing to be opened first. Having granted the application, the court shall serve a copy of the modified or supplemented charge upon the defendant in expectation of his plea and may order the supplementary charge to be tried disjointly.

On reasonable grounds, the defendant may submit to the court of first instance prior to its delivery of judgment a motion for

modifying or supplementing his plea. Deeming appropriate, the court shall serve upon the prosecutor a copy thereof.

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§ 164

A motion for modifying or supplementing the charge shall not be granted if it would impair the defendant’s contention. However, any mistake as to the offence or particulars required to be indicated in the charge may be corrected and the offence or particulars not having been indicated in the charged may be added at any stage of the court of first instance’s trial, and this shall not deemed to be prejudicial to the defendant, save where it causes the defendant to be fogged in defence.

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§ 165[108]

As for a public prosecution, on the day of preliminary hearing the defendants shall appear or shall be brought before the court and the court shall serve a copied charge upon them one by one. Having been satisfied with the identity of the

defendants, the court shall read and explain the charge to them. It shall then ask them whether they have committed the offence in reality and how they would set up their defence. Any statement given by the defendants shall be noted down. The fact that any of them wishes to remain silent shall also be noted down. Following that, the court shall further proceed with the case.

The defendant shall not be entitled to adduce evidence in the course of the preliminary hearing, without prejudice to his right to obtain the assistance of a counsel.

As for a private prosecution, the court shall be empowered to hold a preliminary hearing reo absente. The court shall serve a copied charge upon one defendant after the other. The defendant may attend the preliminary hearing in person, or may also appoint a counsel to cross-examine the prosecution witnesses. If the defendant does not wish to so attend, he may appoint a counsel to conduct a cross-examination on his behalf. The court may not require the defendant to give any plea. Furthermore, prior to the court’s admittance of the charge, the defendant shall not be treated as such.

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§ 166

When the prosecutor fails to attend court as required, the charge shall be dismissed. However, the court, deeming such nonappearance is on justifiable grounds, may order the adjournment.

When the case has been so dismissed, if, within fifteen days as from the date of such dismissal, the prosecutor enters in court a motion demonstrating the justifiable grounds for his nonappearance, the court shall resume the preliminary hearing.

When the case has been so dismissed, the defendant shall not be once again subject to a prosecution on account of the same charge. However, where only a private citizen stands as the prosecutor in the case dismissed, the dismissal does not prejudice the public prosecutor's power to reenter the charge, save where the case is of a compoundable nature.

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§ 167

Should there be a *prima facie* case, the court shall admit for trial the charge only with respect to the count wherefor the *prima facie* case exists. Had there been no *prima facie* case, the charge shall, by judgment, be dismissed.

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§ 168

Upon the court’s admittance of the charge, a copied charge shall be served upon the defendants one by one, save the one who has already obtained a copy.

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§ 169

When the court has admitted the charge but the defendant has not yet appeared before it, the court shall, as deemed appropriate, issue a summons or warrant of arrest of the defendant for the trial’s sake.

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§ 170

An order of the court deciding that a *prima facie* case does exist shall be final. An order of the court deciding that a *prima facie* case does not exist may be appealed by the prosecutor to the court of second instance or court of last resort pursuant to the provisions on appeal to court of second instance and final appeal.

Upon application of the prosecutor, the court may detain or provisionally release the defendant pending appeal to the court of second instance or final appeal.

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§ 171

Save section 175, the provisions on inquiry and trial shall *mutatis mutandis* apply to preliminary hearing.

The provisions of sections 133 *bis* and 172 *ter* shall *mutatis mutandis* apply to preliminary hearing in case a witness is a child not yet over its eighteenth year, irrespective of whether it be private prosecution or public prosecution.[109]

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Division

DIVISION 4

APPEALS TO COURT OF SECOND INSTANCE

AND FINAL APPEALS

(Table of contents)

Title 1

Appeals to Court of Second Instance

(Table of contents)

Chapter 1

General Rules

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§ 193

An appeal against a judgment or order of a court of first instance on account of the questions of fact and the questions

of law shall be lodged with the court of second instance, save where it is debarred by this Code or other law.

All appeals shall respectively contain the facts in brief or the points of law cited.

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§ 193 *bis*[110]

As for a judgment or order of a court of first instance in the case whose maximum punishment is imprisonment for a term not exceeding three years or a fine of not more than six hundred baht or both, an appeal may not be made against it on account of the questions of fact, unless any of the followings are satisfied:

(1) The defendant has been sentenced to a term of imprisonment or confinement in lieu of imprisonment;

(2) The defendant has been sentenced to a term of imprisonment but the sentence is suspended;

(3) The defendant has been found guilty by the court but the infliction of his punishment is suspended; or

(4) The defendant has been sentenced to a fine in excess of one thousand baht.

