

to fail to identify himself and give an exculpatory account of his presence is in effect an extension of the law of arrest, and trenches on the privilege against self-incrimination. It authorizes arrest of persons who have not given reasonable ground for believing that they are engaged in or have committed offenses. Alternatively, it can be regarded as a legislative determination that in "suspicious" circumstances, failure to respond to police inquiries supplies reasonable ground. In either view, extension of the law of arrest might be regarded as a matter for a code of procedure rather than an end to be achieved indirectly by creating a substantive offense of failure to respond to the police.

The constitutionality of such legislation may depend on the fact that the history of Anglo-American law provides an ancient pedigree for offenses of this character, under the heading of "vagrancy". In feudal times the vagrancy statutes served to protect the rights of the lord in his fugitive serfs. They also were an instrument for controlling wandering bands of robbers, as the feudal system began to break up, leaving a surplus of rootless workmen. Paradoxically, the vagrancy laws also lent themselves to control of scarce labor. When the Black Death depopulated England of one-third to one-half of its inhabitants, and the Statute of Labourers was passed to compel able-bodied men to serve anyone who required their services at the customary rate of wages, it was made an offense for a workman or servant to depart from service before the time agreed upon. It was also an offense to give alms to a "valiant" beggar. Wandering or vagrancy was punishable summarily. About this time a distinction came to be made between sturdy and impotent beggars. The former were treated as vagrants, the latter being non-criminal so long as they remained in their own locality. Thus the vagrancy laws assumed still another role: criminal sanctions against abuse of the poor laws. These laws placed the burden of the impotent beggar on his home parish. Impotent beggars were required to remain in the cities or towns where they were living, later being given an option of going to their places of birth. Such beggars came to be licensed. Sturdy beggars were punished and given a pass to return to their place of habitation or birth. Provisions were made for the employment of sturdy beggars in their own locality in workhouse-like institutions.

Thus, the early vagrancy laws were criminal sanctions of the Statute of Labourers, designed to control the labor market. Later they became the criminal sanction of the poor laws. As time went on, they came to be looked upon also as devices to control a mass of potential criminals.

Today some form of vagrancy is a statutory offense in every state except West Virginia, where it is a common law offense. It will be observed that many of these activities are punishable under specific provisions of this Code and the existing codes of the several states. Others cannot, consistently with constitutional standards, be proscribed in the terms commonly found in the vagrancy statutes.

The most noteworthy aspect of the legislation is its effect to create a "status" of criminality based on past behavior. Illustrative is *People v. Craig*, 152 Cal. 42, 91 Pac. 997 (1907). Defendant was convicted of assault with a deadly weapon. His defense was that he was resisting an illegal arrest. The testimony of the arresting officers was quite frank. They received a report that the defendant and another had assaulted a man. They had not seen the offense and concluded they could not arrest them for battery without a warrant. One officer testified: "I was notified that this man and Mack had beat up a man. . . and I says: 'Well, the only thing we can do -- we didn't see it -- we will go and vag them.'" There was evidence that he knew defendant as a vagrant, but had been instructed to leave him alone if he behaved himself. The court affirmed the conviction stating:

Whether this is an entirely commendable attitude toward appellant's class of misdemeanants we need not stop to consider, but we think the admitted fact that appellant would not have been arrested if he had confined himself to vagrancy did not render his arrest for that offense illegal. Vagrancy differs from most other offenses in the fact that it is chronic rather than acute; that it continues after it is complete, and thereby subjects the offender to arrest at any time before he reforms. (152 Cal. at 47)

If the disorderly conduct statutes are troublesome because they require so little in the way of misbehavior, the vagrancy statutes offer the astounding spectacle of criminality with no misbehavior at all!

Loitering statutes, whether or not they include provisions for police interrogation and compulsion on the loiterer to explain his presence, appear to be designed to enable the police to arrest persons suspected of having committed or being about to commit offenses. Thus, in *State v. Grenz*, defendant was convicted of vagrancy (wandering the streets at late or unusual hours without visible or lawful business) upon evidence that he was moving towards a chicken coop carrying a gunny sack. The Court said:

It is true that there was insufficient evidence adduced to support a charge of attempted larceny or attempted burglary for the reason that there was no overt act tending to accomplish the commission of either of these offenses But such was not the charge in this case. The laws relating to criminal attempts do not properly apply to the vagrancy statutes. . . . The gist of the offense in the instant case is that the circumstances under which the appellant was apprehended were consistent with the hypothesis that he was about to commit a crime, and were inconsistent with any reasonable hypothesis that he had any lawful or visible business at the time and place of his apprehension. This is the very evil which the statute was designed to remedy, and it is difficult to conceive of a clearer case calling for its application. (26 Wash. 2d at 770-771)

Four justices dissented, including two who expressed the view that the legislature is without power to make this type of activity an offense. Apart from the issue of constitutionality, the courts are inclined to construe the loitering statutes to exclude lassitude or indolence, i.e., non-suspicious loitering.

Typical suspicious loitering situations would be the following: a known professional pickpocket is seen loitering in a crowded railroad station; a rough-looking character, not recognized by the policeman as a local resident, is seen lurking in a doorway looking up and down the street as if to see whether anyone is watching; a nervous housewife summons police to her neighborhood because an unknown man has been standing for some time in a dark alley. These situations would not be covered by the law of attempt, even under the expanded definition of that offense in Article 5 of this Code, since no act has yet been done which is a "substantial step" toward commission of an offense or "strongly corroborative of the actor's criminal purpose." The "offender" does not even possess burglary tools or other "instrument of crime," upon which to base a conviction under Section 5.06.

What response does the community wish to make to these situations? At least five courses are open:

(1) Loitering or wandering "without lawful business" or "at unusual hours," may be made an offense, as in many vagrancy laws, e.g., Cal. Pen. Code § 647, thus laying the basis for arrest and conviction without proof of any criminal act or purpose.

(2) The suspicious situation may be treated as laying the basis for police inquiries to which the actor must respond, as in draft Section 250.12.

(3) The suspicious situation may be treated as a proper occasion for brief detention to facilitate police interrogation, not involving charge of crime.

(4) The situation might be one in which the police could be authorized to order the suspect to "move on," i.e., to depart from the place where his presence causes alarm.

(5) Or, finally, the police might expect merely to make inquiry of suspicious persons, most of whom would of course answer questions voluntarily. Where the answer does not dissipate suspicion, the officer would make such observations as would facilitate identification of the suspect in case an offense is committed in the neighborhood.

All these alternatives have difficulties. The first authorizes conviction of persons without proof of anti-social behavior or inclination. The second does not exclude that possibility, since failure to identify or to give credible account of one's behavior leads to criminal liability, without necessity on the part of the prosecution to prove any criminal purpose. Another trouble with alternative 2 is that a plausible lie about one's purposes or identity will exclude liability under this section, while an implausible truth does not. The third alternative involves a quite controversial and possibly unconstitutional change in the law of arrest, rather than a definition of a substantive offense within the scope of the Model Penal Code. The fourth alternative, the police order to "move on," hardly solves the problem of the individual who is bent on crime, and confers a disturbingly unbounded discretion upon the police. The last alternative, although most consistent with our ideas of the proper role of the police and with general principles of penal law against convicting person without proof of anti-social behavior, involves total abandonment of the traditional vagrancy concept, a departure which will encounter serious resistance.

In draft Section 250.12 our aim had been to provide the least objectionable form of alternative 2 for those jurisdictions not prepared to break entirely from the vagrancy concept. In contrast to some proposals of the same general character, Section 250.12 requires that the loitering be such as to justify suspicion of criminal activity. Moreover, the offense is only a violation, i.e., not subject to imprisonment.

Municipalities may properly regulate the use of sidewalks to safeguard against annoying and unfortunate mendicants and merchants; but such legislation does not belong in the penal code. Other codes, dealing with traffic, or health and welfare, or regulating callings, would be the place for specific and detailed provisions necessary to make proper distinctions between the aggressive beggar and the immobile, silent beggar; between begging as a business and soliciting for the Red Cross, Disabled Veterans, or the Salvation Army; between begging and the "selling" of pencils or trinkets which the purchaser is not expected to take; between the person suffering a momentary embarrassment from having lost his wallet and the bum dunning passersby for coins with which to buy liquor, under the fraudulent pretense of needing carfare.⁹

40-25-7. Reckless hunting. (1) Any person, while in the act of pursuing, taking or killing game or birds, who does any of the following commits reckless hunting and is guilty of a class ___ misdemeanor:

- (a) Carries a firearm while under the influence of intoxicants or drugs; or
- (b) Acts in a careless or reckless manner or wanton disregard of human life or property.

