

ACIR State Legislative Program

10.

Criminal
Justice

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November 1975
Advisory Commission on Intergovernmental Relations
Washington, D.C. 20575
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M-101

FOREWORD

ACIR's Legislative Program

The Advisory Commission on Intergovernmental Relations is a permanent, national bipartisan body established by Act of Congress in 1959 to give continuing study to the relationships among local, state, and national levels of government. The Commission does not function as a typical Federal agency, because a majority of Commission members come from state and local government. The Commission functions as an intergovernmental body responsible and responsive to all three levels of government.

It should not be inferred, however, that the Commission is a direct spokesman for any single level or branch of government — whether the Congress, the Federal Executive Branch, or state and local government. Nevertheless, many of the Commission's policy recommendations are paralleled by policies of the organizations of state and local government — including the National League of Cities, U.S. Conference of Mayors, and National Association of Counties — and a substantial number of the Commission's draft legislative proposals are disseminated by the Council of State Governments in its annual volume entitled *Suggested State Legislation*. The National Governors' Conference in its report of the 67th Annual Meeting carries 38 of ACIR's legislative proposals as an appendix entitled *State Responsibilities to Local Governments: Model Legislation from the Advisory Commission on Intergovernmental Relations*.

The Commission recognizes that its contribution to strengthening the federal system will be measured, in part, in terms of its role in fostering significant improvements in the relationships between and among Federal, state, and local governments. It therefore devotes a considerable share of its resources to encouraging the consideration of its recommendations for legislative and administrative action by government at all levels, with considerable emphasis upon the strengthening of state and local governments.

ACIR's *State Legislative Program* represents those recommendations of the Commission for state action which have been translated into legislative language for consideration by the state legislatures. Though ACIR has drafted individual bills from time-to-time following the adoption of various policy reports, its suggested state legislation was brought together into a cumulative *State Legislative Program* initially in 1970. This 1975 edition is the first complete updating of the original cumulative program. It contains a number of new bills as well as major rewrites and minor updating of previously suggested legislation.

Scope of the Legislative Program. ACIR's reports, over the years, have dealt with state and local government modernization and finances, as well as a variety of functional activities. Commission recommendations to the states, contained in these reports, have addressed all of these subjects. The suggested legislation contained in the Commission's *State Legislative Program* has been organized into ten booklets (parts) in which the draft bills are grouped logically by subject matter. The groupings for all ten booklets are listed in the summary contents of the full legislative program which follows this foreword. Then, the detailed contents of this booklet, including the title of all bills, are listed with the page numbers where they can be found.

Process for Developing Suggested Legislation. Most of the proposals in the *State Legislative Program* are based on existing state statutes and constitutional provisions. Initial drafts were prepared by the ACIR staff or consultants. Individual proposals were reviewed by state officials and others with special knowledge in the subject matter fields involved. The staff, however, takes full responsibility for the final form of these proposals.

How to Use the Suggested Legislation

The Commission presents its proposals for state legislation in the hope that they will serve as useful references for state legislators, state legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Additional copies of this booklet and the other booklets in the full *Program* are available upon request. Any of the materials in the *Program* may be reproduced without limitation.

The Commission emphasizes that legislation which fits one state may not fit another. Therefore, the following advice is offered to users of the Commission's suggested state legislation.

Fit Proposals to Each State. Many states have standard definitions, administrative procedures acts, standard practices in legislative draftsmanship, and established legislation and constitutional provisions related to new proposals. These differ widely from one state to another, yet they vitally affect the drafting of new proposals for state legislation. No model legislation can possibly reflect the variations which apply in all 50 states. Thus, ACIR strongly recommends that any user of its suggested state legislation seek the advice of legislative draftsmen familiar with the state or states in which such proposals are to be introduced.

Alternative Provisions and Optional Policies. Likewise, the Commission recognizes that uniform policies are frequently not appropriate for application nationwide. Accordingly, its adopted recommendations frequently include alternative procedures and optional policies among which the states should make conscious choices as they legislate. Consequently, the suggested legislation which follows includes bracketed language which alerts the users of these materials to the choices which are to be made. In many cases, the bracketed language is also labeled as an alternative or an option. In the case of alternatives, one (or in some cases more than one) should be chosen and the others rejected. In the case of options, the suggested language may be included or deleted without reference to other provisions unless otherwise noted.

Three types of bracketed information [] are provided in the suggested legislation. Brackets containing *italicized* information indicate wording that is essential to the legislation, but must be rewritten to conform to each particular state's terminology and legal references. Information in regular type within brackets presents alternative or optional language. The third type of brackets contains blank space and requires the insertion of a date, amount, time span, quantity, or the like, as required by each state to comply with its individual circumstances or recommendations.

Caution About Excerpting. Frequently one provision in the suggested legislation may be related to another in the same bill. Thus, any state wishing to en-

act only certain portions of the suggested legislation should check carefully to make sure that essential definitions and related provisions are taken into account in the process of excerpting those portions desired for enactment.

ACIR Assistance

Each item of suggested state legislation in this *Program* is referenced to the ACIR policy report upon which it is based. These reports may be obtained free of charge in most cases, by writing to ACIR, and usually may also be purchased from the U.S. Government Printing Office (especially if multiple copies are required). In those cases where a policy report is out of print, copies may be found in ACIR's numerous depository libraries throughout the nation as well as in many other libraries. In addition, where copies are otherwise unavailable, the ACIR library will arrange to loan a copy.

The ACIR staff, though limited in size, is available upon request to answer questions about the suggested legislation, to help explain it to legislators and others in states where it is under active consideration, and to assist the legislative process in other appropriate ways.

September 1975

**Robert E. Merriam
Chairman**

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ACKNOWLEDGMENTS

The suggested state legislation in this part of ACIR's *State Legislative Program* is based largely upon existing state statutes. William G. Colman acted as consultant to the Commission in tailoring these enactments to ACIR policy.

The following persons served diligently on a panel which reviewed each proposal: Richard Carlson, director of research, Council of State Governments; Honorable Charles A. Docter, Maryland House of Delegates; Marcus Halbrosk, director, Arkansas Legislative Council; David Johnston, director, Ohio Legislative Service Commission; William J. Pierce, executive director, National Conference of Commissioners for Uniform State Laws; Bonnie Reese, executive secretary, Wisconsin Joint Legislative Council; Honorable Karl Snow, Utah state senator; and Troy R. Westmeyer, director, New York Legislative Commission on Expenditure Review.

The suggested legislation was also circulated in draft form to the following national organizations for their review and comment:

Council of State Governments
International City Management Association
National Association of Counties
National Conference of State Legislatures
National Governors' Conference
National League of Cities
U.S. Conference of Mayors

The Commission acknowledges the financial assistance of the U.S. Department of Housing and Urban Development in updating and publishing this new edition of the *State Legislative Program*.

The Commission is grateful to all who helped to produce this volume, but the Commission alone takes responsibility for the policies expressed herein and any errors of commission or omission in the draftsmanship.

Wayne F. Anderson
Executive Director

Part X

CRIMINAL JUSTICE

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*These bills are not included in this IACP preprint, but will be in ACIR Part X to be published this fall.

INTRODUCTION

Crime control and the administration of justice are enormous tasks for state and local governments. State-local expenditures in Fiscal Year 1976 will exceed \$15-billion. Estimates of the annual costs of crime to the national economy range from \$50-to-\$100 billion. In human terms, crime imposes staggering social and economic costs upon offender and victim alike. Not all crimes are reported and, of those which are, only a moderate proportion are cleared by arrest. Of those arrested, only a small proportion are brought to trial and convicted, and the correctional process often seems to corrupt rather than correct those convicted. For the inner cities, the linkage among low income, low school achievement, unemployment, juvenile delinquency, and adult crime has been well documented.

The American public has been increasingly concerned about crime for more than half a century; one of Herbert Hoover's campaign promises was the restoration of law and order and a halt to gangsterism in the cities. He appointed former Attorney General George Wickersham to head what turned out to be the first of many national commissions to study crime and the administration of justice. One of those studies culminated with the 1973 report of the National Advisory Commission on Criminal Justice, Standards, and Goals. The Wickersham report, the national commission's 1973 report, and those of nearly a dozen intervening national commissions are remarkable for their consensus. Most of these reports have emphasized recommendations along the following lines: better training of, and less corruption in, police forces; a consolidation of police forces; elimination of political considerations in the selection of district attorneys, prosecutors, and judges; strengthening of state police capability; a unified and streamlined state court system; and an overhaul of what the Wickersham Commission called an "antiquated and inefficient" correctional system.

One of the intervening reports was a study in 1970-71 by the Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*. The Commission's recommendations covered a broad front but were in the same general direction as the proposals cited above. More specifically, the Commission proposed:

- For police — establishment of minimum police service standards; special task forces in metropolitan areas; extraterritorial police powers; revitalized rural police protection; broadened authority and capability for state police; modernization of county police forces or sheriff's departments; improved police selection, training, and education; revision of the state criminal code; decriminalizing certain crimes to lessen the load on the criminal justice system; improved police personnel practices; and better police-community relations.
- For the courts — a unified, simplified state court system; a state court administrative officer; merit selection of judges; establishment of procedures for judicial qualifications, discipline, and removal; full-time judges; mandatory retirement for judges; and state assumption of all costs of the judicial branch.
- For prosecutors — state supervision of all prosecutions, consolidation of local prosecution functions, state assumption of a major share of prosecutorial costs, and state responsibility for providing defense counsel to the indigent.
- For corrections — reordered priorities with increased emphasis on rehabilitation; expanded academic and vocational training; community based treatment; state assumption of correctional costs; upgraded jails and detention procedures; and the use of paraprofessional personnel and volunteer aides.

To implement the foregoing recommendations, the following draft constitutional and legislative proposals are presented below. For police: (1) Department of State Police; (2) Upgrading Police Personnel Practices; (3) Municipal-County-Metropolitan Relationships in Law Enforcement; and (4) Governmental Tort Liability for Law Enforcement Actions. For the courts: (1) Judicial Constitutional Article; (2) Omnibus Judicial Act; (3) the Uniform Jury Selection Act; (4) an Omnibus Prosecution Act; and (5) the Model Public Defender Statute. Finally, there is a State Department of Corrections act, and a draft legislative resolution for Legislative Committee Responsibility for the Improvement of Law Enforcement and Criminal Justice.

10.1

Police

10.101 DEPARTMENT OF STATE POLICE¹

A strong state police capability has been recognized for some years as an essential element in state-local law enforcement capability. In its 1971 report on *State-Local Relations in the Criminal Justice System*, the Advisory Commission on Intergovernmental Relations proposed that "where lacking, states consider granting the appropriate state law enforcement agency a full range of statewide law enforcement powers and removing geographic limitations on the operation of such agency." In 1972, the Committee for Economic Development, in its report on *Reducing Crime and Assuring Justice*, called for the expansion of state police forces, "strengthened to assure proper protection for the entire population, especially in areas without effective local forces." Finally, it has become apparent that it is impossible for state government to play an effective role in criminal justice planning and coordination without centralized information and intelligence on the number and type of crimes committed in the state and on progress in the clearance of such crimes.

Pennsylvania created a department of state police in 1905; New Jersey, New York, and a few others followed suit over the next 35 years. But for most of the country, the question of a department of state police with statewide law enforcement powers has arisen in more recent years, although most states created highway patrol forces as hard surfaced roads began to be built. In several states, the evolution of a state police agency occurred through the gradual expansion of highway patrol jurisdiction.

Major duties and responsibilities of state police and highway patrol agencies have evolved to include the following: (1) in a general sense, to safeguard lives and safety of persons within the state by enforcing state laws, detecting and preventing crime, preserving order, and maintaining highway safety; (2) patrol of the interstate highway system and state primary and secondary roads originating beyond and traversing municipal boundaries; (3) provision of laboratory facilities for use by other state agencies and local law enforcement agencies; (4) acting as the central collecting agency and depository for traffic and crime data and administering a statewide uniform system for the reporting of crimes by local law enforcement agencies; (5) acting as central depository for criminal intelligence for the combat and control of organized crime within the state and coordinating the interchange of intelligence data with other states; (6) providing specialized assistance to local police, including but not limited to laboratory technicians, criminal investigators, and supplementary riot and crowd control; (7) serving as the focal point of a statewide police communications system; (8) providing general police protection to sparsely populated areas, in agreement with county and municipal governments, through a "resident trooper" or other appropriate means; and (9) conduct of training programs for local police agencies both at a state police academy and on a decentralized basis.

Although the following draft legislation is framed in terms of a department of state police, several states have chosen to group together those agencies concerned with fire protection, police protection, highway safety, and other similar functions into a department of public safety. The draft legislation is not intended to state any organizational preference in this respect.

In the establishment of regional commands, district barracks, and other field facilities, the state will need to consider the relationship of district police agency boundaries to those of standard substate districts (See *Statewide Substate Districting Act* and *City-County-Metropolitan Relationships in Law Enforcement*.)

The following draft is based primarily on the 1968 Maryland statute (Article 88B of the state code), and in part on the *Wisconsin Police Regulation Act* (Ch. 165.55), the *Pennsylvania Administrative Code* (Ch. 71.5.250), and Connecticut's "resident trooper" program. Other comprehensive statutes include 1970 Delaware (Chs. 382 and 670) and Texas (Ch. 5, Title 70).

Section 1 sets forth the purpose of the legislation.

Section 2 includes the definition of terms commonly used in the act.

Section 3 sets forth the powers of the state law enforcement agency and of police employees thereof.

¹Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington, D.C.: Government Printing Office, August, 1971).

Subsection (c) deals with the powers of state police acting within municipalities having police departments and presents two alternate arrangements as bracketed language — one a somewhat circumscribed scope and the other relatively unrestricted jurisdiction.

Section 4 creates a uniform crime reporting system and mandates compliance by local law enforcement agencies.

Section 5 establishes a state crime laboratory and provides for its operation.

Section 6 establishes a statewide police communications system to serve the state law enforcement agency and the external communications needs of local law enforcement agencies.

Section 7 authorizes the establishment and operation of facilities for the training of police and civilian employees of the state law enforcement agency. Authority is also provided for making such facilities available for the training of local law enforcement personnel.

Section 8 authorizes the director of the state law enforcement agency to provide police service and personnel to rural counties on a contractual basis.

Section 9 provides for the internal management of the state law enforcement agency.

Section 10 provides for an annual report to the governor and legislature.

Sections 11 and 12 provide for separability and effective date clauses respectively.

Suggested Legislation

[AN ACT ESTABLISHING A DEPARTMENT OF STATE POLICE]

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purpose.*

2 (a) The [legislature] finds it to be in the best interests of citizens of this state that a state law en-
3 forcement agency be established so that an effective and coordinated statewide attack upon crime may
4 be mounted, state-local cooperation in law enforcement strengthened, necessary but expensive spe-
5 cialized facilities and services made available to local law enforcement agencies throughout the state,
6 adequate general police protection made available to rural areas, and centralized information about
7 crime and criminals within the state maintained on a uniform and systematic basis for dissemination
8 to law enforcement agencies in this and other states and to the public.

9 (b) It is the purpose of this act to establish a [department of state police] and to provide for its
10 powers, duties, and activities. The [department], as provided by law, shall safeguard the lives and safety
11 of persons within the state, protect property, and assist in securing to all persons the equal protec-
12 tion of the law. This includes preserving the public peace; detecting and preventing the commission
13 of crime; enforcing the laws and ordinances of the state and local subdivisions; apprehending and
14 arresting criminals and those who violate or are lawfully accused of violating such laws and ordi-
15 nances; preserving order at public places; maintaining the safe and orderly flow of traffic on public
16 streets and highways; cooperating with and assisting local law enforcement agencies in carrying out
17 their respective duties; and discharging its duties and responsibilities with the dignity and manner
18 which will inspire public confidence and respect.

19 SECTION 2. *Definitions. As used in this act:*

20 (a) "Assigned state policeman" means a police officer detailed from the [state law enforcement
21 agency] to a rural jurisdiction to assist in or assume police functions as agreed upon by the rural
22 jurisdiction and the director.

23 (b) "Civilian classification" means the position held by a civilian employee.

24 (c) "Commissioned rank" means any of the four highest ranks within the [department].

25 "Non-commissioned rank" means any other rank. Neither term includes the director.

26 (d) "Director" means the head of the [state law enforcement agency].

27 (e) "Employee" means any employee of the [state law enforcement agency]. A "police em-
28 ployee" is an employee to whom the director assigns the powers contained in Section 4. A "civilian
29 employee" is an employee other than a police employee.

1 (f) "Laboratory" means the state crime laboratory created by Section 5.

2 (g) "Law enforcement agency" means any law enforcement agency of any department, county,
3 or municipality of the state, including sheriffs, and unless otherwise limited also includes similar
4 agencies of other states and the United States of America.

5 (h) "Local police agency" means a police agency of one or more persons employed full-time by
6 a political subdivision of this state for the purpose of preventing and detecting crime and enforcing
7 laws and whose employees are authorized to make arrests for law violations.

8 (i) "Merit system" means the merit system law as established and administered pursuant to
9 [state civil service or personnel act citation], and includes all provisions of said law.

10 (j) "Motor vehicle" means a motor vehicle as defined in [cite appropriate section of motor ve-
11 hicle law].

12 (k) "Offense" means an act which is a felony, a misdemeanor, [or a violation of a county or
13 municipal criminal code].

14 (l) "Rank" means the status of one or more police employees having the same relative position
15 in the chain of command established by rule. "Grade" means the status of one or more police em-
16 ployees having the same primary areas of duty and responsibility within a rank.

17 (m) "Rule" means any rule, regulation, order, or other directive adopted by the director pur-
18 suant to this act. A rule is not for any purpose a rule as defined in the [administrative procedure act or
19 other appropriate citation].

20 (n) "Rural jurisdiction" means any county¹ that is not all or part of a Standard Metropolitan
21 Statistical Area as designated by the United States Office of Management and Budget, or any local unit
22 of general government within such a county, or any combination thereof.

23 SECTION 3. Powers of the [state law enforcement agency] and of Police Employees.

24 (a) The duties and powers of the [state law enforcement agency] with respect to law enforcement
25 are supplemental to, and concurrent with, similar powers and duties conferred by law upon other
26 law enforcement agencies of the state in their respective jurisdictions. Technological developments,
27 changes in the population and economy of the state, and other factors directly related to proper law
28 enforcement require effective cooperation between all such agencies in order to provide efficient
29 utilization of equipment, personnel, and information and prompt means of collection, analysis, and
30 dissemination of information relevant to the duties of such agencies. The duties imposed upon the
31 [agency] by this subtitle shall be construed to limit the powers or responsibility of any other law en-
32 forcement agency or to make any such agency subject to the supervision of the [agency].

33 (b) The director and employees designated by him as police employees shall have, throughout

¹In New England, a definitional basis other than county lines would need to be used.

1 the state, the same powers, privileges, immunities, and defenses as sheriffs, constables, police officers,
2 and other peace officers possessed at common law and may now or hereafter exercise within their
3 respective jurisdictions. Any warrant of arrest may be executed by a police employee in any part of
4 the state without further endorsement.

5 [Alternative 1.]

6 [(c) Police employees shall not act within the limits of any incorporated municipality which
7 maintains a police force except

8 (1) when in pursuit of an offender;

9 (2) when in search of an offender or suspected offender wanted for a crime committed out-
10 side of the limits of the municipality, or when interviewing or seeking to interview a witness or sup-
11 posed witness to such a crime;

12 (3) when requested to act by the chief executive officer or the chief police officer of the
13 municipality;

14 (4) when ordered by the governor to act within the municipality;

15 (5) when enforcing the motor vehicle laws of this state; or

16 (6) to make lawful arrests without warrant for any violation of the criminal laws of the state
17 that they may witness.]

18 [OR]

19 [Alternative 2.]

20 [(c) Police employees acting within the limits of any municipality which maintains a police force
21 shall advise the chief executive officer or the chief police officer of the municipality as to actions
22 taken in pursuit of their duties.]

23 (d) No police employee shall be placed on detached service and act for any Federal department,
24 agency, or committee outside of the state of [] without the written approval of the governor or as
25 otherwise provided by law. [Insert appropriate citations of existing laws.]

26 SECTION 4. *Uniform Crime Reporting System.*¹

27 (a) Within the [state law enforcement agency] there is hereby established a division of [criminal
28 identification information, and reports] for centralization of information with regard to crime in the
29 state. The division shall:

30 (1) develop and operate an information system which, in the judgment of the [administrator]
31 of the division, will be useful in the reduction of crime and the administration of justice;

32 (2) obtain and file fingerprints, descriptions, photographs, and any other available identi-
33 fying data on persons who have been arrested or taken into custody in this state for any offense for

¹Either in this section specifically, or by citations of other general or special laws, states should deal with rights of privacy as they relate to the centralization of data concerning known and suspected offenders.

1 which the maximum lawful penalty is [two] years;

2 (3) cooperate with all law enforcement agencies in the state to establish a system of crim-
3 inal identification, and furnish all reporting officials with forms and instructions which specify the
4 nature of information required and the time it is to be forwarded;

5 (4) make available upon request, to all local and state law enforcement agencies in this state,
6 to all Federal law enforcement and criminal identification agencies, and to state law enforcement agen-
7 cies in other states, any information in the files of the division which will aid these agencies in the
8 performance of their official duties; and

9 (5) cooperate with other law enforcement agencies in this state and the crime information
10 agencies in other states in developing and operating an interstate, intrastate, and national system of
11 criminal identification, records, and statistics.

12 (b) All local law enforcement agencies in the state shall obtain and file fingerprints, descriptions,
13 photographs, and other available identifying data on persons who have been lawfully arrested or
14 taken into custody in this state for any offense for which the maximum penalty is [two] years or more.
15 It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, parole and
16 probation officers, wardens, or other persons in charge of correctional institutions, and of hospitals
17 and institutions for the criminally insane in this state to furnish the division with data of such
18 scope, at such times and in such form as deemed necessary by the director to carry out the purposes
19 of Section 5 (a)(2).

20 (c) The [*state law enforcement agency*] shall collect, analyze, and disseminate information rela-
21 tive to the occurrence of motor vehicle accidents within the state. The [*department of motor vehicles,*
22 *the state roads commission, the department of postmortem examiners, commissions concerned with*
23 *highway safety*] and all law enforcement agencies of the state shall furnish information relative to
24 such accidents at such time and in such form as may be prescribed by rule of the director.

25 (d) The [*state law enforcement agency*] shall at least monthly publish statistics concerning the
26 occurrence and cause of all motor vehicle accidents within the state. The [*state law enforcement*
27 *agency*] shall also publish periodic statistics of the incidence of crime within the state. No such sta-
28 tistical report shall name or otherwise identify a particular known or suspected offender. Reports re-
29 quired by this section shall be distributed to all agencies which contributed information contained in
30 such reports, to the press, and to other interested persons. In addition, the director may prescribe by
31 rule the conditions under which reports of specific motor vehicle accidents may be made available
32 upon request to the public; [*insert language providing an appropriate fee to cover costs of report*
33 *preparation*].

34 SECTION 5. *Establishment of a State Crime Laboratory.*

35 (a) There is hereby established within the [*state law enforcement agency*] one or more laboratories

1 to provide as may be necessary technical assistance to state and local law enforcement officers in the
2 various fields of scientific investigation in the aid of law enforcement.

3 (b) Persons employed in the laboratory shall not be empowered by reason of their employment
4 in the laboratory to make arrests or to serve or execute criminal process.

5 (c) The laboratory shall maintain and conduct criminal analysis services for the investigation
6 and prosecution of crime in such fields as ballistics, chemistry, handwriting comparison, metallurgy,
7 comparative micrography, lie detector and deception test operations, fingerprinting, toxicology, and
8 pathology.

9 (d) The laboratory shall not undertake investigation of criminal conduct except as ordered by the
10 director. A sheriff, municipal police chief, [*district attorney*], warden, or the [*attorney general*] may
11 request, and the governor may order, the director to authorize an investigation.

12 Upon request of the head of any state department that has law enforcement responsibilities,¹
13 the director may authorize the laboratory to provide scientific and technological services to the re-
14 questing department, provided that these services relate directly to, and are necessary for, the effective
15 performance of law enforcement responsibilities which by statute have been vested in the requesting
16 department.

17 (e) Upon request of the [*attorney general*], the services of the laboratory may be provided in
18 civil cases in which the state or any department, bureau, agency, or officer of the state is a party in
19 an official capacity.

20 [(f) The [*department*] may obtain services from the consolidated state laboratory.]²

21 (g) The director may decline to provide laboratory service as he deems appropriate except on
22 order of the governor.

23 (h) Fees may be charged for the services performed at the laboratory reasonable to each appli-
24 cable case referred for investigation to the laboratory.

25 (i) Whenever the director is informed by the submitting officer or agency that physical evidence
26 in the possession of the laboratory is no longer needed, he may, unless otherwise provided by law,
27 either destroy the evidence or retain it in the laboratory. Whenever the director receives information
28 from which it appears probable that such evidence is no longer needed, he may give written notice to
29 the submitting agency and the appropriate [*district attorney*], by registered mail, of his intention to
30 dispose of the evidence, and if no objection is received within [20] days after the notice was received,
31 he may order disposal of the evidence.

32 SECTION 6. *Establishment of Statewide Police Communication System.* The [*state law enforcement*

¹In order to clear up any ambiguity in the meaning of "law enforcement responsibility," states may wish to name each agency con- sidered to have such responsibility for purposes of this act or of this subsection.

²Virginia and a few other states provide centralized laboratory services to all state agencies.

1 agency] shall establish a police communication system and provide a capability to local law enforce-
2 ment agencies to communicate with one another on a statewide basis and to permit the [state law en-
3 forcement agency] to communicate with law enforcement agencies in other states. Any law enforcement
4 agency of the state or any state agency may be permitted to connect with and use any teletypewriter,
5 voice communication, data communication, message switching, or other communication system es-
6 tablished by the [state law enforcement agency] for statewide use. Such connection and use shall be
7 subject to and in accordance with rules established by the director to promote the purposes of this
8 subtitle, to insure the effective, economical, and efficient utilization of the entire system, including
9 maximum compatibility among components thereof, and to prevent interference with the law en-
10 forcement duties of the [state law enforcement agency]. Violation of such rules shall constitute suffi-
11 cient basis for withdrawal of permission to connect with and use such system.

12 SECTION 7. *Training Facilities.* The [state law enforcement agency] is authorized, within the limits
13 of funds available, to construct and operate facilities for the training of its police and civilian em-
14 ployees. It shall make its training facilities available to any law enforcement agency of the state to
15 the extent permitted by fiscal appropriation and the availability of such facilities and employees of
16 the [state law enforcement agency]. The extent of use of such facilities, the course of training, and the
17 qualifications of persons using such facilities shall be established by rule of the director.

18 SECTION 8. *Assigned State Police Force and Police Services Provided on a Contractual Basis.*

19 (a) Any rural jurisdiction may contract with the director for the purpose of receiving full-time
20 assigned state policemen and various other police services where they are otherwise not available. The
21 contract shall be for a period of not more than [] years and may be renewed. The contract shall pro-
22 vide for reimbursement by the local jurisdiction to the [state law enforcement agency] [state finance
23 agency] of [100] percent of salary [and other] costs attributable to the assigned state policemen.¹

24 (b) The director shall supervise and direct assigned state policemen. In addition to his state law
25 enforcement duties, each assigned state policeman providing services in a rural jurisdiction shall en-
26 force the public local laws and shall have the same powers as officers of the rural jurisdiction unless
27 specifically limited by the contract.

28 SECTION 9. *Management of the [State Law Enforcement Agency].*

29 (a) The affairs and operations of the [state law enforcement agency] shall be supervised by a
30 director. The director shall be appointed by the governor with the advice and consent of the senate.
31 [The person so appointed must be qualified on the basis of training, experience, and ability to dis-
32 charge the duties of the director.]

33 (b) The director shall have the power to make any rules necessary to promote the effective and

¹States may desire to include small municipalities not in a position to provide adequate police services on a round the clock basis, whether or not they are in metropolitan or rural areas.

1 efficient performance of the duties of the [agency] and to ensure the proper functioning of the
2 [agency] and its employees.

3 (c) In supervising and directing the affairs of the [agency] and in exercising the powers referred
4 to in the preceding subsection, the authority of the director shall include, but shall not be limited to,
5 the powers:

6 (1) to determine and establish the form of organization of the [agency];

7 (2) to create subordinate organizational subdivisions within the [agency]; to determine and
8 define the functions, duties, and responsibilities of each such organizational subdivision; and, from
9 time-to-time, to reclassify and redefine the functions, duties, and responsibilities of each such organi-
10 zational subdivision; and, from time to time, to reclassify and redefine the functions, duties, and re-
11 sponsibilities of any departmental subdivision, [whether created by the director or by law];

12 (3) to assign and reassign, allocate and reallocate, employees of the [agency] as in his judg-
13 ment may be necessary to best serve the needs of the [agency] and the public interest;

14 (4) to establish standards, qualifications, and prerequisites of character, training, education,
15 and experience for all employees;

16 (5) to determine and establish such ranks and grades and, in accordance with the merit
17 system, such civilian classifications as he may deem necessary and appropriate;

18 (6) to designate the authority, responsibility, and duties of such ranks, grades, and civilian
19 classifications and the order of succession to positions of command within the [agency].

20 (7) to appoint, promote, reduce in rank or civilian classification, reassign, reclassify, retire,
21 and discharge all employees in the manner prescribed by law;

22 (8) to regulate attendance, conduct, training, discipline, and procedure for all employees
23 of the [agency];

24 (9) to provide systems for periodic evaluation and improvement of the performance and
25 physical condition of employees, including in-service training programs and courses;

26 (10) to establish headquarters, barracks, posts, commands, and other regional facilities in
27 such localities as may be necessary for the efficient performance of the duties of the [agency] and to
28 discontinue such facilities when such need ceases to exist;

29 (11) to purchase or otherwise acquire such land, facilities, equipment, or services as are
30 deemed essential for the needs of the [agency] or its employees in carrying out their duties, in the
31 manner prescribed by law;

32 (12) to sell or dispose of land, facilities, or equipment as such become unnecessary or unfit
33 for further use, in the manner prescribed by law;

34 (13) to establish and modify systems for the reception, processing, and maintenance of
35 reports and records of occurrences or alleged occurrences of crime and motor vehicle accidents within

1 the state, and of the administration, management, and operations of the [agency]; and to establish pro-
2 cedures, not inconsistent with law, for the safekeeping, copying, and destruction of departmental rec-
3 ords; and

4 (14) to suspend, amend, rescind, abrogate, or cancel any rule adopted by him or by any
5 former director.

6 SECTION 10. *Annual Report.* On [January 1] of each year the director shall transmit to the gover-
7 nor and [general assembly] a report covering the work of the agency for the preceding 12 months.
8 The report shall contain any recommendations for changes in legislation which the director believes
9 necessary to improve the capability of state and local law enforcement agencies in the state or to other-
10 wise prevent and reduce crime in the state.

11 SECTION 11. *Separability.* [Insert separability clause.]

12 SECTION 12. *Effective Date.* [Insert effective date clause.]

10.102 UPGRADING POLICE PERSONNEL PRACTICES¹

High quality police selection and training is central to the effective performance of the police function. Programs to develop minimum police standards, education, and training requirements, and provisions for adequate financing of such programs can result in more consistent and uniform law enforcement operations. In addition, such programs have the advantage of promoting greater coordination within the administration of the law enforcement system.

In its 1971 report on *State-Local Relations in the Criminal Justice System*, the Advisory Commission on Intergovernmental Relations recommended the enactment of state legislation to provide for minimum standards for police selection and basic training, such standards to be applied by a police standards council comprising state, local, and public members. The Commission proposed further that states meet the full cost of local training programs meeting state standards, that local governments establish incentive pay plans to assist local policemen in furthering their professional training, and that public and private institutions of higher education be encouraged to offer programs for police training.

In its 1973 report on *A National Strategy to Reduce Crime*, the National Advisory Commission on Criminal Justice Standards and Goals proposed that educational requirements for police recruitment be increased and that recruitment should be directed toward the college educated, aiming toward a minimum standard of college graduation by 1983. Further the Commission called for a mandatory 400 hour basic training for police, and for administration of selection and training standards and programs. The Commission also called for increased utilization of women in police work and in the use of civilians for functions not requiring a professional police officer.