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§ 193 *ter*[111]

Where any appeal is debarred by section 193 bis, if any judge who has sit during the trial of the case, set his hand to the judgment of the case or expressed a dissenting opinion against such judgment in the court of first instance approves the appeal for he considers the issue adjudged by the court of first instance is essential to the extent that it is worth being considered by the court of second instance, or if the Director-General of the Public Prosecution Department[21] or a public prosecutor entrusted by the Director-General of the Public Prosecution Department signs the appeal approving that there are justifiable grounds for the court of second instance to decide it, such appeal shall be admitted for further consideration.

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§ 194

If an appeal is based on the questions of law only, the court of second instance shall, in deciding those questions, adhere to the questions of fact concluded by the court of first instance in pursuance of evidence in the file.

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§ 195

All points of law cited by the appellant shall expressly be indicated in his appeal, but they must have been set up in the court of first instance.

All points of law as to public order or non-compliance of the provisions of this Code governing appeal may be asserted by the appellant or court, even they have not been set up in the court of first instance.

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§ 196

As for an interlocutory order which does not entail the conclusion of the trial, it may not be appealed until a judgment or order is delivered with respect to the essential issues in the case and an appeal is filed against such judgment or order also.

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§ 197

The fact that a person appeals against any judgment order does not prejudice any other person's right to appeal against the same also.

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§ 198

An appeal shall be filed to the court of first instance within one month as from the day whereon it has or is deemed to have pronounced its judgment or order before the appellant. [112]

The court of first instance shall bear the duty to consider as to whether the appeal should be forwarded to the court of second instance according to the provisions of this Code. If it finds that the appeal should be excluded, it shall note down in its order the explicit grounds therefor.

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§ 198 *bis*[113]

When the court of first instance has ordered excluding an appeal, the appellant may, by petition, appeal against such order. This petition shall be filed to the court of first instance within a period of fifteen days as from the date of pronouncing the order, and the court shall forthwith forward the petition to the court of second instance together with the appeal and the judgment or order of the court of first instance. [114]

When the court of second instance finds expedient to inspect the file for the purpose of preparing an order as to the petition, it shall order the court of first instance to hand the file up.

The court of second instance shall consider the petition and, by order, affirm the court of first instance’s order of exclusion or otherwise admit the appeal. This order shall be final and

shall then be forwarded to the court of first instance for pronouncing.

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§ 199

A person detained or imprisoned may lodge his appeal through a prison officer within a period of time for appeal. Upon receipt of such appeal the prison officer shall issue a receipt to the appellant and submit the appeal to the court of first instance.

An appeal submitted by a prison officer to the court of first instance upon elapse of the period of time therefor shall be deemed to be lodged within such period of time if the delay is not the fault of the appellant.

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§ 200[115]

The court shall serve a copied appeal to the other party and require him to enter a plea within of fifteen days as from the

date of receiving the copied appeal.

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§ 201[116]

In the event that the court is unable to serve a copied appeal upon the other party for the reason that he cannot be found, has absconded, has intentionally evaded the service or has already entered a plea, or that the period of time for entry of such plea has lapsed, the court shall forward the file to the court of second instance for further trial and adjudication.

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§ 202

The appellant shall be entitled to enter a *nolle prosequi* in the court of first instance before the file is forwarded to the court of second instance. In such respect, the court of first instance shall grant the *nolle prosequi*. If the file has already been forwarded, a *nolle prosequi* shall, in so far as a judgment of the court of second instance is not yet passed, be filed to the

court of second instance or to the court of first instance to further be sent up to the court of second instance for order.

When the *nolle prosequi* is granted and the other party does not appeal against the judgment or order of the court of first instance also, such judgment or order shall be final only in respect of the appellant who has entered the *nolle prosequi.* But if the other party files such appeal also, such judgment or order shall be final when it is not amended eventually.

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DIVISION 5

EVIDENCE

(Table of contents)

Chapter 1

General Rules

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§ 226

Any real, documentary or parol evidence may be admitted if it is likely to prove the guilt or innocence of the defendant; prescribed that it is not obtained by an act of inducement, promise, threat, deception or any other unjust act, and that it is produced in compliance with the provisions of this Code or other laws which govern the taking of evidence.

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§ 226/1[117]

Where it appears to the court that any evidence is just per se but it has been obtained by an unjust act or by result of an information produced or obtained through an unjust act, the court shall exclude it, save where the admittance of such evidence would be more beneficial to the carriage of justice than detrimental to the criminal justice standard or fundamental rights and liberties of the people.