(2) The hunting license of any person convicted under this section shall be revoked upon conviction and the offender shall not be eligible to purchase or use a Colorado hunting license for a period of three years next following conviction.

Comment

This proposed offense is a restatement of the present offenses defined in 40-11-5, 40-11-6, and 40-11-7, CRS 1963.

40-25-8. Disturbing the remains of a dead person. Any person who knowingly disturbs or removes the remains, or any part thereof, of

9. Model Penal Code, American Law Institute, Philadelphia, Tentative Draft No. 13, April 1961, pp. 60-65.

any person permanently interred in any church, churchyard or cemetery, other than pursuant to an order of court, commits disturbing the remains of a dead person and is guilty of a class ___ misdemeanor.

Comment

This proposed section is a restatement of the present offense defined in 40-12-5, CRS 1963.

40-25-9. Defacing Tombs. Any person who intentionally does any of the following commits defacing tombs and is guilty of a class ___ misdemeanor:

- (1) Defaces, breaks, destroys or removes any tomb, monument or gravestone erected to any deceased person or any memento or any memorial or any ornamental plant, tree or shrub appertaining to the place of burial of any human being; or
- (2) Marks, defaces, injures, destroys or removes any fence, post, rail or wall of any cemetery or graveyard or erected within any cemetery or graveyard.

Comment

This proposed section constitutes a new offense.

40-25-10. Conducting or participating in endurance contests.

(1) Any person who conducts or participates in any physical or mental endurance contest for a period longer than 24 hours or conducts or participates in any such endurance contest within any period of 168 hours commits conducting or participating in endurance contests and is guilty of a class ___ misdemeanor.

(2) This section does not apply to any athletic contest of schools, colleges or universities.

Comment

This proposed section is a restatement of the present offense defined in 40-12-9 through 40-12-17, CRS 1963.

40-25-11. Sunday barbering. Any person who carries on the business of barbering on Sunday in any city of the first or second class, whether incorporated by general law or special charter, commits Sunday barbering and is guilty of a class ___ misdemeanor.

Comment

This proposed section is a restatement of the present offenses defined in 40-12-20 and 40-12-21, CRS 1963.

40-25-12. Polluting streams. Any person who does any of the following commits polluting streams and is guilty of a class ___ misdemeanor:

- (1) Throws or discharges into any stream or running water, or into any ditch or flume, any obnoxious substance, such as refuse matter from a slaughter house or privy, or slops from eating houses, or any other fleshy or vegetable matter which is subject to decay in water; or
- (2) Empties or causes to be emptied, or allows the emptying or flowing of oil, petroleum or other oleaginous substance into any of the waters of this state, or deposits or causes the same to be deposited at such distance that the same may be carried into such waters by natural causes.

Comment

This proposed section is a restatement of the present offenses defined in 40-12-22 and 40-12-23, CRS 1963.

40-25-13. Causing danger to blind persons. Any person, other than a wholly or partially blind person, who knowingly does any of

the following commits causing danger to blind persons and is guilty of a class ___ misdemeanor:

- (a) Carries or uses on any street, highway or other public place, a cane or walking stick which is white in color, or white tipped with red; or
- (b) Fails to take precaution against accidents or injury to a person carrying or using on any street, highway, or other public place a cane or walking stick which is white in color, or white tipped with red.

Comment

This proposed section is a restatement of the present offenses defined in 40-12-24, 40-12-25, and 40-12-26, CRS 1963.

40-25-14. Selling tobacco to children. Any person who, without the written permission of the child's parent or guardian, gives or sells any item containing tobacco to a child under the age of sixteen years commits selling tobacco to children and is guilty of a class ___ misdemeanor.

Comment

This proposed section constitutes a restatement of the present offense defined in 40-13-2 and 40-13-5, CRS 1963.

ARTICLE 26. GAMBLING

40-26-1. Definitions relating to gambling. As used in this article, the following words have the meaning given below:

- (1) "Bet" means a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose anything of value specified in the agreement. But a bet does not include:
 - (a) Bona fide business transactions which are valid under

the law of contracts, including, without limitation:

Contracts for the purchase or sale, at a future date, of securities or other commodities; and agreements to compensate for loss caused by the happening of the chance, including without limitation, contracts for indemnity or guaranty and life or health and accident insurance;

- (b) Offers of purses, prizes, or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such contests; or
 - (c) Betting or games of chance otherwise permitted by law.
- (2) "Gambling device" means a contrivance which for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill and whether or not the prize is automatically paid by the device. A gambling device does not include:
- (a) A coin-in-the-slot operated mechanical device played for amusement which rewards the player with the right to replay such mechanical device, which device is so constructed or devised as to make such result of the operation thereof depend in part upon the skill of the player and which returns to the player thereof no coins, tokens, or merchandise;
 - (b) Vending machines by which full and adequate return is made for the money invested and in which there is no element of chance or hazard.

- (3) "Gambling place" means any structure or place, any vehicle (whether self-propelled or not), or any room within any of them, one of whose principal uses is any of the following: Making and settling bets; receiving, holding, recording, or forwarding bets or offers to bet; or playing gambling devices.

40-26-2. Gambling. Gambling consists of:

- (1) Making a bet; or
- (2) Entering or remaining in a gambling place with intent to make a bet or to play a gambling device;

Whoever commits gambling is guilty of a class ___ misdemeanor.

40-26-3. Commercial gambling. Commercial gambling consists of either:

- (1) Participating in the earnings of or operating a gambling place;
- (2) Receiving, recording, or forwarding bets or offers to bet;
- (3) Possessing or controlling facilities with the intent to receive, record, or forward bets or offers to bet;
- (4) For gain, becoming a custodian of anything of value, either bet or offered to be bet;
- (5) Setting up for use, for the purpose of gambling, or collecting the proceeds of, any gambling device.

Whoever commits commercial gambling is guilty of a class ___ felony.

40-26-4. Permitting premises to be used for gambling. Permitting premises to be used for gambling consists of:

- (1) Knowingly permitting any property owned or occupied by

any person or under his control to be used as a gambling place; or

- (2) Knowingly permitting a gambling device to be set up for use by another for the purpose of gambling in a place under his control.

Whoever commits permitting premises to be used for gambling is guilty of a class ___ misdemeanor.

40-26-5. Dealing in gambling devices. (1) Dealing in gambling devices consists of manufacturing, transferring commercially, or possessing, with intent to transfer commercially, any of the following:

- (a) Anything which he knows evidences, purports to evidence, or is designed to evidence participating in gambling; or
 - (b) Any device which he knows is designed exclusively for gambling purposes or anything which he knows is designed exclusively as a subassembly or essential part of such device. This includes without limitation, gambling devices, numbers jars, punchboards, and roulette wheels.
- (2) Proof of possession of any device designed exclusively for gambling purposes which is not in a gambling place and is not set up for use is prima facie evidence of possession with intent to transfer.
 - (3) Whoever commits dealing in gambling devices is guilty of a class ___ misdemeanor.

Comment

This article restates the essential gambling provisions contained in 40-10-7 through 40-10-11, CRS 1963, 40-10-12, CRS 1963, as amended by Chapter 39, 1964 Session Laws, and the 17 sections that comprise Article 16 of Chapter 40, CRS 1963.

ARTICLE 27. WEAPONS

40-27-1. Unlawful use of weapons. Any person who knowingly does any of the following acts commits unlawful use of weapons:

- (1) Sells, manufactures, purchases, possesses or carries any bludgeon, black-jack, sling-shot, sand-club, sand-bag, shotgun with a barrel less than 18 inches in length, metal knuckles or any knife, commonly referred to as a switchblade knife, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife; or
- (2) Carries or possesses with intent to use the same unlawfully against another, a dagger, dirk, billy, dangerous knife, razor, stiletto or any other dangerous or deadly weapon or instrument of like character; or
- (3) Carries on or about his person or in any vehicle, a tear gas gun projector or bomb or any object containing noxious liquid gas or substance; or
- (4) Carries concealed in any vehicle or concealed on or about his person except when on his land or in his own abode or fixed place of business any pistol, revolver or other firearm; or
- (5) Sets a spring gun; or
- (6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or
- (7) Sells, manufactures, purchases, possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device.

Any person who commits unlawful use of weapons is guilty of a class ___ misdemeanor if the offense is a violation of subsections (1) through (6) of this section. Any person who commits unlawful use of weapons is guilty of a class ___ felony if the offense is a violation of subsection (7) of this section.