Care must be taken to ensure that pay differentials for the college trained police officer and pay incentives for undertaking additional professional training are specifically and formally related to successful job performance. Otherwise they can be attacked as representing socio-economic discrimination.

Presently, police standards councils are in operation in a majority of states, and mandatory selection and training standards are in effect in over half the states. The proposed legislation is directed toward the remaining such programs as well as toward the states where existing programs are based on vague or extremely broad statutory authority.

Section 1 of the act sets forth legislative findings and purpose; included among the findings is the essentiality of college level exposure to certain of the social sciences for satisfactory job performance. *Section 2* sets forth definitions.

Section 3 establishes a state police standards council. *Section 4* outlines the powers and duties of the council. *Section 5* specifies minimum conditions of police selection and training with a bracketed requirement for a bachelor's degree, and certain exceptions thereto. *Sections 6 and 7* make available grants for reimbursement to police officers as an incentive for participation in advanced training and educational programs. *Section 8* provides for the acceptance and administration of grants.

This draft act is patterned after the *Model Police Standards Act* drafted by the International Association of Chiefs of Police. Reference was also made to the *Michigan Law Enforcement Officers Training Council Statute* (Chapter 28.600) and the *Georgia Peace Officers Standards and Training Act of 1970*.

¹Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington, D.C.: U.S. Government Printing Office, August, 1971).

Suggested Legislation

[AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND ADMINISTRATION OF PERSONNEL STANDARDS FOR LAW ENFORCEMENT OFFICERS AND STATE FINANCIAL ASSISTANCE FOR SUCH PURPOSE]

(Be it enacted, etc.)

1 SECTION 1. *Findings and Policy.* The [legislature] finds that the administration of criminal justice is of statewide concern and that law enforcement is important to the health, safety, and welfare of the people of this state. Furthermore, the state has a responsibility to ensure effective law enforcement by establishing minimum selection, training, and educational requirements for local police forces, and also by encouraging advanced in-service training programs.

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6 The [legislature] further finds that minimum levels of education and training are in the public interest and that education and training in sociology, criminology, psychology, government, and other social sciences at the college level is necessary to satisfactory performance of police duties in an increasingly complex urban society.

7
8
9
10 SECTION 2. *Definitions.*

11 (a) "Council" means the police standards council established by Section 3 of this act.

12 (b) "Police officer" means any [appointed] police employee who is responsible for the prevention and detection of crime, and the enforcement of the criminal, traffic, or highway laws of this state.

13 (c) "Political subdivision" means [specify local units of general government].

14
15 SECTION 3. *Police Standards Council.*

16 (a) There is established a police standards council, hereinafter called "the council," in the [appropriate state law enforcement agency]. The council shall be composed of [15] members, including:
17 [] elected officials of political subdivisions; [] chief administrative officers of local police forces;
18 [] representatives of institutions of higher education; [] public members; the director of the
19 [appropriate state law enforcement agency]; the director of the [state law enforcement planning
20 agency]; and the attorney general.
21

22 (b) Except for the attorney general, the [director] of the [appropriate state law enforcement
23 agency], and the [director] of the [state law enforcement planning agency] who shall serve during
24 their continuance in those offices, members of the council shall be appointed by the governor for
25 terms of [four] years, provided that no member shall serve beyond the time when he holds the office
26 or employment by reason of which he was initially eligible for appointment. Any vacancy on the
27 council shall be filled in the same manner as the original appointment, but for the unexpired term.

28 (c) The governor shall designate the chairman of the council from among the members of the

1 council.

2 (d) Notwithstanding any other provision of state law, local ordinance, or charter to the contrary,
3 membership on the council shall not disqualify a member from holding any other public office or
4 employment, or cause the forfeiture thereof.

5 (e) Members of the council shall serve without compensation, but shall be entitled to receive re-
6 imbursement for any actual expenses incurred as a necessary incident to such service.¹

7 (f) The council shall hold no less than [four] regular meetings a year. Subject to the requirements
8 of this subsection, the chairman shall fix the times and places of meetings, either on his own motion
9 or upon written request of any [five] members of the council.

10 (g) The council shall report annually to the governor and [legislature] on the nature and scope
11 of its activities, accomplishments, and goals; the council may make such other reports as it deems
12 desirable.

13 SECTION 4. *Powers and Duties.* In addition to powers conferred upon the council elsewhere in
14 this act, the council shall have power to:

15 (a) promulgate rules and regulations for the administration of this act;

16 (b) require the submission of reports and information by police departments within this state;

17 (c) establish a minimum selection and training standards for admission to employment as a police
18 officer which may take into account different requirements for urban and rural areas, full-time and
19 part-time employment, and specialized police personnel;

20 (d) establish minimum curriculum requirements for preparatory, in-service, and advanced courses
21 and programs for schools operated by or for the state or any political subdivision for the specific
22 purpose of training police recruits and police officers;

23 (e) consult and cooperate with counties, municipalities, agencies of this state, other governmental
24 agencies, and with universities, colleges, junior colleges, and community colleges, and other insti-
25 tutions or organizations concerning the development of police training schools, programs, and
26 courses of instruction;

27 (f) approve institutions and facilities to be used by or for the state or any political subdivision
28 thereof for the specific purpose of training police officers and police recruits;

29 (g) conduct and encourage studies of any aspect of police administration;

30 (h) conduct and stimulate research by public and private agencies designed to improve police
31 administration and law enforcement;

32 (i) make recommendations concerning any matter within its purview pursuant to this act;

33 (j) employ a director and such other personnel as may be necessary in the performance of its

¹Members of the council who are not full-time public employees should be reimbursed on a *per diem* basis in accordance with regular state practice for compensation.

1 functions;

2 (k) make such evaluations as may be necessary to determine if governmental units are complying
3 with the provisions of this act;

4 (l) adopt and amend bylaws, consistent with law, for its internal management and control; and

5 (m) enter into contracts or do such things as may be necessary and incidental to the administra-
6 tion of this act.

7 SECTION 5. *Selection and Training Requirements.*

8 (a) At the earliest practicable time, the council shall provide, by regulation, that no person shall
9 be appointed as a police officer, except on a temporary or probationary basis, unless such person has
10 satisfactorily completed a preparatory program of police training at a school approved by the council
11 [and is the holder of a bachelor's degree from an accredited institution or equivalent as determined
12 by the council]. A police officer who lacks the education and training qualifications required by the
13 council shall not have his temporary or probationary employment extended beyond one year by re-
14 newal of appointment or otherwise.

15 (b) In addition to the requirements of subsection (a) of this section, the council, by rules and
16 regulations, shall fix other qualifications as it deems necessary.

17 (c) The council shall issue a certificate evidencing satisfaction of the requirements of subsections
18 (a) and (b) of this section to any applicant who presents such evidence as may be required by its rules
19 and regulations of satisfactory completion of a program or course of instruction in this or another
20 state conforming to the content and quality required by the council for approved police education
21 and training.

22 (d) Nothing herein shall be construed to preclude any employing agency from establishing quali-
23 fications and standards for hiring, training, compensating, or promoting police officers that exceed
24 those set by the council.

25 (e) Police officers already serving under full-time permanent appointment on the effective date of
26 this act shall not be required to meet any requirement of subsections (b) and (c) of this section as a
27 a condition of tenure or continued employment; nor shall failure of any such police officer to fulfill
28 such requirements make him ineligible for any promotional examination for which he is otherwise
29 eligible. Law enforcement officers employed prior to the enactment of this act may continue their
30 employment and participate in training programs on a voluntary or assigned basis, but failure to meet
31 the standards shall not be grounds for their dismissal or termination of employment.

32 SECTION 6. *Police Training Programs: Grants Under the Supervision of Council and the State.*

33 (a) For purposes of this act, the council may cooperate with Federal, state, and local police agen-
34 cies in establishing and conducting instruction and training programs for police officers of this state,
35 its counties, and its municipalities.

1 (b) The council shall establish and maintain police training programs through such agencies and
2 institutions as the council may deem appropriate to carry out the intent of this act.

3 (c) The council shall reimburse each state agency and political subdivision that adheres to the
4 selection and training standards established by the council for the [salary and the] allowable tuition,
5 living, and travel expenses incurred by the officers in attendance at approved training programs.

6 SECTION 7. *Police Career Incentive Program.* The council shall develop guidelines for use by
7 local governments in establishing a career incentive pay program offering base salary increases to
8 regular full-time members of the county and municipal police departments in the state as a reward for
9 furthering their education in the field of police work. The council shall determine the manner in
10 which police career incentive salary increases shall be predicated and granted, including the determina-
11 tion of eligibility of participating counties and municipalities for full [100 percent] reimbursement by
12 the state of the costs of such payments upon certification to the council that all credits and degrees
13 have been earned in an educational institution duly accredited by the state.

14 SECTION 8. *Acceptance and Administration of Grants.*

15 (a) In addition to funds appropriated by the [legislature], the council may accept for any of its
16 purposes and functions any grants of money and real and personal property from any governmental
17 unit or public agency, or from any institution, person, firm, or corporation, and may receive, utilize,
18 and dispose of the same. Any moneys received by the council pursuant to this subsection shall be
19 deposited in the state treasury to the account of the council.

20 (b) The council, by rules and regulations, shall provide for the administration of the grant pro-
21 grams authorized by the act. In promulgating such rules, the council shall promote the most efficient
22 utilization of existing facilities and programs for the purposes of avoiding duplication.

23 (c) The council may provide grants as a reimbursement for actual expenses incurred by the state
24 or political subdivisions thereof for the provision of training programs to officers from other juris-
25 ddictions within the state as herein authorized.

26 SECTION 9. *Separability.* [Insert separability clause.]

27 SECTION 10. *Effective Date.* [Insert effective date.]

10.103 MUNICIPAL-COUNTY-METROPOLITAN RELATIONSHIPS IN LAW ENFORCEMENT¹

The nation's metropolitan areas are the site of much of the country's criminal activity. But the typical metropolitan area is served by dozens or scores of separate police forces. Usually, in addition to the police department of the central city, each larger suburban municipality or township maintains a separate police force. In addition, some or all of the counties in the metropolitan area maintain a countywide police force. This type of fragmented police protection necessitates: (a) carefully developed cooperative arrangements among neighboring police forces; (b) a minimum standard of police protection for metropolitan residents; and (c) legislative authorization for incentives for cooperation among, and consolidation of, smaller police forces.

In rural areas and in counties located away from metropolitan centers, relationships and incentives need to be developed so as to assure adequate police protection for rural areas, provide effective relationships between municipal police forces and sheriff's offices, encourage the assumption by the county of police protection for residents of small municipalities, and provide arrangements whereby county and city residents are taxed only for the law enforcement services they receive. The cost of sheriff's patrols that cover only unincorporated territory should be borne entirely by the residents of such territory.

In its 1971 report on *State-Local Relations in the Criminal Justice System*, the Advisory Commission on Intergovernmental Relations recommended the enactment of state legislation: (a) authorizing interlocal cooperation in law enforcement; (b) empowering overlying county governments to assume the police function in any metropolitan locality failing to provide full-time patrol and preliminary investigative services to its residents; (c) requiring the consolidation or phasing out through contractual or other arrangements of police forces that do not provide adequate police services directly or through interlocal agreement; (d) empowering counties to perform specialized and supportive police services including communications, records, and crime laboratory functions; (e) authorizing, in multicounty metropolitan areas, the formation of areawide police instrumentalities, such as criminal justice planning agencies and councils of government, to render specialized police services; (f) authorizing the creation of specialized police task forces under state or cooperative local direction in order to deal with extralocal and organized crime; (g) giving local police forces carefully circumscribed extraterritorial powers relating to "close pursuit;" (h) requiring the cost of county police services rendered only in unincorporated areas to be borne by such areas; (i) providing incentive grants to encourage consolidation of subcounty police forces into a single county police force; and (j) requiring county law enforcement personnel to be compensated solely on a salary basis under civil service tenure.

The following suggested legislation is designed to carry out the foregoing proposals for change. *Section 1* sets forth the several purposes of the act.

Section 2 sets forth definitions used.

Section 3 authorizes and prescribes limitations upon the exercise of extraterritorial police powers, including pursuit across county and municipal lines and the guarantee of tort liability and insurance protection for the personnel involved. Such powers are essential if a policeman is to discharge his duties and discourage criminal offenders from using jurisdictional lines to hinder their apprehension. Moreover, the grant of extraterritorial power must be accompanied by clear state or local responsibility for tort liability protection and employee insurance benefits if it is to be effective.

Section 4 specifies a minimum level of police services. Eighty percent of the 25,000 police agencies in the United States have fewer than ten full-time officers, yet they account for less than 10 percent of the total police officers in the country. The lack of adequate basic police service in an urban jurisdiction creates a harmful gap in the capability of metropolitan police systems. The residents of the affected community are deprived of easy access to front line police services and quite often neighboring local or state law enforcement agencies are forced to supply basic services on an *ad hoc* basis. The inability or unwillingness of a

¹Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington, D.C.: Government Printing Office, August, 1971).

local government in a metropolitan area to provide basic police services suggests that it may not be a viable unit of local government — if it incorporates, it should be willing and able to provide basic police services to its residents either directly or through intergovernmental agreement. The draft legislation places a floor on the level of police services a metropolitan jurisdiction must provide. As such it builds on earlier Commission recommendations geared to ensuring the viability of local governments. Optional language is provided to apply the same or a different standard to rural jurisdictions. Subsection (a) provides that the director or the appropriate state law enforcement agency or state police standards council shall set minimum standards for the provision of basic police services in metropolitan areas. Subsection (b) prescribes alternate ways in which local governments may meet minimum standards. Subsection (c) mandates counties to provide basic police protection in localities failing to provide basic services and makes these counties eligible for additional state aid when they do so. Subsection (d) specifies the conditions under which local governments may resume the provision of basic police services.

Section 5 provides state financial support through grants to encourage the consolidation of police forces.

Section 6 deals with independent county police forces and modernized sheriff's departments. Effective metropolitan police protection depends, in large measure, on a capable countywide law enforcement agency. To that end, many metropolitan counties have either vested full-time county police responsibilities in an independent county police force or a revitalized sheriff's department. Over 50 counties, most of them in large metropolitan areas, have independent county police forces responsible to the county executive or county board of commissioners. Many other metropolitan counties have bolstered the police responsibilities of the sheriff's department and downgraded its more traditional court and jail duties. By both sorts of actions, metropolitan counties have modernized their law enforcement agencies.

The first alternative presented, *Section 6*, provides for independent county police forces, authorizing their creation in metropolitan counties while, at the same time, placing the sheriff in a subordinate police role to the new force. It sets forth the powers and duties of the independent police agency and the responsibilities of the metropolitan police chief. Finally, it provides that department personnel shall be compensated solely by salary and be covered by the county civil service personnel regulations.

Section 6, the second alternative, provides for election of the sheriff for a four year term with no limits on succession. It sets forth the powers of his department, his own management and appointment powers, and provides for a transfer of the agency's non-police duties to appropriate state or local court and correctional agencies. Like the independent police force, it is provided that county law enforcement personnel shall be compensated solely by salary and covered under county civil service regulations.

Section 7 provides for special police task forces in metropolitan areas. There are nearly 150 metropolitan areas in the nation that are composed of more than one county or that are situated in more than one state. In such areas, there is no single local police force that has police jurisdiction over the entire area. In nearly half the states, state law enforcement agencies are primarily concerned with highway patrol and, therefore, do not supply areawide police coverage to such areas.

Multicounty and interstate metropolitan areas are among the most populous portions of the country. Organized crime, unfortunately, flourishes in some of these locations. All these areas experience problems with apprehending mobile criminals. The creation of special purpose police forces, under either interlocal or state direction, to combat extralocal and organized crime would close a troublesome gap in police protection for these locations. All these areas experience problems with apprehending mobile criminals. The creation of special purpose police forces, under either interlocal or state direction, to combat extralocal and organized crime would close a troublesome gap in police protection for these locations. Being special purpose units, an overcentralization of basic police services within these jurisdictions would be prevented. The Kansas City and St. Louis metropolitan areas have created special purpose multicounty police details to operate on an *ad hoc* basis to solve crimes of an areawide dimension. Atlanta's METROPOL operates an areawide fugitive squad to keep a continuing surveillance on known criminals in that area. All of these operations could be considered as prototypes of a multicounty or interstate special police task force.

Subsection (a) of *Section 7* provides for the creation of police task forces through interlocal action; creation through state action is provided in subsection (b). Powers and duties and limitations are set forth in subsections (c) and (d).

Section 8 sets forth procedures for judicial review of administrative rules and orders issued pursuant to the act.

Sections 9 and 10 provide for separability and effective date clauses, respectively.

The draft legislation has drawn on the following sources: (1) the model uniform statute on intrastate pursuit and interstate agreements contained in the 1966 edition of the *Handbook on Interstate Crime Control* prepared by the Council of State Governments; (2) Chapter 966, *Laws of 1970 of the State of New York*, authorizing statewide arrest powers; (3) a 1972 Missouri statute requiring 24 hour police service in certain local jurisdictions; (4) Massachusetts Chapter 878, *1969 Laws*; (5) a 1973 Kansas statute giving qualifications and mandatory training for sheriffs, and (6) the Nashville-Davidson County, Tennessee, city-county charter.

Suggested Legislation

[AN ACT PROVIDING FOR MUNICIPAL-COUNTY-METROPOLITAN
RELATIONSHIPS IN LAW ENFORCEMENT]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* It is the intent of this act:

2 (a) to grant extraterritorial police powers to police officers to perform the lawful exercise of their
3 police duties anywhere in the state including provisions for immunity from tort liability and for insur-
4 ance benefits of the police officers of county and municipal corporations engaged in the lawful exer-
5 cise of extraterritorial police activity;

6 (b) to assure that minimum basic police services are provided in all metropolitan local jurisdic-
7 tions and to require that such services be provided by either:

8 (1) the local police department itself; or

9 (2) the local police force through an appropriate intergovernmental agreement with other
10 local or state law enforcement agencies; or

11 (3) county assumption of such services;

12 (c) to provide state financial support through grants for the consolidation of small police forces;

13 [Alternative 1.]

14 [(d) to authorize metropolitan counties to vest primary law enforcement responsibilities in an
15 independent county police under the control of the [county governing body] [county chief executive]
16 and to insure that all county law enforcement personnel are covered under a county [civil service] sys-
17 tem, compensated solely by salary, and provided with adequate retirement benefits;]

18 [OR]

19 [Alternative 2.]

20 [(d) to authorize metropolitan counties to vest primary law enforcement responsibilities in a mod-
21 ernized sheriff's department, and to insure that county law enforcement personnel are covered under
22 a county [civil service] system, compensated solely by salary, and provided with adequate retirement
23 benefits;]

24 (e) to authorize state and local law enforcement agencies to operate special police task forces
25 throughout multicounty and interstate metropolitan areas for the more effective detection, apprehen-
26 sion, and control of persons engaged in organized and extralocal crime and to prevent other unlawful
27 actions which may be beyond the control of a single jurisdiction; and

28 (f) to set forth a procedure for judicial review of orders issued under this act.

1 SECTION 2. *Definitions.* As used in this act:

2 (a) "Areawide agency" means any duly organized interlocal instrumentality having jurisdiction
3 over a whole multicounty or interstate metropolitan area and which is authorized to perform police
4 functions.¹

5 (b) "Basic police services" means, at a minimum, continuous, 24 hour, police patrol and pre-
6 liminary investigative service [by a [two man] police patrol with appropriate supporting police per-
7 sonnel].

8 (c) "Board" means the county governing board.

9 (d) "Chief" means the administrative head of the metropolitan county police department.

10 (e) "Close pursuit" means pursuit of a person who has committed a felony or whose pursuer
11 reasonably believes he has committed a felony in this state, or who has committed a misdemeanor in
12 the presence of the arresting officer, or for whom such officer holds a warrant of arrest for a criminal
13 offense.

14 (f) "Council" means the state council on police standards.

15 (g) "Director" means the head of the [*state law enforcement agency*].

16 (h) "Executive" means the chief executive of the metropolitan county government.

17 (i) "Extralocal crime" means any felonious act which involves the crossing of a municipal or
18 county boundary.

19 (j) "Metropolitan county" means any county located in a metropolitan area as designated by
20 the United States Office of Management and Budget.

21 (k) "Metropolitan county police department" means an independent county police department
22 created pursuant to Section 6 of this act.

23 (l) "Metropolitan local jurisdiction" means any unit of general local government located in an
24 area designated by the United States Office of Management and Budget as a Standard Metropolitan
25 Statistical Area.

26 (m) "Minimum standards" means standards prescribed by the [director] [council] concerning the
27 adequacy of basic police services.

28 (n) "Multicounty or interstate metropolitan area" means any Standard Metropolitan Statistical
29 Area as designated by the United States Office of Management and Budget, being composed of more
30 than one county or situated in more than one state.

31 (o) "Organized crime" means any felonious act committed by a person who is a member of a
32 criminal syndicate.

33 (p) "Police officer" means an employee of a police department of any political subdivision of

¹ACIR recommends that, wherever possible, a single areawide agency should be used for all governmental functions undertaken at that level. See suggested legislative options concerning areawide units.

1 the state who is responsible for crime prevention, crime detection, or the enforcement of the criminal,
2 traffic, or highway laws of this state.

3 (q) "Task force" means a special purpose multicounty or interstate police force under the di-
4 rection of either the director of the [*appropriate state law enforcement agency*] or the local governments
5 party to the multicounty or interstate agreement setting up such a special purpose police force.

6 SECTION 3. *Intrastate Extraterritorial Police Powers.*

7 (a) *Pursuit Across County and Municipal Lines.*

8 (1) Any police officer in "close pursuit" may arrest the person pursued.

9 (2) If an arrest is made in obedience to a warrant, the disposition of the prisoner shall be as
10 in other cases of arrest under a warrant. If the arrest is without warrant, the prisoner shall without
11 unnecessary delay be taken before the appropriate authority in the jurisdiction wherein the arrest was
12 made for a hearing to determine the lawfulness of the arrest. The court shall admit such person to bail,
13 if the offense is bailable, by taking security by way of recognizance for the appearance of such pris-
14 oner before the court having jurisdiction for such criminal offense.

15 (3) Any officer engaged in close pursuit shall be in uniform, and whenever feasible he shall
16 notify the law enforcement authorities of other appropriate jurisdictions of such pursuit. If close pur-
17 suit takes place at speeds in excess of the legal speed limit, pursuit shall be in a marked police vehicle
18 with emergency lights and siren in operation.

19 (b) *Immunity from Tort Liability and Insurance Benefits Connected With the Exercise of Police*
20 *Duties Beyond Territorial Limits.*

21 (1) Any police officer, when acting under lawful authority beyond the territorial limits of
22 the employing county or municipal corporation, shall have all the immunities for tort liabilities and
23 all the pensions, relief, disability, workmen's compensation, and other benefits enjoyed by him while
24 performing his duties within the territorial limits of the employing county or municipal corporation.

25 (2) Nothing in this act shall be deemed to:

26 (i) entitle the extension of any benefits to an officer who at the time of death, injury,
27 disability, or illness is acting for compensation on behalf of anyone other than the employing county
28 or municipal corporation; or

29 (ii) require the extension of any benefits to a police officer whose action gives rise to
30 death, injury, disability, or illness, if such action, at the time it occurs, is expressly prohibited by
31 charter, ordinance, rule, or regulation of the employing county or municipal corporation.

32 SECTION 4. *Minimum Police Services.*

33 (a) *Minimum Standards for Basic Police Services.*

34 (1) The [director] [council] shall promulgate, and from time-to-time may amend, reasonable
35 minimum standards for the provision of basic police services by [metropolitan] local jurisdictions.

1 (2) In drafting such standards, the [director] [council] shall give due consideration to the views
2 of representatives of local governments [in metropolitan counties] and to such factors as variations in
3 density of population settlement, incidence of crime in particular areas of the state, and the cost of
4 increasing quality and scope of services and equipment.

5 (3) No later than [six] months after the effective date of this act, the [director] [council] shall
6 give public notice and within [90] days shall hold a public hearing on the issuance of such standards.

7 (4) Minimum standards shall take effect on a date prescribed by the [director] [council] which
8 shall be not less than [three] nor more than [12] months after the standards are promulgated.

9 (b) *Local Provision of Minimum Basic Police Services.* Commencing on the effective date of the
10 minimum standards, all [metropolitan] local jurisdictions shall meet or exceed the minimum standards
11 for basic police services either:

12 (1) directly by maintaining a local police force; or

13 (2) by supplementing or transferring its police services through agreements with other
14 municipal, county, or state law enforcement agencies; or

15 (3) by a combination of (1) and (2).

16 (c) *County Assumption of Basic Police Services.* [One year] after the effective date of the mini-
17 mum standards, and annually thereafter, the [director] [council] shall determine whether each metropoli-
18 tan local jurisdiction in the state is in compliance with the minimum standards and shall notify the
19 governing body of each metropolitan local jurisdiction of his finding with respect to that jurisdiction.

20 (1) Upon receipt of the [director's] [council's] finding that it is not in compliance with the mini-
21 mum standards, the metropolitan local jurisdiction shall have the [90] days to bring itself into compli-
22 ance as provided in subsection (b) above. If, after the [90] day period, the [director] [council] finds that the
23 metropolitan local jurisdiction still is not in compliance with the minimum standards, [he] [it] shall notify
24 the governing body of the county in which the metropolitan local jurisdiction is located.

25 (2) Within [90] days after receipt of the [director's] [council's] finding that a metropolitan local
26 jurisdiction is not providing minimum police services, the county shall provide such basic police serv-
27 ices for the jurisdiction as may be needed to bring it into compliance.¹

28 (3) The county shall charge the cost of providing the basic police services to the affected
29 jurisdiction and shall be eligible for [additional] annual state aid equal to [5] percent of its police expendi-
30 tures made on such mandated services for the fiscal year preceding the assumption of such services,
31 during each of the ensuing [five] fiscal years.²

¹As an alternative to requiring county assumption of local police services, some states may wish to authorize a state commission on local boundary adjustments to consider the failure of a metropolitan local jurisdiction to provide basic minimum police services as evidence that the jurisdiction should no longer exist as a separate government entity, and order its consolidation with an adjacent municipality where appropriate.

²The state aid provision should be included by states which provide grants-in-aid to local governments.

1 (d) *Local Resumption of Services.* No sooner than [one] year after a county, pursuant to Section
2 5 of this act, has commenced providing basic police services as may be needed to bring the metro-
3 politan local jurisdiction into compliance with the minimum standards, the local jurisdiction may re-
4 sume the provision of basic police services, if the [director] [council] finds that the jurisdiction has made
5 adequate provision for furnishing such services.

6 SECTION 5. *State Financial Incentives to Encourage Consolidation of Local Police Departments*
7 *Into a Single County Police Force.*

8 (a) In addition to its other powers, the governing body of any local jurisdiction [under 25,000]
9 population] other than a county by [ordinance] [resolution], may abolish its police department and vest
10 its law enforcement powers and duties in the government of the county in which it is located.

11 (b) On the effective date of the dissolution of the police department, any pending criminal prose-
12 cutions of the police department of the local government shall be assumed by the police force of the
13 county, and all employees of the local government police department shall be eligible for transfer to
14 the county police department.

15 (c) The county sheriff, his deputies, and other police officers of the county police force shall
16 have all the powers, duties, immunities, and privileges conferred by law upon law enforcement per-
17 sonnel of a rural jurisdiction which transfers its police powers and duties to a county.¹

18 (d) The [county governing body] shall determine as nearly as possible the actual cost of provid-
19 ing basic police services to the non-county local jurisdiction that abolishes its police department and
20 vests its law enforcement powers and duties in a county pursuant to this section. This cost shall be
21 paid to the county by the local jurisdiction.

22 (e) A local jurisdiction that vests its law enforcement powers and duties in a county shall receive
23 reimbursement from the state [for a period of five years] for [25] percent of the amount it pays a county
24 for police services pursuant to this section. The reimbursement shall be made [quarterly] by the
25 [state treasurer] from funds appropriated for that purpose upon receipt by the [state treasurer] of
26 a certification by the county and by the affected rural jurisdiction of the cost of police services pro-
27 vided for it by the county.

28 (f) Whenever a local jurisdiction repeals the [ordinance] [resolution] abolishing its police depart-
29 ment and vesting its law enforcement powers and duties in a county, it shall cease to be eligible for
30 the reimbursement provided for in Section 5 (e).

31 [Alternative 1.]

32 [SECTION 6. *Establishment of Independent County Police Forces.*

33 (a) *Authorization.*

¹This may require a constitutional amendment in some states.

1 (1) The governing body of every metropolitan county in this state may, by ordinance, es-
2 tablish and maintain a metropolitan county police department under the direction of the [board] [execu-
3 tive] and may provide for the appointment of county police, prescribe their duties, and fix their com-
4 pensation. The metropolitan county police department shall consist of a chief, and such other officers
5 and employees of such ranks and grades as may be established by ordinance. The department shall in-
6 clude such bureaus, divisions, and units as may be provided by ordinance or by regulations of the
7 chief consistent therewith.

8 (2) Where an independent county police force is created pursuant to this section, the
9 sheriff shall not be the principal peace officer within the jurisdiction of the metropolitan county police
10 department. However, he may retain any law enforcement powers that are necessary for him to serve
11 as the chief enforcement officer of the [*appropriate general trial court*] in the county in which he is lo-
12 cated. He may also give law enforcement assistance to the metropolitan county police department
13 when so requested by the chief.

14 (b) *Police Powers of County Police Department.* The metropolitan county police department
15 shall be responsible for the preservation of the public peace, prevention and detection of crime, ap-
16 prehension of criminals, protection of personal and property rights, and enforcement of state laws
17 and local ordinances throughout its jurisdiction. The department shall be vested with all the power and
18 authority belonging to the office of constable and sheriff by common law and other powers and
19 duties conferred on them by law.

20 (c) *Chief of County Police Department: Powers and Duties.* The metropolitan county police
21 department shall be under the general management and control of a chief. He shall have, but not be
22 limited to, the following powers:

23 (1) establishment of zones and precincts for police work;

24 (2) assignments of department members to respective posts, shifts, and details, consistent
25 with their rank;

26 (3) promulgation of regulations [with the approval of the [executive] [board]] concerning the
27 operation of the department, the conduct of the officers and employees thereof, their uniforms, arms,
28 and their training; and

29 (4) other powers [as may be delegated by the [board] [executive]] that may be necessary for
30 the efficient operation of the department.

31 [Disobedience to the lawful commands of the chief or violations of the rules and regulations
32 governing the operation of the metropolitan county police department shall be grounds for re-
33 moval or other disciplinary action as provided for by county civil service regulations.]

34 (d) *Chief of County Police Department: Selection and Personnel Powers.* The chief shall be ap-
35 pointed by the [board] [executive with approval of the board], and he shall serve at the pleasure of the

1 [board] [executive]. The chief shall appoint all police personnel who report directly to him from the
2 ranks of any qualified applicants in accordance with the county civil service procedures. All other
3 county law enforcement personnel shall be selected pursuant to county [civil service] laws.

4 (e) *County Law Enforcement Personnel: Civil Service Tenure and Retirement Provisions.* All
5 county law enforcement personnel, excepting the chief, in metropolitan counties shall be covered by
6 the applicable rules and regulations of county [civil service] laws. They shall be compensated solely by
7 salary and be under a county retirement plan.]

8 [OR]

9 [Alternative 2.]

10 [SECTION 6. *Modernized Sheriff's Department.*¹

11 (a) *Office of the Sheriff.* The sheriff shall be the principal conservator of the peace within all
12 [metropolitan] counties of the state. He shall be elected for a term of [four] years and may be re-elected.

13 (b) *Powers and Duties.* The sheriff's department shall be responsible for the preservation of the
14 public peace, prevention and detection of crime, apprehension of criminals, protection of personal
15 and property rights, and enforcement of state laws and local ordinances throughout its jurisdic-
16 tions. The sheriff's department shall be vested with all power and authority belonging to the office of
17 constable and sheriff by common law and other powers and duties prescribed by law. The sheriff's
18 department shall be under the general management and control of the sheriff. He shall have, but not
19 be limited to, the following powers:

20 (1) establishment of zones and precincts for police work;

21 (2) assignment of department members to respective posts, shifts, and details, consistent
22 with their rank;

23 (3) promulgation of regulations [with the approval of the [executive] [board]] concerning the
24 operation of the department, the conduct of the officers and employees thereof, their uniforms, arms,
25 and for their training; and

26 (4) other powers [as may be delegated by the [board] [executive]] that may be necessary for
27 the efficient operation of the department.