In exercising its discretion as to whether evidence under paragraph 1 is admissible, the court shall be mindful of all circumstances of the case, including without limitation:

(1) The value of provability, significance and reliability of such evidence;

(2) The circumstances and gravity of the offence charged;

(3) The nature of, and the injury caused by, the unjust act;

(4) The fact as to whether and how much the person committing the unjust act whereby such evidence has been obtained has been punished.

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§ 226/2[118]

The court shall never admit any evidence in relation to the offence committed by the defendant on another occasion or to his disgraceful behaviour which has been produced for the purpose of proving his guilt in the present case, save:

(1) Where such evidence is directly related to the elements of the offence charged in the present case;

(2) Where such evidence conveys specific nature, means or form as to the defendant’s commission of offence;

(3) Where such evidence may be used to rebut the facts alleged by the defendant in connection with his wholesome act or behaviour.

The provisions under paragraph 1 shall not prohibit the court from examining such evidence in collaboration with its discretion in determining or enhancing the punishments.

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§ 226/3[119]

Any information which is based on the reports of others and given as parol evidence before the court, or is recorded onto any document or other object and produced as evidence before the court, shall, if presented for the purpose of proving the truth, be deemed hearsay evidence.

No hearsay evidence is admissible, save:

(1) Where, having taken into account the nature, quality, source and surrounding facts of such evidence, the evidence is believed to be capable of proving the truth; or

(2) Where, by cause of necessity, the person having directly seen or heard of or possessing personal knowledge as to information concerned could not give evidence in person and, in the interest of justice, it is reasonable to admit such hearsay evidence.

In the event that the court excludes hearsay evidence and the party concerned raises an objection prior to the court carrying out further proceedings, the court shall note down the name or nature and the quality of such hearsay evidence, as well as the objection by the party concerned. As regards the grounds for objection, the court, *proprio motu*, may note them down or require the party to submit them in a form of statement to be gathered in the file.

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§ 226/4[120]

In the case of sexual offences, the defendant shall be prohibited from producing any evidence or raising any question as to a sexual activity between the victim and a third party other than the defendant himself, save where he is permitted by the court upon his application.

The court may give the permission under paragraph 1 only in the event where it views that the trial and adjudication would be fairer.

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§ 226/5[121]

In its trial, the court may, on the necessary or justifiable basis, admit in conjunction with the other evidence in the present case a note of testimony given in the course of the preliminary hearing or note of testimony given by a witness in another case.

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§ 227

The court shall exercise its discretion in considering and weighing all the evidence. It shall not pass any judgment of conviction unless it ensures that the offence charged has been committed actually and by the defendant.

In case of reasonable doubt as to whether the defendant has committed the offence charged in reality, the benefit of the doubt shall be given to him.

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§ 227/1[122]

In considering and weighing any hearsay evidence, implicated witness, witness in respect of whom the defendant has enjoyed no occasion to cross-examine or other evidence bearing such a defect likely to affect its own reliability, the court shall exercise its due care and shall not admit such evidence merely for the purpose of punishing the defendant, save where the evidence is supported by firm reasons, by special circumstances of the case or by other supplementary evidence.

Supplementary evidence under paragraph 1 defines other evidence which is admissible and is obtained from a source independent from the evidence required to be supported by it, and contains the value of provability likely to augment the reliability of the evidence required to be supported by it.

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§ 228

In the course of its trial, the court, either *proprio motu* or upon the request of any party, may examine additional evidence by itself or by request.

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§ 229

The court may examine evidence either inside its precincts or outside, as it may deem appropriate according to the nature of the evidence.

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§ 229/1[123]

Subject to section 173/1, in the interest of a preliminary hearing or trial, the prosecutor is required to submit to the court within a period not less than fifteen days prior to the date of the preliminary hearing or date for examining evidence a list of evidence containing the brief information as to the types and nature of the objects or places or containing as much as possible the documents, or the names and residences of the persons or experts, to be adduced by him or to be inspected or appointed by the court, together with the sufficient copies of the list to be received by the defendant; also, the defendant is required to submit to the court prior to the date for examining defence evidence a list of evidence and the copies thereof.

In hearing a request for return of an exhibit confiscated by a judicial order or request for property confiscation, the person concerned is required to submit to the court within a period not less than seven days prior to the date of hearing a list of evidence and the sufficient copies thereof to be received by the persons concerned, if any.