Any person who has been convicted of any felony under the laws of this or any other state and, within ten years of release from penitentiary or within ten years of conviction if a penitentiary sentence has not been imposed, violates any subsection of this section is guilty of a class ___ felony.

40-27-2. Exemptions. (1) Subsections (3) and (4) of section 40-27-1 shall not apply to or affect any of the following:

- (a) Peace officers or any person summoned by any such officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer.
- (b) Warden, superintendents and keepers of prisons, penitentiaries, jails, and other institutions for the detention of persons accused or convicted of an offense.
- (c) Members of the armed services or reserve forces of the United States or the national guard or the reserve officers training corps, while in the performance of their official duty.
- (d) Watchmen while actually engaged in the performance of the duties of their employment.
- (e) Manufacture, transportation, or sale of weapons to persons authorized under paragraphs (a) through (d) of this subsection to possess such.

(2) Subsection (4) of section 40-27-1 shall not apply to or affect any of the following:

- (a) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using their firearms on such target ranges.
- (b) Licensed hunters or fishermen while engaged in hunting or fishing.
- (c) Transportation of weapons broken down in a non-functioning state or not immediately accessible.
- (d) Any person in possession of a valid license issued to him pursuant to sections 40-27-7 through 40-27-11.

(3) Subsection (7) of section 40-27-1 shall not apply to or affect any of the following:

- (a) Peace officers.
- (b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.
- (c) Members of the armed services or reserve forces of the United States or the national guard while in the performance of their official duty.
- (d) Manufacture, transportation or sale of machine guns to persons authorized under paragraphs (a) through (c) of this subsection to possess such, provided said machine guns are broken down in a non-functioning state or not immediately accessible.

(4) An information or indictment based upon a violation of sections 40-27-1 through 40-27-6 need not negative any exemptions

tained in this article. The defendant shall have the burden of proving such exemptions.

40-27-3. Unlawful sale of firearms. A person commits the offense of unlawful sale of firearms and is guilty of a class ___ misdemeanor when he knowingly:

- (1) Sells or gives any firearm of a size which may be concealed upon the person to any person under eighteen years of age; or
- (2) Sells or gives any firearm to any narcotic addict; or
- (3) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within ten years from release from the penitentiary or within ten years of conviction if penitentiary sentence has not been imposed.

40-27-4. Register of sales by dealer. (1) Any seller of firearms of a size which may be concealed upon the person, other than a manufacturer selling to a bona fide wholesaler or retailer or a wholesaler selling to a bona fide retailer, shall keep a register of all firearms sold or given away.

(2) Such register shall contain the date of the sale or gift, the name, address, age, and occupation of the person to whom the weapon is sold or given, the price of the weapon, the kind, description, and number of the weapon, and the purpose for which it is purchased and obtained.

(3) Such seller on demand of a peace officer shall produce for inspection the register and allow such peace officer to inspect such register and all stock on hand.

(4) Any person convicted of violating any subsection of this section is guilty of a class ___ misdemeanor.

40-27-5. Defacing identification marks of firearms. (1)

Any person who shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification of any firearm is guilty of a class ___ misdemeanor.

(2) Possession of any firearm upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same.

40-27-6. Confiscation and disposition of weapons. Any stolen weapon so confiscated, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession if known. All other confiscated weapons when no longer needed for evidentiary purposes shall, in the discretion of the trial court, be destroyed, preserved as county property, delivered to the armed forces of the United States or the national guard or sold and the proceeds of such sale shall be paid to the county treasurer.

40-27-7. License to carry concealed firearm. Upon proof that the applicant is of good moral character, a citizen of the United States, has no prior history of mental illness, or narcotic drug addiction, has not been convicted of a felony in this or any other state or of an offense which if committed in this state would constitute a felony, during the preceding ten years, is 21 years of age or older, and that a good reason or reasons exist for the issuance thereof, the sheriff of any county may issue to such applicant a license to carry a concealed firearm in that county, restricted to any such reasons which are satisfactory to the sheriff.

40-27-8. Application for license. Each applicant shall pay to the sheriff an application fee of three dollars upon the submission of his application for license. Such application for license

shall be filed in writing and include the applicant's: (1) name, (2) occupation, (3) home address, (4) business address, (5) age, (6) sex, (7) height, (8) weight, (9) color of eyes, (10) color of hair, (11) color photograph, two inches by two inches, taken within one year prior to such application, (12) signature, and (13) reasons for the necessity or desirability to carry a concealed firearm.

40-27-9. Comparison of fingerprints of applicant. Upon application, the sheriff shall cause to have duplicate fingerprints made of the applicant and shall forward one copy to the national bureau of identification in Washington, D. C., for comparison of fingerprints with those on file in the bureau. No license, except a temporary emergency license, shall be issued unless and until a report is received by the sheriff that such comparison shows no conviction of a felony during the preceding ten years. In the event the applicant previously has been fingerprinted in accordance with this section, and his fingerprints are on file with the national bureau of identification, reference to such prints may be submitted in lieu thereof.

40-27-10. License contents -- in possession. (1) Each license shall be issued for a definite period of not more than one year, and no renewal of such license shall be granted except upon the filing of a new application. Each license shall include the applicant's (1) name, (2) occupation, (3) home address, (4) business address, (5) age, (6) sex, (7) height, (8) weight, (9) color of eyes, (10) color of hair, (11) color photograph, two inches by two inches, taken within one year prior to the application, (12) signature, (13) right thumb imprint or if that be not possible, the left thumb imprint or some other finger. Each license shall contain a description of the weapon or weapons authorized to be carried, including the name of the manufacturer, the serial number, and the caliber.

(2) Each licensee shall carry his license upon his person at all times when he may be carrying a concealed firearm upon his person or in any vehicle operated or occupied by such licensee, and shall display such license upon the request of any law enforcement officer.

40-27-11. Temporary emergency license. The sheriff of any county may grant a temporary emergency license to carry a concealed firearm in that county in cases of emergency pending the results of a fingerprint comparison. Such temporary emergency license shall expire automatically 30 days after the date of issuance thereof.

Comment

This article restates the essential firearm provisions contained in 40-11-1, CRS 1963, as amended by Chapter 39, 1964 Session Laws; 40-11-2, and 40-11-8 through 40-11-10, CRS 1963; 53-3-1 through 53-3-3, CRS 1963, 53-3-4, CRS 1963, as amended by Chapter 39, 1964 Session Laws; and the four sections comprising Article 4 of Chapter 53, CRS 1963.

PART E. OFFENSES AGAINST PUBLIC ADMINISTRATION

ARTICLE 28. DISLOYALTY

40-28-1. Flag Desecration. (1) Any person who intentionally does any of the following commits flag desecration and is guilty of a class ___ misdemeanor:

- (a) Places on or attaches to a flag any word, mark, design, or advertisement not properly a part of the flag; or
- (b) Exposes to public view a flag upon which has been placed or attached a word, mark, design, or advertisement not properly a part of the flag; or
- (c) Manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which a flag is depicted; or
- (d) Publicly mutilates, defiles, or casts contempt upon a flag.

(2) As used in this section, flag means anything which is or purports to be:

- (a) The Stars and Stripes; or
- (b) The Colorado state flag; or
- (c) Any other authorized flag, standard, color, or ensign of the United States or of the state of Colorado; or
- (d) Any copy, picture or representation of any authorized flag, standard, color or ensign of the United States or of the state of Colorado.

(3) The possession of any flag upon which is placed or attached a word, mark, design, or advertisement not properly a part of the flag and the possession of any article of merchandise or a wrapper

or receptacle for merchandise upon which a flag is depicted is prima facie evidence of an intent to expose the same to public view.

Comment

This proposed section constitutes a restatement of the present offense defined in 40-23-3, CRS 1963.

40-28-2. Display of foreign flag. (1) Any person who intentionally displays any flag, except the flags of the United States, upon any state, county or municipal building commits display of foreign flag and is guilty of a class ___ misdemeanor.

(2) Whenever any foreigner becomes a guest of the United States, the state of Colorado or of any city in this state, or upon the occasion of the visit of any foreign minister, envoy or ambassador in his official representative capacity, the flag of the country of which he is a citizen may be displayed upon public buildings.

(3) As used in this section, foreign flag includes flags of other nations and flags of anarchistic societies.

Comment

This proposed section restates the present offense defined in 40-23-1, CRS 1963.

40-28-3. Improper use of national anthem. Any person who plays, sings or renders in any public place or assemblage, except an entire or separate composition or number "The Star Spangled Banner," commits improper use of national anthems and is guilty of a class ___ misdemeanor.