28 [Disobedience to the lawful commands of the sheriff or violations of the rules and regulations
29 governing the operation of the sheriff's department shall be grounds for removal or other disciplinary
30 action as provided for by county civil service regulations.]

31 (c) *Personnel Powers.* The sheriff shall appoint all police personnel who report directly to him
32 from the ranks of any qualified applicants in accordance with the county [civil service] procedures. All
33 other sheriff's department personnel shall be selected pursuant to county [civil service] laws.

¹This may require a constitutional amendment in some states.

1 (d) *Transfer of Court and Correctional Duties.*

2 (1) After [insert appropriate date], the sheriff and his deputies shall relinquish their respon-
3 sibilities as principal law enforcement officers of any trial court of general or limited jurisdiction to
4 court personnel designated by the chief justice.¹ Such transferred duties shall include but not be
5 limited to service of court orders and service as bailiff of the court.

6 (2) After [insert appropriate date], the sheriff's responsibilities for the county jail shall be
7 assumed by [insert name of appropriate local correctional agency].

8 (e) *County Law Enforcement Personnel.* All sheriff's department personnel, excepting the
9 sheriff, shall be covered by the applicable rules and regulations of county [civil service] laws. They shall
10 be compensated solely by salary and be under a county retirement plan.]

11 SECTION 7. *Special Police Task Forces in Metropolitan Areas.*

12 (a) *Interlocal Creation of Special Police Task Forces.*

13 (1) Local jurisdictions in multicounty and interstate metropolitan areas may enter into inter-
14 local agreements with other local governments in this and adjacent states to create special police task
15 forces composed of police officers from party jurisdictions in any number that may be designated by
16 the parties to the agreement as may be necessary to perform task force services throughout the
17 jurisdictions of the affected parties.

18 (2) The governing bodies of the participating local governments may designate an ap-
19 propriate existing agency to perform task force operations or create a new areawide agency to per-
20 form task force operations where there is no suitable existing agency in existence willing or able to
21 assume this assignment.

22 (b) *State Creation of Special Police Task Forces.* Where the authority granted under subsection
23 (a) of this section is not utilized by local jurisdictions and where in the opinion of the governor there
24 is a clear and urgent need for such task forces, he may create or enter into interstate agreements to
25 create a special police task force that will serve on a continuing basis in multicounty or interstate
26 metropolitan areas. In the case of multicounty, intrastate metropolitan areas, the director shall ap-
27 point a commander for this task force to serve at his pleasure. In the case of interstate agreements,
28 the respective state directors shall appoint a single commander to head the task force for a [two]
29 year term.

30 (c) *Powers and Duties.* Police task forces shall be limited to the following powers:

31 (1) to conduct intelligence and undercover operations for the detection and apprehension of
32 persons engaged in, or otherwise associated with, organized crime;

¹Title VIII of the Advisory Commission on Interlocal Relation's *Omnibus Judicial Act* provides for state assumption of the judicial function. Some states may wish to have sheriff's department personnel transferred to the state judicial department for the performance of the court's law enforcement duties.

1 (2) to detail police patrol and investigative teams throughout the jurisdiction of the task
2 force to control, detect, and apprehend persons engaged in extralocal and organized crime; and

3 (3) to assist, upon request or at the direction of the governor, local police departments in
4 emergency situations.

5 An officer of the task force shall have legal authority to detain, search, and arrest any person on
6 probable cause that he has been involved in organized crime or has committed a crime that involved
7 the crossing of municipal, county, or state boundaries. A task force officer shall also have the power
8 to arrest any person committing a felony in his presence.

9 (d) *Limitations.*

10 (1) An officer, when serving on the task force, shall not engage in any police activities other
11 than those enumerated in subsection (c) above.

12 (2) When possible, local police departments shall honor requests for assistance in task
13 force operations under subsection (c) of this section. Any local assistance so rendered shall be reim-
14 bursed by the task force.

15 (e) *Interstate Task Force Agreements.* Any interstate agreement agreed to under subsections
16 (a) and (b) of this section shall at least specify:

17 (1) provisions for apportionment of personnel and fiscal responsibilities in the maintenance
18 of an interstate task force; and

19 (2) provisions for withdrawal from the interstate agreement.

20 SECTION 8. *Judicial Review.* Any orders issued pursuant to this act by the [director] [council] [],
21 other than decisions regarding grants to local jurisdictions pursuant to Section 5 above, shall be re-
22 viewable pursuant to [cite state administrative procedures act] by a proceeding in the [court of ap-
23 propriate jurisdiction].

24 SECTION 9. *Separability.* [Insert separability clause.]

25 SECTION 10. *Effective Date.* [Insert effective date.]

10.104 GOVERNMENTAL TORT LIABILITY FOR LAW ENFORCEMENT ACTIONS¹

Over the past several years the doctrine of governmental immunity for torts committed by state and local police officers has been undergoing a steady erosion. Courts and legislatures have taken the position that governmental entities should compensate persons injured as a result of wrongful acts committed by their officers, employees, and agents in the performance of governmental functions. It has also been recognized that, although the officer, employee, or agent may be personally liable to the person injured, any judgment obtained by the injured party is likely to be uncollectible.

Over half the states have adopted legislation completely or partially waiving the immunity of the state and its units of local government. Several have waived immunity for the state only, while others have eliminated immunity for local governments only. But many of these states have legislation specifying that immunity still applies to claims arising from cases of assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, or slander, and for claims arising from the performance of — or failure to perform — a discretionary act, whether or not the discretion was abused. Still others have legislation that waives immunity only for injuries caused by motor vehicles or by negligent — as opposed to intentional or willful — conduct.

Thus, law enforcement officers in many cases remain largely unprotected. The actions for which they later may be held personally liable usually are intentional, based on instant judgments made in times of stress, and are likely to involve the types of torts for which governmental immunity has not been waived in many jurisdictions. Effective law enforcement requires police officers who are free to perform their duties without the fear that the financial security of their families will be jeopardized.

There is a need for comprehensive tort liability legislation to protect the law enforcement officer against liability for his honest errors in judgment and to enable the citizen to collect for damages to person and property that may arise from the use of police discretionary powers. Police tort liability legislation should also provide a way to compensate the citizen for damages caused by an errant police officer who willfully and maliciously abuses his power, while making the officer personally liable for the consequences of his actions. This sort of legislation will help to raise public confidence in the law enforcement process and, in the long run, should generate greater cooperation with the police.

As the Advisory Commission on Intergovernmental Relations observed in its 1971 report on *State-Local Relations in the Criminal Justice System*,

. . . governmental tort liability is a vital indication of public responsiveness to the plight of the individual police officer in performing his daily duties. . . . With tort liability the average citizen is assured that government will compensate him for incidental as well as intentional infringements on his personal rights. At the same time the policeman is protected from tort actions arising out of the uses of his discretionary power.

The suggested legislation is divided into seven sections.

Sections 1 and 2 set forth the basic purpose and definitions of the legislation.

Section 3 renders the state and its units of local government liable in those cases where a law enforcement officer would otherwise be liable.

Section 4, which is optional, provides a suggested administrative procedure for receiving and processing of claims by the state and its units of local government and requires the filing of a claim under that procedure as a condition preceding the right to file a civil suit.

Section 5 limits governmental liability according to statutory maximum or insurance policy limit and makes the officer personally liable for the portion of any judgment that exceeds that limit or results from malicious abuse of his powers.

¹Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington, D.C.: U.S. Government Printing Office, August, 1971).

Section 6 provides two alternatives for officers' immunity from claims. Under the first, officers are given full immunity when the claim is against the state or locality and is less than the statutory maximum or policy limit. Under the second, officers are given full immunity unless the claim does not arise from acts committed in performance of their duties and within the scope of their employment. Adoption of the second alternative requires conforming amendments in *Section 5(c)* and *(d)*.

Section 7 authorizes state and local governments to purchase insurance covering their officers, provides optional language in case the state elects to act as a selfinsurer or to purchase a statewide policy covering both state and local officers, allows for bonding or insuring of special officers, and establishes the mode of payment of claims.

Sections 8 and 9 provide for separability and effective date clauses, respectively.

The draft statute is a model developed in cooperation with the International Association of Chiefs of Police and is based, in part, on the *Federal Tort Claims Act* and on the codes of Hawaii, Chapter 662, *et seq.*, and Idaho, Chapter 9, Section 6-901, *et seq.* *Section 5(b)* of the proposed bill is based on legislation in effect in a number of states, including Minnesota, Oklahoma, Idaho, Kansas and Utah.

Particular attention needs to be paid to the choice of language in *Sections 4, 5(a), and 6(a)* in the light of constitutional provisions and court decisions in the state, since these sections tend to limit or affect a party's right to sue in a court of law.

Suggested Legislation

[GOVERNMENTAL TORT LIABILITY FOR LAW ENFORCEMENT ACTIONS]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* The purpose of this act is to protect state and local law enforcement
2 officers from personal liability arising from acts committed during the performance of their activities,
3 in the conduct of their office, or within the scope of their employment, and to compensate the indi-
4 viduals harmed by these actions.

5 SECTION 2. *Definitions.*

6 (a) "Claim" means any alleged or actual legal liability arising from any act committed or duty
7 omitted by a law enforcement officer during the performance of his activities, in the conduct of his
8 office, or within the scope of his employment.

9 (b) "Employee" includes any officer, special officer, agent, or servant of this state or any of its
10 units of local government, whether elected or appointed, serving with or without compensation, and
11 whether temporarily or permanently employed, and any other person lawfully summoned to assist an
12 employee.

13 (c) "Law enforcement officer" means any employee of this state or any of its units of local govern-
14 ment who is authorized or required to enforce some or all of the criminal statutes of this state or local
15 penal ordinances or resolutions.

16 SECTION 3. *Assumption of Liability.* This state and any and all of its units of local government
17 waive any governmental immunity from suit or other liability for any claim as defined in this act and
18 assume liability for the claim under circumstances in which a law enforcement officer would otherwise
19 be personally liable for a claim, to the extent provided in this act.

20 [Optional Section.]

21 [SECTION 4. *Procedure for Filing Claims.*¹

22 (a) All claims arising under this act must be filed with the [secretary of state] if the claim is
23 against the state, or with the [clerk] [official designated for that purpose by the governing body] of
24 the appropriate unit of local government if the claim is against that unit of local government, within
25 [90] days after the act or omission giving rise to the claim occurred or reasonably should have been
26 discovered, whichever is later.

27 (b) All claims filed with the state or unit of local government shall set forth accurately and com-

¹Some states may wish to eliminate entirely the administrative claims procedure provided in Section 4, leaving all claims to be filed directly in court. Others may wish to adopt the procedure for the state government and leave the administrative details of handling local claims to the discretion of the local units of government.

1 pletely the acts and circumstances giving rise to the claim, describe the injury or damage and the time
2 and place of its occurrence, cite the names and addresses of participants and witnesses, if known, and
3 state the nature and amount of damages sought. If the claimant is incapacitated from filing his claim
4 within the prescribed time limit or if the claimant is a minor or non-resident of this state or necessarily
5 absent during the prescribed filing time, the claim may be filed on behalf of the claimant by any
6 relative, attorney, or agent representing the claimant.

7 (c) Within [10] days after the filing of a claim under Section 4(a) of this act, the [*secretary of*
8 *state*] or the [*appropriate official*] of the unit of local government shall refer the claim to the attorney
9 general of this state, if it is against the state, or to the legal officer of the unit of local government, if it
10 is against the unit of local government.

11 (d) Upon receipt of the claim, the attorney general or appropriate local legal officer shall cause it
12 to be investigated and, subject to the provisions of any applicable policy of liability insurance, may
13 recommend a compromise, settlement, or denial of the claim. The recommendation of the attorney
14 general or local legal officer shall be referred to the state or local agency involved for its concurrence
15 prior to settlement.

16 (e) After a recommendation for compromise, settlement, or denial of a claim has been agreed upon,
17 the recommendation shall be transmitted to the appropriate governing body, agency, or employer
18 for final action.

19 (f) If after [90] days from the filing of a claim under this act, the state or unit of local government
20 has failed to approve or has denied the claim, the claimant may institute a civil action in any court of
21 competent jurisdiction in this state.

22 (g) No claim may be allowed by any court of this state unless it has been filed within the pre-
23 scribed time limits.

24 (h) No action on a claim may be initiated against this state or any of its units of local govern-
25 ment or any law enforcement officer after the expiration of [two years] from the date of the occur-
26 rence giving rise to the cause of action.

27 (i) If the state or unit of local government agrees to settle or compromise a claim or, subject to the
28 approval of the state or unit of local government, its insurer so agrees and the claimant accepts the
29 offer, the claimant shall execute a release which constitutes a complete bar to any future actions insti-
30 tuted by the claimant arising out of the same subject matter as the claim.

31 (j) If the claimant is a minor, the settlement and release are subject to approval by a court of com-
32 petent jurisdiction.]

33 SECTION 5. *Limitation of Amount of Damages of State or Unit of Local Government.*

34 (a) The liability of this state or any of its units of local government for a claim recognized in this
35 act is limited to [\$25,000] if the claim is one for a wrongful death, [\$50,000] in the case of any other

1 claim or claims brought by any one claimant, and [\$300,000] for any number of claims by numerous
2 claimants arising out of the same occurrence or subject matter.¹

3 (b) The liability of the state or a unit of local government for a claim recognized in this act may ex-
4 ceed the maximum amounts herein specified to the extent of the maximum coverage available in a
5 policy of insurance, if a policy was in force at the time the liability was incurred.

6 (c) A law enforcement officer is personally liable for the amount of any judgment rendered in
7 excess of the maximum liability that may be imposed on the state or a unit of local government.

8 (d) A law enforcement officer is personally liable to the state or unit of local government for the
9 reimbursement of any civil judgment rendered against the state or a unit of local government caused
10 by the intentional and malicious abuse of his discretionary powers.

11 SECTION 6. *Immunity of Officers.*

12 [Alternative 1.]

13 [(a) No claim may be brought against a law enforcement officer unless the amount of damages
14 sought exceeds the maximum liability that may be imposed on this state or any of its units of local
15 government and the state or unit of local government also is made a party defendant to the action in
16 the manner described in this act.]

17 [OR]

18 [Alternative 2.]

19 [(a) Bringing a claim against the state or any of its units of local government constitutes a com-
20 plete waiver of right of action against a law enforcement officer who otherwise would have been
21 liable for the damages demanded in such claim, unless such claim did not arise from acts committed
22 during the performance of his activities, in the conduct of his office, or within the scope of his employ-
23 ment.]²

24 SECTION 7. *Insurance; Payment of Claims and Judgments.*³

25 [Alternative 1.]

26 [(a) The [appropriate state agency] may purchase insurance to protect the state from liability as
27 provided by this act. Premiums for insurance protecting the state shall be paid from the annual ap-
28 propriation of the agency.]

29 [OR]

30 [Alternative 2.]

31 [(a) Any claim or judgment arising under this act affecting state law enforcement officers shall be
32 paid from funds appropriated by the legislature to the [appropriate state agency].]

¹Some states may wish to establish a graduated scale of liability limits according to the size of jurisdiction.

²Adoption of this alternative requires conforming amendments in Sections 5(c) and 5(d).

³Alternative Sections 7(a) are intended to give a state the options of purchasing insurance covering state law enforcement agencies and their officers or acting as selfinsurer.

1 (b) The units of local government of this state may purchase insurance against liability as pro-
2 vided in this act.

3 (1) Premiums for insurance protecting local law enforcement agencies shall be paid by [*the*
4 *state*] [*the unit of local government concerned, in the manner prescribed by its governing body*].

5 (2) If insurance has not been obtained by or provided for a unit of local government, any
6 claim or judgment arising under this act shall be paid from funds appropriated for this purpose by the
7 local governing body.

8 (c) This state [or any of its units of local government] may require any person specially com-
9 missioned or deputized as a law enforcement officer under its jurisdiction and who is not compen-
10 sated from public funds to post an indemnity bond secured by a licensed carrier or a policy of pro-
11 fessional liability insurance with the same limits of liability imposed by this act, or to tender a sum
12 equal to the amount of premium required to cover the specially commissioned or deputized law en-
13 forcement officers in any policy obtained by the state or unit of local government, whichever is the
14 case.

15 (d) When any claim is prosecuted in any court of this state as a civil cause of action, the court
16 may award a reasonable attorney's fee and costs to the party prevailing.

17 SECTION 8. *Separability*. [*Insert separability clause.*]

18 SECTION 9. *Effective Date*. [*Insert effective date.*]

10.2 Courts

10.201 JUDICIAL CONSTITUTIONAL ARTICLE¹

A substantial part of the disorganization in most state-local criminal justice systems stems from the confused character of the judicial process. Too often judicial systems suffer from lack of centralized court administration, wide disparities in the qualifications for, and conduct in, judicial office, overly cumbersome procedures for judicial retirement and discipline, and an overreliance on partisan methods of judicial selection.

There has been a wide area of agreement among the various studies of the criminal justice system as to the kinds of change needed in the judicial process to assure equitable and expeditious handling of criminal cases, effective and economical administration, and the proper role of the judiciary in the total process of state government.² Judicial reform in these matters needs to be of a constitutional and statutory nature. The separation of powers necessitates the drafting of a model constitutional article that will be the basis for statutory court reforms. The following draft constitutional article provides the fundamental construction for: (1) a unified court system under the central direction of a supreme court and the chief justice; (2) "merit" selection of judges; (3) appointment of a court administrator; (4) rulemaking power; (5) uniform rules concerning judicial conduct; (6) modernized procedures for judicial retirement, removal, and discipline; (7) impeachment; and (8) assumption of judicial costs by the state.

State judicial constitutional reform has enjoyed considerable support in the past three decades. Beginning with thorough reforms in Missouri in 1945 and New Jersey in 1947 and building on the model constitutions of Alaska and Hawaii in 1959, a number of other states have revised their constitutional judicial articles. Among such states are California (1966), Colorado (1966), Illinois (1962, 1970), Michigan (1964), Nebraska (1962, 1966), New Mexico (1966, 1967), New York (1961), and Oklahoma (1967). This model constitutional article is derived from the various provisions of the Alaska, California, Hawaii, Illinois, Missouri, Nebraska, and New Jersey constitutions as well as the model judicial constitutional articles of the American Bar Association and the National Municipal League.

¹Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington, D.C.: U.S. Government Printing Office, August, 1971).

²See reports of the Committee for Economic Development, *Reducing Crime and Assuring Justice*, 1972; National Advisory Commission on Criminal Justice Standards and Goals, 1973; President's Commission on Crime and the Administration of Justice, 1967; and Advisory Commission on Intergovernmental Relations, *op. cit.*, 1971.

Suggested Article

[THE JUDICIAL SYSTEM]

(Be it enacted, etc.)

1 SECTION 1. *Judicial Power.* The judicial power of the state is vested in [a unified judicial system]
2 [one court of justice], which shall include a supreme court, [a court of appeals,] a trial court of general
3 jurisdiction, the geographic divisions of which shall be district courts, [and special subdivisions of the
4 trial court of general jurisdiction known as courts of limited jurisdiction]. All courts except the
5 supreme court may be divided into geographic districts and into functional divisions and subdivisions
6 as provided by law or by judicial rules not inconsistent with the law. The several courts shall have
7 original and appellate jurisdiction as provided by law.

8 SECTION 2. *Judicial Nominating Commissions.* The [legislature] shall establish a judicial nomi-
9 nating commission for the supreme court and for each geographic division of the [court of appeals
10 and] the trial court of general jurisdiction. All judges shall be appointed initially by the governor
11 from a list of nominees submitted by the appropriate judicial nominating commission. Each judge
12 shall stand for retention in office on a ballot which shall submit the question whether he should be
13 retained in judicial office for the prescribed term.

14 SECTION 3. *Court Administration.* The chief justice of the supreme court shall be the executive
15 head of the judicial system and shall appoint [, with the approval of the supreme court,] an adminis-
16 trator to supervise the administration of the courts of the state. The administrator shall serve at the
17 pleasure of the supreme court. The chief justice, with the approval of the supreme court, may [assign
18 judges from one court or division thereof to another] [assign judges to any court in the state] in order
19 to aid in the prompt disposition of judicial business.

20 SECTION 4. *Rulemaking Power.* The supreme court shall adopt rules governing the adminis-
21 tration, practice, and procedure in all courts. These rules may be changed by the [legislature] by a
22 [majority] [two-thirds] vote of the members elected to [each house].

23 SECTION 5. *Judicial Rules of Conduct.*

24 (a) The supreme court shall adopt rules of conduct for all judges.

25 (b) All judges shall devote full time to judicial duties. They shall not, while in office, engage in
26 the practice of law or other gainful employment. They shall not hold any other public office under
27 the United States, this state or its civil divisions. They also shall not hold any office in a political
28 party or organization.

29 SECTION 6. *Commission on Judicial Qualifications.* The [legislature] shall establish a commission
30 on judicial qualifications. The commission may recommend to the supreme court the removal, retire-
31 ment, or discipline of any judge who the commission finds is physically and mentally incapable of

1 performing his judicial duties, or who has persistently failed to perform his judicial duties or whose
2 other conduct has been prejudicial to the administration of justice.

3 SECTION 7. *Impeachment.* Judges shall be subject to the same processes of impeachment as ap-
4 ply to civil officers [*as provided in Article []*].

5 SECTION 8. *Costs of the Judicial System.* Judges shall receive salaries provided by law which
6 shall not be diminished to take effect during the terms of appointment. There shall be no fee officers
7 in the judicial system. All salaries and other expenses of the judicial system as may be provided by
8 law shall be paid by the state.

10.202 OMNIBUS JUDICIAL ACT¹

This nation's state-local judicial systems suffer from a number of serious administrative, structural, and fiscal maladies. Court systems in most states are highly fragmented, lack central administrative direction, exhibit disparate rules of practice and procedure, have cumbersome and unprofessional procedures for judicial selection, discipline, removal, and retirement, and are often faced with a critical lack of funding. The result is too often a disorganized, inefficient judicial system.

In its 1971 report on *State-Local Relations in the Criminal Justice System*, the Advisory Commission on Intergovernmental Relations proposed the enactment of state constitutional and statutory provisions to: (1) create a unified, simplified state court system; (2) establish court administrative offices; (3) appoint judges on a "merit plan" with a non-competitive election at the end of the initial term; (4) establish machinery for discipline and removal of judges; (5) require mandatory retirement at 70; (6) require all judges to be full time; and (7) shift all costs of the judicial system to the state. These proposals parallel many of those of earlier and later studies (President's Commission on Crime and the Administration of Justice, 1967; Committee for Economic Development, *Reducing Crime and Assuring Justice*, 1972; and the report of the National Advisory Commission on Criminal Justice Standards and Goals, 1973).

Progress in judicial reform in recent years has been moderate to good. Nearly half the states have unified their court systems; all but four states have instituted a central court administrator; about half the states use the Missouri Plan for selection and appointment of judges; an increasing number of states use judicial qualifications commissions to scrutinize the performance of incumbent judicial personnel and provide for compulsory judicial retirement on or after the age of 70; and seven states have assumed substantially all (90 percent or more) of judicial costs. All these state reforms have resulted in a more efficient and manageable judiciary.

The omnibus judicial bill that follows is divided into ten titles. *Title I* sets forth the purpose and definitions of the act. *Title II* delineates the structure of a unified judicial system and provides for the organization and jurisdiction of the supreme court, court of appeals, and trial courts of general and limited jurisdiction. The chief justice is made executive head of the judicial department, and the supreme court or the legislature may organize the geographical divisions of the court of appeals and the trial courts of general and limited jurisdiction.

Title III structures the administrative responsibility for court operation. Part A creates a three tiered hierarchy of judicial administration making departmental justices and chief judges responsible to the chief justice for the conduct of court business. Part B provides for professional court administrators at all levels to aid chief judicial personnel in their management responsibilities. The office of the state court administrator centralizes management responsibilities at the highest judicial level and should be a guiding force in effecting more uniform court procedures, more flexible assignment of court personnel, and more continuous scrutiny of the operations of the judicial system as a whole. The appellate and general trial court administrators provide similar guidance in other courts.

Title IV confers upon the chief justice assignment power over judicial personnel and *Title V* centralizes judicial rule making power in the supreme court and the chief justice.

Title VI specifies the qualifications for judicial office and the method of judicial selection. It authorizes the creation of judicial nominating commissions that shall select nominees for appointment to any judicial vacancy. Procedures for non-partisan election of judges so appointed are also set forth.

Title VII provides for the promulgation of a canon of judicial ethics, full-time service for judges, and the institution of a judicial qualifications commission to scrutinize the performance of incumbent judges. The judicial commission may recommend to the supreme court (i) the involuntary retirement of judges due to mental or physical disability which hinders their judicial performance or (ii) the removal or discipline of judges whose conduct may be deemed prejudicial to the administration of justice.

¹Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington, D.C.: U.S. Government Printing Office, August, 1971).

Title VIII mandates state assumption of court finances and the institution of centralized budget and personnel procedures for the judicial system. *Title IX* makes judicial retirement mandatory at the age of 70. It also sets forth, in general terms, other conditions of retirement for judicial department personnel.

Title II is modelled after Connecticut, Idaho, and Vermont laws on judicial organization. *Title III* is derived from statutes of the over 30 states that have central court administrators. *Titles IV and V* are adapted from Puerto Rico and Hawaii law respectively.

Title VI on "merit" selection of judges is adapted from Missouri and Nebraska laws.

Title VII on judicial conduct is designed after California Supreme Court rules as well as Idaho, Nebraska, and Oregon laws on the subject.

Title VIII is modelled after Colorado law and parts of *Title IX* are adapted from Maine legislation.

Other helpful citations are: Wisconsin, code of judicial ethics (promulgated as part of opinion 153 N.W. 2nd 873); Florida judicial reorganization (Chapters 72-402-06) 1972; Massachusetts 1971 law creating housing court in city of Boston (Chapter 185 A); and Connecticut 1974 law decriminalizing intoxication (PA-280).

Suggested Legislation

[AN ACT TO REORGANIZE THE COURT SYSTEM
OF THE STATE AND FOR RELATED PURPOSES]

(Be it enacted, etc.)

Title I

PURPOSE AND DEFINITIONS

1 SECTION 1. *Purpose.* The purpose of this act is to:

2 (a) create a unified court system, subject to central direction by the chief justice and the supreme
3 court;

4 (b) institute a corps of professional court administrators to assist the chief justice and judicial
5 associates in matters of court administration;

6 (c) provide modernized procedures of judicial retirement and discipline;

7 (d) promulgate uniform rules on judicial conduct and judicial qualifications;

8 (e) provide for "merit" selection of judicial personnel; and

9 (f) mandate state assumption of all court finances.

10 SECTION 2. *Definitions.*

11 (a) "Administrator" means the general trial court administrator of each judicial district.

12 (b) "Chief justice" means the chief justice of the state supreme court.

13 (c) "Departmental justice" means the judicial administrative head of a judicial circuit.

14 (d) "Director" means the head of the administrative office of the courts.

15 (e) "Judge" means any duly appointed or elected presiding judicial officer in the state.

16 [(f) "Judicial circuit" means a geographical division of the state court of appeals.]

17 (g) "Judicial department" means the judicial branch of the state government.

18 (h) "Judicial district" means a geographical division of the state general trial court.

19 (i) "Member of the state bar" means any person admitted to the practice of law in this state.

20 (j) "Non-judicial personnel" means all employees of the judicial department who do not hold the
21 post of judge.

Title II

JUDICIAL DEPARTMENT ORGANIZATION AND STRUCTURE

1 SECTION 3. *General Plan of Organization.* The judicial department of the state shall consist of a

1 supreme court, [a court of appeals,] a statewide general trial court, and such subdivisions of the
2 general trial court to be known as trial courts of limited jurisdiction as [the supreme court may estab-
3 lish] [may be established by law]. The executive head of the judicial department shall be the chief justice
4 of the supreme court. The territorial jurisdiction of all courts in the judicial department shall be co-
5 extensive with the boundaries of the state.

6 SECTION 4. *Supreme Court Organization.* There shall be one supreme court which shall be the
7 highest court of the state and shall consist of a chief justice and [] associate justices.

8 SECTION 5. *Supreme Court Jurisdiction.* The supreme court shall have final appellate juris-
9 diction. Appeals to the supreme court from the [court of appeals] [general trial court] are a matter of
10 right if a question under the Constitution of the United States or of this state arises for the first time
11 in and as a result of the action of the [court of appeals] [general trial court] or if the [court of appeals]
12 [general trial court] certifies that a case decided by it involves a question of such importance that the
13 case should be decided by the supreme court except that a defendant shall have an absolute right to
14 one appeal in all criminal cases. On all appeals authorized to be taken to the supreme court in criminal
15 cases, that court shall have the power to review all questions of law and, to the extent provided by rule,
16 to review and revise the sentence imposed.

17 [Optional Section.]

18 [SECTION 6. *Organization of the Court of Appeals.* The court of appeals shall consist of as
19 many geographical divisions known as judicial circuits as [the supreme court shall from time-to-time
20 determine to be necessary] [may be established by law]. Each judicial circuit of the court shall consist
21 of one chief judge and [] associate judges. The court shall sit at the times and places prescribed by
22 [the rules of the supreme court] [the chief justice].]

23 [Optional Section.]

24 [SECTION 7. *Jurisdiction of the Court of Appeals.* Appeals from final judgments of a general
25 trial court are a matter of right to the court of appeals in the judicial circuit in which the general trial
26 court is located except in:

- 27 (a) criminal cases directly appealable to the supreme court; and
28 (b) criminal cases

29 The court of appeals shall exercise appellate jurisdiction in all other cases under such terms and
30 conditions as the supreme court shall specify by rule.]

31 SECTION 8. *General Trial Court Organization.* There shall be one general trial court having
32 statewide jurisdiction. The general trial court shall consist of as many geographical divisions as [the
33 supreme court shall from time-to-time determine to be necessary] [as may be established by law].
34 [The boundaries of judicial districts shall be contained within the judicial circuits in the state.] The
35 supreme court shall designate the principal office in each district and shall also designate the chief

1 judge of each district court. The court may hold sessions anywhere in its geographical area where
2 adequate facilities exist for the disposition of court business. It shall hold continuous sessions or be in
3 session as often as the chief justice finds that the caseload of each district requires.

4 SECTION 9. *Jurisdiction of General Trial Court.* The general trial court shall have original
5 jurisdiction, subject to appeal and exceptions by the supreme court.

6 SECTION 10. *Trial Courts of Limited Jurisdiction.*

7 (a) The supreme court may authorize the establishment of trial courts of limited jurisdiction as
8 functional subdivisions of the general trial court. These courts shall be under the general direction of
9 the chief judge of the judicial district of which they are a part.¹

10 (b) [These courts shall exercise jurisdiction in such cases as the supreme court may designate by
11 rule.] [These courts shall exercise original jurisdiction in the case of criminal misdemeanors and
12 violations of municipal ordinances.]

Title III

COURT ADMINISTRATION

Part A

JUDICIAL ADMINISTRATORS

1 SECTION 11. *Chief Justice as Executive Head of Courts.* The chief justice shall be the executive
2 head of the judicial department and be responsible for the efficient operation thereof, for the ex-
3 peditious dispatch of litigation therein, and for the proper conduct of business in all courts. The chief
4 justice may require reports from all courts in the state and may issue rules and regulations as may be
5 necessary for the efficient operation of the courts and the prompt and proper administration of
6 justice.

7 [Optional Section.]

8 [SECTION 12. *Departmental Justices.* The chief justice shall appoint from the ranks of all
9 [appellate and] general trial court judges a departmental justice for each judicial circuit in the state.
10 Departmental justices shall be responsible to the chief justice for the efficient operation of courts in
11 their circuits. The departmental justice shall be assisted in his duties by an appeals court
12 administrator.]

13 SECTION 13. *Chief Judges.* Every general trial court district shall have a chief judge selected
14 from the judges in the district by the [departmental justice in the circuit in which the district is
15 located] [chief justice]. The chief judge shall be responsible to the [departmental justice] [chief

¹To provide for housing courts, or small claims, or other courts functioning under specialized rules.