Upon elapse of the period of time for submitting a list of evidence pursuant to paragraph 1 or 2, whichever applies, if the party or person concerned who has submitted the list could satisfy the court with the justifiable grounds that he was

not aware of the necessity to produce certain evidence or of the existence of certain evidence is based on the justifiable grounds or with any other justifiable grounds, or if the party or person concerned who has not submitted any list could satisfy the court with the reasonable grounds that he was unable to submit a list within the period of time fixed, he may enter a request for adducing such evidence together with a list of evidence and its copies to the court at any time before the examination of his evidence is over if he has submitted any list, or at any time before the trial is over if he has submitted no any list. In this respect, should the court deem necessary to examine such evidence in order to give a fair decision governing any subject matter, it shall be invested with the power to grant the request and admit the mentioned evidence.

The court shall not grant any evidence to be examined and admitted had the party or person concerned not indicated his intention to thereupon rely pursuant to paragraph 1, 2 or 3 or to section 173/1, paragraph 2 or 3. Nonetheless, if the court finds necessary to protect the witnesses or to examine the said evidence in order to give a fair decision governing any subject matter or to allow the defendant to enjoy full opportunity of contention, it shall be empowered to grant such evidence to be examined and admitted.

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§ 230[124]

The court, either *proprio motu* or upon the request of any party concerned, may examine evidence out of court and, in case of necessity where it is unable to produce any evidence before the court and no any other means of production may be undertaken, may request another court to examine such evidence on its behalf. The requested court shall have the same power and duty as that of the requesting court, including without limitation the power to further request another court to carry out the same mission.

Subject to sections 172 and 172 bis, the file, copied charge, copied plea, documents or exhibits concerned shall be delivered to the requested court to the extent necessary for the examination of such evidence. Should the defendant be detained pending trial, the prison officer shall deliver him to the requested court, save where, with regard to section 172 bis, he does not wish to attend the trial, in which case he may submit to the requested court the questions for direction examination or statement for inspection of evidence, and the requested court shall examine that evidence in conformity therewith.

Once the examination of evidence as requested is over, the requested court shall forward and return to the requesting court the memoranda together with the documents or exhibits concerned.

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§ 230/1[125]

In case of necessity where any witness cannot be examined in court, the court, either proprio motu or upon the request of any party, may allow such witness to give evidence in another court, at a state agency office or at any place other than its precincts, by means of videoconferencing supervised by the court having jurisdiction over such locality; subject to the criteria and procedure prescribed in the regulation which shall be issued by the President of the Supreme Court of Justice with approval of the Plenary Session of the Supreme Court of Justice and shall come into force upon its publication in the Government Gazette.

The giving of evidence pursuant to paragraph 1 shall be deemed as if it were conducted in a courtroom.

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§ 230/2[126]

In the event that the giving of evidence could not be conducted in accordance with section 230/1, the court, either *proprio motu* or upon the request of any party, may allow a person residing in a foreign state to submit a deposition in lieu of giving evidence before it. However, this shall not prejudice that person's right to appear before the court in order to give additional evidence.

The deposition under paragraph 1 shall contain the following items:

(1) The name of the court and the number of the case;

(2) The date and place of making the deposition;

(3) The names and family names of the parties;

(4) The name, family name, age, residence and profession of the deponent, and his relationship with the party;

(5) The particulars of the facts or opinions given;

(6) The signatures of the deponent and of the party submitting the note.

As for the signature of the deponent, section 47, paragraph 3, of the Civil Procedure Code shall apply *mutatis mutandis.*

No amendment may be made to a deposition which has been submitted to the court, save the correction of insignificant errors or mistakes.

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§ 231

Where any party or person is required to give or produce any of the following evidence:

(1) A document or information kept confidential officially;

(2) A confidential document or information obtained or learnt of by virtue of his profession or duty;

(3) Any process, design or work lawfully protected from disclosure; such party or person shall be entitled to refuse to give or produce such evidence, save where the permission of the officer or person in connection with the said confidentiality is obtained.

Where any party or person refuses to give or produce any of the described evidence, the court shall be empowered to, by summons, request the officer or person in connection with such confidentiality to make a personal appearance and give statement before it in order to substantiate the facts whereon the refusal is based. Deeming the refusal is groundless, it shall order the party or person to give or produce such evidence.

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§ 229

The court may examine evidence either inside its precincts or outside, as it may deem appropriate according to the nature of the evidence.

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Chapter 2

Parol Evidence

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§ 232

The defendant may not be adduced as a prosecution witness.

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§ 233[127]

The defendant may adduce himself as a witness. In such respect, the court may allow him to be heard before all other defence witnesses. Had one defendant given a testimony in a manner incriminating or prejudicing the other defendant, the latter may cross-examine the former.

A testimony given by the defendant may be used against him and may be admitted by the court in conjunction with other prosecution evidence.