Comment

This proposed section is a restatement of the present offense defined in 40-23-16 and 40-23-17, CRS 1963.

40-28-4. Insurrection. Any person who engages in, or co-operates or participates with any armed force of men, with the intent by force of arms to obstruct, retard or resist the execution of any law of this state or, with an armed force of men, invades any portion of this state, commits insurrection and is guilty of a class ___ felony.

Comment

This proposed section is a restatement of the present offense defined in 40-7-18, CRS 1963.

ARTICLE 29. BRIBERY

40-29-1. Definitions. In article 29, unless a different meaning plainly is required:

(1) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(2) "Government" includes any branch, subdivision or agency of the government of the State or any locality within it;

(3) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested;

(4) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner,

notary or other person taking testimony or deposition in connection with any such proceeding;

(5) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility;

(6) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain;

(7) "Public servant" means any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function; but the term does not include witnesses;

(8) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

40-29-2. Bribery in official and political matters. (1)

Any person who offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another any of the following commits bribery in official and political matters and is guilty of a class ___ felony:

- (a) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or
- (b) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official

discretion in a judicial or administrative proceeding; or

- (c) Any benefit as consideration for a violation of a known duty as public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

40-29-3. Threats and other improper influence in official and political matters. (1) Any person who does any of the following commits threats and other improper influence in official and political matters:

- (a) Threatens unlawful harm to any person with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or
- (b) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or
- (c) Threatens harm to any public servant or party official with purpose to influence him to violate his duty; or
- (d) Privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to

act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(3) Any person who commits threats and other improper influence in official and political matters is guilty of a class ___ misdemeanor unless the offender threatened to commit a crime or made a threat with purpose to influence a judicial or administrative proceeding, in which cases the offense is a class ___ felony.

40-29-4. Official misconduct. Any public officer or employee who, in his official capacity, does any of the following commits official misconduct and is guilty of a class ___ felony (misdemeanor) and forfeits his office or employment:

- (1) Intentionally or recklessly fails to perform any mandatory duty as required by law; or
- (2) Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

40-29-5. Compensation for past official behavior. Any person who does any of the following commits compensation for past official behavior and is guilty of a class ___ misdemeanor:

- (1) Solicits, accepts or agrees to accept any pecuniary benefit as compensation for having, as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty; or
- (2) Offers, confers or agrees to confer compensation acceptance of which is prohibited by subsection (1) of this section.

40-29-6. Retaliation for past official action. Any person who harms another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public servant commits retaliation for past official action and is guilty of a class _____ misdemeanor.

40-29-7. Gifts to public servants by persons subject to their jurisdiction. (1) No public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority, or participating in the enforcement of its decisions, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in a bill, transaction or proceeding, pending or contemplated,

before the legislature or any committee or agency thereof.

(5) This section shall not apply to:

- (a) Fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled; or
- (b) Gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or
- (c) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer, or offer or agree to confer, any benefit prohibited by the foregoing subsections.

(7) An offense under this section is a class ___ misdemeanor.

40-29-8. Compensating public servant for assisting private interests in relation to matters before him. Any person who does any of the following commits compensating public servant for assisting private interests in relation to matters before him and is guilty of a class ___ misdemeanor:

(1) Any public servant who solicits, accepts or agrees to accept compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise; or

(2) Any person who pays or offers or agrees to pay compensation to a public servant with knowledge that acceptance by the public servant is unlawful.

Comment

Proposed article 29 is based on the provisions of the Model Penal and the newly enacted Illinois codes. With the exception of proposed sections 40-29-2 and 40-29-4, this article proposes new law. A list of the present bribery statutes this article replaces would include:

- 40-7-5, CRS 1963* -- Bribery of Judges or Legislator
- 40-7-6, CRS 1963* -- Bribery of Public Officer
- 40-7-8, CRS 1963 -- Bribery of Water Commissioner
- 40-7-38, CRS 1963 -- Embracery
- 40-7-43, CRS 1963* -- Judge or Officer Receiving Reward
- 40-7-45, CRS 1963* -- Officer Taking Reward for Omission of Duty

* As amended by Chapter 39, 1964 Session Laws

ARTICLE 30. ABUSE OF OFFICE

40-30-1. Definitions. In this article, unless a different meaning plainly is required, the definitions given in section 40-29-1 apply.

40-30-2. Speculating or wagering on official action or information. Any public servant who, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which has not been made public, does any of the following commits speculating or wagering on official action or information and is guilty of a class ___ misdemeanor:

- (1) Acquires pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action; or
- (2) Speculates or wagers on the basis of such information or official action; or
- (3) Aids another to do any of the foregoing.

40-30-3. Official oppression. Any person who, while acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, does any of the following with knowledge that his conduct is illegal commits official oppression and is guilty of a class ___ misdemeanor:

- (1) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or
- (2) Denies or impedes another in the exercise or enjoyment of any right, power or immunity; or
- (3) Has legal authority and jurisdiction of any person legally restrained of his liberty and denies the person restrained the opportunity to consult in private with any practicing attorney at law, if:
 - (a) There is no danger of imminent escape; and
 - (b) The person in custody desires to consult with the practicing attorney at law.

Comment

Proposed section 40-30-2 restates several offenses presently defined in chapter 40, CRS 1963, including:

- 40-19-1, CRS 1963 -- State and County Officers Not to Deal in Warrants
- 40-19-2, CRS 1963 -- County and Municipal Officers Not to Deal in Warrants
- 40-19-5, CRS 1963 -- No Officer to Derive Benefit From Contract
- 40-19-6, CRS 1963 -- Making Unlawful Contract
- 40-19-10, CRS 1963 -- Interest in Contract Prohibited
- 40-19-11, CRS 1963 -- Penalty for Violation of Section 40-9-10

Proposed section ~~40-30-3~~, restates several offenses presently defined in chapter 40, CRS 1963, including:

39-1-1, CRS 1963, as amended by chapter 39, 1964 Session Laws -- Rights of Prisoner to Consult Counsel

40-7-10, CRS 1963 -- Inhumanity of Jailer

40-7-11, CRS 1963, as amended by chapter 39, 1964 Session Laws -- Coercion of Prisoners

40-7-12, CRS 1963 -- Rules of Evidence Not Affected

40-7-17, CRS 1963, as amended by chapter 39, 1964 Session Laws -- Resisting Officer

ARTICLE 31. ESCAPE AND RELATED OFFENSES

40-31-1. Refusing to aid an officer. Any person who upon command refuses or knowingly fails reasonably to aid a person known by him to be a peace officer to do any of the following commits refusing to aid an officer and is guilty of a class ___ misdemeanor:

- (1) Apprehending a person whom the officer is authorized to apprehend; or
- (2) Preventing the commission by another of any offense.

Comment

This proposed section is a restatement of the present offenses defined under 40-7-48, CRS 1963, as amended by chapter 39, 1964 Session Laws. Under the present law, a person may not commit this offense unless he is a male above 18 years of age. The proposed section provides no similar limitation.

40-31-2. Resisting an officer. Any person who intentionally obstructs, resists or opposes the authorized service of any lawful process or order of any court by any public officer or other person commits resisting an officer and is guilty of a class ___ misdemeanor.

Comment

This section is a restatement of the present offense defined under 40-7-17, CRS 1963, as amended by Chapter 39, 1964 Session Laws.

40-31-3. Compounding. (1) Any person who accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense commits compounding and is guilty of a class ___ misdemeanor.

(2) It is an affirmative defense to prosecution under this section that the pecuniary benefit did not exceed an amount which the offender believed to be due as restitution or indemnification for harm caused by the offense.

Comment

This proposed section is a restatement of the present offense defined in 40-7-34, CRS 1963.

40-31-4. Aiding escape. Any person commits aiding escape when he intentionally:

- (1) Rescues any person who has been convicted of a class ___ felony, and is guilty of a class ___ felony; or
- (2) Rescues any person who has been convicted of a class ___ felony, whether the person is in the custody of an officer or in the penitentiary, and is guilty of a class ___ felony; or
- (3) Rescues any person who is charged but not convicted of a class ___ felony, and is guilty of a class ___ felony; or
- (4) Rescues any person who is charged but not convicted of a class ___ misdemeanor, and is guilty of a class ___ misdemeanor.

Comment

This proposed section constitutes a restatement of the present offenses defined in 40-7-20 and 40-7-21, CRS 1963.

40-31-5. Officer aiding escape. Any warden of the penitentiary

or any of his employees or any law enforcement officer who intentionally aids or permits any prisoner to escape commits officer aiding escape and is guilty of a class ___ felony.