1 justice] for the efficient operation of the courts in his district. Each chief judge shall be assisted in his
2 duties by a general trial court administrator as directed by the [departmental justice] [chief justice].

3 SECTION 14. *Administrative Powers of Chief Justice.* The chief justice of the supreme court may:

4 (a) assign or reassign all judicial department personnel to any court in the state as described in
5 Title IV of this act;

6 (b) exercise powers of general financial management as detailed in Title VIII of this act;

7 (c) exercise all other powers as the supreme court shall deem necessary to insure the proper
8 administration of justice.

Part B

STATE COURT [, COURT OF APPEALS,] AND GENERAL TRIAL COURT ADMINISTRATORS

1 SECTION 15. *Creation of the Office.* There is hereby established a state office known as the
2 administrative office of the courts. It shall be supervised by a director who shall be appointed by the
3 chief justice to serve at his pleasure. The director may appoint assistants and other employees
4 necessary for the performance of duties of the office.

5 SECTION 16. *Qualifications of the Director, Compensation of Employees.* The director and
6 other personnel shall have whatever qualifications as may be prescribed by [law] [the supreme court]
7 provided that no personnel in the office shall be engaged directly or indirectly in the practice of law
8 nor hold any other office or employment. The compensation of the director shall be [*prescribed by*
9 *law*]. [The director shall fix the compensation of the personnel under his supervision.]

10 SECTION 17. *Powers and Duties.* The director, under the direction of the chief justice, shall:

11 (a) carry on a continuous survey and study of the organization, operation, condition of business,
12 practice and procedure of the judicial department and make recommendations to the chief justice
13 concerning the number of judges, other judicial personnel, and prosecutors required for the efficient
14 administration of justice;

15 (b) examine the status of the dockets of all courts so as to determine cases and other judicial
16 business that have been delayed beyond [] months and make reports thereon. From such reports,
17 the director shall indicate which courts are in need of additional judicial personnel and make recom-
18 mendations to the chief justice concerning the assignment or reassignment of personnel to courts that
19 are in need of such personnel. The director shall also carry out the directives of the chief justice as to
20 the assignment or reassignment of personnel in these instances;

21 (c) investigate complaints with respect to the operation of the courts;

22 (d) examine the statistical systems of the courts and make recommendations for a uniform system
23 of judicial statistics. The director shall also collect and analyze statistical and other data relating to the

1 business of the courts;

2 (e) prescribe uniform administrative and business methods, systems, forms, and records to be used
3 in all state courts;

4 (f) assist in preparing assignment calendars of all judges and attend to the printing and distribu-
5 tion thereof;

6 (g) implement standards and policies set by the chief justice regarding hours of court, the assign-
7 ment of term parts, judges and justices, and the publication of judicial opinions;

8 (h) act as fiscal officer of the courts and in so doing:

9 (1) maintain fiscal controls and accounts of funds appropriated for the judicial system;

10 (2) prepare all requisitions for the payment of state moneys appropriated for the maintenance
11 and operation of the judicial system;

12 (3) prepare budget estimates of state appropriations necessary for the maintenance and
13 operation of the judicial system and make recommendations with respect thereto;

14 (4) collect statistical and other data and make reports to the chief justice relating to the
15 expenditures of public moneys [, both state and local,] for the maintenance and operation of the
16 judicial system;

17 (5) develop a uniform set of accounting and budgetary accounts for all courts in the state
18 court system;¹ and

19 (6) fix the compensation of all non-judicial personnel whose compensation is not otherwise
20 fixed pursuant to Title VIII;

21 (i) examine the arrangements for the use and maintenance of court facilities and supervise the
22 purchase, distribution, exchange, and transfer of judicial equipment and supplies thereof;

23 (j) act as secretary to the judicial council and prepare for an annual conference of all judges of
24 courts of record to discuss recommendations for the improvement of the administration of justice;

25 (k) submit an annual report to the chief justice, [legislature], and governor of the activities and
26 accomplishments of the office for the preceding calendar year; and

27 (l) attend to other matters consistent with the powers delegated herein as may be assigned by the
28 chief justice.

29 [Optional Section.]

30 [SECTION 18. *Appeals Court Administrator: Creation.* The departmental justice of each judicial
31 circuit, subject to the approval of the chief justice, shall appoint an appeals court administrator to
32 assist him in his administrative duties. The appeals court administrator shall serve at the pleasure of
33 the departmental justice and he shall, subject to the approval of the chief justice, employ such other

¹Some states also have the director serve as the auditor for the judicial department.

1 personnel as may be necessary to enable him to perform the duties of his office.]

2 SECTION 19. *General Trial Court Administrator. Creation.* The chief judge of each judicial
3 district, subject to the approval of the chief justice, shall appoint a general trial court administrator to
4 assist him in his administrative duties. The administrator shall serve at the pleasure of the chief judge
5 and he shall, subject to the approval of the [department justice] [chief justice], employ such other
6 personnel as may be necessary to enable him to perform the duties of his office.

7 SECTION 20. [*Appeals Court and*] *General Trial Court Administrator: Qualifications, Com-*
8 *ensation and Employees.* The [appeals court administrator and general trial court administrator]
9 [administrator] and [their] [his] employees shall have whatever qualifications may be prescribed
10 pursuant to Title VIII of this act except that they shall not engage in the practice of law nor hold any
11 other office or employment. The compensation of the [appeals court and general trial court
12 administrator] [administrator] and [their] [his] employees shall be prescribed pursuant to Title VIII
13 of this act.

14 SECTION 21. *Compliance with Requests for Information.* All employees of the state court
15 system [the attorney general, and all district attorneys] shall promptly comply with the requests of the
16 director for information and statistical data bearing on the business of the courts and such other
17 information as may be needed to carry out the lawful duties of the administrative office of the courts.
18 The director shall be assisted by all [appeals court and] general trial court administrators in the
19 performance of his duties.

Title IV

ASSIGNMENT OF JUDICIAL DEPARTMENT PERSONNEL

1 SECTION 22. *Assignment Powers of Chief Justice.* The chief justice shall supervise, with the aid
2 of the director, all employees of the judicial department of the state and assign, reassign, or modify
3 assignments to various parts of the judicial department as the need may require.

4 SECTION 23. *Assignment Powers of [Departmental Justices and] Chief Judges.*

5 [Optional Section.]

6 [(a) Subject to the authority of, and upon consultation with, the chief justice, departmental jus-
7 tices shall have the power to assign or reassign judges to conduct sessions of the respective courts in
8 their judicial circuit as the business of those courts may require. In performing these tasks, the depart-
9 mental justices shall be aided by the appeals court administrator.]

10 (b) Chief judges shall have general supervisory power over judges in their courts. They shall be
11 subject to the assignment power of [departmental justices and] the chief justice as the situation may
12 require.

1 SECTION 24. *Compensation for Assignment or Reassignment.* Any employee of the judicial
2 department, when reassigned to any court in this state on less than a permanent basis, shall serve
3 without additional compensation but shall be reimbursed for all reasonable expenses actually incurred
4 as a result of such reassignment.

Title V

RULES OF PRACTICE AND PROCEDURE

1 SECTION 25. *Rule Making Powers Vested in Supreme Court.* The supreme court shall make
2 uniform rules regulating practices and procedures in all courts of the judicial department and there-
3 after revise such rules at its discretion subject to modification by a [majority] [two-thirds] vote of each
4 house of the [legislature]. All rules and regulations made under this act shall, when duly promulgated,
5 have the force and effect of law.

6 SECTION 26. *Nature of Uniform Rules.* Uniform rules of practice and procedures shall apply to
7 all courts. The supreme court shall provide for a public hearing not less than [] days before the
8 adoption of any general rule or amendment thereof.

9 SECTION 27. *Criminal and Civil Procedures Rules Committee.* The Supreme court may appoint
10 a criminal and civil procedures rules committee [, members of which shall be members of the state
11 bar,] which shall assist the supreme court and the director in the preparation, revision, promulgation,
12 publication, and administration of general rules of practice and procedure.

13 SECTION 28. *General Rules of Court Business.* The chief justice may prescribe uniform rules
14 governing the general business of, and practice in, any courts in the state. Such rules shall become
15 immediately effective as of the date fixed by the chief justice.

Title VI

JUDICIAL QUALIFICATIONS AND SELECTION

1 SECTION 29. *Judicial Qualifications.* All judges in this state shall be licensed to practice law in
2 this state [and shall possess the following additional qualifications:].

3 SECTION 30. *Judicial Nominating Commissions.* There shall be one nominating commission for
4 the supreme court [and court of appeals] and one judicial nominating commission for each general
5 trial court district. After [insert appropriate date] whenever a vacancy shall occur in the office of
6 judge in any court in this state, the governor shall fill such vacancy by appointing one of three
7 persons possessing the qualifications for such office who shall be nominated and whose names shall

1 be submitted to the governor by the appropriate judicial nominating commission established and
2 organized as hereafter provided. All such appointments shall be for a period of [] year[s]. If the
3 governor fails for [45] days to make the appointment, [it shall be made from such nominees by the
4 chief justice] [another set of three qualified nominees shall be submitted by the nominating commis-
5 sion to the governor].

6 SECTION 31. *Composition of Commissions.* Each judicial nominating commission shall consist
7 of [] members. Members of the state bar shall elect [] of their number to act as members of the
8 nominating commission in the judicial district where they reside. The governor shall appoint, subject
9 to confirmation by the [legislature], [] judges, and [] citizens who are neither judges, retired
10 judges, nor members of the state bar to each judicial nominating commission in the state. [The chief
11 justice shall be an *ex officio* member of the judicial nominating commission for the supreme court and
12 court of appeals.] [[Departmental justices] [Chief judges] shall be *ex officio* members of the judicial
13 nominating commissions for the judicial districts over which they have jurisdiction.] All terms shall
14 be for [] years. [Optional. Insert language to provide for staggered terms.]

15 SECTION 32. *Restrictions on Members.* Members of judicial nominating commissions shall not
16 hold any other elective or salaried public office. [Members shall not be eligible for reappointment or
17 reelection to a judicial nominating commission.] No member of the commission, except members
18 appointed to the commission as judges and *ex officio* members, shall be eligible for appointment as a
19 judge as long as he is a member of that commission and for a period of [] years thereafter. All acts
20 of judicial nominating commissions shall be made with the concurrence of a majority of its members.
21 All commissions shall operate in accordance with rules promulgated by the supreme court.

22 SECTION 33. *Nominating Procedures.* In the event of a judicial vacancy, the chairman of the
23 appropriate judicial nominating commission shall notify other members of the commission and sched-
24 ule a public hearing to be held on qualified nominees for the vacancy. He shall also cause appropriate
25 notice of such hearing to be published by the various news media and make known the interest of the
26 judicial nominating commission to receive information relating to qualified applicants for the judicial
27 vacancy. Any member of the public shall be entitled to attend the public hearing to express, either
28 orally or in writing, his views concerning candidates for the judicial vacancy. After the public hearing,
29 a judicial nominating commission shall hold any additional [confidential] meetings and make any
30 independent investigation and inquiry it deems necessary to determine the qualifications of candidates
31 for the judicial vacancy. Thereafter, the judicial nominating commission, upon the concurrence of a
32 majority of its members, shall recommend three qualified nominees for the judicial vacancy. [If the
33 commission cannot name three qualified nominees within [] months of the judicial vacancy, the
34 governor, subject to the confirmation of the [legislature], may appoint a qualified judge to the judi-
35 cial vacancy.]

1 SECTION 34. *Election of Judges.*

2 (a) Any judge desiring to retain his office after initial gubernatorial appointment and every []
3 years thereafter shall certify his candidacy to the proper election officials and the [secretary of state]
4 no less than [] days before the said election. At the election, the name of each judge who has filed
5 such a certification shall be submitted to the voters, on the ballot without party designation, on the
6 sole question of whether he shall be retained in office for another term. The elections shall be con-
7 ducted in the appropriate judicial [circuits or] districts.

8 (b) The affirmative votes of a majority of qualified voters voting on the question shall retain a
9 judge in office for the prescribed term.

10 (c) Any judge failing to file a declaration of candidacy or who fails reelection shall vacate his
11 office at the expiration of his term. His vacancy shall be filled according to procedures of Sections 30
12 and 33 of this title.

13 SECTION 35. *Compensation of Commissions.* The members of judicial nominating commissions
14 [who are public officials] shall receive no salary or other compensation for their service. [All other
15 members shall be eligible for a *per diem* compensation of [\$50].] All members may be reimbursed for
16 all reasonable expenses incurred in the discharge of their official duties. The budgets of all nomi-
17 nating commissions shall be included in the judicial department operating budget.

18 SECTION 36. *Unlawful Influence of Commissions.* It shall be unlawful and a breach of ethics for
19 any judge, public officeholder, lawyer, or any other person or organization to attempt to influence any
20 judicial nominating commission in any manner and on any basis except by presenting facts and
21 opinions relevant to the judicial qualifications of the proposed nominees, at the times and in the
22 manner set forth in Section 34 of this title. Violation of this section shall be considered as contempt of
23 the supreme court. Violation of this section by any judge of this state shall be grounds for discipline or
24 removal as provided for in Title VII of this act.

Title VII

JUDICIAL CONDUCT

1 SECTION 37. *Judicial Canon of Ethics.* After due notice and hearing, the supreme court shall
2 adopt and put into effect canons of judicial ethics which shall govern the conduct of all judges. Any
3 violations of these canons shall be grounds for removal or retirement or discipline as provided in
4 Sections 41 through 44 of this title.

5 SECTION 38. *Full-Time Judges.*

6 (a) All judges shall devote full time to their judicial duties. During his term of office a judge shall
7 not practice law nor shall he be the partner or associate of any person in the practice of law. A judge

1 shall also not hold any other employment or position of profit or hold a public office under the
2 United States, this state, or any of its civil divisions during his term of office.

3 (b) Any judge violating Section 39(a) of this title shall be subject to removal or discipline as
4 provided for in Sections 41 through 44 of this title.

5 SECTION 39. *Grounds for Removal and Suspension.*

6 (a) Without recourse to the commission on judicial qualifications, the supreme court shall suspend
7 any judge from office without salary when he pleads guilty or no contest or is found guilty in a
8 general trial court of a crime punishable as a felony under state or Federal law or any other crime that
9 involves moral turpitude under the law. If his conviction is reversed, suspension terminates and he
10 shall be paid his salary for the period of his suspension. If his conviction becomes final, the supreme
11 court shall remove him from his office.

12 (b) All other proceedings for removal shall be conducted through the judicial qualifications
13 commission as provided for in Sections 41 through 44 of this title [and through the impeachment
14 process applicable to civil officers pursuant to [citation] of the constitution].

15 SECTION 40. *Commission on Judicial Qualifications.* A commission on judicial qualifications is
16 hereby established which shall consist of [] judges [appointed by the chief justice], [] members of
17 the state bar [elected by that body], and [] citizens who shall not be judges, retired judges, or
18 persons admitted to the practice of law. Members shall be appointed for a term of [] years. [*Option-*
19 *al. Insert language to provide staggered terms.*] Whenever a member resigns, dies, or ceases to be a
20 member of the commission, the appointing authority as herein provided shall appoint a successor for
21 the unexpired term. The commission shall elect one of its members to serve as a chairman for the
22 term prescribed by the commission.

23 SECTION 41. *Grounds for Retirement or Removal.* Any judge, in accordance with the pro-
24 cedures described in this title, may by action of the supreme court be:

25 (a) retired from office for any physical or mental disability seriously interfering with the per-
26 formance of his duties which is, or is likely to become, of a permanent character;

27 (b) disciplined or removed from office for action occurring within [] years before the com-
28 mencement of his current term which constitutes willful misconduct in office, willful and persistent
29 failure to perform his duties, habitual intemperance, unlawful influence of a judicial nominating
30 commission, or any other conduct deemed prejudicial to the administration of justice or that brings the
31 judicial office into disrepute.

32 SECTION 42. *Powers of the Commission.*

33 (a) The commission shall have, but not be limited to, the following powers:

34 (1) to hold hearings and subpoena witnesses and exercise requisite process powers;

35 (2) to require a judge to submit to physical or mental examination by qualified medical

1 experts;

2 (3) to make independent investigations either by members of the commission, or by special
3 investigators employed by the commission or by the office of attorney general;

4 (4) to hold confidential hearings with all parties involved in the proceedings before the
5 commission; and

6 (5) to employ investigators, medical experts and such other employees as the commission in
7 its discretion determines to be necessary to carry out its functions and purposes.

8 (b) All personnel of the judicial department of this state shall cooperate with, and give reasonable
9 assistance and information to, the commission and any authorized representative thereof in connec-
10 tion with any investigations or proceedings within the jurisdiction of the commission. It also shall be
11 the duty of any law enforcement officer of this state to serve, process, and execute all lawful orders
12 of the commission throughout the state.

13 SECTION 43. *Procedures of the Commission.*

14 (a) The commission on its own motion, or on the complaint of any citizen, may initiate proceed-
15 ings for the retirement, discipline, or removal of any judge in the state. All citizen complaints shall be
16 directed to the commission or to any member of the commission. No specified form of complaint shall
17 be required.

18 (b) The commission may make such investigation as it deems necessary to verify or refute the
19 substance of the complaint. After such investigation, the commission may order a confidential hearing
20 to be held before it concerning the complaint. After confidential hearing, the commission may
21 recommend to the supreme court the retirement, removal, or discipline, as the case may be, of the
22 judge against whom the complaint is filed.

23 (c) The supreme court shall review the record of the commission proceedings and in its discretion
24 may permit the introduction of additional evidence. It shall make whatever determinations it finds just
25 and proper, and may order the removal, discipline, or retirement of the judge, or may wholly reject the
26 recommendation. Upon an order for retirement, the judge shall thereby be retired with the same rights
27 and privileges as if he had retired pursuant to other provisions of law relating to retirement of judges.
28 Upon an order for removal, the judge shall be removed from office and his salary shall cease from the
29 date of such order. He shall be ineligible for judicial office for [] years.

30 (d) The director shall be the commission's executive secretary. He shall certify each order of the
31 commission to the governor and the chief justice.

32 (e) No act of the commission shall be valid unless concurred in by a majority of its members.

33 (f) All papers filed with, and proceedings before, the commission shall be confidential and the
34 record filed by the commission may become public record with the consent of the judge being investi-
35 gated. No members or employees of the commission shall disclose or use any commission records,

1 files, or communications in any other than their official duties.

2 (g) No judge who is a member of the commission or of the supreme court shall sit on the commis-
3 sion or the court in any proceedings involving his own discipline, removal, or retirement.

4 SECTION 44. *Rights of Judicial Defendants in Commission Action.*

5 (a) In any proceeding involving a judge's discipline, removal, or retirement, the judge shall have
6 the right and reasonable opportunity to defend himself against complaints by the introduction of
7 evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have
8 the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers,
9 or other evidentiary matter.

10 (b) In any proceedings under this act, the judge under investigation and his counsel shall be
11 given [] days advance notice of such proceedings.

12 (c) A judge is disqualified from acting as a judge, without loss of salary, while there is pending a
13 recommendation to the supreme court by the commission for his removal or retirement.

14 SECTION 45. *Voluntary Retirement for Disability.* Any judge desiring to retire on the grounds of
15 mental or physical disability shall certify to the commission his request for retirement and the nature of
16 his disability and the commission may order a medical examination and make a report and
17 recommendation.

18 SECTION 46. *Budget and Compensation of Commission.* The judicial department shall be re-
19 sponsible for preparing and presenting to the legislature proposed annual budgets for the commis-
20 sion. Members of the commission [who hold other salaried public office] shall serve without compen-
21 sation. [Other members shall be eligible for a *per diem* compensation of [\$50].] Members shall be re-
22 imbursed for all reasonable expenses incurred by them in connection with their duties as members of
23 the commission.

Title VIII

COURT PERSONNEL AND FINANCES¹

1 SECTION 47. *State Responsibility for Court Finances.* After [insert appropriate date] the [legis-
2 lature] shall appropriate funds for the expenses of the judicial department.

3 SECTION 48. *Court Personnel and Compensation.*

4 (a) After [insert appropriate date] the chief justice shall prescribe by rule a personnel classification
5 plan for all courts in the judicial department. Such a plan shall include:

6 (1) a basic compensation plan of pay ranges to which classes of positions shall be assigned
7 and may be reassigned;

¹Carl Baar, "The Limited Trend Toward State Court Financing," *Judicature*, Vol. 58, No. 7 (February, 1975), pp. 323-29.

1 (2) qualifications for all non-judicial positions and classes of positions which shall include
2 education, experience, special skills, and legal knowledge;

3 (3) an outline of duties to be performed in each position and class of positions;

4 (4) the number of full-time and part-time positions, by position title and classification, in
5 each court in the state;

6 (5) the procedures for and regulations governing the appointment and removal of non-
7 judicial personnel;

8 (6) the procedures for and regulations governing the promotion of non-judicial personnel;
9 and

10 (7) the amount, terms, and conditions of sick leave and vacation time and fringe benefits for
11 court personnel, including annual allowance and accumulation thereof, and hours of work and other
12 conditions of employment.

13 (b) The chief justice, in promulgating rules set forth in this section, shall take into account the
14 compensation and classification plans, vacation and sick leave provisions, and other conditions of
15 employment applicable to the employees of the executive and legislative departments. The chief justice
16 shall be aided by the administrative office of the courts in the implementation of this section.

17 SECTION 49. *Operating Budgets.*

18 (a) The director shall, subject to the approval of the chief justice, prepare annually a consolidated
19 operating budget for all courts in the state to be known as the judicial department operating budget.
20 He shall be assisted in this task by all [appeals court and] general trial court administrators.

21 (b) The director shall prepare the consolidated court budget according to procedures prescribed by
22 the [state budget officer] [and the joint budget committee of the legislature]. Budget requests and
23 other additional information as requested shall be transmitted to the [state budget officer] [and the
24 joint budget committee of the legislature] by [insert appropriate date]. The governor shall include his
25 recommendations for court appropriations by [insert appropriate date] and the [legislature] shall make
26 appropriations to courts based on an evaluation of the budget request, the governor's recommenda-
27 tions, and the availability of state funds.

28 (c) The director, subject to the approval of the chief justice, shall prescribe the financial manage-
29 ment procedures to be used in all courts of the judicial department. These procedures shall include but
30 not be limited to:

31 (1) the preparation of budget requests;

32 (2) the disbursement of funds appropriated to the judicial department;

33 (3) the purchase of forms, supplies, equipment, and other items as authorized in the judicial
34 department operating budget; and

35 (4) any other matter relating to fiscal administration.

1 SECTION 50. *Capital Budgets.*

2 (a) The director shall, subject to the approval of the chief justice, prepare a consolidated capital
3 budget for all courts in the state. He shall be assisted in this task by all [appeals court and] general
4 trial court administrators.

5 (b) The director shall prepare the consolidated capital budget according to procedures prescribed
6 by the [state budget officer] [and the joint budget committee of the legislature]. Budget requests and
7 other additional information as requested shall be transmitted to the [state budget officer] [and the
8 joint budget committee] by [insert appropriate date]. The governor shall include his recommendations
9 for court capital expenditures by [insert appropriate date] and the [legislature] shall make appropri-
10 ations or authorize bond issues for court capital expenditures based on an evaluation of the budget
11 request, the governor's recommendations, and the availability of state funds.

12 (c) The consolidated capital budget for the judicial department shall include but not be limited to:

13 (1) projections of additional court facilities required for each court;

14 (2) estimated costs of the additional facilities and whether these facilities will include space to
15 be used by other state agencies or governmental units of the state; and

16 (3) a detailed report on the present court facilities currently in use and the reasons for their
17 inadequacy. The capital budget shall also indicate the relative priority of the capital construction
18 needs for each court for the next [] years.

19 (d) The director, subject to the approval of the chief justice, may enter into leasing agreements
20 with local units of government or other departments of the state government when joint construction
21 of capital facilities is authorized. The leasing agreement shall provide for the payment of state funds
22 for that portion of the construction costs related to the operation of the courts.

Title IX

JUDICIAL RETIREMENT

1 SECTION 51. *Mandated Retirement.* All judges shall retire at the age of 70. They shall be in-
2 cluded in a retirement plan of the state.

3 SECTION 52. *Eligibility for Reappointment.* All retired judges shall be eligible for reappointment
4 by the chief justice as an active retired judge. An active retired judge shall be subject to the same
5 judicial rules and regulations as other judges. He shall act only in such cases and matters and hold
6 court only at such times as he may be directed and assigned by the chief judge of his court. In no case
7 shall a judge serve on the bench after [80] years of age.

8 SECTION 53. *Retirement System.*¹

¹Some states may wish to integrate the judicial personnel retirement system with an existing retirement system.

1 (a) After *[insert appropriate date]* the director, subject to the approval of the supreme court
2 [and the state retirement board], shall promulgate the terms and conditions of retirement for judicial
3 department personnel. They shall include but not be limited to:

4 (1) eligibility for retirement;

5 (2) basis of retirement compensation for the employees of the judicial department and their
6 survivors;

7 (3) conditions of receiving retirement pay as concerns outside employment;

8 (4) conditions for retirement for disability; and

9 (5) any other matter that may be properly related to the determination of retirement pay.

10 In defining the terms and conditions of retirement for personnel of the judicial department, the
11 director shall take into account the retirement plans applicable to employees of the executive and
12 legislative departments.

13 (b) After *[insert effective date of act]* all employees of local judicial agencies shall be deemed to be
14 employees of the judicial department. These employees shall receive full credit for the time employed
15 by local judicial agencies in computing the number of years of service required to receive pension
16 benefits under the *[insert appropriate state retirement plan]*.

Title X

MISCELLANEOUS

1 SECTION 54. *Effective Date.* *[Insert effective date.]*

2 SECTION 55. *Separability.* *[Insert separability clause.]*

3 SECTION 56. *Transition.* *[Insert appropriate transition provisions.]*

10.203 UNIFORM JURY SELECTION AND SERVICE ACT¹

In the beginning of its 1971 report on *State-Local Relations in the Criminal Justice System*, the Advisory Commission on Intergovernmental Relations observed: "Growing anxiety about safety to person and property, shaken public confidence in our institutions of criminal justice, as well as rising skepticism about the American promise of equal justice under the law, are all symptomatic of the need to reappraise the efficiency of modern crime control systems. Indeed, lack of confidence in the criminal justice system can be one of the root causes of popular disillusionment with government in general." The Commission then proceeded to present over 40 recommendations for strengthening and upgrading the criminal justice system in state and local governments.

Although not dealt with specifically in the report, the process of jury selection has long been both a controversial and vulnerable part of the judicial system. Because of its relevance to the Commission's concern about the lack of public confidence in the system, the *Uniform Jury Selection and Service Act* promulgated by the National Conference of Commissioners on Uniform State Laws is included in the ACIR's state legislative program.

The Problem. In recent decisions of both Federal and state courts the method of selecting jurors has been questioned, and in many cases the jury panel has been found to be unlawful. Furthermore, in 1968 Congress adopted the *Federal Jury Selection and Service Act* which modified the selection process for juries utilized in Federal courts. An attempt was made in the Federal legislation to avoid issues that might lead to judicial declaration that the jury panel was unlawful. The major attack on the validity of juries has been the problem of whether or not all citizens had an opportunity to be considered for jury service. Of additional importance is the obligation of citizens of the state to serve as jurors when summoned for that purpose. Many states have different systems of selection of jurors in the various courts. Unification of the method of selection and avoidance of duplication seems desirable.

Need for Uniformity. The basic need for uniformity in the area of jury selection and service rises out of the recent litigation dealing with the validity of various types of jury panels. Furthermore, the enactment of Federal legislation has indicated a need for state legislation of a comparable nature so that "forum shopping" based upon the manner of selection of jurors can be avoided. Internally within a state, it is also desirable to unify the method of selecting jurors. Duplication of effort and overlapping of assignments can be avoided. There is need, therefore, for a unified body of laws dealing with the method of selection of jurors so that all citizens have an opportunity to serve and have an obligation to serve when summoned.

Solution Proposed by Uniform Act. *Section 2* of the *Uniform Act* provides that no citizens shall be excluded from jury service on account of race, color, religion, sex, national origin, or economic status. The basic purpose of the act is to provide a system for jury selection at random from a fair cross section of the population served by the court. The *Uniform Act* recommends the use of voter registration lists as the prime source for a master list, but in those states where lists of registered voters are not maintained, the list of actual voters at the most recent general election may be used. The highest court of the state is permitted to add, by rule, additional sources of names when necessary to carry out the objectives of the act.

The act provides for the establishment of a jury commission in each county or judicial district and describes its duties. The *Uniform Act* establishes the "key number" system, and prospective jurors are selected at random from the master "jury wheel" as jurors may be required by the court. A prospective juror who is not a citizen, not 21 years of age, and not a resident, or who is unable to read,

¹Related to: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington, D.C.: U.S. Government Printing Office, August, 1971).

speaking, and understanding the English language or is incapable by reason of mental disability is disqualified. Additionally, prospective jurors who do not have the right to vote by reason of a criminal conviction are also disqualified. Prospective jurors may be excused by the court upon the showing of undue hardship, extreme inconvenience, or public necessity. The *Uniform Act* also contains the typical provisions dealing with the right to challenge the jury selection process, preservation of records, compensation for expenses of jurors, and protection of the juror's employment relationship.

Suggested Legislation

[AN ACT PROVIDING FOR UNIFORM AND FAIR JURY SELECTION THROUGH- OUT THE STATE]

(Be it enacted, etc.)

1 SECTION 1. *Declaration of Policy.*¹ It is the policy of this state that all persons selected for jury
2 service be selected at random from a fair cross section of the population of the area served by the
3 court, and that all qualified citizens have the opportunity in accordance with this act to be considered
4 for jury service in this state and an obligation to serve as jurors when summoned for that purpose.

5 SECTION 2. *Prohibition of Discrimination.*² A citizen shall not be excluded from jury service in
6 this state on account of race, color, religion, sex, national origin, or economic status.

7 SECTION 3. *Definitions.*³ As used in this act:

8 (a) "court" means the [] court[s] of this state, and includes, when the context requires, any
9 [judge] [justice] of the court;

10 (b) "clerk" and "clerk of the court" include any deputy clerk;

11 (c) "master list" means the [voter registration lists] [lists of actual voters] for the [county] [district]
12 which shall be supplemented with names from other sources prescribed pursuant to this act (Section
13 5) in order to foster the policy and protect the rights secured by this act (Sections 1 and 2);

14 [Alternative 1.]

15 [(d) "voter registration lists" means the official records of persons [registered] [qualified] to vote in
16 the most recent general election;]

17 [OR]

18 [Alternative 2.]

19 [(d) "lists of actual voters" means the official records of persons actually voting in the most recent
20 general election;]

¹This section is derived from the comparable section of the *Federal Jury Selection and Service Act of 1968* (hereinafter called the *Federal Act*), 28 U.S.C.A. § 1861. See also Section 1 of *1969 Maryland Jury Act*.

²Derived from the *Federal Act*, 28 U.S.C.A. § 1862, and Section 2 of *1969 Maryland Jury Act*.

³It is the purpose of the *Uniform Act* to provide for the selection of jurors from as broadly inclusive a list of citizens as possible. The term "master list" (Section 3(c)) is used to designate that broadly inclusive source of names from which the names to be placed in the master jury wheel will be first selected by a random process. Voting lists are used as the starting point for compilation of the master list, but they must be supplemented to carry out the policy of the act. Section 5 spells out the way in which the supplementation is to be carried out. The voter lists used will be the registration lists, except in those states where the only available lists are those of actual voters.

The random selection of names can be efficiently carried out through electronic or mechanical devices and the definition of "jury wheel" in (e) permits their use. See also Section 6(b).

Activities of the court hereunder, as, for example, in drawing or directing the drawing of names from the master jury wheel under Section 7(a) or in determining disqualifications or excuses under Sections 8 and 11, will ordinarily be conducted by the particular judge holding the jury trial term or otherwise assigned to supervising jury selection.

1 (e) "jury wheel" means any physical device or electronic system for the storage of the names or
2 identifying numbers of prospective jurors;

3 (f) "master jury wheel" means the jury wheel in which are placed names or identifying numbers
4 of prospective jurors taken from the master list (Section 6); and

5 (g) "qualified jury wheel" means the jury wheel in which are placed the names or identifying num-
6 bers of prospective jurors whose names are drawn at random from the master jury wheel (Section 7)
7 and who are not disqualified (Section 8).