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§ 234

A witness shall not be bound to answer any question which may directly or directly tend to incriminate him. Whenever such question is raised, the court shall caution the witness thereagainst.

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§ 235

In the course of a trial, the court, *proprio motu,* may question any prosecutor, defendant or witness.

The defendant shall not be questioned merely for the purpose of supplementing any defect in the case for the prosecution, save where the defendant adduces himself as a witness.

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§ 236

In the course of a trial, the court shall be invested with the power to order any witness, other than the defendant, to leave and stay outside the courtroom until he is required to give

testimony. Upon having given testimony, the witness may be ordered to stay inside the courtroom.

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§ 236[128]

A testimony given by any witness during a preliminary hearing or trial shall be read by the court to such witness in the presence of the defendant, save in the event under section 165, paragraph 3.

By virtue of an agreement between the parties, the court may take a testimony given by any witness during the preliminary hearing as a testimony given by such witness during the trial, without requiring him to give the same testimony once again. Otherwise, the court may allow the witness to be cross-examined by the defendant instantly. This shall not apply to the case of offences liable to the minimum imprisonment for a term exceeding five years or higher.

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§ 237 *bis*[129]

Prior to the entry of charge, if there exists a reasonable belief that any witness would leave the Kingdom, has no fixed residence or is residing a great way off the precincts of the court trying the case, or that any witness would be tampered with directly or indirectly, or if there occurs any other necessity likely to impede the examination of any witness in the future, the public prosecutor, either by his own authority or upon the request of the enquirer or victim, may submit to the court a petition indicating all the offences alleged to have been committed by the accused in order to request for a judicial order directing the examination of such witness straightaway. If the offender is identified and is restrained by the enquirer or public prosecutor, the public prosecutor shall bring him to the court. If the offender is restrained by the court, the court shall cause him to be present before it.

Upon receipt of the said petition, the court shall examine the witness without hesitation. In this respect, the accused may also cross-examine the witness or appoint a counsel for such purpose.

In the event under paragraph 2, if the accused is alleged to have committed an offence and a subsequent prosecution would require the court to appoint a counsel for him, or if he is entitled to request the court to appoint a counsel for him pursuant to section 173, the court shall, prior to the examination of such witness, ask the defendant as to whether he is already represented by a counsel. Should the court be required to appoint a counsel for him and should the court

deem that such appointment can be made in good time, it shall then so appoint and examine the witness without delay. Otherwise, the court shall direct-examine the witness on behalf of the accused.

The court shall read a testimony given by the witness to such witness and, if the accused is also present, in the presence of the accused.

Had a prosecution later been brought against the accused on the basis of the said offence, such testimony can then be admitted to the trial.

Where the accused deems that, if he will be charged as a defendant, a person who he may adduces as his witness would leave the Kingdom, has no fixed residence or is residing a great way off the precincts of the court trying the case, or if there exists a reasonable belief that such witness would be tampered with directly or indirectly or the examination of such witness in the future would be inconvenient, he may file to the court a petition demonstrating the said grounds or necessity and requesting for a judicial order directing the immediate examination of such witness.

Where appropriate, the court may grant the petition and inform the enquirer or public prosecutor concerned of the matter. In this respect, the public prosecutor shall be entitled to cross-examine the witness, and the provisions of paragraphs 3, 4 and 5 shall apply *mutatis mutandis.*

The provisions of section 172 *ter* shall apply *mutatis mutandis* to the examination of a witness who is a child not yet over its eighteenth year.

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§ 237 *ter*[130]

Section 237 bis shall apply *mutatis mutandis* to the examination of an expert witness and other evidence, and to the event in which a charge has been preferred but the examination of evidence is required to be held ahead of a normal period of time therefor according to section 173/2, paragraph 2.

Where any scientific evidence is likely to prove certain significant facts in the case, or where there is a reasonable belief that any essential scientific evidence would, by reason of the delay in producing it, become lost or inconvenient to be analysed, the accused or the public prosecutor, either by his own authority or upon application of the enquirer or victim, may apply to the court for a judicial order directing a scientific analysis to be conducted in pursuance of section 224/1 prior to the entry of charge. In this regard, the provisions of section 237 bis shall apply *mutatis mutandis.*

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Chapter 3

Documentary Evidence

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§ 238

Only original documents may be adduced as evidence. Where the originals are not available, certified copies thereof or parol evidence in connection with their contents may be adduced.

Where official documents are adduced as evidence, even the originals are still available, officially certified copies thereof may be produced, unless elsewise directed in the subpoenas.

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§ 239

Where a party adducing any document as evidence does not have such document in his possession, if he informs the court of the nature of the said document and the place where it can be found, the court shall, by subpoena, direct the possessor of the document to produce it before the court.