Comment

This proposed section constitutes a restatement of the present offense defined in 40-7-22, CRS 1963.

40-31-6. Officer permitting convict to be at large. Any warden of the penitentiary or any of his employees or any law enforcement officer who negligently permits any convict committed or in custody, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to such convict, or to be there visited, conversed with, comforted or relieved, contrary to the rules and regulations of the penitentiary, or negligently permits such convict or any other convict committed to the penitentiary under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or contrary to the rules and regulations thereof, to be out of close confinement, commits officer permitting convict to be at large and is guilty of a class ___ misdemeanor.

Comment

This proposed section constitutes a restatement of the present offense defined in 40-7-23, CRS 1963.

40-31-7. Inducing prisoners to absent selves. Any person who invites, entices, inveigles, solicits or induces any prisoner confined in the penitentiary or restrained on or in any ranch, farm or camp owned, operated or maintained by the state of Colorado or by authority thereof or at any place whatsoever, to absent himself from his work, or who delays or hinders such prisoner in his work, commits inducing prisoners to absent selves and is guilty of a class ___ misdemeanor.

Comment

This proposed section constitutes a restatement of the present offense defined in 40-7-24, CRS 1963.

40-31-8. Conveying tools to prisoner. Any person who conveys to any convict in custody, or committed to the penitentiary, into the penitentiary or other place where such convict may be confined, any tool, weapon or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, commits conveying tools to prisoner and is guilty of a class ___ misdemeanor.

Comment

This proposed section constitutes a restatement of the present offense defined in 40-7-25, CRS 1963.

40-31-9. Furnishing weapons to convicts. Any person who furnishes, or aids or assists in furnishing to any convict who is confined in the penitentiary or state reformatory, or restrained on or in any ranch, farm, or camp owned, operated, or maintained by the state of Colorado, or by authority thereof, or at any place whatsoever, or who furnishes to any person confined in any jail, or in the custody of any sheriff, deputy sheriff, coroner, peace officer, or other person having lawful custody of such person, or conveys by any means into a jail or other place of confinement, any firearms, or other deadly weapons, or dynamite or other explosives, for the purpose of aiding, assisting, or encouraging such convict or person to escape from such confinement, custody, or such restraint, or to bring about an outbreak or riot, commits furnishing weapons to convicts and is guilty of a class ___ felony.

Comment

This proposed section constitutes a restatement of the present

offense defined in 40-7-26, CRS 1963.

40-31-10. Assisting escape. (1) Any person who knowingly aids, or assists any convict who is confined in the penitentiary or state reformatory, or restrained on or in any ranch, farm or camp owned, operated or maintained by the state of Colorado, or by authority thereof, or at any other place whatsoever, to escape commits assisting escape and is guilty of a class ___ felony.

(2) The knowingly leaving or causing to be left any clothing, food, money, or other thing whatsoever which may be used by such convict in attempting to escape where such article or thing may be obtained by such convict shall be held to be, within the meaning of this section, the assisting of such convict to escape.

Comment

This proposed section constitutes a restatement of the present offense defined in 40-7-27, CRS 1963.

40-31-11. Furnishing drugs or liquor to convicts. (1) Any person who knowingly furnishes, or assists in furnishing to any prisoner confined in the penitentiary or state reformatory or restrained on or in any ranch, farm, or camp owned, operated, or maintained by the state of Colorado, or by authority thereof, or at any place whatsoever, any morphine, cocaine, codeine, or other such habit-forming drug or any intoxicating liquor, commits furnishing drugs or liquor to convicts and is guilty of a class ___ felony.

(2) Knowingly leaving or causing to be left any such article where it may be obtained by any such convict shall be held to be, within the meaning of this section, the furnishing such articles to such convict.

Comment

This proposed section constitutes a restatement of the present offense defined in 40-7-28, CRS 1963.

40-31-12. Rescue on civil process. Any person who rescues another in legal custody on civil process commits rescue on civil process and is guilty of a class ___ misdemeanor.

Comment

This proposed section constitutes a restatement of the present offenses defined in 40-7-29, CRS 1963.

40-31-13. Aiding in escape attempt. Any person who aids or assists a prisoner lawfully committed or detained in any jail for an offense against this state, or who shall be lawfully confined by virtue of any civil process, to make his escape from the jail, though no escape be actually made, or any person who conveys or causes to be delivered to any such prisoner any disguise, instrument or arms proper to facilitate the escape of such prisoner, commits aiding in escape attempt and is guilty of a class ___ misdemeanor.

Comment

This proposed section constitutes a restatement of the present offense defined in 40-7-30, CRS 1963.

40-31-14. Aiding escape from officer. Any person who aids or assists any prisoner to escape, or rescues any prisoner from the lawful custody of any law enforcement officer, commits aiding escape from officer and is guilty of a class ___ misdemeanor.

Comment

This proposed section constitutes a restatement of the present offense defined under 40-7-31, CRS 1963, as amended by Chapter 39, 1964 Session Laws.

40-31-15. Officer allowing escape. Any law enforcement officer having lawful custody of any prisoner permits a prisoner to

escape or go at large commits officer allowing escape and:

- (1) Is guilty of a class ___ misdemeanor, if the prisoner has not been convicted of any offense; or
- (2) Is guilty of a class ___ felony, if the prisoner is charged with a class ___ felony but has not been convicted; or
- (3) Is guilty of a class ___ misdemeanor, if the prisoner escapes because of the law enforcement officer's negligence.

Comment

This proposed section constitutes a restatement of the present offense defined under 40-7-32, CRS 1963, as amended by Chapter 39, 1964 Session Laws.

40-31-16. Assault during escape. Any person who commits an assault with intent to commit bodily injury upon the person of another with a deadly weapon or instrument, or by any means of force likely to produce great bodily injury, commits assault during escape and is guilty of:

- (1) A class ___ felony, if the person has been convicted of a class ___ felony; or
- (2) A class ___ felony, if the person has been convicted of a class ___ felony.

Comment

This proposed section constitutes a restatement of the present offense defined under 40-7-49 and 40-7-50, CRS 1963.

40-31-17. Holding hostages during escape. Any person committed to the state penitentiary or the state reformatory at Buena Vista who, while escaping or attempting to escape, holds as hostage any person within the state penitentiary or the state reformatory at Buena Vista, or, who by force or threat of force, holds any person or

persons against his will in defiance of official orders within the state penitentiary, or state reformatory at Buena Vista, or who, while being held in jail after sentence but awaiting transportation to the state penitentiary or the state reformatory at Buena Vista, or who, while being transported to or from the state penitentiary or the state reformatory at Buena Vista, escapes, commits holding hostages during escape and is guilty of a class ___ felony.

Comment

This proposed section constitutes a restatement of the present offense defined under 40-7-51, CRS 1963.

40-31-18. Escapes. Any person after being found guilty of a felony by a court or jury or after pleading guilty to a felony who, while being held in jail or while in the custody of any person lawfully having charge of him, escapes therefrom, commits escape and is guilty of a class ___ felony.

Comment

This proposed section constitutes a restatement of the present offense defined in 40-7-53, CRS 1963.

ARTICLE 32. PERJURY AND OTHER FALSIFICATION IN
OFFICIAL MATTERS

40-32-1. Definition. In this article, unless a different meaning plainly is required:

- (1) The definitions given in 40-29-1 apply; and
- (2) "Statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

40-32-2. Perjury. (1) Any person who, in any official proceeding, makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true commits perjury and is guilty of a class ___ felony.

(2) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(3) It is not a defense to prosecution under this Section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(4) No person shall be guilty of an offense under this Section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(5) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was

false and not believed by the defendant to be true.

(6) No person shall be convicted of an offense under this Section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

40-32-3. False swearing in official matters. (1) Any person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, commits false swearing in official matters and is guilty of a class ___ misdemeanor, if:

- (a) The falsification occurs in an official proceeding; or
- (b) The falsification is intended to mislead a public servant in performing his official function.

(2) Subsections (3) to (6) of section 40-32-2 apply to this section.

40-32-4. False swearing. (1) Any person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, commits false swearing and is guilty of a class ___ misdemeanor, if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (3) to (6) of section 40-32-2 apply to this section.

40-32-5. Unsworn falsification to authorities. (1) Any person who does any of the following with purpose to mislead a public servant commits unsworn falsification to authorities and is guilty of a class ___ misdemeanor:

- (a) Makes any written false statement which he does not believe to be true; or

- (b) Purposely creates a false impression in a written application for any pecuniary or other benefit, by omitting information necessary to prevent statements therein from being misleading; or
- (c) Submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or
- (d) Submits or invites reliance on any sample, specimen, map, boundary-mark, or other object which he knows to be false.