8 SECTION 4. *Jury Commission.*¹ A jury commission is established in each [county] [district] to
9 manage the jury selection process under the supervision and control of the court. The jury commis-
10 sion shall be composed of the clerk of the court and a jury commissioner appointed for a term of four
11 years by the [court] [chief justice of the supreme court] [chief administrative officer or board of the
12 [county] [district]]. The jury commissioner must be a citizen of the United States and a resident in the
13 [county] [district] in which he serves. [The jury commissioner shall be reimbursed for travel, subsistence,
14 and other necessary expenses incurred by him in the performance of his duties and shall receive
15 compensation at a *per diem* rate fixed by the [chief justice of the supreme court] or as provided by
16 [law].]

17 SECTION 5. *Master List.*²

18 (a) The jury commission for each [county] [district] shall compile and maintain a master list con-
19 sisting of all [voter registration lists] [lists of actual voters] for the [county] [district] supplemented with

¹The *Uniform Act* prescribes the minimum standards for the jury selection process and avoids what appears as unduly cumbersome in permitting diverse jury selection plans within a single state. Some degree of flexibility is, however, permitted by the provision for court made rules, see *Section 18*, and by special court orders as, for example, for adding names to the master jury wheel (see *Section 6(a)*).

²The *Federal Act*, 28 U.S.C.A. § 1863(b)(2), uses the voter registration lists as the most inclusive list of names of potential jurors, providing, alternatively in those situations where registration lists are not maintained, that lists of actual voters will be used. The *Federal Act* leaves it up to the plan adopted in each Federal district to "prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured" by that act. The *Uniform Act* leaves such responsibility for supplementing the voter lists to either the supreme court or the attorney general, and it makes such supplementation mandatory.

Exclusive use of voter lists as the basis for selecting citizens to be called for jury service may have a chilling effect upon exercise of the franchise, particularly by wage earners for whom jury service may be a particular economic hardship. Principally for that reason the *Report of the President's Commission on Registration and Voting Participation* (November 1963) recommended that voter registration lists be used only for electoral purposes. Furthermore, voter lists typically constitute far from complete lists of the citizens qualified for jury service. Considerable filling out of the master list to be more inclusive than the voter lists is necessary to carry out the declaration of *Section 1* that "all qualified citizens shall have the opportunity . . . to be considered for jury service." Despite these disadvantages of use of voter lists in jury selection, the *Federal Act* and a great many states now use voter lists for that purpose — undoubtedly because it is the most conveniently available public list.

In most instances, the high court of the state should be the agency to prescribe the supplementary sources of names for the master list. Such would be consistent with the rule making power also granted to that court by *Section 18*. In some states, however, the legislature may conclude that the office of the attorney general is better fitted to determine the availability and practicality of supplementary lists. Whichever agency is given the responsibility must act within 90 days of the effective date of the act and must maintain a continuing watch over the matter to assure the adequacy of the supplementation. In particular, the supplementary sources should be reviewed shortly before December each even numbered year since pursuant to *Section 6(a)* the master jury wheel is refilled in that month by random selection from the master list.

It is frequently the case that no single voter registration list or list of actual voters is maintained for the county or judicial district but rather a separate list is kept for each voting precinct or municipality. In such case the starting point for the master list would be

1 names from other lists of persons resident therein, such as lists of utility customers, property [and
2 income] taxpayers, motor vehicle registrations, and drivers' licenses, which the [supreme court] [attorney
3 general] from time-to-time designates. The [supreme court] [attorney general] shall initially designate the
4 other lists within]90] days following the effective date of this act and exercise the authority to desig-
5 nate from time-to-time in order to foster the policy and protect the rights secured by this act (Sec-
6 tions 1 and 2). In compiling the master list the jury commission shall avoid duplication of names.

7 (b) Whoever has custody, possession, or control of any of the lists making up or used in com-
8 piling the master list, including those designated under subsection (a) by the [supreme court] [attorney
9 general] as supplementary sources of names, shall make the list available to the jury for inspection,
10 reproduction, and copying at all reasonable times.

11 (c) The master list shall be open to the public for examination.

12 SECTION 6. *Master Jury Wheel.*

13 (a)¹The jury commission for each [county] [district] shall maintain a master jury wheel, into which
14 the commission shall place the names or identifying numbers of prospective jurors taken from the
15 master list. If the total number of prospective jurors on the master list is 1,000 or less, the names or
16 identifying numbers of all of them shall be placed in the master jury wheel. In all other cases, the
17 number of prospective jurors to be placed in the master jury wheel shall be 1,000 plus not less than
18 [1] percent of the total number of names on the master list. From time-to-time a larger or additional
19 number may be determined by the jury commission or ordered by the court to be placed in the master

the aggregation of all the voter registration lists or lists of actual voters of the several political subdivisions. There is no need for the several lists to be put together into a single alphabetical list. It would, for example, be satisfactory for the lists simply to be put in alphabetical order by municipality. The exact method of putting together the several lists into the master list is left to the jury commission or may be prescribed by rule.

The sources of names for the master list may be public, such as voter lists and motor vehicle registration lists, or may be private, as lists of telephone subscribers or electric company customers. Section 5(b) requires such lists to be made available to the jury commission. If any expense beyond merely making the list available at reasonable times becomes involved, as for example the expense of producing a computer print-out, the owner of the private list can reasonably expect reimbursement of the actual cost thereof.

The master list is open to the public. In general, other lists and papers used or produced in connection with the jury selection process, with the exception of the names of jurors drawn for jury service and the contents of their juror qualification forms (Section 9), are kept, confidential, but even they can be opened up for examination by parties preparing, presenting or defending against motions for relief on the ground of a substantial failure to comply with this act.

¹The *Federal Act*, 28 U.S.C.A. § 1863(b)(1), specifies that the minimum number of names to be placed initially in the master jury wheel shall be "one-half of 1 per centum of the total number of persons on the lists used as the source of names for the district or division . . . but in no event less than one thousand." Section 4(b)(iii) of the *Maryland Jury Act*, modeled on the *Federal Act*, changes the irreducible minimum from 1,000 to 200. The number of 1,000 (plus 1 percent of the total number of names on the master list) is suggested in the *Uniform Act* to be necessary to provide jurors for a two year period in even a county with only a few jury terms each year. In counties with more juries, the number placed in the master jury wheel should be greater. The jury commission is authorized to fix a greater number depending upon the particular circumstances.

Within a single state, wide variations commonly exist between the populations of different counties or judicial districts. The *Uniform Act* recognizes the existence of such population differences and accommodates jury selection to the circumstances of each county or district. If the county or district has such a small population that the master list has fewer than 1,000 names, all of those names will be put into the master jury wheel and the random selection process prescribed in Section 6 is not necessary. On the other hand, in a larger county the minimum number of names to be placed in the master jury wheel is 1,000 plus a fixed percentage of the total number of names on the master list.

1 jury wheel. In December of each even numbered year the wheel shall be emptied and refilled as pre-
2 scribed in this act.

3 (b)¹Unless all the names on the master list are to be placed in the master jury wheel pursuant to
4 subsection (a), the names or identifying numbers of prospective jurors to be placed in the master
5 jury wheel shall be selected by the jury commission at random from the master list in the following
6 manner: The total number of names on the master list shall be divided by the number of names to be
7 placed in the master jury wheel; the whole number nearest the quotient shall be the "key number,"
8 except that the key number shall never be less than two. A "starting number" for making the selec-
9 tion shall then be determined by a random method from the numbers from one to the key number,
10 both inclusive. The required number of the names shall then be selected from the master list by taking
11 in order the first name on the master list corresponding to the starting number and then successively
12 the names appearing in the master list at intervals equal to the key number, recommencing if neces-
13 sary at the start of the list until the required number of names has been selected. Upon recommencing
14 at the start of the list, or if additional names are subsequently to be selected for the master jury wheel,
15 names previously selected from the master list shall be disregarded in selecting the additional names.
16 The jury commission may use an electronic or mechanical system or device in carrying out its duties.

17 SECTION 7. *Drawings from Master Jury Wheel; Juror Qualification Form.*²

18 (a) From time-to-time and in a manner prescribed by the court, the jury commission publicly shall
19 draw at random from the master jury wheel the names or identifying numbers of as many prospective
20 jurors as the court by order requires. The clerk shall prepare an alphabetical list of the names drawn.
21 Neither the names drawn nor the list shall be disclosed to any person other than pursuant to this act
22 or specific order of the court. The clerk shall mail to every prospective juror whose name is drawn
23 from the master jury wheel a juror qualification form accompanied by instructions to fill out and re-
24 turn the form by mail to the clerk within ten days after its receipt. The juror qualification form shall

¹The process of selecting names for the master jury wheel from the master list may be illustrated by the following two examples:

A. The master list contains 1,400 names. The minimum number of names for the master jury wheel is therefore 1,000 plus 1 percent of 1,400, or a total of 1,014. The quotient, obtained by dividing 1,400 by 1,014, is 1.4. However, to provide an equal opportunity of selection for every name on the list, the act requires that the key number" be no less than two, so that will become the "key number." To obtain a "starting number" a random choice is made between one and two, perhaps by tossing a coin. Assuming one is selected, the first name on the master list is the first name picked, the third name is next picked, and so on at intervals of two. The first time through the master list will produce only 700 names and therefore it is necessary to start again at the head of the list, but this time the names already picked must be ignored. Accordingly, in this instance, the second name on the original list will be first this time, and so on until a total of 1,014 names have been picked.

B. The master list contains 360,000 names. The minimum number of names for the master jury wheel is therefore 1,000 plus 1 percent of 360,000, or a total of 4,600. The jury commission or the court determines, however, that it would be desirable to have 4,800 names in the master jury wheel. The quotient of 360,000 divided by 4,800 is 75. and, therefore, the "key number" is 75. The "starting number" is determined by a random method from the numbers from one to 75, inclusive. If the number so determined is four, for example, the fourth name on the master list is the first selected, and then every 75th name thereafter is picked until a total of 4,800 have been selected. In this example, it is to be noted that the number of names desired to be put into the master jury wheel (4,800) divides evenly into the total number of names on the master list (360,000). In such circumstances, the full 4,800 names can be selected without recommencing at the start of the list.

In those districts where electronic data processing equipment is available, the act specifically permits its use to perform the required random selection by appropriate programming.

²Derived from the *Federal Act*, 28 U.S.C.A. § 1864, and Section 5 of the Maryland Jury Act.

1 be subject to approval by the court as to matters of form and shall elicit the name, address of resi-
2 dence, and age of the prospective juror and whether he (1) is a citizen of the United States and a resi-
3 dent of the [county] [district], (2) is able to read, speak, and understand the English language, (3) has
4 any physical or mental disability impairing his capacity to render satisfactory jury service, and (4) has
5 lost the right to vote because of a criminal conviction. The juror qualification form shall contain the
6 prospective juror's declaration that his responses are true to the best of his knowledge and his ac-
7 knowledgement that a wilful misrepresentation of a material fact may be punished by a fine of not
8 more than [\$500] or imprisonment for not more than [30] days, or both. Notarization of the juror
9 qualification form shall not be required. If the prospective juror is unable to fill out the form, another
10 person may do it for him and shall indicate that he has done so and the reason therefor. If it appears
11 there is an omission, ambiguity, or error in a returned form, the clerk shall again send the form with
12 instructions to the prospective juror to make the necessary addition, clarification, or correction and to
13 return the form to the jury commission within ten days after its second receipt.

14 (b) Any prospective juror who fails to return a completed juror qualification form as instructed
15 shall be directed by the jury commission to appear forthwith before the clerk to fill out the juror
16 qualification form. At the time of his appearance for jury service, or at the time of any interview be-
17 fore the court or clerk, any prospective juror may be required to fill out another juror qualification
18 form in the presence of the court or clerk, at which time the prospective juror may be questioned, but
19 only with regard to his responses to questions contained on the form and grounds for his excuse
20 or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror
21 qualification form.

22 (c) A prospective juror who fails to appear as directed by the commission pursuant to sub-
23 section (a) shall be ordered by the court to appear and show cause for his failure to appear as di-
24 rected. If the prospective juror fails to appear pursuant to the court's order or fails to show good
25 cause for his failure to appear as directed by the jury commission, he is guilty of criminal contempt
26 and upon conviction may be fined not more than [\$100] or imprisoned not more than [three] days, or
27 both.

28 (d) Any person who wilfully misrepresents a material fact on a juror qualification form for the
29 purpose of avoiding or securing service as a juror is guilty of a misdemeanor and upon conviction
30 may be fined not more than [\$500] or imprisoned not more than [30] days, or both.

31 SECTION 8. *Disqualifications from Jury Service.*¹

32 (a) The court, upon request of the jury commission or a prospective juror or on its own initia-
33 tive, shall determine on the basis of information provided on the juror qualification form or interview
34 with the prospective juror or other competent evidence whether the prospective juror is disqualified

¹ Derived largely from the *Federal Act*, 28 U.S.C.A. § 1865.

1 for jury service. The clerk shall enter this determination in the space provided on the juror qualifi-
2 cation form and on the alphabetical list of names drawn from the master jury wheel.

3 (b) A prospective juror is disqualified to serve on a jury if he:

4 (1) is not a citizen of the United States, [21] years old, and a resident of the [district] [county];

5 (2) is unable to read, speak, and understand the English language;

6 (3) is incapable, by reason of his physical or mental disability, of rendering satisfactory jury
7 service; but a person claiming this disqualification may be required to submit a physician's certifi-
8 cate as to the disability, and the certifying physician is subject to inquiry by the court at its discre-
9 tion; or

10 (4) has lost the right to vote because of a criminal conviction.

11 SECTION 9. *Qualified Jury Wheel; Selection and Summoning of Jury Panels.*¹

12 (a) The jury commission shall maintain a qualified jury wheel and shall place therein the names
13 or identifying numbers of all prospective jurors drawn from the master jury wheel who are not dis-
14 qualified (Section 8).

15 (b) [A judge] [The court administrator] or any court or any other state or [county] [district] official
16 having authority to conduct a trial or hearing with a jury within the [county] [district], may direct the
17 jury commission to draw and assign to that court or official the number of qualified jurors he deems
18 necessary for one or more jury panels or as required by law for a grand jury. Upon receipt of the
19 direction and in a manner prescribed by the court, the jury commission shall publicly draw at random
20 from the qualified jury wheel the number of qualified jurors specified. The qualified jurors drawn for
21 jury service shall be assigned at random by the clerk to each jury panel in a manner prescribed by the
22 court.

23 (c) If a grand, petit, or other jury is ordered to be drawn, the clerk thereafter shall cause each
24 person drawn for jury service to be served with a summons either personally or by registered or certi-
25 fied mail, return receipt requested, addressed to him at his usual residence, business, or post office
26 address, requiring him to report for jury service at a specified time and place.

27 (d) If there is an unanticipated shortage of available petit jurors drawn from a qualified jury
28 wheel, the court may require the sheriff to summon a sufficient number of petit jurors selected at
29 random by the clerk from the qualified jury wheel in a manner prescribed by the court.

30 (e) The names of qualified jurors drawn from the qualified jury wheel and the contents of jury

¹ The first four subsections are derived from the *Federal Act*, 28 U.S.C.A. § 1866 (a)(b), and (f). *Subsection (e)* is derived from Section 4(b)(iv) of the *1969 Maryland Jury Act*.

The *Uniform Act* contemplates that the jury commission in each county or district will carry out the selection of jurors for all juries within that territory. Any court or public official having authority to conduct a trial or hearing with a jury can, pursuant to *Section 9(b)*, requisition the requisite number of jurors. Under *subsection (c)* the clerk member of the jury commission is charged with the job of summoning all jurors, including those for specialized tribunals. For the purpose of granting excuses from service on the juries used by such specialized tribunals, the presiding officer would exercise the powers of the "court" under *Section 11(b)*.

1 qualification forms completed by those jurors shall be made available to the public unless the court
2 determines in any instance that this information in the interest of justice should be kept confidential
3 or its use limited in whole or in part.

4 SECTION 10. *No Exemptions.*¹ No qualified prospective juror is exempt from jury service.

5 SECTION 11. *Excuses from Jury Service*²

6 (a) The court, upon request of a prospective juror or on its own initiative, shall determine on the
7 basis of information provided on the juror qualification form or interview with the prospective juror
8 or other competent evidence whether the prospective juror should be excused from jury service. The
9 clerk shall enter this determination in the space provided on the juror qualification form.

10 (b) A person who is not disqualified for jury service (Section 8) may be excused from jury ser-
11 vice by the court only upon a showing of undue hardship, extreme inconvenience, or public neces-
12 sity, for a period the court deems necessary, at the conclusion of which the person shall reappear
13 for jury service in accordance with the court's direction.

¹The *Federal Act*, 28 U.S.C.A. § 1863(b)(6), permits the plan in each district to "specify those groups of persons or occupational classes whose members shall be barred from jury service on the ground that they are exempt" provided that "the district court finds, and the plan states, that their exemption is in the public interest and would not be inconsistent" with the policies declared in the first and second sections of the act. The *Federal Act* goes on to require that exemption be provided for the following:

- (i) members in active services in the Armed Forces of the United States; (ii) members of the fire or police department of any state, district, territory, possession or subdivision thereof; (iii) public officers in the executive, legislative, or judicial branches of the government of the United States, or any state, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties.

Many states also have a long list of exempt classes of persons. For example, Maine exempts all officers of the United States, officers of colleges, and cashiers of incorporated banks, as well as ministers, teachers, physicians, dentists, nurses, and attorneys. 14 M.R.S.A. § 1201.

Exemption of particular classes by statute is believed inadvisable. The public policy declared in *Section 1* is better achieved by individual excuses pursuant to *Section 11* upon a showing in the individual case of undue hardship, extreme inconvenience, or public necessity. Moreover, since petit jury service is, except in the unusual case, limited by *Section 15* of the *Uniform Act* to a specified number of court days in any two year period, the burden of jury service upon the individual is minimized. The individual should not be given an automatic exemption merely because he comes within a particular class, but rather should be required to make out a case of hardship to the court.

²The *Federal Act* permits the plan in each district to specify groups of persons or occupational classes whose members shall, on individual request therefor, be excused from jury service and also to fix the distance either in miles or travel time beyond which prospective jurors would not be required to travel to court. 28 U.S.C.A. § 1863(b)(5) and (7). Many plans adopted under the *Federal Act* give automatic excuse upon request to a long list of classes of groups, as, for example, the following list quoted from the plan for the District of Maine:

- (1) all persons over 70 years of age;
- (2) all ministers of the gospel and members of religious orders, actively so engaged;
- (3) all attorneys, physicians, surgeons, dentists, veterinarians, pharmacists, nurses, and funeral directors, actively so engaged;
- (4) all persons who have served as a grand or petit juror in a state or Federal court within the preceding two years;
- (5) all school teachers in public, parochial, or private schools, actively so engaged;
- (6) all persons who do not have adequate means of transportation to the place of holding court;
- (7) all women who are caring for a child or children under the age of 16 years;
- (8) all sole operators of businesses.

Other district plans have strictly limited the automatic excuses, as for example, that for the Western District of North Carolina, which grants automatic excuse upon individual request only to the following:

- (1) persons over 75 years of age;
- (2) women who have legal custody of a child or children under the age of ten years;
- (3) any person who resides more than one hundred (100) miles from place of holding court.

1 SECTION 12. *Challenging Compliance with Selection Procedures.*¹

2 (a) Within seven days after the moving party discovered or by the exercise of diligence could
3 have discovered the grounds therefor, and in any event before the petit jury is sworn to try the case,
4 a party may move to stay the proceedings, and in a criminal case to quash the indictment, or for other
5 appropriate relief, on the ground of substantial failure to comply with this act in selecting the grand
6 or petit jury.

7 (b) Upon motion filed under subsection (a) containing a sworn statement of facts which, if true,
8 would constitute a substantial failure to comply with this act, the moving party is entitled to present
9 in support of the motion the testimony of the jury commissioner or the clerk, any relevant records
10 and papers not public or otherwise available used by the jury commissioner or the clerk, and any
11 other relevant evidence. If the court determines that in selecting either a grand jury or a petit jury
12 there has been a substantial failure to comply with this act, the court shall stay the proceedings pend-
13 ing the selection of the jury in conformity with this act, quash an indictment, or grant other appro-
14 priate relief.

15 (c) The procedures prescribed by this section are the exclusive means by which a person accused
16 of a crime, the state, or a party in a civil case may challenge a jury on the ground that the jury was
17 not selected in conformity with this act.

18 (d) The contents of any records or papers used by the jury commissioner or the clerk in connec-

*Section 11 of the Uniform Act is based upon the same principle as Section 10, namely, that there should be no automatic exemp-
tions or excuses from jury service, but rather that excuse should be only upon a showing of actual need or public reason therefor.
The Uniform Act proceeds on the principle that jurors should be selected by random methods from the widest possible list of citizens.
The corollary is that actual service on the jury should be shared as widely as possible and in particular that professional and business
groups should be excused only in cases of demonstrated need. The so-called "blue ribbon jury" is outlawed by the Uniform Act. At
the same time, business and professional groups within the community should not be permitted to avoid jury service. It is also be-
lieved that citizens in general will be more willing to perform jury service if it is known throughout the community that jury service
is universal, barring only particular hardship in specific cases.*

*The Uniform Act does not refer to those other ways in which pursuant to other provisions of law prospective jurors may be ex-
cluded from service, namely, (i) exclusion upon peremptory challenge; (ii) exclusion for good cause; and (iii) exclusion because the
requisite number of jurors, including alternate jurors, have already been impaneled in a particular case. Those other occasions for
the exclusion of qualified jurors are well defined in the law. Otherwise than by exclusion under those circumstances, if a qualified
juror is drawn from the qualified wheel and he is not excused upon a showing of undue hardship, extreme inconvenience, or public
necessity, he has the obligation to serve and is guaranteed the opportunity to serve. See Section 1.*

*This section establishes the exclusive means for challenging a jury on the grounds that its selection was otherwise than in conform-
ity with the provisions of this act. The challenge must be made before the trial jury is sworn or within seven days after discovery or
constructive discovery of the grounds of the challenge, the whichever occurs earlier. A defendant may not complain about the make-
up of the panel; his objection can go only to the manner of selection. See *Pinkney v. United States*, 380 F.2d 882 (5th Cir. 1957).*

*This section is derived from the Federal Act, 28 U.S.C.A. § 1867. The Senate Committee Report on the bill which became the
Federal Act had the following to say in regard to the exclusivity provision (Subsection (c) in the Uniform Act), which in the Federal
Act is Section 1867(e):*

*Subsection (e) makes clear that the procedures prescribed in this section are the exclusive means for challenging compli-
ance with the statute. Challenge procedures existing under other laws are left intact for purposes of asserting rights created
by other laws and for enforcing constitutional rights, but such other procedures may not be used to challenge compliance
with this statute. Your committee feels constrained to recognize that these alternatives for raising rights created by other
statutes and for raising constitutional challenges are not affected by the act. This recognition is particularly apt in light of
recent Supreme Court decisions indicating that the manner in which constitutional rights may be raised cannot be narrowly
prescribed. See e.g., *Henry v. Mississippi*, 379 U.S. 443, 447 (1965); *Douglas v. Alabama*, 380 U.S. 415, 422 (1965).*

1 tion with the selection process and not made public under this act (Sections 5(c) and 9(e)) shall not
2 be disclosed, except in connection with the preparation or presentation of a motion under subsection
3 (a), until after the master jury wheel has been emptied and refilled (Section 6) and all persons se-
4 lected to serve as jurors before the master jury wheel was emptied have been discharged. The parties
5 in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the
6 preparation and pendency of a motion under subsection (a).

7 SECTION 13. *Preservation of Records.*¹ All records and papers compiled and maintained by
8 the jury commissioner or the clerk in connection with selection and service of jurors shall be pre-
9 served by the clerk for four years after the master jury wheel used in their selection is emptied and
10 refilled (Section 6) and for any longer period ordered by the court.

11 SECTION 14. *Mileage and Compensation of Jurors.*² A juror shall be paid mileage at the rate
12 of [10] cents per mile for this travel expense from his residence to the place of holding court and
13 return and shall be compensated at the rate of [\$20.00] for each day of required attendance at sessions
14 of the court.

15 SECTION 15. *Length of Service by Jurors.*³ In any [two] year period a person shall not be
16 required:

- 17 (a) to serve or attend court for prospective service as a petit juror more than [ten] court days,
18 except if necessary to complete service in a particular case;
- 19 (b) to serve on more than one grand jury; or
- 20 (c) to serve as both a grand and petit juror.

21 SECTION 16. *Penalties for Failure to Perform Jury Service.*⁴ A person summoned for jury ser-
22 vice who fails to appear or to complete jury service as directed shall be ordered by the court to appear
23 forthwith and show cause for his failure to comply with the summons. If he fails to show good
24 cause for non-compliance with the summons, he is guilty of criminal contempt and upon conviction
25 may be fined not more than [\$100] or imprisoned not more than [three] days, or both.

26 SECTION 17. *Protection of Jurors' Employment*⁵

27 (a) An employer shall not deprive an employee of his employment, or threaten or otherwise co-

¹Derived from the *Federal Act*, 28 U.S.C.A. § 1868.

²Compensation more adequate than has commonly been provided and also reimbursement for at least travel expenses should accompany the expanded obligation for jury service. Also, more adequate compensation will tend to reduce the occasions for excusing prospective jurors under *Section 11* because of financial hardship.

³This section is derived from the *Federal Act*, 28 U.S.C.A. § 1866(e), although a maximum of ten days service on a petit jury is suggested as against the 30 day limitation of the *Federal Act*. The purpose of the section is stated in the *Senate Committee Report* on the bill which became the *Federal Act*:

This provision is designed to distribute the 'burden' of jury service and to enhance the representative quality of juries. Moreover, since jury service involves direct participation in the democratic process, as many citizens as possible ought to have the chance to serve.

⁴Derived from the *Federal Act*, 28 U.S.C.A. § 1866(g).

⁵In substance derived from Section 13 of the 1969 *Maryland Jury Act* and Michigan C.L.A. § 600.1348. The civil remedy provided in subsection (c) parallels that provided in Section 5.202(6) of the *Uniform Consumer Credit Code* (relating to wrongful discharge for garnishment), with the addition of the allowance of a reasonable attorney's fee to the prevailing plaintiff.

1 erce him with respect thereto, because the employee receives a summons, responds thereto, serves
2 as a juror, or attends court for prospective jury service.

3 (b) Any employer who violates subsection (a) is guilty of criminal contempt and upon convic-
4 tion may be fined not more than [\$500] or imprisoned not more than [six] months, or both.

5 (c) If an employer discharges an employee in violation of subsection (a) the employee within
6 [] days may bring a civil action for recovery of wages lost as a result of the violation and for an order
7 requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for
8 six weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

9 SECTION 18. *Court Rules.*¹ The [supreme court] may make and amend rules, not inconsistent with
10 this act, regulating the selection and service of jurors.

11 SECTION 19. *Separability.* If any provision of this act or the application thereof to any person
12 or circumstance is held invalid, the invalidity does not affect other provisions or applications of the
13 act which can be given effect without the invalid provision or application and to this end the pro-
14 visions of this act are separable.

15 SECTION 20. *Short Title.* This act may be cited as the *Uniform Jury Selection and Service Act.*

16 SECTION 21. *Application and Construction.* This act shall be so applied and construed as to
17 effectuate its general purpose to make uniform the law with respect to the subject of this act among
18 those states which enact it.

19 SECTION 22. *Repeal.* The following acts and parts of acts are repealed:

20 (a)

21 (b)

22 (c)

23 SECTION 23. *Effective Date.* [*Insert Effective date clause.*]

¹This Section does not appear in either the Federal or Maryland Act (although those acts do provide for local "plans" which are in effect rules). It is added in order to enable the state's highest court to flesh out the provisions of the act and to assure to the extent desirable that the same detailed methods of jury selection and administration of the act are followed throughout the state or at least that any variations from uniformity are the result of conscious choice. In some respects, the rules made by the state's highest court will serve the same function as the jury selection plan under the *Federal Act*. See also *Section 5(a)* authorizing the supreme court (or alternatively the attorney general) to prescribe supplementary sources of names for the master list.

Mich. C.L.A. § 600.1353 gives rule making power in regard to jury selection to the judges of each circuit court.

10.204 OMNIBUS PROSECUTION ACT¹

The relationship between the attorney general and local prosecuting attorneys varies widely from state-to-state. A few states vest complete prosecutorial authority in the attorney general; at the same time, a few give him no authority whatsoever in criminal cases. Between these extremes, most states have established a range of relationships, including mutually exclusive areas of criminal authority, attorney general advice and assistance to local prosecutors, and direct control over local prosecuting attorneys by the attorney general. A 1973 Connecticut statute places the prosecution function in the judicial department with the chief state's attorney appointed by the chief justice and local prosecutors appointed by the circuit judge (PA 73-122).

The purpose of the following proposed legislation is to strengthen statewide coordination of prosecutorial activity providing for general supervision by the attorney general of the prosecution component of a state's criminal justice system, while preserving and encouraging flexibility on the part of local prosecutors in exploring and testing varying approaches to the prosecutorial function with a view to increasing its effectiveness and equity. Strengthened coordination of the activities of local prosecutors has been proposed in a variety of studies of the criminal justice system in recent years by the National Advisory Commission on Criminal Justice Standards and Goals, the Committee for Economic Development, the National Association of Attorneys General, and the Advisory Commission on Intergovernmental Relations (ACIR). The ACIR, in its 1971 report on *State-Local Relations in the Criminal Justice System*, urged that the attorney general serve as the supervisory prosecution officer of the state.

Section 2 of the proposed legislation contains the necessary definitions. It should be recognized that the definition of "local prosecuting attorney" will vary from state-to-state; in determining the proper titles, however, it should be kept in mind that the local prosecutor should have primary responsibility for instituting criminal actions within his jurisdiction.

Section 3 of the bill sets forth powers and duties of the attorney general in the criminal justice system and provides a number of actions that the attorney general may take *vis-a-vis* local prosecutors at his discretion; on the request of the local prosecuting attorney, the governor, or a grand jury, or when the local prosecutor fails to apply properly a statewide policy. These actions include consultation, technical assistance, and intervention. This section also embodies necessary safeguards in connection with the exercise of the attorney general's authority in criminal investigations.

Section 4 authorizes the attorney general to submit periodically to the legislature local prosecution district reorganization plans, and requires local prosecuting attorneys of multicounty districts to appoint at least one assistant. *Section 5* requires the attorney general to prescribe minimum standards for local prosecutors' offices, and authorizes state financial aid to offices certified as meeting these standards to cover part of the costs related to the investigation and prosecution of criminal offenses.

Section 6 establishes a state council of prosecutors and provides for interagency cooperation; and *Section 7* deals with reporting requirements. *Section 8* contains procedures for the removal of local prosecuting attorneys.

This draft bill draws upon the American Bar Association's *Model Department of Justice Act*, New Jersey's *Criminal Justice Act of 1970*, and *The Office of Attorney General* (National Association of Attorneys General, February, 1971). In some states, constitutional amendments may be required to allow for various sections of this act.

Other relevant state statutes include a 1973 Connecticut law (HB 8247) for state assumption of criminal prosecution activities, and a 1970 Tennessee statute for state assumption of costs of prosecuting felonies.

¹Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington, D.C.: Government Printing Office, August, 1971).

Suggested Legislation

**[AN ACT PROVIDING FOR THE GENERAL SUPERVISION BY THE
ATTORNEY GENERAL OF CRIMINAL LAW ENFORCEMENT
THROUGHOUT THE STATE]**

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purpose.* The [legislature] hereby finds and declares that:

2 (a) The increasing rate of crime presents a serious threat to the political, social, and economic
3 institutions of the state and helps bring about a loss of popular confidence in the agencies of
4 government.

5 (b) Fragmented administration of the prosecution function has reduced the effectiveness of the
6 crime prevention and control efforts of the state and its political subdivisions, and has hindered the
7 consistent application of criminal law throughout the state.

8 It is the purpose of this act to encourage cooperation among state and local prosecuting attorneys
9 and to provide for the general supervision of criminal justice by the attorney general as chief law
10 officer of the state, in order to secure the benefits of a uniform and efficient enforcement of the
11 criminal law and the administration of criminal justice throughout the state. It is the further purpose
12 of this act to preserve and encourage initiative on the part of local prosecuting attorneys in exploring
13 and utilizing new and potentially productive approaches in the prosecution of crimes.