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§ 240[131]

In the event that the court has not fixed a date for inspecting evidence under section 173/1, any party wishing to adduce any document in his possession as evidence shall submit such documentary evidence to the court for a period not less than fifteen days prior to the date of preliminary hearing or date for examining evidence, so that the other party would enjoy opportunity to inspect and copy the documentary evidence before it is produced, save where the document to be adduced is a witness's testimony or contains the name or residence of a

witness, or where the court elsewise orders by reason of the nature and necessity of such document.

In the event that any document needs not be submitted pursuant to paragraph 1 but it is adduced as evidence in court, the court shall read it or deliver it to every party for inspection. Should any party require a copy thereof, the court may, where appropriate, order the party adducing the document to furnish the requiring party with a copy.

In the event that any party fails to submit a document according to paragraph 1, or a copy pursuant to paragraph 2 or a documentary or real evidence in relation to section 173/2, paragraph 1, the court shall be given the power to exclude such evidence, save where the court determines that the evidence is necessary in the interest of justice, or the failure is unintentional and the admittance of such evidence would not prejudice the other party’s opportunity to carry out his procedural acts.

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Chapter 4

Real Evidence

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§ 241

Any article used as real evidence must be brought to the court.

Where the real evidence could not be brought to the court, the court shall inspect it and make a memorandum of inspection at the place where it is, at the time and by the means as the court may deems appropriate according to its nature.

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§ 242

In the course of an enquiry, preliminary hearing or trial, every party or witness shall be allowed to inspect any article used as real evidence.

Where wrapped or sealed real evidence is unwrapped or unsealed, the rewrapping or resealing shall be made in the presence of the party or witness concerned.

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Chapter 5[132]

Experts

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§ 243[133]

A person who, by profession or elsewise, has the relevant knowledge and experience in any field such as science, the arts, artisan, commerce, medicine or foreign law, and whose opinion may be of value for the adjudication of a case, may, in the course of the enquiry, preliminary hearing or trial, become a witness in any matter, for example, the analysis of the person or mind of the victim, accused or defendant or of handwriting, or any other experiments or activities.

An expert may render his opinion in writing, but the copies thereof must be submitted to the court and served upon the other parties for acknowledgement, and he shall also make a personal appearance before the court for the purpose of giving further testimony in collaboration with his written opinion, save where it is necessary or where the parties do not wish examine him, in which case the court may accept the written opinion without any further testimony.

Where an expert is required to attend court for the purpose of giving further testimony, he shall submit to the court for a period not less than seven days prior to the date of giving such testimony the sufficient copies of his written opinion, so that the other parties would receive them.

In giving further testimony, an expert may read a prepared document.

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§ 244[134]

In the course of the preliminary hearing, trial or enquiry, if the court or senior administrative or police officer deems necessary to analyse a corpse, even encoffined or inhumed, it or he shall be empowered to order the corpse to be analysed by an expert. Nonetheless, in executing such order, regards shall be made to the religious precepts and no danger may be caused.

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§ 244/1[135]

In the case of offences liable to any term of imprisonment, should scientific evidence be necessary for proving any facts being a subject matter of the case, the court shall be invested with the power to order any person, object or document to be analysed by scientific means.

Where the analysis pursuant to paragraph 1 requires a specimen of blood, tissue, skin, hair, saliva, urine, fæces, secreted substance, nucleic acid or bodily organ to be

collected from any party or person, the court shall be authorised to order a physician or expert to carry out such analysis to the extent necessary and appropriate, and in a manner causing slightest suffering to such person and not being detrimental against such person's person or health. In this respect, the consent of the party or person concerned must be obtained. Should any party withhold his consent or perform any act to impede any person concerned from giving such consent without justifiable grounds, it shall preliminarily be presumed that the fact alleged by the opposite party is veracious.

Where any scientific evidence is capable of proving the truth to the extent that the case would be adjudicated without examining any other evidence, or where there occurs a reasonable belief that any essential scientific evidence would, by reason of the delay in producing it, be lost or difficult to be analysed, the court, either *proprio motu* or upon the request of any party, may order the scientific analysis under paragraphs 1 and 2 straightway and without anticipating a normal period of time for the examination of evidence. In this respect, the provisions of section 237 *bis* shall apply *mutatis mutandis.*

The outlays accruing from the analysis under this section shall be covered by the budget in pursuance of the rule issued by the Courts of Justice Administration Board with approval of the Ministry of Finance.

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DIVISION 6

ENFORCEMENT OF JUDGMENTS AND COSTS

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Title 1

Enforcement of Judgments

(Table of contents)

§ 245[136]

Subject to sections 246, 247 and 248, the case shall be enforced without delay upon its finality.