(2) Any person who makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable is guilty of a class ___ misdemeanor.

(3) Subsections (3) to (6) of section 40-32-2 apply to this section.

40-32-6. False alarms to agencies of public safety. Any person who knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property, commits false alarms to agencies of public safety and is guilty of a class __ misdemeanor.

40-32-7. False reports to law enforcement authorities. (1) Any person who does any of the following commits false reports to law enforcement authorities:

- (a) Knowingly gives false information to any law enforcement officer with purpose to implicate another; or
- (b) Reports to law enforcement authorities an offense or

other incident within their concern knowing that it did not occur; or

(c) Pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(2) A person who commits false reports to law enforcement authorities by violating subsection (1)(a) of this section is guilty of a class ___ misdemeanor. Otherwise, an offense under this section is a class ___ misdemeanor.

40-32-8. Tampering with witnesses and informants. (1) Any person who, believing that an official proceeding or investigation is pending or about to be instituted, attempts to induce or otherwise cause a witness or informant to do any of the following commits tampering with witnesses and informants:

(a) Testify or inform falsely; or

(b) Withhold any testimony, information, document or thing;
or

(c) Elude legal process summoning him to testify or supply evidence; or

(d) Absent himself from any proceeding or investigation to which he has been legally summoned.

(2) A person who commits tampering with witnesses and informants is guilty of a class ___ felony if he employs force, deception, threat or offer of pecuniary benefit. Otherwise, an offense under this section is a class ___ misdemeanor.

40-32-9. Retaliation against witness or informant. Any person who harms another by any unlawful act in retaliation for anything done in the capacity of witness or informant commits retaliation against witness or informant and is guilty of a class ___ misdemeanor.

40-32-10. Witness or informant taking bribe. Any person who solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in subsections (1)(a) to (1)(d) of section 40-32-8 commits witness or informant taking bribe and is guilty of a class ___ felony.

40-32-11. Tampering with or fabricating physical evidence. Any person, believing that an official proceeding or investigation is pending or about to be instituted, does any of the following commits tampering with or fabricating physical evidence and is guilty of a class ___ misdemeanor:

- (1) Alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or
- (2) Makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

40-32-12. Tampering with public records or information. (1) Any person who does any of the following commits tampering with public records or information:

- (a) Knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government; or
- (b) Makes, presents or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (a); or

(c) Purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(2) An offense under this section is a class ___ misdemeanor unless the offender's purpose is to defraud or injure anyone, in which case the offense is a class ___ felony.

40-32-13. False personation of judicial or governmental officials. Any person who falsely represents himself to be an attorney authorized to practice law or a public officer or a public employee, commits false personation of judicial or governmental officials and is guilty of a class ___ misdemeanor.

40-32-14. Performance of unauthorized acts. Any person who performs any of the following knowing that his performance is not authorized by law commits performance of unauthorized acts and is guilty of a class ___ felony (misdemeanor):

- (1) Conducts a marriage ceremony; or
- (2) Acknowledges the execution of any document which by law may be recorded; or
- (3) Becomes a surety for any party in any civil or criminal proceeding, before any court or public officer authorized to accept such surety; or
- (4) Does any other act in the course of any act or proceeding whereby if it were done by the person falsely personated, such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur a charge, forfeiture or penalty.

Comment

Proposed article 32 is based on the provision of the Model Penal Code and the newly revised criminal code of Illinois. A partial list of present perjury statutes this article replaces would include:

- 40-7-1, CRS 1963 -- Perjury - Subornation
- 40-7-2, CRS 1963 -- False Verified Statements
- 40-7-3, CRS 1963 -- Procuring Conviction of Murder by Perjury
- 40-7-4, CRS 1963 -- Indictment - Allegations
- 40-7-7, CRS 1963 -- Inducing Witness to Secrete Himself
- 40-7-9, CRS 1963 -- Officer Purloining Records
- 40-7-13, CRS 1963 -- Detaining Office Records
- 40-7-14, CRS 1963 -- False Instruments - Procuring
- 40-7-15, CRS 1963 -- Simulating Judicial Process
- 40-7-16, CRS 1963 -- Penalty for Simulating Judicial Process
- 40-7-37, CRS 1963 -- Exercising Office Unlawfully
- 40-17-1, CRS 1963 -- False Impersonation Defined
- 40-17-3, CRS 1963 -- False Impersonation - Penalty

PART F. INCHOATE OFFENSES

ARTICLE 33. CRIMINAL ATTEMPT

40-33-1. Criminal attempt. (1) (a) A person is guilty of attempt to commit a crime if, acting with the state of mind otherwise required for the commission of the crime, he:

- (b) Purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or
 - (c) When causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result, without further conduct on his part; or
 - (d) Purposely does or omits to do anything which, under the circumstances as he believes them to be, is a substantial step in a course of conduct planned to culminate in his commission of the crime.
- (2) (a) Such person's conduct shall not be held to constitute a substantial step under subsection (1) (d) of this section unless it is strongly corroborative of the actor's criminal purpose. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:
- (b) Lying in wait for, searching for, or following the contemplated victim of the crime;
 - (c) Enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

- (d) Reconnoitering the place contemplated for the commission of the crime;
- (e) Unlawful entry of a vehicle, into a structure, into any enclosure, or onto any real property in which or on which it is contemplated that the crime will be committed;
- (f) Possession of items or materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;
- (g) Possession, collection, or fabrication of items or materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection, or fabrication serves no lawful purpose of the actor under the circumstances; or
- (h) Soliciting an accomplice or an innocent agent to engage in conduct constituting an element of the crime.

40-33-2. Conduct in aid of another. Any person who engages in conduct intended to aid another to commit any crime which would establish his complicity under section _____ or _____, if the crime were committed by such other person, is guilty of an attempt to commit a crime, although the crime is not committed or attempted by such other person.

40-33-3. Defenses available -- not available. (1) When the actor's previous conduct would otherwise constitute an attempt to commit a crime, as defined in this article, it is a defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting the renunciation of his criminal purpose. The establishment of such defense shall not affect

the liability for the attempt of an accomplice who did not join in such abandonment or prevention

(2) (a) It shall not be a defense to a conviction of the crime of attempt to commit a crime that:

- (b) Because of a misapprehension of the circumstances it would have been factually or legally impossible for the accused to commit the offense attempted; or
- (c) Under the circumstances, the accused could not have actually accomplished his purpose; or
- (d) The crime attempted or intended was actually perpetrated by the accused.

40-33-4. Multiple convictions. No person shall be convicted of both the perpetration of a crime and the attempt to commit that crime where the acts constituting such attempt were part of the same conduct constituting the completed crime.

40-33-5. Penalties. A person convicted of an attempt to commit a crime may be fined or imprisoned or both in the same manner as for the offense attempted, but such fine or imprisonment shall not exceed one-half of the largest fine, or one-half of the longest term of imprisonment, or both, prescribed for the offense attempted; provided that:

- (1) If the offense attempted is a class I or class II felony, the offense is a class ___ felony;
- (2) If the offense is an attempt to commit any felony involving bodily injury of or an assault on any person, other than a class I or class II felony, the offense is a class ___ felony;
- (3) If the offense is an attempt to commit any felony other than those referred to in subsections (1) and (2) of this

- section, the offense is a class ___ felony; and
- (4) If the offense is an attempt to commit any class of misdemeanors, the offense is a class ___ misdemeanor.

Comment

This proposed article is a restatement of the present provisions of article 25, CRS 1963.

ARTICLE 34. CRIMINAL CONSPIRACY

40-34-1. Definition of conspiracy. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:

- (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt to commit such crime; or
- (2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt to commit such crime.

40-34-2. Scope of conspiratorial relationship. If a person guilty of conspiracy, as defined by section (1) of this article, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

40-34-3. Conspiracy with multiple criminal objectives. If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

40-34-4. Joinder and venue in conspiracy prosecutions. (1) Subject to the provisions of subsection (2) of this section, two or

more persons charged with criminal conspiracy may be prosecuted jointly if:

- (a) They are charged with conspiring with one another; or
- (b) The conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(2) In any joint prosecution under subsection (1) of this section:

- (a) No defendant shall be charged with a conspiracy in any judicial district other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired; and
- (b) Neither the liability of any defendant nor the admissibility against him of evidence of acts or declarations of another shall be enlarged by such joinder; and
- (c) The court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence, and shall take any other proper measures to protect the fairness of the trial.