14 SECTION 2. *Definitions.*

15 (a) "Law enforcement officer" means a police officer, sheriff, or other individual who is employed
16 full time by the state or a unit of local government to preserve order and enforce the laws.

17 (b) "Local prosecuting attorney" means a [county or district prosecutor, or a county attorney,
18 district attorney, state's attorney, or circuit attorney] having primary responsibilities for instituting
19 criminal actions.

20 SECTION 3. *Powers and Duties of the Attorney General.*

21 (a) The attorney general shall serve as the supervisory prosecuting officer of the state. He shall
22 maintain general supervision over local prosecuting attorneys with a view to obtaining effective
23 enforcement of the criminal laws throughout the state. He shall consult with and advise the several
24 local prosecuting attorneys and may provide technical assistance in matters relating to the duties of
25 their office.

26 (b) Any local prosecuting attorney may request in writing the assistance of the attorney general in
27 the conduct of any investigation, criminal action, grand jury, or other criminal proceeding. The
28 attorney general may thereafter take whatever action he deems necessary to assist the local prosecuting

1 attorney in the discharge of his duties.

2 (c) Whenever requested in writing by the governor, the attorney general shall, and whenever
3 requested in writing by a grand jury or a county or by *[insert other appropriate agencies]*, the
4 attorney general may intervene in any investigation, criminal action, or proceeding instituted by a
5 local prosecuting attorney, and may appear for the state in any court or tribunal for the purpose of
6 conducting such investigations, criminal actions, or proceedings as shall be necessary for the protec-
7 tion of the rights and interests of the state.

8 (d) Whenever in his opinion the interests of the state will be furthered by so doing, the attorney
9 general may, and whenever a local prosecuting attorney refuses to apply a statewide policy or has
10 applied it in a manner that distorts its purposes, the attorney general shall, intervene in or initiate any
11 investigation, criminal action, or proceeding. In such instances, the attorney general may appear for
12 the state in any court or tribunal for the purpose of conducting such investigations, criminal actions,
13 or proceedings as shall be necessary to promote and safeguard the public interests of the state and
14 secure the enforcement of the laws of the state. [The attorney general may act for any local prosecuting
15 attorney in representing the interests of the state in any and all appeals and applications for post-
16 conviction remedies.]

17 (e) The attorney general shall prosecute the criminal business of the state in any county or
18 judicial district having no local prosecuting attorney.

19 (f) Whenever the attorney general shall assist, intervene or participate in, or initiate or conduct
20 any criminal action or proceeding as heretofore provided in subsections (b) and (c) of this section, he
21 shall be authorized to exercise all the powers and perform all the duties the local prosecuting attorney
22 would otherwise be authorized or required to perform, including the investigation of alleged crimes, the
23 attendance before the criminal courts and grand juries, the preparation and trial of indictments for
24 crimes, and the representation of the state in all proceedings in criminal cases on appeal or otherwise
25 in the courts of this state. The attorney general is empowered to convene statewide investigatory
26 grand juries. Subject to the availability of funds, he may appoint temporary assistants, aides,
27 investigators, or other personnel.

28 (g) The powers and duties conferred upon or required of the attorney general by this act shall not
29 be construed to supplant or deprive local prosecuting attorneys of any of their authority in respect to
30 criminal prosecutions, or relieve them from any of their duties to enforce the criminal laws of the
31 state.

32 SECTION 4. *Local Prosecution Districts.*

33 (a) Local prosecuting attorneys of multicounty districts shall appoint at least one assistant [in
34 each county] to coordinate the prosecution of crimes under state law and handle all stages of felony
35 proceedings.

1 (b) So as to warrant at least one full-time local prosecuting attorney and the supporting staff
2 necessary for effective performance of the prosecution function, the attorney general shall submit
3 periodically to the [legislature] a plan revising existing or establishing new local prosecution districts
4 on the basis of population, caseload, judicial district boundaries, and other relevant factors.¹

5 SECTION 5. *Minimum Standards; Financial Assistance.* In order to assure the efficient opera-
6 tion of offices of local prosecuting attorneys, the attorney general shall prescribe minimum standards
7 with regard to personnel, procedures, and other appropriate matters. Offices of local prosecuting at-
8 torneys shall be given reasonable opportunity to meet such minimum standards. On or before
9 [the last day of each fiscal year], the attorney general shall certify to the [state disbursing officer]
10 those offices of local prosecuting attorneys meeting these standards. The [state disbursing officer]
11 shall make payments, from funds appropriated for that purpose, to the appropriate [units of local
12 government] to reimburse them for [50] percent of the costs incurred during the ensuing fiscal year
13 for activities related to the investigation and prosecution of criminal offenses conducted by certified
14 offices of local prosecuting attorneys.

15 SECTION 6. *State Council of Prosecutors and Interagency Cooperation.*

16 (a) The attorney general shall establish a state council of prosecutors composed of all local
17 prosecuting attorneys, which shall meet on a regular basis to develop guidelines for local prosecuting
18 attorneys and assure that local prosecution policies and practices meet state minimum standards and
19 are consistent from jurisdiction to jurisdiction.

20 (b) The attorney general may, from time-to-time, and as often as may be required, call into
21 conference the local prosecuting attorneys, the chiefs of police of the several counties and municipal-
22 ities, and any other law enforcement officers of the state or such of them as he may deem advisable,
23 for the purpose of discussing the duties of their respective offices with a view to the adequate and
24 uniform enforcement of the criminal laws of this state.

25 (c) All local prosecuting attorneys and local police officers shall cooperate with and aid the
26 attorney general in the performance of his duties. All state and local law enforcement officers shall
27 cooperate with and aid the attorney general and the several local prosecuting attorneys in the
28 performance of their respective duties.

29 SECTION 7. *Reports.*

30 (a) The attorney general shall annually submit to the governor and the [legislature] a report
31 setting forth the activities of the office during the preceding calendar year, together with suggestions
32 and recommendations for the adequate and uniform enforcement of the criminal laws of the state.
33 The attorney general shall include in his report an abstract of the annual reports of the several local
34 prosecuting attorneys.

¹In some states, a constitutional amendment may be necessary to implement this subsection.

1 (b) Each local prosecuting attorney shall annually submit to the attorney general a written report
2 for the last preceding [fiscal] [calendar] year, covering such items of information and such dispositions
3 of complaints, investigations, criminal actions, and proceedings as the attorney general shall pre-
4 scribe. The report shall also contain a description of results obtained from locally initiated efforts to
5 improve the effectiveness and equity of the prosecution function. The attorney general may also
6 require the several local prosecuting attorneys to submit, from time-to-time, special reports as to
7 specific matters pertaining to the duties of their office.

8 (c) The attorney general may make studies and surveys of the organization, procedures, and
9 methods of operation and administration of all law enforcement agencies within the state, with a view
10 toward preventing crime, improving the administration of criminal justice, and securing the improved
11 enforcement of the criminal law. Such studies may include the procedures and results of sentencing,
12 where sentences are open to discretion.

13 SECTION 8. *Removal of Local Prosecuting Attorneys.* In addition to any and all methods now
14 provided by law for removal from office, the attorney general, after receipt of a valid complaint or on
15 his own motion, may initiate proceedings for the removal of any local prosecuting attorney in the
16 state by the supreme court. Upon receipt of a valid complaint, the attorney general shall make such
17 investigation as he deems necessary to verify or refute the substance of the complaint. After such
18 investigation, the attorney general may order a confidential hearing to be held. After investigation and
19 hearing, the attorney general may petition the supreme court for the removal from office of any
20 prosecuting attorney. The supreme court shall review the record of the attorney general's proceedings
21 and in its discretion may permit the introduction of additional evidence. If the court finds a failure of
22 the local prosecuting attorney to discharge the duties of the office, it shall enter an order for removal
23 from office.

24 SECTION 9. *Laws Repealed.* All acts or parts of acts inconsistent with the provisions of this act
25 are hereby repealed.

26 SECTION 10. *Separability.* [Insert separability clause.]

27 SECTION 11. *Effective Date.* [Insert effective date.]

10.205 PUBLIC DEFENDER ACT¹

[Model act promulgated by National Conference of Commissioners on Uniform State Laws]²

During the late 60s and early 70s, a consensus developed throughout the country covering a wide spectrum of legal and lay opinion to the effect that states should move immediately to assure the availability of competent and dedicated defense counsel to defendants not able to employ counsel. The Advisory Commission on Intergovernmental Relations in its 1971 report on *State-Local Relations in the Criminal Justice System* said: "The Commission recommends that each state establish and finance a statewide system for defense of the indigent making either a public defender or coordinated assigned counsel service readily available to every area of the state."

The following proposed legislation is an act promulgated by the National Conference of Commissioners on Uniform State laws at its annual meeting in 1971.

In 1959, the conference adopted a *Model Defender Act* based on careful study and close cooperation with the National Legal Aid and Defender Association, the standing committee on legal aid work of the American Bar Association, and its section of criminal law.

Later study, made in the new light cast by Supreme Court decisions such as *Gideon v. Wainwright* (372 U.S. 335 (1963)), *Escobedo v. Illinois* (378 U.S. 478 (1964)), and *Miranda v. Arizona* (384 U.S. 436 (1966)), suggested the advisability of reevaluating the earlier work of the conference. As a result, the conference adopted the *Model Defense of Needy Persons Act* in 1966.

There were two main features to that act. It set up (1) a procedure for assuring that the rights of needy persons accused of crime would be protected in accordance with constitutional mandates, and (2) an organizational system and framework by which adequate counsel and other needed facilities could be provided at state expense. In the latter respect, it adopted the so-called "county option" plan, which left it up to each county whether to set up a public defender, adopt a court assigned counsel plan, use the services of legal aid groups, or adopt some combination of these approaches.

Since 1966, the *Model Act* has been enacted in variously modified forms in about a dozen states. A recent example is Wisconsin.

Although the procedural provisions of the 1966 *Model Act* have apparently been satisfactory, the same has not been true of the provisions built around the county option plan. In 1967, the President's Commission on Law Enforcement and Administration of Justice recommended that "jurisdictions that have not already done so should move from random assignment of defense counsel by judges to a coordinated assigned counsel system or a defender system . . . each state should finance assigned counsel and defender systems on a regular and a statewide basis."

The National Defender Conference, held in 1969, made clear that each state should have an organization at the state level headed by a defender general or director of defense. This was intended to assure better coordination and consistency of approach throughout the state, and better consultation with the several branches of state government. It was also intended to reduce the administrative burden on court personnel and provide more efficient and more experienced defense counsel services to needy persons accused of crime. Because of this shift in thinking, some states have been changing their legislative approaches accordingly. Unfortunately, this has led them to overlook the superior procedural safeguards of the *Model Defense of Needy Persons Act*, particularly those relating to the need for counsel between the time a person is first detained and the time he is formally charged or, in many instances, the time he is formally arrested.

¹Related to: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington D.C.: Government Printing Office, August, 1971).

²The National Conference of Commissioners on Uniform State Laws in promulgation of its uniform acts urges, with the endorsement of the American Bar Association, their enactment in each jurisdiction. Where there is a demand for an act covering the subject matter in a substantial number of the states, but where in the judgment of the National Conference of Commissioners on Uniform State Laws it is not a subject upon which uniformity between the states is necessary or desirable, but where it would be helpful to have legislation which would tend toward uniformity where enacted, acts on such subject are promulgated as model acts.

The purposes of the proposed *Model Public Defender Act*, therefore, are twofold:

- to continue and update the procedural safeguards provided by the *Model Defense of Needy Persons Act* (these are contained for the most part in *Sections 1-9*), and
- to shift from the county option approach to a statewide defender system.

This shift does not mean that the flexibility of the county option plan is to be replaced by the rigidities of a monolithic bureaucracy. The proposed act preserves the options of using court assigned attorneys and the services of legal aid bureaus, but it provides that these options will be exercised on a coordinated basis at the state level.

In its work, the committee has continued its liaison with other bodies, particularly the interested agencies of the American Bar Association. The committee is especially grateful for the help provided by the National Legal Aid and Defender Association, specifically through General Charles L. Decker, director of its National Defender Project.

In carrying out its functions with respect to providing adequate procedural safeguards, the committee has been guided by the views of the Supreme Court. Throughout, the objective has been to assure fair treatment for the needy defendant within the bounds of what is administratively practicable.

In general terms, *Gideon v. Wainwright* gave the needy criminal defendant the same right to legal representation in a state court under the 14th Amendment (whether "equal protection" or "due process") that the 6th Amendment gives to criminal defendants in Federal courts.¹ The minimum requirements of representation, therefore, are to be found not only in the express assurance made in *Gideon* itself but also in what the court had previously found to be required of Federal proceedings under the 6th Amendment.

According to the majority opinion, written by Mr. Justice Black, "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." (372 U.S. at 344.) Representation is assured "unless the right is competently and intelligently waived" (citing *Johnson v. Zerbst* (304 U.S. 458 (1938)), the first case to extend the right to counsel to needy persons). At the same time, in *Douglas v. California* (372 U.S. 353 (1963)), the Court extended the needy person's right to counsel to include at least his first appeal.

As for the necessary expenses of defense other than the services of an attorney, the Supreme Court, in *Griffin v. Illinois* (351 U.S. 12 (1956)) and *Draper v. Washington* (373 U.S. 487 (1963)), has assured the needy defendant in a Federal criminal case the right to a free transcript (or its equivalent) on appeal.

The criminal defendant's right to counsel covers every critical stage of the proceedings against him. It includes arraignment (*Walton v. Arkansas*, 371 U.S. 28 (1962)), and preliminary hearing (*White v. Maryland*, 373 U.S. 59 (1963)). In *Escobedo*, the Supreme Court held that under some circumstances at least a person under arrest for murder has a constitutional right to the presence of counsel while the police interrogate him as a suspect (378 U.S. at 492). Accordingly, it threw out a confession obtained while the counsel retained by the accused was excluded from the interrogation. On the basis of *Gideon and Escobedo*, it seemed likely that the Supreme Court would extend the same protection to needy suspects.

In *Miranda*, the Supreme Court held that once a person (in that case, a needy person) had been taken into custody by the police, no confession, admission, or exculpatory statement made outside the presence of counsel could be used against him, unless, after being fully informed as to his rights, he had waived his right to counsel voluntarily, knowingly, and intelligently (384 U.S. at 478-79).

From these cases, it has seemed clear that:

- (1) the Supreme Court has extended to state cases the protections that it provides in Federal cases;
 - (2) it has extended to needy persons the protections that it provides to persons of adequate means;
 - (3) it has made the right to counsel absolute and not dependent on particular circumstances or, except in some respects for petty offenses, on the nature of the crime;
 - (4) it is interested in the suspect from the moment he is taken into custody or comes into court to plead;
- and

¹U.S. Constitution, Amend. VI: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

(5) it is tending to extend its protection of needy persons to all aspects of an "adequate defense," including necessary facilities for investigation and trial.

The approach of the new *Model Act* is not to define the exact limits of the right to an adequate defense, but to provide that, whatever the Supreme Court says it consists of for persons of adequate means, the needy person is entitled to the same protection and that, to the extent that he is unable to pay for it, he is entitled to have it paid for by the state.

Also, there has been no attempt in it to codify the other aspect of a constitutionally adequate criminal procedure. For instance, the act says nothing about the suspect's right to remain silent, or his right to bail. It is confined to equipping the needy person with necessary defensive facilities. Lest anyone read a negative implication into this limited coverage, *Section 16* has been included to prevent one from arising. As a model, rather than uniform act, it is designed for the typical state and seeks only as much uniformity as is consistent with local conditions. Matters most likely to vary from state-to-state are in brackets.

Suggested Legislation

[AN ACT TO ESTABLISH A STATEWIDE PUBLIC DEFENDER SYSTEM]

(Be it enacted, etc.)

1 SECTION 1. *Definitions.*¹As used in this act:

2 (a) "detain" means to have in custody or otherwise deprive of freedom of action;

3 (b) "expenses," when used with reference to representation under this act, includes the expens-
4 es of investigation, other preparation, and trial;

5 (c) "needy person" means a person who at the time his need is determined is financially unable,
6 without undue hardship, to provide for the full payment of an attorney and all other necessary ex-
7 penses of representation or who is otherwise unable to employ an attorney;

8 (d) "serious crime" includes:

9 (1) a felony;

10 (2) a misdemeanor or offense any penalty for which involves the possibility of confinement
11 for more than six months or a fine of more than \$500; and

12 (3) an act that, but for the age of the person involved, would be a serious crime.

13 SECTION 2. *Right to Representation, Services, and Facilities.*¹

14 (a) A needy person who is being detained by a law enforcement officer without charge or judi-

¹The term "detain" is defined in terms, drawn from *Miranda v. Arizona* (384 U.S. at 477), that make it clear that the act in this respect is coextensive with the constitutional requirements respecting the kind of situation in which the needy person is entitled to be represented by counsel.

The term "expenses" is given a partial ("includes") rather than an exhaustive ("means") definition, because it is necessary only to make clear that preparation and trial are an integral part of adequate representation.

The term "needy person" is defined to make clear that partial need and supervening need are also included. "Undue hardship," not being susceptible to precise definition, is left to the sound judgment of the court. Minor hardship is no reason for providing relief; unreasonable hardship is. The term "indigent" is not used, because it would suggest that only a destitute person was entitled to free counsel or services. The term has been expanded to include a person who for other than financial reasons is unable to employ an attorney.

The term "serious crime" is defined along the lines of Mr. Justice Harlan's concurrence in *Gideon* (372 U.S. at 351), which left open the question whether counsel was required in the case of petty offenses. The *Criminal Justice Act of 1964* excepts "petty offenses" (78 Stat. 552, 18 U.S.C. § 3006A (b) (1964)), which are defined by federal statute as "any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than \$500, or both." (62 Stat. 684 (1948), 18 U.S.C. § 1 (1964).) Although *Miranda v. Arizona* recognizes no exception for petty offenses, that case did not deal with the broad right to counsel but only with the conditions precedent to the admissibility of a confession, admission, or exculpatory statement.

Although the standards approved by the house of delegates of the American Bar Association recommend that confinement for any period be considered "serious," a bracketed limitation to confinements "for more than six months" is included because of the differences in opinion as to whether protection should be extended to what the *Criminal Justice Act of 1964* treats as a petty crime. The Supreme Court has not yet clarified the matter. In the meantime, it is believed that, if a time limitation is used to define the minimum confinement necessary to constitute a "serious crime," a period longer than six months would clearly be excessive.

Through the use of the word "includes," the term "serious crime" is given a partial definition to provide judicial flexibility in any case where the court believes that special circumstances make the crime serious in fact even though the legal penalties do not meet the specific criteria of this clause.

¹This section defines the right to representation generally. Although *Miranda v. Arizona* defined only the earliest time when the presence of counsel became a condition precedent to the admissibility of a confession, admission, or exculpatory statement, that time

1 cial process, or who is charged with having committed or is being detained under a conviction of a
2 serious crime, is entitled:

3 (1) to be represented by an attorney to the same extent as a person having his own counsel;
4 and

5 (2) to be provided with the necessary services and facilities of representation (including in-
6 vestigation and other preparation), as authorized or later approved by the court. The attorney,
7 services and facilities, and court costs shall be provided at public expense to the extent that the per-
8 son, at the time the court determines need, is unable to provide for their payment without undue
9 hardship.

10 (b) A needy person who is entitled to be represented by an attorney under subsection (a) is en-
11 titled:

12 (1) to be counseled and defended at all stages of the matter beginning with the earliest time
13 when a person providing his own counsel would be entitled to be represented by an attorney and in-
14 cluding revocation of probation or parole;

15 (2) to be represented in any appeal; and

16 (3) to be represented in any other post-conviction proceeding that the attorney or the needy
17 person considers appropriate, unless the court in which the proceeding is brought determines that it
18 is wholly frivolous.

19 (c) A needy person's right to a benefit under subsection (a) or (b) is not affected by his having

being the moment the suspect is taken into custody, it is believed that this occasion also represents the time the right to counsel will be held generally to attach.

If the accused is formally charged before he is taken into custody, the right to counsel is assured even though no confession, admission, or exculpatory statement has been made. Counsel is necessary, for example, if the accused wishes to plead guilty (*White v. Maryland*, 373 U.S. 59 (1963)). Arraignment is a critical stage because some defenses and pleas in abatement would be waived unless asserted at that point (*Hamilton v. Alabama*, 368 U.S. 52 (1961)). There is a strong consensus among judges, prosecutors, and defense counsel that appointment of counsel at the earliest possible stage is the most critical aspect of providing valuable and effective representation.

The section does not undertake to spell out all the circumstances in which a criminal defendant is entitled to counsel. It provides only that, whenever a man of adequate means is legally entitled to counsel, the needy person is likewise entitled to counsel. "Legally entitled" is intended to mean "under the law," whether constitution, statute, regulation, or ordinance.

The section also makes clear that the criminal defendant is entitled to all the necessary elements of adequate representation. *Anders v. California* (386 U.S. 738 (1966)) requires counsel even though counsel or court think the appeal unwarranted.

The section provides that relief is to be given only to the extent of the need; under *Section 4(c)* the accused must contribute as much as he reasonably can. It also allows for relief in the case of supervening need or change of mind about a previous waiver.

The words "at the time the court determines need" are included in *subsection (a)* to take care of the case where there is a significant change in the defendant's financial condition between the time he receives legal assistance and his first appearance in court (*i.e.*, when need is determined under *Section 4*). If he is not needy when he receives assistance but is needy at the time of determination, there is no point in requiring him to pay what he is then unable to pay. (If he later becomes able to pay, he can be required to do so under *Section 8(a)*.) Conversely, if he is needy when he receives assistance but can pay at the time of determination, he should be required to pay. (If he does not pay then, he will have to pay later under *Section 9(b)*.) The same analysis applies where the change in financial condition is one only of degree.

Paragraph (1) of subsection (b) follows the theme of *Gideon v. Wainwright*: the needy accused has rights of representation co-extensive with those of a person with adequate means.

Paragraph (2) makes clear that the right to counsel on appeal is absolute. This complies with *Douglas v. California*.

Paragraph (3) provides that the right to counsel in any other post-conviction proceeding attaches unless it is found to be wholly frivolous.

1 provided a similar benefit at his own expense, or by his having waived it, at an earlier stage.

2 SECTION 3. *Notice and Provision of Representation.*¹

3 (a) if a person who is being detained by a law enforcement officer without charge or judicial pro-
4 cess, or who is charged with having committed or is being detained under a conviction of a serious
5 crime, is not represented by an attorney under conditions in which a person having his own counsel
6 would be entitled to be so represented, the law enforcement officer, [magistrate], or court concerned
7 shall:

8 (1) clearly inform him of the right of a needy person to be represented by an attorney at
9 public expense; and

10 (2) if the person detained or charged does not have an attorney, notify the appropriate pub-
11 lic defender that he is not so represented. This shall be done upon commencement of detention,
12 formal charge, or post-conviction proceeding, as the case may be. As used in this subsection, the term
13 "commencement of detention" includes the taking into custody of a probationer or parolee.

14 (b) Upon commencement of any later judicial proceeding relating to the same matter, the presid-
15 ing officer shall clearly inform the person so detained or charged of the right of a needy person to be
16 represented by an attorney at public expense.

17 (c) If a law enforcement officer, [magistrate], or court determines that the person is entitled to be
18 represented by an attorney at public expense, the officer, [magistrate], or court, as the case may be,
19 shall promptly notify the appropriate public defender.

20 (d) Upon notification under this section or upon request by the person concerned, the [*defender*
21 *general*] shall represent the person with respect to whom the notification is made. If the [*defender*
22 *general*] is unable or unwilling to represent the person, the court concerned may ¹ assign an attorney
23 to represent him. Representation may include co-counsel or associate counsel in appropriate cases.

24 (e) Information given to a person under this section is effective only if:

25 (1) it is in writing or otherwise recorded;

26 (2) he records his acknowledgment of receipt and time of receipt, or, if he refuses to make
27 this acknowledgment, the person giving the information records that he gave the information and

¹One of the most critical elements in the adequate protection of a needy accused is adequate notice of his legal rights respecting coun-
sel and representation. The section attempts to insure that adequate information will be given him at the earliest possible moment and
at each critical stage thereafter. A reference to the possibility that the accused may be brought before a magistrate has been added.

When the accused does not have an attorney, the section sets the wheels in motion for representation by providing for notification
of the operating defender agency, which is required to act upon receiving notice. *Subsection (d)* now expressly recognizes that the
request for representation may come from the accused himself. It also makes express the authority to provide co-counsel or associ-
ate counsel, where appropriate.

Before the accused's first appearance in court, the right to representation does not depend on a finding that the accused is a
"needy person." It is enough that he does not have an attorney. At this stage, time is a critical factor. If it is later found that the
accused was not a needy person, he may be required to pay under *Section 4(c)* or under *Section 9(a)*.

¹In its report on *State-Local Relations in the Criminal Justice System*, the Advisory Commission on Intergovernmental Relations
called for "making either a public defender or coordinated assigned counsel available to every area of the state." Consequently, it is
suggested that "shall" may be more appropriate than "may" in this context.

1 that the person informed refused to so acknowledge it; and

2 (3) the material so recorded under paragraphs (1) and (2) is filed with the court next con-
3 cerned.

4 SECTION 4. *Determination of Financial Need.*²

5 (a) The determination whether a person covered by Section 2 is a needy person shall be deferred
6 until his first appearance in court or in a suit for payment or reimbursement under Section 9, which-
7 ever occurs earlier. Thereafter, the court shall determine, with respect to each proceeding, whether
8 he is a needy person.

9 (b) In determining whether a person is a needy person and the extent of his ability to pay, the
10 court may consider such factors as income, property owned, outstanding obligations, and the num-
11 ber and ages of his dependents. Release on bail does not necessarily disqualify him from being a
12 needy person. In each case, the person, subject to the penalties for perjury, shall certify in writing
13 or by other record such material factors relating to his ability to pay as the court prescribes.

14 (c) To the extent that a person covered by Section 2 is able to provide for an attorney, the other
15 necessary service and facilities of representation, and court costs, the court may order him to pro-
16 vide for their payment.

17 SECTION 5. *Competence to Defend.*¹ A person assigned the primary responsibility for repre-
18 senting a needy person must be licensed to practice law in this state and otherwise competent to
19 counsel and defend a person charged with crime. Competence shall be determined by the court at the
20 first court proceeding after the giving of primary responsibility.

21 SECTION 6. *Replacement Defender.*² At any stage, including appeal or other post-conviction
22 proceeding, the [defender general] or the court for good cause may assign a replacement attorney. The
23 replacement attorney has the same functions with respect to the needy person as the attorney whom
24 he replaces.

²For reasons given under Section 3, the determination of need is left to the cognizant court. This does not create a gap in needed protection, because under Section 3(d) the right to an attorney arises as soon as the appropriate defender is notified or assigned.

A special provision on bail is inserted in subsection (b) because in some jurisdictions the ability to post bond has been held to negate eligibility for counsel at public expense. Such a position fails to recognize that bail may have been provided as an accommodation by someone not legally obligated to provide counsel to the accused.

To reduce the incidence of misrepresentation, the alleged needy person is required by subsection (b) to certify, subject to the penalties for perjury, such facts as the court considers appropriate under the circumstances. This process need not be elaborate if the need is fairly evident, as, for example, where the accused is already on public relief.

¹It is clear from the cases that, where the accused is entitled to be represented by counsel, he is entitled to be represented by competent counsel. "Competent counsel" does not mean the best counsel, but only counsel meeting the minimum requirements of an adequate representation in a criminal case. The attorney must be licensed to practice law in the state with some background in criminal law, but he need not be an expert. Although a law student is believed not to meet the minimum qualifications for handling serious crimes, he is not precluded from assisting qualified counsel in the case of a serious crime. The word "licensed" is used in preference to the word "authorized," because in some states a lawyer may lose his license to practice without losing his membership in the bar.

Persons "licensed to practice law in this state" include not only persons who are licensed by the state but persons licensed by other states who by court order or otherwise are authorized to practice in the state.

As with the determination of need, determination of competence is left to the cognizant court.

²This section is largely self-explanatory. This system will protect the defendant while remaining flexible enough to meet any need to substitute, regardless of source.

1 SECTION 7. *Waiver*.¹ A person who has been appropriately informed under Section 3 may waive
2 in writing, or by other record, any right provided by this act, if the court, at the time of or after
3 waiver, finds of record that he has acted with full awareness of his rights and of the consequences of
4 a waiver and if the waiver is otherwise according to law. The court shall consider such factors as the
5 person's age, education, and familiarity with the English language, and the complexity of the crime
6 involved.

7 SECTION 8. *Use of State Facilities*.² An attorney representing a person under this act is enti-
8 tled to use any state, county, or municipal technical services and facilities for the development or
9 evaluation of evidence that are available to the [state or local prosecutor].

10 SECTION 9. *Recovery from Defendant*.³

11 (a) The [*defender general*], on behalf of the state, may recover reimbursement from each person
12 who has received legal assistance or another benefit under this act:

13 (1) to which he was not entitled;

14 (2) with respect to which he was not a needy person when he received it; or

15 (3) with respect to which he has failed to make the certification required by Section 4(b);

16 and for which he refuses to reimburse. Suit must be brought within six years after the date on which
17 the aid was received.

18 (b) The [*defender general*], on behalf of the state, may recover reimbursement from each person,
19 other than a person covered by subsection (a), who has received legal assistance under this act and
20 who, on the date on which suit is brought, is financially able to reimburse the state for it according to
21 the standards of ability to pay applicable under Sections 1(c), and 4(b), but refuses to do so. Suit must

¹Although the right to waive a right is well recognized, it is important that a waiver of so basic a right as the right to counsel be recognized as valid only where it is clear that the accused knows the significance and consequences of his act. Hence the constitutional requirement that the waiver be done voluntarily, competently, and intelligently (*Miranda v. Arizona*, 384 U.S. at 478-79).

To make sure that an adequate foundation for a waiver is laid, the act requires that the accused be adequately informed of his rights respecting representation. The requirement that it be written or otherwise recorded not only provides evidence of the act but makes clear that the mere absence of a request for counsel, or a plea of guilty, cannot be construed as a waiver. See *Doughty v. Maxwell*, 372 U.S. 781 (1963); *William v. Kaiser*, 323 U.S. 472 (1945).

The phrase "and if the waiver is otherwise according to law" is included because some states have adopted additional safeguards.

The last sentence is intended to make more uniform the widely varying waiver practices among the states.

²This section is intended to equalize, so far as possible, the facilities available to the prosecutor and the defender. The words "county, or municipal" have been included for clarity. The section has been broadened to include technical facilities for the development of evidence. It is unnecessary to include express authority for the court to authorize the use of private facilities at state expense where the use of public facilities is impractical, because the matter is already covered in general terms in *Section 2(a)(2)*.

³A recapture provision is included as *subsection (a)* for three purposes: (1) to discourage misrepresentation; (2) to provide for repayment where legal services were provided under *Section 3(d)* to a person who, upon subsequent court determination, is found not to have been a needy person; and (3) to avoid unnecessary costs to the county or state.

Paragraph (2) covers the special case where a person with adequate means but without an attorney was provided with an attorney, but for some reason was not required to pay for his services at the time the court made its determination of need under *Section 2(a)*.

Paragraph (1) is inadequate for this purpose because before his first appearance in court an accused who does not have an attorney is entitled to one under *Section 3(d)* whether he can pay or not.

A reimbursement provision is included as *subsection (b)* to avoid unnecessary costs to the county or state, where within a reasonable time the dependent becomes able to pay.

Statutes of limitation of six years and three years, respectively, are included.

1 be brought within three years after the date on which the benefit was received.

2 (c) Amounts recovered under this section shall be paid into the [general fund] of the state.

3 SECTION 10. Office of [Defender General.]¹

4 (a) The Office of [Defender General] is established in the executive branch of the state. The head
5 of the office is the [defender general].

6 (b) The [defender general] shall be appointed by the governor, with the advice and consent of the
7 [appropriate state legislative body], for a term of six years and until his successor is appointed and
8 qualified. To be qualified for appointment, a person must be licensed to practice law in the state.
9 He may be removed from office only as judges of courts of general jurisdiction are removed and only
10 for the reasons for which such judges are removed. The [defender general] is entitled to compensa-
11 tion at the annual rate of [\$].