The court of first instance shall bear the duty to forward to the court of second instance the file of the case wherein capital punishment or imprisonment for life is inflicted, if no appeal is lodged against such sentence. This sentence is not yet final, save where it is affirmed by the court of second instance.

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§ 246[137]

In the following cases, either *proprio motu* or upon the request of the defendant, spouse or relative of the defendant, public prosecutor, prison governor or officer in charge of

enforcement the warrant of imprisonment, the court shall be empowered to, by order, suspend the imprisonment until the grounds therefor ceases to exist:

(1) Where the defendant is insane;

(2) Where it is feared that the defendant would be lethally imperiled by reason of being imprisoned;

(3) Where the defendant is conceiving a child;

(4) Where the defendant has given birth to a child for a period not yet over three years and it requires her maintenance.

During such suspension, the court may, by order, keep the person in custody at a proper place other than a prison or than a place designated in the warrant of imprisonment, and it shall also charge the officer bearing the duty to enforce such warrant with the duty and responsibility for carrying out the order.

The types of the proper place under paragraph 2 shall be prescribed in the Ministerial Regulation wherein the means for custody and treatment suitable to the nature of the defendant, including the measures for preventing his abscondence and any possible injuiry, shall be specified.

Upon delivery of the order under paragraph 1, had the defendant failed to conform to the means or measures according to paragraph 3 or had the circumstances changed,

the court shall be invested with the power to modify the order or otherwise enforce the warrant of imprisonment.

The days during which the defendant is kept in custody pursuant to this section shall be deducted from his term of imprisonment.

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§ 247

When the defendant is sentenced to capital punishment, the sentence shall not be enforced until the provisions of this Code governing pardon are abided by.

Where a female sentenced to capital punishment is conceiving a child, her sentence shall be suspended for three years as from the birth of the child. Following that, her sentence shall be reduced to imprisonment for life, save where the child dies prior to elapse of such period. During a period of three years as from the birth of the child, the female shall furnish it with proper care at a proper place inside her prison.[138]

The capital punishment shall be enforced at a place and time as the officer responsible therefor deems appropriate.

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§ 248

Should a person sentenced to capital punishment be insane prior to being put to death, the sentence shall be suspended until he recovers his sanity. Pending such suspension, the court shall be empowered to apply section 46 (2) of the Penal Code[3].

Should the insane person recover his sanity within one year as from the finality of the judgment, the capital punishment inflicted upon him shall be reduced to imprisonment for life.

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§ 249[139]

A judgment or order for restitution of property or value thereof or for payment of compensation or costs shall be enforced pursuant to the provisions of the Civil Procedure Code.

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§ 250[140]

Unless elsewise indicated in the judgment, all persons convicted of the same offence shall be jointly and severally liable for restitution of property or value thereof or for payment of compensation or costs.

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§ 251[141]

Where the seizure of property for payment of court costs, fine, property value or compensation is to be made concurrently, but the property of the defendant does not satisfy all, the net profits of such property shall be applied in the following order:

(1) Payment of costs;

(2) Payment of property value or compensation;

(3) Payment of fine.

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Title 2

Costs

(Table of contents)

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§ 252

In all criminal cases, the courts of justice may not demand for any costs other than those prescribed in this Chapter.

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§ 253[142]

In regard to a public prosecution, if the public prosecutor enters a motion for restitution of property or value thereof together with a charge pursuant to section 43, or if the victim enters a claim for compelling the defendant to make compensation, no costs may be demanded. Nonetheless, if the court deems that the victim has claimed for immoderate compensation or performed any procedural act with bad faith, it shall be empowered to, by order, direct the victim to pay the whole or part of the costs within a period of time as it may fix, and had if the victim failed to abide by the order, he shall be deemed to have abandoned his civil action.

In the event that a judgment or order for restitution of property or value thereof or for payment of compensation is rendered pursuant to paragraph 1, if the court needs to carry out any further proceedings for the purpose of enforcing such judgment or order, the person entitled to the restitution or compensation must bear the costs accruing from the said further proceedings in the same manner as in a civil action.

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§ 254[143]

Subject to section 253, paragraph 1, in the case where the victim has entered a claim for restitution of property or value thereof or for compensation together with a charge or as an

independent civil action, the costs shall be demanded as in a civil action.