40-34-5. Overt act. No person may be convicted of conspiracy to commit a crime, other than a class _ or class __ felony, unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

40-34-6. Renunciation of criminal purpose. It is an affirmative defense that the offender, after conspiring to commit a crime,

thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

40-34-7. Duration of conspiracy. For purposes of this article:

- (1) Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired; and
- (2) Such abandonment is presumed if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and
- (3) If an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

40-34-8. Incapacity, irresponsibility or immunity of party to conspiracy. (1) Except as provided in subsection (2) of this section, it is immaterial to the liability of a person who conspires with another to commit a crime that:

- (a) He or the person with whom he conspires does not occupy a particular position or have a particular characteristic which is an element of such crime, if he believes that one of them does; or
- (b) The person with whom he conspires is irresponsible or has an immunity to prosecution or conviction for the commission of the crime.

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

40-34-9. Penalties for criminal conspiracy; mitigation in cases of lesser danger; multiple convictions barred. (1) Except as otherwise provided in this section, conspiracy is a crime of the same class as the most serious offense which is an object of the conspiracy. A conspiracy to commit a class I felony is a class II felony.

(2) If the particular conduct charged to constitute a criminal conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither such conduct nor the offender presents a public danger warranting the grading of such offense under this section, the court may enter judgment and impose sentence for a crime of a lesser class or, in extreme cases, may dismiss the prosecution.

(3) A person may not be convicted of both the conspiracy to commit a crime and:

- (a) The commission of the crime which is the object of the conspiracy; or
- (b) The attempt to commit the crime which is the object of the conspiracy.

Comment

This proposed article, based on the recommended provisions contained in the Model Penal Code, constitutes a restatement of the present general conspiracy, 40-7-35, CRS 1963.

PART G. MISCELLANEOUS OFFENSES

46-3-3. When marriage is void. (1)(a) A marriage is void only if one or more of the following conditions existed at the time of the marriage:

- (b) Either party was under the age of sixteen, unless a license to marry was issued by order of a court of record;
- (c) The marriage was not contracted in this state and was incestuous as defined by the law of the place where such marriage was contracted;
- (d)(i) The marriage was contracted in this state and was between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half blood as well as the whole blood, between uncles and nieces, aunts and nephews, and between first cousins.
- (ii) Subsection (d)(i) of this section shall extend to legitimate as well as illegitimate children and relations.
- (iii) As used in subsection (d)(i) of this section, marriages between first cousins include those marriages where one party has at least one parent who is a sibling of at least one parent of the other party;
- (e) The marriage was bigamous or polygamous; or
- (f) The marriage was void by the law of the place where such marriage was contracted.

Comment

This proposed section is a restatement of present sections 40-9-4 and 46-3-3, CRS 1963. The former section defines incestuous marriages and the latter voids incestuous marriages. These two

sections are combined and broadened under this proposed section to include first cousin marriages. The committee agree that the science of human genetics supports the popular belief that first cousin marriages increases the incidence of mentally retarded or otherwise defective children in the first generation if the blood line carries an unfavorable recessive gene, although not substantially. Under this proposed section, a first cousin marriage is void but neither party is subject to punishment under this or the proposed criminal incest sections.

48-5-1. Definitions. (11) "Narcotic drugs" means any of the following:

- (a) Alpha eucaine
- (b) Beta eucaine
- (c) "Cannabis" includes all parts of the plant Cannabis Sativa L. (commonly known as marihuana), whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.
- (d) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium, but does not include apomorphine or any of its salts.
- (e) "Coca leaves" includes cocaine, and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do

not contain cocaine, ecgonine, or substance from which cocaine or ecgonine may be synthesized or made.

- (f) "Isonipecaine" means the substance identified chemically as 1-methyl-4-phenyl-piperidene-4-carboxylic acid ethyl ester, or any salt thereof by whatever trade name identified.
- (g) "Methadon" means the substance identified chemically as 4-4-Diphenyl-6-Dimethylamino-Heptanone-3, or any salt thereof by whatever trade name identified.
- (h) "Isoamidone" means the substance identified chemically as 4, 4-Diphenyl-5-Methyl-6-Dimethylamino-hexanone-3, or any salt thereof by whatever trade name identified.
- (i) All parts of the plant of the genus *Lophophora* whether growing or otherwise; the buttons thereof, the alkaloids extracted from any such plant; and every compound salt, derivative, mixture or preparation of such plant.
- (j) "Dromoran" means any substance identified chemically as dl-3-hydroxy-N-methylmorphinan, 1-3-hydroxy-N-methylmorphinan (except d-3-hydroxy-N-methylmorphinan), dl-3-methoxy-N-methylmorphinan, or 1-3-methoxy-N-methylmorphinan (except d-3-methoxy-N-methylmorphinan), or any salt thereof by whatever trade name designated.
- (k) "Nisentil" means any substance identified chemically as 2-1, 3-dimethyl-4-phenyl-4-propionoxy-piperidene or any salt thereof by whatever trade name designated.
- (l) "Ketobemidone" means any substance identified chemically as 4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone or any salt thereof by whatever trade name designated.

Comment

Proposed subsection 48-5-1 (11) replaces and restates in modern language the present narcotic drug definitions set out in 48-5-1 (11), 48-5-1(12), 48-5-1(13) and 48-5-1(14)(a) through (c) and (e), CRS 1963. In so doing, the proposed subsection eliminates the phrase "any drug found by the state board of health, after reasonable notice and opportunity for hearing, to have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the date of publication of such finding by said board of health," which has been declared to be an undue delegation of authority in the Boulder District Court.

48-5-20. Violations -- penalties. (5) Any person within the state of Colorado who shall use narcotic drugs, or shall be under the influence of narcotic drugs, as defined in this article, except when such drugs are or have been administered by or under the direction of a person licensed and duly authorized by law to prescribe and administer narcotic drugs for bona fide medical needs, is a disorderly person and, shall, upon conviction, be confined in the county jail not less than six months, nor more than one year.

Comment

This proposed subsection is a restatement of the present subsection, minus the phrase "shall be addicted to the use of narcotic drugs." A California statute, similar to Colorado's, was declared unconstitutional by the United States Supreme Court in 1962.¹⁰

The court, in its majority opinion, ruled that the statute inflicts a cruel and unusual punishment in violation of the eighth and fourteenth amendments. It stated that:

It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper or to be afflicted with a venereal disease. A State might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment, involving quarantine, confinement, or sequestration. But, in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an

10. Robinson v. California, 370 U.S. 660.

infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments... We cannot but consider the statute before us as of the same category. In this court counsel for the State recognized that narcotic addiction is an illness. Indeed, it is apparently an illness which may be contracted innocently or involuntarily. We hold that a state law which imprisons a person thus afflicted as a criminal, even though he has never touched any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment. To be sure, imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be a cruel and unusual punishment for the "crime" of having a common cold.¹¹

11. Ibid., pp. 666-667.

48-8-1. Definitions. (1)(a) For the purpose of this

article:

- (b) The term "hypnotic drug" means any drug which contains any quantity of: Barbituric acid or any of the salts of barbituric acid; or any derivative of barbituric acid; provided, that such terms shall not include drugs containing, in addition to any such hypnotic drug, a sufficient quantity or proportion of another drug or drugs to prevent the ingestion of a sufficient amount of the hypnotic drug to cause a hypnotic or somnifacient effect; and shall not include any drug permitted under federal law to be sold over the counter without prescription.
- (c) The term "stimulant drug" means any drug which contains any quantity of amphetamine, benzphetamine, diethyloropion, mephentermine, methamphetamine, methylphenidate, phenmetrazine, pipradrol, or any salt, mixture or optical isomer thereof; provided, that such term shall not include any drug containing, in addition to any such stimulant drug, a sufficient quantity or proportion of another drug or drugs to prevent the ingestion of a sufficient amount of stimulant drug to cause a stimulating effect on the central nervous system; and shall not include any drug permitted under federal law to be sold over the counter without prescription.
- (d) The term "delivery" means sale, dispensing, giving away, or supplying in any other manner.
- (e) The term "patient" means, as the case may be, either the individual for whom a hypnotic drug or a stimulant

drug is prescribed or to whom a hypnotic drug or stimulant drug is administered; or the owner or the agent of the owner of the animal for which a hypnotic drug or stimulant drug is prescribed or to which a hypnotic drug or stimulant drug is administered.