12 (c) The [defender general] has the primary responsibility for providing needy persons with legal
13 services under this act. He may provide these services personally, through deputies or assistants,
14 through [district] public defenders employed under Section 12(a), or as provided by subsection (d).
15 No other official or agency of the state may supervise the [defender general] or assign him duties in
16 addition to those prescribed by this act. He may not practice law other than in the performance of
17 his duties under this act or engage in any other occupation, except as provided in Section 17.

18 (d) Whenever appropriate, the [defender general] may contract with private or public legal aid
19 or other non-profit organizations that are equipped to provide the services to needy persons cover-
20 ed by this act or to carry out any other function of the Office of [Defender General]. Each contract must
21 provide (1) that the services performed shall meet the professional standards that this act prescribes
22 for services performed by the Office of the [Defender General], and (2) that the services are subject to
23 the [Defender General's] supervision and control.

24 (e) The [defender general] shall supervise the training of all public defenders, and for this purpose
25 he may establish a training course.

26 (f) Whenever appropriate, the [defender general] may appear in legislative or administrative pro-
27 ceedings for the purpose of assuring adequate representation to the persons covered by this act.

28 (g) The [defender general] shall consult and cooperate with interested professional groups with
29 respect to the causes of crime, the development of effective means for discouraging crime, the reha-
30 bilitation of convicted criminals, the administration of criminal justice, and the administration of
31 the Office of the [Defender General].

¹For the reasons given in the introductory statement, the county option plan, adopted by the *Model Defense of Needy Persons Act*, is now considered inadequate. This section provides for an integrated state system.

The compensation of the defender general is not equated to that of the attorney general because the latter normally has many responsibilities in addition to those involved in direct law enforcement.

1 SECTION 11. *Local Offices.*¹ The [*defender general*] may establish as many branch or local of-
2 fices as necessary to carry out his responsibilities under this act. Each branch or local office shall be
3 headed by a [district] public defender who is an assistant public defender selected by the [*defender*
4 *general*]. A [district] public defender is entitled to annual compensation not proportionately less than
5 the compensation of the [county] prosecutor.

6 SECTION 12. *Personnel and Facilities.*²

7 (a) The [*defender general*] may employ, in the manner and at the compensation prescribed by the
8 [*appropriate legislative authority*], as many deputy defenders general, public defenders (including
9 [district] public defenders), investigators, clerks, stenographers, and other persons as necessary to
10 carry out his responsibilities under this act. Persons employed under this section, other than civil
11 service employees, serve at the pleasure of the [*defender general*].

12 (b) A deputy defender general or public defender must be licensed to practice law in the state and
13 competent to represent a person charged with crime. He may not otherwise engage in the practice of
14 criminal law, except as provided in Section 17.

15 (c) The [*defender general*] shall be reimbursed from state funds for all reasonable expenses, in-
16 cluding mileage and other travel expenses, lodging, and subsistence incurred in carrying out his re-
17 sponsibilities under this act.

18 (d) The [*appropriate administrative authority*] of the state shall provide appropriate facilities (in-
19 cluding office space, furniture, equipment, books, postage, supplies, and interviewing facilities in
20 jail) necessary to carry out the [*defender general's*] responsibilities under this act.

21 SECTION 13. *Court Assigned Attorneys.*³ If a court assigns an attorney under Section 3(d) or
22 6, it shall prescribe a reasonable rate of compensation for his services based on the complexity of the
23 issues, the time involved, and other relevant considerations, and shall determine the direct expenses,
24 necessary to representation, for which he should be reimbursed. Payment or reimbursement shall be
25 made out of the [*appropriate fund*] of the state.

26 SECTION 14. *Allocation of Expenses.*⁴ Any expense, including the cost of a transcript [or sub-

¹This section provides for administrative decentralization, where necessary. It also insures that the local administrative head will be paid as much as the local prosecutor. (The word "proportionately" is used because the public defender may be on a full-time basis while the public prosecutor is on a part-time basis.)

²In a state where decentralization seems likely, it may be desirable to specify terms of office for deputy defenders general and [district] public defenders.

Subsections (a) and (d) are intended to make sure that a public defender is adequately equipped to meet his responsibilities under the act. Consistent with the state's civil service system, he should have full control of his personnel.

With respect to *subsection (b)*, it is recommended that, so far as state conditions permit, the act require full-time employment.

³In fixing compensation, the court may find the amounts fixed by the *Criminal Justice Act of 1964* (78 Stat. 553, 18 U.S.C. § 3006A (d) (1964)) helpful as a guide. If maximum amounts seem desirable, they may be imposed by rule of the state supreme court.

⁴This section, in recognizing that the necessary expenses of defense are not confined to the personal services of an attorney, takes its cue from *Griffin v. Illinois* (351 U.S. 12 (1956)), and *Draper v. Washington* (372 U.S. 487 (1963)). Among other things, these cases assure the needy defendant the right to a free transcript (or its equivalent) on appeal. A few states use a bystander's bill of exceptions or other substitute for a transcript. E.g., ILL. APP. CT. (CRIM.) R. 2 (intermediate appellate review only); KY. R. CRIM. P. 12.63 (*in forma pauperis*). 12.70 (bystander's bill). & 12.72 (agreed statement); TEX CODE CRIM. PROC. art. 40.09 (1966).)

1 stitute for a transcript] that is directly and necessarily incurred by the [local governmental unit] in rep-
2 resenting a needy person under this act, is a charge against the state [and shall be reimbursed from
3 the [appropriate fund] of the state].

4 SECTION 15. *Additional Fees Forbidden.*¹ A person who represents a needy person under this
5 act may not receive any fee for his services in addition to that provided under the act.

6 SECTION 16. *Reports.*²

7 (a) An attorney who is assigned by a court to represent a needy person under Section 3(d) or
8 6 shall report to the [defender general] on his representation of the needy person, as prescribed by the
9 [defender general].

10 (b) The [defender general] shall submit an annual report to the [governor] [legislature] showing the
11 number of persons represented under this act, the crimes involved, the outcome of each case, and
12 the expenditures (totalled by kind) made in carrying out the responsibilities imposed by this act.

13 SECTION 17. *Representation in State and Federal Courts.*³ This act applies only to representa-
14 tion in or with respect to the courts of this state. It does not prohibit the [defender general], a deputy
15 defender general, or other public defender from representing a needy person in a Federal court of the
16 United States, if:

17 (a) the matter rises out of, or is related to, an action pending or recently pending in a court of
18 criminal jurisdiction of the state; or

19 (b) representation is under a plan of the United States District Court as required by the *Crimi-
20 nal Justice Act of 1964* (18 U.S.C. 3006A) and is approved by the [legislature].

21 SECTION 18. *Protections Not Exclusive.* The protections provided by this act do not exclude
22 any protection or sanction that the law otherwise provides.

23 SECTION 19. *Separability.* If a provision, or an application of a provision, of this act is held
24 invalid, the valid provisions and applications that can be given effect without the invalid provision
25 of application are intended to be in effect. To this end, the provisions of this act are separable.

26 SECTION 20. *Repeal.* The following acts and parts of acts are repealed:

27 (a)

28 (b)

29 SECTION 21. *Effective Date.* [Insert effective date clause.]

¹The sound administration of any defender plan depends on keeping adequate records and making adequate reports.

²In view of the establishment in the *Criminal Justice Act of 1964* of a defender program for the Federal courts, it seems desirable that a unified defender system be permitted to operate in both state and Federal courts if the arrangement meets the approval of both the Federal court and the local legislative authority. (Currently several defender offices, including those in New York, Philadelphia, Cleveland, and Kansas City, are operating in both court systems.) Such a program is believed to be economically expedient and practically sound. While a defending attorney is operating in a Federal court, he is operating outside this act and under the Federal rules.

³This section is included to preclude any negative implication that might otherwise arise by reason of the fact that the act does not deal with rights of the accused other than those involved in providing adequate representation and the other elements of an adequate defense. No inference, for example, is to be drawn from the fact that the act says nothing about the accused's right to remain silent or his right to bail.

10.3

Corrections and Legislative Oversight

10.301 OMNIBUS CORRECTIONS ACT¹

In most states, the administration of corrections facilities and services is highly fragmented. Only a few states have established a "unified" corrections system, while a handful of others have consolidated responsibility for most of the corrections functions in one agency at the state level. Generally, however, administrative responsibility for the nine corrections activities — juvenile detention, juvenile probation, juvenile institutions, juvenile aftercare, misdemeanor probation, adult probation, local short term adult institutions and jails, long term adult institutions and parole — is divided between the state and its political subdivisions and among the various public and private agencies that handle adult and juvenile related programs. The only generalization that can be safely made is that every state has assumed responsibility for parole, long term adult institutions, and long term juvenile institutions, while local governments usually are responsible for juvenile detention and jails, police lock-ups, and other short term facilities. This wide inter-governmental and interagency diversity has done little to further the successful rehabilitation of offenders, as reflected in high recidivism rates.

Also, during the past several years, there has been growing recognition that the correctional part of the criminal justice system has been falling far short of the objective of correcting offenders and rehabilitating them for a return to community life. Education and counseling services have been non-existent or inadequate; offenders have been housed in large facilities usually far removed from major urban centers; released offenders have received little assistance in their efforts to secure gainful employment; and, in fact, many barriers are raised against the opportunity of the previous offender to secure public employment or to enter a licensed occupation.

While there is general agreement that the treatment of all inmates of correctional institutions must be made humane and that major revisions must be made in the nature and quality of rehabilitation services and processes, there is a growing recognition of the compelling need to identify those repeated offenders for whom rehabilitation efforts have been demonstrably unsuccessful and for whom prolonged incarceration with strictly limited access to parole is indicated.

In its 1971 report on *State-Local Relations in the Criminal Justice System*, the Advisory Commission on Intergovernmental Relations recommended (1) a high priority to upgrading rehabilitation services; (2) community based treatment programs, including probation, work release, half-way houses and aftercare; (3) assumption by the state of full financial, administrative and operational responsibility for juvenile and long term adult correctional institutions, juvenile aftercare, and adult probation; (4) consolidation of all correctional activities except probation and parole in a single agency; (5) authorization of work release programs and the utilization of approved regional or local facilities for this purpose; (6) upgrading academic and vocational offerings to inmates; (7) contracting with larger units of local government for custody of state prisoners; and (8) improving the quality and quantity of correctional personnel.

Similarly, the National Advisory Commission on Criminal Justice Standards and Goals in its report on *A National Strategy to Reduce Crime* called for (1) retention by offenders of most rights enjoyed by citizens in general; (2) repeal of laws discriminating against ex-offenders; (3) emphasis on community based problems; (4) development of probation as an alternative to jail sentences for misdemeanants; and (5) organizational consolidation of the corrections function.

The act which follows is designed to implement the foregoing recommendations. *Section 1* sets forth the legislature's findings and purpose; *Section 2* contains the necessary definitions.

Section 3 establishes a state department of corrections and a director of corrections directly accountable to the governor. *Section 4* fixes responsibility for the maintenance, supervision, and administration of all long term correctional institutions for adults and juveniles, adult probation, parole services, and juvenile aftercare. The department is required to furnish to local detention and short term correctional facilities and probation programs technical assistance, training courses, encouragement to enter into interlocal contracts

¹Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington, D.C.: U.S. Government Printing Office, August, 1971).

and agreements for regional facilities, and financial aid. The department also is made responsible for establishing and enforcing standards and rules of operation for local facilities.

Section 5 deals with cooperative agreements. *Section 6* pertains to the director's role in the commitment and transfer of offenders. *Section 7* concerns the provision of diagnostic services, and *Section 8* deals with the transfer of mentally retarded inmates.

Sections 3 through 8 draw upon the *Standard Act for State Correctional Services*, prepared by the National Council on Crime and Delinquency and the American Correctional Association, and on Delaware's recent statute (Title II, *Delaware Code Annotated*, "Crimes and Criminal Procedure," Ch. 65) establishing a state department of corrections.

Section 9 drawing upon Florida's *Correctional Reform Act of 1974* (Ch. 74-112), provides a framework for community based correctional facilities and programs, including community correctional centers, adult intake and evaluation, drug treatment facilities and services, and pre-trial intervention programs. *Section 10*, drawing upon a Minnesota law (Ch. 145, S.F. No. 197), authorizes lease arrangements between the state and private enterprise whereunder manufacturing and processing plants may be located on the grounds of correctional institutions, providing useful employment to inmates.

Section 11, based on Florida, Ch. 74-112, provides for the adult intake and evaluation function and a pre-trial intervention program. *Section 12* provides for pre-sentence investigations.

Section 13 provides for classification treatment and discipline of inmates, based on the *Standard Act* cited above and on Florida, Ch. 74-112.

Section 14, drawing on Florida, Ch. 74-112, provides a framework for vocational education and evaluation thereof.

Section 15, based on the *Standard Act* and on *Minnesota Statutes 1971*, Sec. 242.37, provides for work by inmates and compensation, including the establishment and operation of conservation camps. *Section 15* also authorizes employment of inmates by agencies of the state government (Connecticut, *Public Act*, No. 73-277).

Section 16 — an optional one not specifically recommended by ACIR in its 1971 report — creates the position of ombudsman in the corrections system, drawing on Minnesota, Ch. 553, S.F. No. 672.

Section 17 provides for credit for good behavior. *Section 18*, based on Washington, Ch. 72.02, provides for discharge allowances and unemployment compensation.

Section 19, based on Minnesota, Ch. 298, S.F. No. 3247, prohibits disqualifications of ex-offenders from public employment or licensed occupations.

Sections 20 and 21, based on Delaware, "Crimes and Criminal Procedure," cited above, provide for the transfer of personnel, property, records and funds incident to consolidation of state and local corrections functions into a single state agency.

Sections 22, 23, 24, and 25 provide respectively, for a savings clause, for repeal of existing laws, and for separability and effective date clauses.

Other recent state enactments relevant to the subjects covered here include: Arkansas, 1973 law on jail standards (SB 10); Illinois, 1973 corrections act (HB 1086); and Washington, 1973 law on prisoner furloughs (SB 2125).

Suggested Legislation

**[AN ACT TO ESTABLISH A STATE DEPARTMENT OF CORRECTIONS
AND TO SET FORTH STATE POLICIES FOR THE
REHABILITATION OF OFFENDERS]**

Title I

FINDINGS, PURPOSE AND DEFINITIONS

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purpose.*

2 (a) The [legislature] hereby finds and declares that:

3 (1) The state has a basic obligation to protect the public by providing institutional confine-
4 ment and care of offenders.

5 (2) Efforts to rehabilitate and restore criminal offenders as law-abiding and productive
6 members of society are essential to the reduction of crime.

7 (3) Upgrading of correctional institutions and rehabilitative services deserves priority
8 consideration as a means of lowering crime rates and of preventing offenders, particularly youths,
9 first offenders, and misdemeanants, from becoming trapped in careers of crime.

10 (4) Correctional institutions and services should be so diversified in program and personnel as
11 to facilitate individualized treatment; this includes education and rehabilitation efforts for those
12 demonstrably or potentially susceptible to such programs, services, and processes; it also includes
13 primary emphasis upon confinement under adequate security conditions for those repeated offenders
14 for whom rehabilitation efforts have been unsuccessful.

15 (5) One of the chief factors contributing to the high recidivism rate in the state is the general
16 inability of ex-offenders to find or keep meaningful employment, and the correctional system has
17 done little to provide the offender with the vocational skills he needs to return to society as a produc-
18 tive citizen. Consequently, vocational training, advanced education, and assistance in job placement
19 must be placed on a priority basis as an integral part of the process of changing deviant behavior in
20 the institutionalized offender, when such change is determined to be possible.

21 (6) The opportunity to secure employment or to pursue, practice, or engage in a meaningful
22 or profitable trade, occupation, vocation, profession, or business is essential to rehabilitation and the
23 responsibilities of citizenship.

24 (7) These changes must not be made out of sympathy for the criminal or in disregard of the

1 threat of crime to society. That threat is too serious to be countered by present ineffective methods.

2 (b) The purpose of this act is to establish an agency of state government to provide for the
3 custody, care, discipline, training, treatment, and study of persons committed to state correctional
4 institutions or on probation or parole, and to supervise and assist in the treatment, training, and
5 study of persons in local correctional and detention facilities, so that such persons may be prepared for
6 release, aftercare, and supervision in the community and to set forth state policies for the rehabilitation
7 of offenders.

8 SECTION 2. *Definitions.*

9 (a) "Adult" means a person 18 years of age or older.

10 (b) "Commission" means the probation and parole commission.

11 (c) "Conviction of a crime" means conviction for a felony, gross misdemeanors, and misde-
12 meanors for which a jail sentence may be imposed. No other conviction shall be considered conviction
13 of a crime within the provisions of this act.

14 (d) "Department" means the department of corrections.

15 (e) "Detention" means the temporary care of juveniles or adults who require custody for their own
16 or the community's protection in a physically restricting facility.

17 (f) "Director" means the head of the department of corrections.

18 (g) "Halfway house" means a community based and oriented facility which may provide "live-in"
19 accommodations for offenders and those who are assisted in one or more of: obtaining and holding
20 regular employment; enrolling in and maintaining academic courses; participating in vocational
21 training programs; utilizing the resources of the community in meeting their personal and family
22 needs; or participating in whatever specialized programs exist within the facility.

23 (h) "Hiring or licensing authority" means the person, board, commission, or department of the
24 state government, its agencies or political subdivisions, responsible by law for the hiring of persons
25 for public employment or the licensing of persons for occupations.

26 (i) "Institution" means a prison, penitentiary, jail, work house, training school, or other facility
27 operated by the state or by a unit of local government for the detention or correction of offenders.

28 (j) "Intake and evaluation" is the process of interviewing and classifying persons under detention
29 or convicted offenders committed to the correctional system for the purpose of determining the most
30 appropriate assignment or treatment, which may include programs and services carried out in
31 municipal or county jails or other places in local communities as well as in state correctional
32 institutions.

33 (k) "Juvenile," "minor," or "youthful" means a person less than 18 years of age.

34 (l) "License" includes all licenses, permits, certificates, registrations, or other means required to
35 engage in all occupations which are granted or issued by the state, its agents or political subdivisions

1 before a person can pursue government, practice, or engage in any occupation.

2 (m) "Local facility" means a temporary holding facility, police lockup, or other facility for the
3 detention of persons for fewer than [48] hours operated by a unit of local government.

4 (n) "Occupation" includes all occupations, trades, vocations, professions, businesses, or employ-
5 ment of any kind for which a license is required to be issued by the state government, its agencies, or
6 political subdivisions.

7 (o) "Offender" means any person convicted of a crime or offense under the laws and ordinances
8 of the state and its political subdivisions.

9 (p) "Public employment" includes all employment with the state government, its agencies, or its
10 political subdivisions.

11 (q) "Unit of local government" means a county, municipality, town, township, village, or other
12 general purpose political subdivisions of the state.

Title II

ORGANIZATION OF DEPARTMENT

1 SECTION 3. *State Department of Corrections.*

2 (a) A state department of corrections is hereby established. The department shall be accountable
3 directly to the governor.

4 (b) A director of corrections, who shall be the chief administrative and fiscal officer of the
5 department, shall be appointed by the governor [with the advice and consent of the *[senate]*] and
6 shall serve at his pleasure. The director shall receive an annual salary pursuant to law in addition to
7 an allowance for expenses actually and necessarily incurred by him in the performance of his duties.
8 The director shall be qualified for his position by character, personality, ability, education, training,
9 and successful administrative experience in the correctional field. He need not be a resident of this
10 state when appointed.

11 (c) The director shall appoint such personnel as are required to administer the provisions of this
12 act. All employees of the department other than the director shall be within the state [*merit system*].

13 (d) Within the general policies established by the governor and the [*legislature*], the director shall
14 administer the department, prescribe rules and regulations for its operation, and supervise the
15 administration of all institutions, facilities, and services under the department's jurisdiction pursuant
16 to Section 4. The director shall prescribe the duties of all personnel of the department and the regula-
17 tions governing transfer of employees from one institution or division of the department to another.
18 He shall have authority, subject to civil service requirements, to suspend, discharge, or otherwise
19 discipline personnel for cause.

1 (e) The director, in cooperation with [insert state civil service commission or personnel agency],
2 shall establish minimum qualifications standards for correctional personnel; shall develop new person-
3 nel classifications to enable paraprofessionals, volunteers, and ex-offenders [except those who were
4 former police officers] to perform appropriate correctional services; and shall arrange with appro-
5 priate agencies to provide pre-employment training and educational opportunities to such individuals
6 to enable them to meet minimum qualifications standards, and to make available in-service training to
7 departmental personnel.

8 (f) The director, in cooperation with institutions of higher education and with the [head, state
9 law enforcement agency] shall establish and operate a training academy for the purpose of providing
10 pre-entry and in-service training for persons to be appointed corrections officers in the department.

11 SECTION 4. *Institutions, Services, and Administrative Structure.*

12 (a) Local units of government shall be responsible for the custody of persons detained and await-
13 ing trial, for the custody of convicted misdemeanants with sentences of less than 30 days, and for the
14 maintenance and operation of facilities for these purposes. The department shall be completely respon-
15 sible for the maintenance, supervision, and administration of all other correctional institutions and
16 services, including but not limited to the following:

17 (1) all institutions within the state for the care, custody, and correction of persons committed
18 for felonies or misdemeanors, persons adjudicated as youthful offenders, and minors adjudicated as
19 delinquents by the [juvenile or family] courts and committed to the department;¹

20 (2) probation services for courts having jurisdiction over adult criminal offenders.

21 (3) parole services for persons committed by criminal courts to institutions within the
22 department. The parole board established by [cite section of act establishing parole board] shall be
23 continued and shall be responsible for those duties specified in section [];²

24 (4) aftercare services for juveniles released from correctional institutions and facilities.

25 (b) The department may establish and operate institutions for misdemeanants committed for
26 terms of 30 days or over.

27 (c) The following services and assistance shall be provided by the department to detention and
28 short term correctional facilities and probation programs operated by units of local government:

29 (1) consultation regarding the design, construction, programs, and administration of facilities
30 for juveniles and adults. The department may make studies and surveys of the programs and admin-
31 istration of those facilities. Personnel of the department shall be admitted to these facilities as required
32 for those purposes;

¹A substantial number of states prefer to provide juvenile correctional and other services through other organizational arrangements such as (a) a separate agency of the state government concerned solely with children and youth; (b) a juvenile services unit in the state social services agency; or (c) the state health and mental hygiene agency.

²See National Council on Crime and Delinquency, *Standard Probation and Parole Act* (New York: The Council, 1955).

1 (2) establishment of standards and rules for the operation of state and local facilities and
2 inspection, on at least an annual basis, to ensure their compliance with the standards set. The depart-
3 ment shall make public the results of the inspections as well as statistical and other aggregate data on
4 the persons held in those facilities. After providing reasonable notice and opportunity to make
5 necessary improvements, the director may order the closing of any facility that does not meet the
6 standards set by the department;

7 (3) establishment of minimum standards for probation services for juveniles and mis-
8 demeanants.

9 (4) provision of training courses for the personnel of local facilities.

10 (5) encouragement to enter into contracts and joint service agreements with other local units
11 to establish and operate regional detention and correctional facilities for adult and juvenile offenders;

12 (6) administration of a financial assistance program established by state law to cover a
13 reasonable share of the costs of construction and operation of approved local facilities and programs.

14 (7) administration of a contract program with units of local government whereby counties
15 and cities operate community based facilities of the department or other facilities meeting state
16 standards in the provision of rehabilitation services to offenders under jurisdiction of the department.

17 (d) The department shall establish programs of research, statistics, and planning, including
18 evaluations of the performance of the various functions of the department and the effectiveness of the
19 treatment of offenders.

20 (e) The department shall make an annual report to the governor on its activities, including
21 statistical and other data; accounts of research work, analysis and evaluation of the adequacy and
22 effectiveness of personnel, institutions, and services; and recommendations for legislation affecting
23 the department. Copies of the report shall be provided to each member of the [legislature].

24 (f) The director shall develop a suitable administrative structure providing for divisions and
25 services to accomplish the purposes, goals, and programs required by this act, including, but not
26 limited to the following.

27 (1) Services for minors committed as delinquents by the [juvenile or family] courts shall be
28 provided by qualified professional staff in institutions separate from those for adults, and, where
29 administratively practical, other services for juveniles shall be administered separately from those for
30 adults.

31 (2) The department shall provide for the administration of all institutions by professional
32 corrections personnel.

33 SECTION 5. *Cooperation and Agreements with Other Departments and Agencies.* The depart-
34 ment shall cooperate with the courts and with public and private agencies and officials to assist in
35 attaining the purposes of this act. The department may enter into agreements with other departments

1 of Federal, state, or local governments and with private agencies concerning the discharge of its
2 responsibilities or theirs.

Title III

INSTITUTIONAL ADMINISTRATION

1 SECTION 6. *Commitment and Transfer.*

2 (a) Commitment of individuals to the jurisdiction of the department shall be to the department
3 itself, not to a particular institution. The director shall assign a newly committed inmate to an appro-
4 priate institution. He may transfer an inmate from one institution to another, consistent with the
5 commitment and in accordance with treatment, training, and security needs, except that he may not
6 transfer a minor adjudicated as delinquent by a [*juvenile or family*] court to an institution for
7 offenders committed by criminal courts.

8 (b) The emphasis of treatment, programs, and services for inmates shall be based upon a con-
9 tinuing appraisal of the individual inmate's motivation toward and susceptibility to correction and
10 rehabilitation. For those offenders repeatedly convicted of serious crimes and those for whom prior
11 rehabilitation programs, services, and other efforts have been demonstrably unsuccessful, the
12 primary emphasis shall be upon secure and humane confinement for the duration of sentence.

13 (c) On the request of the chief executive officer of the affected unit of local government, the
14 director may transfer a person detained in a local facility to a state institution. The director shall
15 determine the cost of care for that person to be borne by the unit of local government.

16 SECTION 7. *Diagnostic Facilities and Services.* The department shall provide diagnostic facilities
17 to make such social, medical, psychological, and other appropriate studies of persons committed to its
18 care as are related to the determination of the type and method of care most appropriate. Such services
19 shall be at all stages of the correctional process and to the maximum extent feasible, services shall be
20 provided in community based as well as other types of correctional institutions.

21 SECTION 8. *Transfer of Mentally Ill and Mentally Retarded Inmates.* The director may arrange
22 for the transfer of an inmate for observation and diagnosis to other appropriate state departments or
23 institutions, provided that he has obtained the prior consent of the administrators of the agencies. If
24 the inmate is found to be subject to civil commitment for psychosis, other mental illness, or retarda-
25 tion, the director shall initiate legal proceedings for the commitment. While the inmate is in another
26 institution, his sentence shall continue to run. When, in the judgment of the administrator of the
27 institution to which an inmate has been transferred, the inmate has recovered from the condition
28 which occasioned the transfer, the administrator shall provide for his return to the department, unless

1 his sentence has expired. If the inmate has not recovered at the time of expiration of sentence the
2 provisions of [civil commitment statutes] will apply.

3 SECTION 9. *Community Based Facilities and Programs.*

4 (a) In addition to those facilities and services described elsewhere in this act, the department shall
5 develop, provide or contract for a statewide system of community based facilities, services and pro-
6 grams for the rehabilitation of offenders which shall include, but shall not necessarily be limited to:

7 (1) a system of community correctional centers to be located at various places throughout the
8 state as required. The purpose of these centers is to facilitate the reintegration of offenders back into
9 the community by means of participation in various work release, study release, or other community
10 rehabilitation programs; provided, however, no facility shall be constructed, leased or purchased in
11 any county until public hearings have been held in that county. Such public hearings shall be
12 pursuant to uniform rules adopted by the department;

13 (2) adult intake and evaluation programs and services where required. It is the intent of this
14 subsection to decentralize the intake and evaluation function of the corrections system so that intake
15 services are located in urban areas of the state;

16 [(3) Drug and alcoholism treatment facilities or services.]¹

17 (b) The following facilities or services shall be provided or contracted for by the commission in
18 coordination with the department.

19 (1) Residential facilities, including half-way houses [in specific locations or types of location
20 by population class or otherwise] where probationers, participants in pre-trial intervention programs,
21 and others committed to or under the supervision of the department may reside while working or
22 attending school. A plan shall be established for the phasing in of these residential facilities over a
23 period of [five] years from and after the effective date of this act. The purpose of these facilities and
24 services is to provide the court with an alternative to commitment to other state correctional institu-
25 tions and to assist in the supervision of probationers.

26 (2) Pre-trial intervention programs in appropriate counties to provide early counseling and
27 supervision services to specified first offenders.

28 (c) The department is authorized to contract with counties [and/or municipalities of specified
29 population classes] for the construction or operation of state supervised, community based facilities
30 and programs, so that those local units of government with capital facilities or personnel appropriate
31 for use in the state correctional program may be utilized in providing rehabilitative services to
32 offenders in the custody of the state system. Reimbursements under such contracts may include but
33 not exceed all direct operating and capital costs attributable to the facilities and programs provided.

¹This reference appropriate only where such facilities and services continue under correctional rather than medical auspices.

1 [Optional Section]

2 [SECTION 10. *Private Industry on Grounds of Correctional Institutions.*

3 (a) Notwithstanding the provisions of any law to the contrary, the [commissioner of
4 administration], with the approval of the governor, may lease one or more buildings or portions
5 thereof on the grounds of any state adult correctional institution, together with the real estate needed
6 for reasonable access to and egress from the leased buildings, for a term not to exceed [20] years, to a
7 private corporation for the purpose of establishing and operating a factory for the manufacture and
8 processing of goods, wares or merchandise.

9 (b) The corporation operating a factory under this section may employ persons conditionally
10 released subject to the provisions of [this act or other citation] and such persons shall be deemed to be
11 parolees within the purview of 49 United States Code, Section 60.

12 (c) Any factory established under the provisions of this section shall be deemed a private enter-
13 prise and subject to [all] the laws, rules and regulations of this state governing the operation of
14 similar business enterprises elsewhere in this state [including minimum wage; other special provisions
15 or exemptions], and the products manufactured therein shall be exempt from the provisions of
16 [prison labor, etc., appropriate citation].

17 (d) A decision to lease to a corporation pursuant to subsection (a) above shall be predicated upon a
18 careful study of the relative benefits to inmates and to meeting state and local needs and shall take into
19 account the extent to which, if any, the undertaking is likely to enjoy a competitive advantage over
20 other business enterprises.

21 (e) The authority of the director over the institutions of the department of corrections and the
22 inmates thereof shall not be diminished by this section.]

Title IV

TREATMENT OF OFFENDERS

1 SECTION 11. *Adult Intake and Evaluation.*

2 (a) *Components.* The state system of adult intake and evaluation shall include the following
3 functions:

4 (1) the performance of pre-trial investigation where applicable;

5 (2) assistance in the evaluation of offenders for diversion from the criminal justice system or
6 referral to residential or non-residential programs;

7 (3) the provision of secure detention services for pre-trial detainees who are unable to comply
8 with the conditions of release established by the court or who represent a serious threat to the
9 community;

1 (4) the provision of diagnostic, evaluation, and classification services at the pre-sentence
2 stage to assist the court; the commission, and the department in planning programs for rehabilitation
3 of convicted offenders; and

4 (5) the performance of post-sentence intake by the department.

5 (b) *Pre-Trial Intervention Program.*

6 (1) The commission shall supervise pre-trial intervention programs. Such programs shall
7 provide appropriate counseling, education, and supervision and medical and psychological treatment
8 as available and when appropriate for the persons released to such programs.

9 (2) Any first offender who is charged with any misdemeanor, or felony of the [third] degree,
10 is eligible for release to the pre-trial intervention program on the approval of the director, the state
11 attorney, and the judge who prescribed at the initial appearance hearing of the offender. In no case,
12 however, shall any individual be so released unless, after consultation with his attorney or one made
13 available to him if he is indigent, he has voluntarily agreed to such program, and he has knowingly
14 and intelligently waived his right to speedy trial for the period of his diversion.

15 (3) The criminal charges against an individual admitted to the program shall be continued
16 without final disposition for a period of [90] days from the date the individual was released to the
17 program, if the offender's participation in the program is satisfactory, and for an additional [90]
18 days upon the request of the program administrator and consent of the state attorney, if the offender's
19 participation in the program is satisfactory.