With respect to the civil action under paragraph 1, if the victim, who is the plaintiff, wishes to apply for exemption of the costs in the first instance, second instance or last resort, he shall file to the court of first instance wherein the charge has been entered such application together with the plaint, or appeal to the court of second instance or final appeal, as the case may be. If the court of first instance is of an opinion that there is a *prima facie* case with regard to the charge, and that the claim for compensation is not immoderate and is entered in good faith, it shall grant the application. But if the court orders exempting only part of the costs or otherwise dismissed the application, it shall fix a period of time for the plaintiff to pay such costs. The order of the court of first instance exempting the costs or dismissing the application shall apply to the proceedings as from the instance wherein the action is pending trial until the instance wherein it is final. Nevertheless, if the circumstances of the case have changed, the court trying the action may modify such order as deemed appropriate.

The order under paragraph 2 may not be appealed to the court of second instance or court of last resort.

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§ 255

As regards the cases set forth in sections 253, paragraph 2 and 254, the court, upon application, may order the losing party to reimburse the costs to the other party.

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§ 256[144]

According to the rule issued by the Courts of Justice Administration Board with approval of the Ministry of Finance, the court shall pay travel expenses, remunerations and residence outlays to the witnesses who have made their personal appearances as summonsed.

The witnesses who have received the similar travel expenses, remunerations and residence outlays under other law shall not be entitled to this section anymore.

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§ 257

(Repealed)[145]

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§ 258[146]

The provisions of the Civil Procedure Code on costs shall apply *mutatis mutandis.*

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DIVISION 7

PARDON, COMMUTATION AND REDUCTION

(Table of contents)

§ 259[147]

Once the case is final, the person sentenced to any punishment whatsoever or any interested person who wishes to petition the King for pardon may submit his petition to the Minister of Justice.

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§ 260[148]

A petitioner who is imprisoned may submit his petition to the prison officer or governor. Upon receipt of such petition, the prison officer or governor shall issue a receipt thereof to the petitioner and forthwith forward the petition to the Minister of Justice.

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§ 261[149]

The Minister of Justice shall bear the duty to submit to the King the petitions together with his opinions as to whether those petitions should be granted.

Where no petition is submitted but the Minister of Justice deems appropriate, he may render to the King an advice for pardoning the convicted person.

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§ 261 *bis*[150]

Where the Council of Ministers deems appropriate, it may render to the King an advice for pardoning any convicted person.

The pardon under paragraph 1 shall be granted in a form of Royal Decree.

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§ 262

Subject to sections 247 and 248, when the case becomes final, the officer shall enforced the sentence of death upon elapse of sixty days as from the date of pronouncing the judgment, save where a petition is submitted or an advice is rendered pursuant section 261, in which event the enforcement shall be suspended until elapse of sixty days as from the date whereon the petition has been submitted or the advice has been rendered by the Minister of Justice. Nonetheless, the sentence may be enforced immediately after the petition or advice is denied by the King.[151]

As regards any person sentenced to capital punishment, a petition or advice for pardoning him can be submitted or rendered only once.

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§ 263

Any sentence, other than a death one, shall not be suspended for the reason that a petition for pardon is submitted.

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§ 264

As for a petition for pardon with respect to any sentence other than death, if it is denied, a new petition may not be submitted until elapse of two years as from the date of the preceding denial.

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§ 265

A sentence which is pardoned absolutely and unconditionally may not be enforced. Had any part thereof been enforced, the remainder shall without delay come to an end. Had any fine been paid, whatever paid shall be returned *in toto.*

Should a pardon merely cause the sentence to be commutated or reduced, the remaining punishment shall further be enforced.

The fact that any person is pardoned shall not exonerate him from the liability to restitute the property or value thereof or to make a compensation in pursuance of the judgment.

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§ 266

In the event that a person pardoned for any offence is charged with another offence, the fact that he has been pardoned does not prejudice the power of the court to extend or not to suspend a sentence in pursuance of the provisions of the Penal Code[3] governing recidivism or sentence suspension.

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§ 267

The provisions of this Chapter shall apply *mutatis mutandis* to the petitions for commutation or reduction.

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Footnotes

1. ↑ The Public Prosecution Department has now been abolished and replaced by the Office of the Attorney-General, by virtue of the Constitution of the Kingdom of Thailand, BE 2550 (2007).
2. ↑ § 2 (9) has been amended by the Act Amending the Criminal Procedure Code (No. 22), BE 2547 (2004).

3. ↑ 1 2 3 The Penal Code as promulgated in 1908 has been repealed and replaced by the Criminal Code as from January 1, 1957.
4. ↑ S. 2 (17) has now been abolished and replaced by the office of the Police Deputy Commissioner-General, by virtue of the National Police Act, BE 2547 (2004).
9. ↑ The office of the Provincial Police Deputy Chief has now been abolished and replaced by the office of the Provincial Police

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