20 (4) Resumption of pending criminal proceedings shall be undertaken at any time if the
21 program administrator or state attorney finds such individual is not fulfilling his obligations under
22 this plan, or the public interest so requires.

23 (5) At the end of the intervention period, the administrator shall recommend that the case
24 shall revert to normal channels for prosecution in instances in which the offender's participation in
25 the program has been unsatisfactory, or that he is in need of further supervision, or that dismissal of
26 charges without prejudice shall be entered where prosecution is not deemed necessary. In such
27 instances, the state attorney shall make the final determination as to whether the prosecution shall
28 continue.

29 (6) The chief judge in each [circuit] may appoint an advisory committee for the pre-trial
30 intervention program. Said committee shall be composed of [*the chief judge or his designate who shall*
31 *serve as chairman, the state attorney, public defender, program administrator, or their representatives*
32 *and such other persons as the chairman shall deem appropriate.*] The committee may also include
33 persons representing any other agencies to which persons released to the pre-trial intervention pro-
34 gram may be referred. The committee shall observe the operation of the intervention program and
35 make appropriate recommendations for improvement and modification.

1 (7) The commission may contract for the services and facilities necessary to operate pre-trial
2 intervention programs.

3 SECTION 12. *Pre-Sentence Investigation Reports.*

4 (a) Any court of the state having original jurisdiction of criminal actions, where the defendant in a
5 criminal felony case has been found guilty or has entered a plea of *nolo contendere* or guilty shall
6 refer, and in misdemeanor cases in its discretion may refer, the case to the parole and probation
7 commission for investigation and recommendation. It shall be the duty of the commission, following
8 an interview with the defendant by the commission or a staff member thereof, to make a report in
9 writing to the court prior to sentencing at a specified time depending upon the circumstances of the
10 offender and the offense. Said report shall include the following:

11 (1) a complete description of the situation surrounding the criminal activity with which the
12 offender has been charged, including a synopsis of the trial transcript, if one has been made, and, at
13 the offender's discretion, his version and explanation of the act;

14 (2) the offender's educational and experience background and social history;

15 (3) the offender's medical history and, as appropriate, a psychological or psychiatric
16 evaluation;

17 (4) Information about environments to which the offender might return or to which he could
18 be sent should a sentence of non-incarceration or community supervision be imposed by the court
19 and resources available to assist the offender such as treatment centers, residential facilities, vocational
20 training programs, special education programs or services that may preclude or supplement commit-
21 ment to the division of corrections;

22 (5) an explanation of the offender's criminal record, if any, including his version and
23 explanation of any previous offenses and the views of the person preparing the report as to the
24 offender's motivations and ambitions and an assessment of the offender's explanations for his criminal
25 activity;

26 (6) a recommendation as to disposition by the court. It shall be the duty of the commission to
27 make a written determination as to the reasons for its recommendation.

28 The commission shall include an evaluation of the following factors:

29 (i) the appropriateness or inappropriateness of community facilities, programs, or
30 services for treatment or supervision;

31 (ii) the ability or inability of the commission to provide an adequate level of supervision
32 for the offender in the community and a statement of what constitutes an adequate level of
33 supervision;

34 (iii) the existence of other treatment modalities which the offender could use but which
35 do not exist at present in the community.

1 (b) In those instances where a pre-sentence investigation report has been previously compiled, the
2 commission may elect to complete a short form report updating the above information.

3 (c) All information in the pre-sentence investigation report should be factually presented and
4 verified if reasonably possible by the preparer of the report. On examination at the sentencing hearing,
5 the preparer of the report, if challenged on the issue of verification, shall bear the burden of explaining
6 why it was not possible to verify the challenged information.

Title V

TREATMENT OF INMATES

1 SECTION 13. *Classification, Treatment, and Discipline.*

2 (a) Persons committed to the institutional care of the department shall be dealt with humanely,
3 with efforts directed to their rehabilitation and return to the community as safely and promptly as
4 practicable. For these purposes, the director shall establish programs of classification and diagnosis,
5 education, casework, counseling and psychotherapy, vocational training and guidance, work, library,
6 and other rehabilitation services; and he shall institute procedures for the study and classification of
7 inmates. The director shall maintain a comprehensive record of the behavior of each inmate reflecting
8 accomplishments and progress toward rehabilitation as well as charges of infractions of rules and
9 regulations, punishments imposed, and medical inspections made.

10 (b) The director shall establish and prescribe standards for health, medical, and dental services for
11 each institution, including preventive, diagnostic, and therapeutic measures on both an out-patient
12 and a hospital basis, for all types of patients. An inmate may be taken, when necessary, to a medical
13 facility outside the institution.

14 (c) Under rules prescribed by the department, heads of institutions may authorize visits and
15 correspondence between inmates and appropriate friends, relatives, and others.

16 (d) The director shall promulgate regulations under which inmates, as part of a program looking
17 to their release from the custody of the department, or their treatment, may be granted temporary
18 furloughs from an institution to visit their families or to be interviewed by prospective employers.

19 (e) The director shall prescribe rules and regulations for the maintenance of good order and
20 discipline in institutions, including procedures for dealing with violations. A copy of the rules shall be
21 provided to each inmate. [Corporal punishment is prohibited.]

22 (f) The rules and regulations shall include or relate to:

23 (1) an enumeration of the rights of inmates;

24 (2) the rules of conduct to be observed by inmates and the categories of violations according

1 to degrees or levels of severity as well as the degrees of punishment applicable and appropriate to
2 such violations;

3 (3) disciplinary procedures and punishment;

4 (4) grievance procedures;

5 (5) operation and management of the correctional institution or facility and its personnel and
6 functions; and

7 (6) mail, to and from the state correctional system.

8 (g) Regulations of the department shall be adopted and filed with the [*department of state*] as
9 provided in [*appropriate citation*].

10 (h) It shall be the duty of facility superintendents to supervise the government, discipline, and
11 policy of the state correctional institutions and to enforce all orders, rules and regulations.

12 (i) The department shall cause a record to be kept of violations of rules of conduct; the rule or
13 rules violated; the nature of punishment administered; the authority ordering such punishment; the
14 duration of time during which the offender was subjected to punishment; and the condition of the
15 prisoner's health.

16 SECTION 14. *Education and Vocational Training.* There is created in the department a
17 [*bureau of education and career development*]. The head of the [*bureau*] shall be a [*deputy director*
18 *for education and career development*]. The purpose of the [*bureau*], in cooperation with institutions
19 of higher education and vocational and technical schools in the state, is to provide educational and
20 training opportunity and, in cooperation with the parole and probation commission, the [*division of*
21 *vocational rehabilitation*], the [*division of vocational education of the department of education*], and
22 the [*state employment service*] to develop job training programs and job placement opportunities. The
23 [*bureau*] shall have the capability of evaluating current job training programs and performing follow-
24 up investigations and studies to determine the effectiveness of these programs. Job histories of each
25 offender enrolled in the program shall be maintained, tracing the offender's employment after leaving
26 prison for a period of at least two years. The services of the parole and probation commission shall be
27 utilized in maintaining this follow-up capability.

28 SECTION 15. *Work by Inmates and Compensation.*

29 (a) The department shall afford employment opportunities and work experiences for inmates
30 capable of participation to the extent possible, equipment, management practices, and general
31 procedures shall approximate normal conditions of employment. [Tax supported departments,
32 agencies, and institutions of the state and its political subdivisions shall give preference to the
33 purchase of products of inmate labor and inmate services.]

34 (b) Inmates shall be compensated, at rates [provided by law] [fixed by the director], for work
35 performed, including institutional maintenance and attendance at training programs. [*Additional*

1 *provisions concerning support of dependents, dependents receiving public assistance, etc.]*

2 (c) The department may make contractual arrangements for the use of inmate labor by other tax
3 supported units of government and private industry when evidence is available that such employment
4 will contribute to the rehabilitation of the inmate.

5 (d) The department may grant any inmate serving a sentence, [the balance of which does not
6 exceed [five] years,] the privilege of leaving the institution during necessary and reasonable hours for
7 any of the following purposes:

8 (1) seeking employment;

9 (2) working;

10 (3) conducting his own business or other selfemployed occupation [including attending to
11 family and home needs]; and

12 (4) attending an educational institution.

13 (e) The department shall establish administrative and fiscal procedures to permit the use of
14 approved regional or community institutions or half-way houses for the placement of inmates
15 released for those purposes.

16 (f) Any inmate participating in work and educational release programs under the provisions of
17 subsection (d) shall continue to be in the legal custody of the department, notwithstanding his absence
18 from an institution by reason of employment or education, and any employer or educator of that
19 person shall be considered the agent of the department.

20 *[Optional Subsection]*

21 [(g) (1) The director of corrections may establish and operate conservation camps in which
22 persons committed to the department may be placed. Such camps may be established independently or
23 in cooperation with any other public agency or any governmental subdivision, subject to the approval
24 of such agency or subdivision as to any camp or project to the extent that its premises or operations
25 are affected.

26 (2) Every able bodied person committed as provided in paragraph (1) may be confined to a
27 conservation camp established pursuant to this section or to any other institution under the control of
28 the director; any person committed to a conservation camp as herein provided may be required by
29 order of the director to labor during the whole or some part of the time for which he is committed and
30 confined, but not more than eight hours per day. The director is authorized and empowered to provide
31 for the payment of such compensation as [otherwise provided by law] [he may determine] to persons
32 so confined who perform labor as herein above provided. Any money arising hereunder shall be and
33 remain under control of the director and shall be for the sole benefit of the person performing the
34 labor unless it shall be used for rendering assistance to his family or dependents or in making
35 restitution to persons determined by the director to be entitled thereto; in either event payments shall

1 be made only in such amount, at such time and to such persons as the director shall order in
2 writing.]

3 (h) The director may permit any inmate of a correctional facility under his jurisdiction to be
4 employed by any department or agency of the state which desires to make use of the services of such
5 inmates, provided participation by such inmates shall be voluntary. Any inmate employed under this
6 section shall receive the same compensation he would receive if he worked within the correctional
7 institution to which he is confined.

8 [Optional Section.]

9 [SECTION 16. *Office of Ombudsman.*¹

10 (a) The office of ombudsman for the [state] department of corrections is hereby created. The
11 ombudsman shall serve at the pleasure of the governor [in the unclassified service], shall be selected
12 without regard to political affiliation, and shall be a person highly competent and qualified to analyze
13 questions of law, administration, and public policy. No person may serve as ombudsman while hold-
14 ing any other public office. The ombudsman for the department of corrections shall be accountable to
15 the governor and shall have the authority to investigate decisions, acts, and other matters of the
16 department of corrections so as to promote the highest attainable standards of competence, efficiency,
17 and justice in the administration of corrections.

18 (b) The ombudsman may:

19 (1) prescribe the methods by which complaints are to be made, reviewed, and acted upon;
20 provided, however, that he may not levy a complaint fee;

21 (2) determine the scope and manner of investigations to be made;

22 (3) employ assistants from appropriated funds;

23 (4) except as otherwise provided, determine the form and distribution of his conclusions,
24 recommendations, and proposals, provided, however, that the governor or his representative may, at
25 any time the governor deems it necessary, request and receive information from the ombudsman;

26 (5) investigate, upon a complaint in writing or upon his own initiative, any action of an
27 administrative agency;

28 (6) request and shall be given access to information in the possession of an administrative
29 agency which he deems necessary for the discharge of his responsibilities;

30 (7) examine the records and documents of an administrative agency;

31 (8) enter and inspect, at any time, premises within the control of an administrative agency;

¹Establishment of the ombudsman function in the state correctional system was not among the recommendations of the ACIR in its report on the criminal justice system. It is included here as one of the means by which the kinds of changes in correctional role, emphasis, and direction, as urged by the Commission, might be facilitated. Also, it might be noted that the position of ombudsman is already being established in some state governments. (See "Creating State Ombudsmen: A Growing Movement," *National Civic Review*, May, 1974, p. 250, and the "Model State Ombudsman Act," prepared by the American Bar Association and summarized in *1975 Suggested State Legislation* (Vol. XXXIV), Council of State Governments.

1 (9) order any person to appear, give testimony, or produce documentary or other evidence
2 which the ombudsman deems relevant to a matter under his inquiry; provided, however, that any
3 witness at a hearing or before an investigation as herein provided, shall possess the same privileges
4 reserved to such a witness in the courts or under the laws of this state; and

5 (10) bring an action in an appropriate state court to provide the operation of the powers
6 provided in this subdivision. The ombudsman may use the services of legal assistance to state
7 prisoners for legal counsel.

8 (c) In selecting matters for his attention, the ombudsman should address himself particularly to
9 actions of an administrative agency which might be:

10 (1) contrary to law or regulation;

11 (2) unreasonable, unfair, oppressive, or inconsistent with any policy or judgment of an
12 administrative agency;

13 (3) mistaken in law or arbitrary in the ascertainment of facts;

14 (4) unclear or inadequately explained when reasons should be revealed; or

15 (5) inefficiently performed.

16 The ombudsman may also concern himself with strengthening procedures and practices which
17 lessen the risk that objectionable actions of the administrative agency will occur.

18 (d) The ombudsman may receive a complaint from any source concerning an action of an
19 administrative agency. He may, on his own motion or at the request of another, investigate any action
20 of an administrative agency.

21 The ombudsman may exercise his powers without regard to the finality of any action of an
22 administrative agency; however, he may require a complainant to pursue other remedies or channels of
23 complaint open to the complainant before accepting or investigating the complaint.

24 After completing his investigation of a complaint, the ombudsman shall inform the complainant,
25 the administrative agency, and the official or employee of the action taken.

26 A letter to the ombudsman from a person in an institution under the control of an administrative
27 agency shall be forwarded immediately and unopened to the ombudsman's office.

28 (e) If, after duly considering a complaint and whatever material he deems pertinent, the ombuds-
29 man is of the opinion that the complaint is valid, he may recommend that an administrative agency
30 should:

31 (1) consider the matter further;

32 (2) modify or cancel its actions;

33 (3) alter a regulation or ruling;

34 (4) explain more fully the action in question; or

35 (5) take any other step which the ombudsman states as his recommendation to the admin-

1 istrative agency involved.

2 If the ombudsman so requests, the agency shall, within the time he specifies, inform the
3 ombudsman about the action taken on his recommendation or the reasons for not complying with it.

4 (f) If the ombudsman has reason to believe that any public official or employee has acted in a
5 manner warranting criminal or disciplinary proceedings, he may refer the matter to the appropriate
6 authorities.

7 (g) If the ombudsman believes that an action upon which a valid complaint is founded has been
8 dictated by a statute, and that the statute produces results or effects which are unfair or otherwise
9 objectionable, the ombudsman shall bring to the attention of the governor and [*legislature*] his view
10 concerning desirable statutory change.

11 (h) The ombudsman may make public his conclusions and suggestions by transmitting them to
12 the office of the governor. Before announcing a conclusion or recommendation that expressly or
13 impliedly criticizes an administrative agency, or any person, the ombudsman shall consult with that
14 agency or person. When publishing an opinion adverse to an administrative agency, or any person,
15 the ombudsman shall include in such publication any statement of reasonable length made to him by
16 that agency or person in defense or mitigation of the action.

17 (i) In addition to whatever reports the ombudsman may make on an ad hoc basis, the ombudsman
18 shall, at the end of each year, report to the governor concerning the exercise of his functions during
19 the preceding year.]

20 SECTION 17. *Good Behavior.*

21 An inmate serving a commitment shall be allowed a reduction, from his maximum term, of
22 [ten] days for each month served in good behavior for the first [five] years of any term, and [15] days
23 per month for the period of any term over [five] years. However, the director, pursuant to regulations
24 promulgated by him, may deny the allowances for [one] or more months served prior to the infraction
25 of rules by the inmate. The regulations shall provide, under stated circumstances, for the restoration of
26 good time lost.

27 SECTION 18. *Discharge Allowances and Unemployment Compensation.*

28 (a) Any person serving a sentence for a term of confinement in a state correctional facility for
29 convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole
30 of the state board of prison terms and paroles, or who is discharged from custody by a court of appro-
31 priate jurisdiction, shall be entitled to retain his earnings from labor or employment while in confine-
32 ment and shall be supplied by the superintendent of the state correctional facility with suitable and
33 presentable clothing, the sum of [\$40] for subsistence, and transportation by the least expensive
34 method of public transportation not to exceed the cost of [\$100] to his place of residence or the
35 place designated in his parole plan, or to the place from which committed if such person is being

1 discharged on expiration of sentence, or discharged from custody by a court of appropriate juris-
2 diction; provided, [that up to [\$60] additional may be made available to the parolee for necessary
3 personal and living expenses upon application to and approval by such person's parole officer.] If,
4 in the opinion of the director, suitable arrangements have been made to provide the person to be
5 released with suitable clothing and/or the expenses of transportation, the director may consent to such
6 arrangement. If the director has reasonable cause to believe that the person to be released has ample
7 funds to assume the expenses of clothing, transportation, or the expenses for which payments made
8 pursuant to subsections (a) or (b) of this section or any one or more of such expenses, the person
9 released shall be required to assume such expenses.

10 (b) As state, Federal, or other funds are available, the director or his designee is authorized, in his
11 discretion, not to provide the \$40 subsistence or the optional \$60 to a person or persons released as
12 described in subsection (a) of this section and instead to utilize the authorization and procedure
13 contained in this section relative to such person or persons.

14 (1) Any person designated by the director serving a sentence for a term of confinement in a
15 state correctional facility for convicted felons, pursuant to court commitment, who is thereafter
16 released upon an order of parole of the state probation and parole commission, or is discharged from
17 custody upon expiration of sentence, or is ordered discharged from custody by a court of appropriate
18 jurisdiction, shall receive the sum of \$55 per week for a period of up to six weeks. The initial weekly
19 payment shall be made to such person upon his release or parole by the director. Subsequent weekly
20 payments shall be made to such person by the probation and parole officer at the office of such
21 probation or parole officer. In addition to the initial six weekly payments provided for in this section,
22 a probation and parole officer and his district supervisor may, at their discretion, continue such
23 payments up to a maximum of 20 additional weeks when they are satisfied that such person is actively
24 seeking employment and that such payments are necessary to continue the efforts of such person to
25 gain employment; provided, that if, at the time of release or parole, in the opinion of the director,
26 funds are otherwise available to such person, with the exception of earnings from labor or employment
27 while in confinement, such weekly sums of money or part thereof shall not be provided to such
28 person.

29 (2) When a person receiving such payments provided for in this section becomes employed,
30 he may continue to receive payments for [two weeks] after the date he becomes employed but pay-
31 ments made after he becomes employed shall be discontinued as of the date he is first paid for such
32 employment; provided, that no person shall receive payments for a period exceeding the [26 weeks]
33 maximum as established in this section.

Title VI

TREATMENT OF EX-OFFENDERS

1 SECTION 19. *Disqualifications from Public Employment or Licensed Occupation.*

2 (a) Notwithstanding any other provision of law to the contrary, no person shall be disqualified
3 from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in
4 any occupation for which a license is required solely or in part because of a prior conviction of a
5 crime or crimes, unless the crime or crimes for which convicted relate directly to the position of
6 employment sought or the occupation for which the license is sought.

7 (b) In determining if a conviction relates directly to the position of public employment sought or
8 the occupation for which the license is sought, the hiring or licensing authority shall consider:

9 (1) the nature and seriousness of the crime or crimes for which the individual was convicted;

10 (2) the relationship of the crime or crimes to the purposes of regulating the position of
11 public employment sought or the occupation for which the license is sought; and

12 (3) the relationship of the crime or crimes to the ability, capacity, and fitness required to
13 perform the duties and discharge the responsibilities of the position of employment or occupation.

14 (c) A person who has been convicted of a crime or crimes which relate directly to the public
15 employment sought or to the occupation for which a license is sought shall not be disqualified from
16 the employment or occupation if the person can show competent evidence of sufficient rehabilitation
17 and present fitness to perform the duties of the public employment sought or the occupation for
18 which the license is sought. Sufficient evidence of rehabilitation may be established by the production
19 of:

20 (1) a copy of the local, state, or Federal release order; and

21 (2) evidence showing that at least one year has elapsed since release from any local, state, or
22 Federal correctional institution without subsequent conviction of a crime; and evidence showing
23 compliance with all terms and conditions of probation or parole; or

24 (3) a copy of the relevant department of corrections discharge order or other documents
25 showing completion of probation or parole supervision.

26 (d) In addition to the documentary evidence presented, the licensing or hiring authority shall
27 consider any evidence presented by the applicant regarding:

28 (1) the nature and seriousness of the crime or crimes for which convicted;

29 (2) all circumstances relative to the crime or crimes, including mitigating circumstances or
30 social conditions surrounding the commission of the crime or crimes;

31 (3) the age of the person at the time the crime or crimes were committed;

32 (4) the length of time elapsed since the crime or crimes were committed; and

1 (5) all other competent evidence of rehabilitation and present fitness presented, including, but
2 not limited to, letters of reference by persons who have been in contact with the applicant since his or
3 her release from any local, state, or Federal correctional institution.

4 (e) The following criminal records shall not be used, distributed, or disseminated by the state of
5 [], its agents, or political subdivisions in connection with any application for public employment
6 nor in connection with an application for a license:

7 (1) records of arrest not followed by a valid conviction;

8 (2) convictions which have been, pursuant to law, annulled or expunged; and

9 (3) misdemeanor convictions for which no jail sentence can be imposed.

10 (f) If a hiring or licensing authority denies an individual from pursuing, practicing, or engaging in
11 any occupation for which a license is required, solely or in part because of the individual's prior
12 conviction of a crime, the hiring or licensing authority shall notify the individual in writing of the
13 following:

14 (1) the grounds and reasons for the denial or disqualification;

15 (2) the applicable complaint and grievance procedure as set forth in *[appropriate citation]*;

16 (3) the earliest date the person may re-apply for a position of public employment or a license;

17 and

18 (4) that all competent evidence or rehabilitation presented will be considered upon re-applica-
19 tion.

20 (g) This section shall not apply to the practice of law; but nothing in this section shall be con-
21 strued to preclude the supreme court, in its discretion, from adopting the policies set forth in this
22 section.

Title VII

TRANSFER OF PERSONNEL, PROPERTY, RECORDS, AND FUNDS

1 SECTION 20. *Status of Personnel.*

2 (a) All employees of state, county, and municipal correctional institutions and agencies providing
3 adult probation services¹ shall be deemed to be employees of the department of corrections as of
4 *[insert effective date of this act]*.

5 (b) Employees shall receive full credit for the time employed by state, county, or municipal
6 institutions or agencies in computing the number of years of service required to receive pension

¹The legislation needs to exclude those employees of small local governments or of those in sparsely populated areas whose duties may include, but are not primarily involved with adult probation of associated correctional services (e.g. deputy sheriffs engaged in a combination of law enforcement, correctional, and related duties).

1 benefits within the meaning of the *[insert state employees' pension plan]*. No person shall be entitled
2 to the pension benefits provided herein until he has completed *[one year]* as an employee of the
3 department and has met all other requirements of the *[insert state employees' pension plan]*.
4 *[Language may be added to provide for the appropriate transfer of funds from local retirement*
5 *systems to the state retirement system.]*

6 SECTION 21. *Transfer of Property, Records, and Funds.* The following shall be transferred to
7 the department in accordance with regulations and procedures prescribed by the director:

8 (a) all property and records of correctional institutions and adult probation and juvenile aftercare
9 agencies operated by units of local government.

10 (b) all property, records, and unexpended balances of appropriations, allocations, and other
11 funds of state correctional institutions, adult probation and juvenile aftercare agencies, and the
12 parole board.

Title VIII

APPLICATION OF ACT

1 SECTION 22. *Savings Clause.* No provision of this act shall apply in such a manner as to
2 eliminate or decrease any right, privilege, or benefit enjoyed by any inmate of the correctional system
3 of this state as of the date of enactment *[or other similar language appropriate in the particular state]*.

4 SECTION 23. *Laws Repealed.* *[Insert language repealing all other acts and parts of acts incon-*
5 *sistent with the provision of this act.]*

6 SECTION 24. *Separability.* *[Insert separability clause.]*

7 SECTION 25. *Effective Date.* *[Insert effective date.]*

10.302 LEGISLATIVE COMMITTEE RESPONSIBILITY FOR IMPROVEMENT OF LAW ENFORCEMENT AND CRIMINAL JUSTICE¹

The legislature must involve itself to a much greater extent than heretofore in bringing together for examination and revision the related parts of the state criminal justice system if substantial progress is to be made in overhauling and strengthening the system as a whole. The functional areas of criminal code revision; powers, responsibilities and relationships of police agencies; statutory and administrative rules governing the prosecution and court systems; and correctional policies, institutions, and administration, including the often neglected parole system, are all closely interrelated. Criminal justice planning agencies under the direction of governors' offices have begun to provide coordinated attention to these various aspects of law enforcement and the administration of justice. But progress on the legislative side has been slow.

One of the basic difficulties has been the dispersal of the legislature's jurisdiction over criminal justice system components among two or more committees of each house. Often the correction function is assigned to a welfare or institutions oriented committee and the operational aspects of the local police function to a committee concerned with county and city affairs. In many states, the judiciary committees handle code review and revision and problems related to the court system. The purpose of the concurrent resolution which follows is to focus jurisdiction over the criminal justice system into a single committee. The key part of the resolution is the first "resolved clause" that sets forth the substantive responsibility of the committee with regard to the criminal justice system. The resolution follows the form for a joint committee, but equally appropriate in many cases would be the extension of judiciary committee responsibilities to encompass the desired objectives, or in some cases the creation of a new, separate committee on criminal justice.

¹Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*, Report A-38 (Washington, D.C.: Government Printing Office, August, 1971).

Suggested Concurrent Resolution¹

[PROVIDING FOR THE ESTABLISHMENT OF A JOINT LEGISLATIVE
COMMITTEE ON IMPROVEMENT OF LAW ENFORCEMENT AND
CRIMINAL JUSTICE]

1 WHEREAS, the increasing incidence of crime presents a serious threat to the political, social, and
2 economic institutions of the state and local governments; and

3 WHEREAS, there is a need to formulate and implement a state comprehensive criminal justice
4 plan to guide public policies and programs for achieving a coordinated criminal justice system; and

5 WHEREAS, there also is a need for continuing overall review by the [legislature] of the compre-
6 hensive state criminal justice plan and related functional plans; and

7 WHEREAS, a [joint legislative] committee is a means of assuring continuing and systematic re-
8 view and study of the progress toward a comprehensive state criminal justice plan and providing the
9 framework within which relevant policies and programs may be evaluated.

10 NOW, THEREFORE, BE IT RESOLVED, by the [legislature] of the state of [], that a
11 [joint legislative] committee on the improvement of law enforcement and criminal justice is created to:

12 (1) receive the comprehensive state criminal justice plan from the [state criminal justice
13 planning agency] and related functional plans from other state agencies, and submit reports and rec-
14 ommendations thereon to the [legislature];

15 (2) review all relevant proposed state legislation for conformance to the comprehensive
16 criminal justice plan and related functional plans, including but not limited to improvements in tech-
17 niques, organizations, coordination, and administration of police, court, prosecution, counsel for the
18 indigent, correctional, and rehabilitation activities;

19 (3) encourage cooperation and coordination of law enforcement and criminal justice efforts
20 between state and local jurisdictions and among local units of government;

21 (4) stimulate greater citizen involvement in crime reduction and promote better relationships
22 among law enforcement officials and members of the community; and

23 (5) develop and introduce legislation affecting the plan;

24 AND BE IT FURTHER RESOLVED, that the [joint legislative] committee on the improvement of
25 law enforcement and criminal justice shall consist of [] members, [[] of whom shall be members
26 of the [senate] to be appointed by the [president of the senate]; and [] of whom shall be members of
27 the [house of representatives] to be appointed by the [speaker of the house of representatives];

¹Some states may find it more appropriate to enact the following in the form of a statute rather than a concurrent resolution.

1 AND BE IT FURTHER RESOLVED, that any vacancy of the committee shall be filled by appoint-
2 ment by the officer authorized to make the original appointment;

3 AND BE IT FURTHER RESOLVED, that the committee shall choose a chairman, a vice-chair-
4 man, and a secretary from its membership, and may employ professional, clerical, stenographic, and
5 other assistants and fix their compensation.¹ Members of the committee shall serve without compen-
6 sation but shall be reimbursed for any expenses incurred by them in the performance of their common
7 duties.

8 AND BE IT FURTHER RESOLVED, that the committee may:

9 (1) request from any department, division, board, commission, or other agency of the state
10 or any political subdivision of the state such information and assistance as may be necessary for the
11 committee's review of proposed legislation, the comprehensive state criminal justice plan, and related
12 functional plans;

13 (2) [subpoena] [request the appearance of] witnesses, take testimony, and [compel] [request]
14 the production of books, records, documents, papers, and other sources of information deemed by the
15 committee to be relevant to its investigation;

16 [(3) have access to all books, records, documents, and papers of any political subdivision of
17 the state;]

18 (4) exercise all powers and authority of other standing committees of the [legislature]; and

19 (5) sit anywhere within or without the state to conduct the review herein described.

¹To the extent that the concurrent resolution comprises a consolidation of existing responsibilities rather than the establishment of new ones, staffing needs should be met through the appropriate transfer of personnel.

COMMISSION MEMBERS

PRIVATE CITIZENS

Robert E. Merriam, Chairman, Chicago, Illinois

Robert H. Finch, Los Angeles, California

John H. Altorfer, Peoria, Illinois

MEMBERS OF THE UNITED STATES SENATE

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Edmund S. Muskie, Maine

William V. Roth, Delaware

MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES

L. H. Fountain, North Carolina

Clarence J. Brown, Jr., Ohio

James C. Corman, California

OFFICERS OF THE EXECUTIVE BRANCH, FEDERAL GOVERNMENT

James M. Cannon, Assistant to the President for Domestic Affairs

James T. Lynn, Office of Management and Budget

Vacancy

GOVERNORS

Richard F. Kneip, South Dakota

Daniel J. Evans, Washington

Robert D. Ray, Iowa

Philip W. Noel, Rhode Island

MAYORS

Richard G. Lugar, Vice Chairman, Indianapolis, Indiana

Jack D. Maltester, San Leandro, California

John H. Poelker, St. Louis, Missouri

Vacancy

STATE LEGISLATIVE LEADERS

John H. Briscoe, Speaker, Maryland House of Delegates

Robert P. Knowles, Senator, Wisconsin

Charles F. Kurfess, Minority Leader, Ohio House of Representatives

ELECTED COUNTY OFFICIALS

Conrad M. Fowler, Shelby County, Alabama

John H. Brewer, Kent County, Michigan

William E. Dunn, Salt Lake County, Utah

what is acir?

The Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. ACIR is a permanent national bipartisan body representing the executive and legislative branches of Federal, state, and local government and the public.

The Commission is composed of 26 members — nine representing the Federal government, 14 representing state and local government, and three representing the public. The President appoints 20 — three private citizens and three Federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from slates nominated by the National Governors' Conference, the Council of State Governments, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Congressmen by the Speaker of the House.

Each Commission member serves a two year term and may be reappointed.

As a continuing body, the Commission approaches its work by addressing itself to specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning

of the federal system. In addition to dealing with the all important functional and structural relationships among the various governments, the Commission has also extensively studied critical stresses currently being placed on traditional governmental taxing practices. One of the long range efforts of the Commission has been to seek ways to improve Federal, state, and local governmental taxing practices and policies to achieve equitable allocation of resources, increased efficiency in collection and administration, and reduced compliance burdens upon the taxpayers.

Studies undertaken by the Commission have dealt with subjects as diverse as transportation and as specific as state taxation of out-of-state depositories; as wide ranging as substate regionalism to the more specialized issue of local revenue diversification. In selecting items for the work program, the Commission considers the relative importance and urgency of the problem, its manageability from the point of view of finances and staff available to ACIR and the extent to which the Commission can make a fruitful contribution toward the solution of the problem.

After selecting specific intergovernmental issues for investigation, ACIR follows a multistep procedure that assures review and comment by representatives of all points of view, all affected levels of government, technical experts, and interested groups. The Commission then debates each issue and formulates its policy position. Commission findings and recommendations are published and draft bills and executive orders developed to assist in implementing ACIR policies.