- (f) The term "person" includes individual, corporation, partnership, and association.
- (g) The term "practitioner" means a person licensed by law to prescribe and administer hypnotic drugs or stimulant drugs.
- (h) The term "pharmacist" means a person duly registered with the state board of pharmacy as a compounder, dispenser, and supplier of drugs upon prescription.
- (i) The term "prescription" means a written or oral order by a practitioner to a pharmacist for a hypnotic drug or stimulant drug for a particular patient, which specifies the date of its issue, the name and address of such practitioner, the name and address of the patient and, if such hypnotic drug or stimulant drug is prescribed for an animal, the species of such animal, the name and quantity of the hypnotic drug or stimulant drug prescribed, the directions for use of such drug, and in the case of a written order the signature of such practitioner. An oral order by a practitioner for a hypnotic drug or stimulant drug must be promptly reduced to writing by the pharmacist.
- (j) The term "manufacturer" means persons other than pharmacists who manufacture hypnotic drugs or stimulant drugs, and includes persons who prepare such drugs in dosage

forms by mixing, compounding, encapsulating, entableting, or other process.

(k) The term "wholesaler" means persons engaged in the business of distributing hypnotic drugs or stimulant drugs to persons included in any of the classes named in section 48-8-3.

(l) The term "warehouseman" means persons who store hypnotic drugs or stimulant drugs for others and who have no control over the disposition of such hypnotic drugs or stimulant drugs except for the purpose of such storage.

48-8-2. Prohibited acts. (1) The following acts, the failure to act as hereinafter set forth, or the causing of any such act or failure are hereby declared unlawful, except as provided in section 48-8-3.

(2)(a) The delivery of any hypnotic drug or stimulant drug unless:

(b) Such hypnotic drug or stimulant drug is delivered by a pharmacist, upon a prescription, and there is affixed to the immediate container in which such drug is delivered a label bearing the name and address of the owner of the establishment from which such drug was delivered; the date on which the prescription for such drug was filled; the number of such prescription as filled in the prescription files of the pharmacist who filled such prescription; the name of the practitioner who prescribed such drug; the name and address of the patient, and if such drug was prescribed for an animal, a statement of the species of the animal; and the directions for use of the drug as contained in the prescription; or

(c) Such hypnotic drug or stimulant drug is delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered bears a label on which appears the directions for use of such drug, the name and address of such practitioner, the name and address of the patient, and if such drug is prescribed for an animal, a statement of the species of the animal.

(3) The refilling of any prescription for a hypnotic drug or stimulant drug except as designated on the prescription, or by the consent of the practitioner.

(4) The delivery of a hypnotic drug or stimulant drug upon prescription unless the pharmacist who filled such prescription files and retains it as required in section 48-8-4.

(5) The possession of a hypnotic drug or stimulant drug by any person, unless such person obtained such drug on the prescription of a practitioner or in accordance with section 48-8-2 (2)(c).

(6) The refusal to make available and to accord full opportunity to check any record or file as required by section 48-8-5.

(7) The failure to keep records as required by subsection (1) or (2) of section 48-8-4.

(8) The using by any person to his own advantage, or the revealing, other than to an officer or employee of the state department of public health, or to a court when relevant in judicial proceeding under this article, of any information required under the authority of section 48-5-5, concerning any method or process which as a trade secret is entitled to protection.

48-8-3. Exemptions. (1)(a) The provisions of subsections (2) and (5) of section 48-8-2 shall not be applicable to the delivery

of hypnotic drugs or stimulant drugs to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or to the possession of hypnotic drugs or stimulant drugs by such persons or their agents or employees for such use:

- (b) Pharmacists;
- (c) Practitioners;
- (d) Persons who procure hypnotic drugs or stimulant drugs for handling by or under the supervision of pharmacists or practitioners employed by them; or for the purpose of lawful research, teaching, or testing, and not for resale;
- (e) Hospitals and other institutions which procure hypnotic drugs or stimulant drugs for lawful administration by practitioners;
- (f) Officers or employees of appropriate enforcement agencies of federal, state or local governments, pursuant to their official duties;
- (g) Manufacturers and wholesalers; or
- (h) Carriers and warehousemen.

48-8-4. Records. (1)(a) Persons (other than carriers) to whom the exemptions of section 48-8-3 are applicable shall:

- (b) Make a complete record of all stocks of hypnotic drugs and stimulant drugs on hand on the effective date of this article, and
- (c) Maintain detailed, but not necessarily separate, records and inventories relating to hypnotic drugs and stimulant drugs manufactured, purchased, sold, distributed and

handled; and retain all such records and inventories required by this section for not less than two calendar years after the date of the transaction shown by such record and inventory.

(2) Pharmacists shall in addition to complying with the provisions of subsection (1)(c) of this section, retain each prescription for a hypnotic drug or stimulant drug received by them, for not less than two calendar years immediately following the date of the filling or the date of the last refilling of such prescription, whichever is the later date.

48-8-5. Inspection of records. Persons required to keep files or records, relating to hypnotic drugs or stimulant drugs by section 48-8-4 shall, upon the written request of an officer or employee duly designated by the state department of public health, make such files or records available to such officer or employee, at all reasonable hours, for inspection and copying; and accord to such officer or employee full opportunity to check the correctness of such files or records, including opportunity to make inventory of all stocks of hypnotic drugs or stimulant drugs on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness.

48-8-6. Regulations. The state department of public health is hereby authorized to promulgate necessary regulations for the administration and enforcement of this article.

48-8-7. Penalties. Any person who violates any of the provisions of this article shall upon conviction thereof, be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such imprisonment and fine.

Comment

This proposed article is aimed at the increasing and illicit use of stimulants and depressants. This proposed article is similar to the narcotic drug article in that the drugs within the scope of its provisions may be sold upon prescription only, and in properly labeled containers. Furthermore, a record of each sale must be kept by the seller for a minimum of two years.

CROSS REFERENCE TABLE

This table is designed to show the disposition of the present sections contained in chapter 40, Colorado Revised Statutes 1963, as amended by the session laws of 1964.

Columns (1) and (2) show the present section number and, by stating its title, indicates the subject matter of each present section of chapter 40. Column (3) shows the proposed article and section number in which the subject matter of the present section may be found. If no proposed article and section number appears in column (3), the subject matter has either been transferred to the proposed code's general provisions or to another body of law, or has been omitted because it no longer is useful or it duplicates a provision contained in another body of law, e.g., present chapter 40 sections which set out the jurisdiction of courts for a specific offense duplicate the jurisdiction provisions of the statutes which establish the county and district courts. A present section number followed by a single asterisk (*) indicates the section was amended by the 1964 session laws, a double asterisk (**) indicates the section was repealed by the 1964 session laws.

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3	Who deemed of sound mind	Transferred to General Provisions
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5	Lunatics, not to be convicted	Transferred to General Provisions
6	Idiot not guilty	Transferred to General Provisions
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8	Husband responsible for wife's crimes	Transferred to General Provisions
9	Drunkenness no excuse, persons causing, how punished	Transferred to General Provisions
10	Accident, offenses against officers	Transferred to General Provisions
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15	Self-defense, sufficient cause	Transferred to General Provisions
16	Resisting officer, killing a felon	Transferred to General Provisions
17	Justifiable homicide	Transferred to General Provisions
18	Excusable homicide	Transferred to General Provisions
19	Killing justifiable or excusable, acquittal	Transferred to General Provisions
20	Killing proved, burden on accused	Transferred to General Provisions
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32	Assault on child under sixteen	12-2
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37	Hazing unlawful	Omitted
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39	Punishment for hazing in state institutions	Omitted

(1) Present Penal Law Section	(2) Subject Matter	(3) Proposed Penal Law Section
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(1) Present Penal Law Section	(2) Subject Matter	(3) Proposed Penal Law Section
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(1)	(2)	(3)
Present Penal Law Section	Subject Matter	Proposed Penal Law Section
<u>ARTICLE 5</u> <u>ROBBERY, LARCENY AND EMBEZZLEMENT, contd.</u>		
18	Embezzlement by carriers, warehousemen	8-1
19	Embezzling landlord's share of crops	8-1
20	Larceny under fifty dollars misdemeanor	8-1
21	Petit larceny, punishment	8-1
22**	Jurisdiction of justice, jury	Omitted
23**	Docket, judgment	Omitted
24**	Execution	Omitted
25**	Body execution	Omitted
26**	Accused confessing	Omitted
27**	County commissioners to furnish work	Omitted
28	Shoplifting, elements of the offense	8-1
29	Penalties for shoplifting, subsequent offenses	8-1
30	Concealment of goods as prima facie evidence of crime of shoplifting	Omitted
31	Questioning of person suspected of shoplifting without civil liability	Omitted
32	Sections cumulative and supplemental	Omitted
<u>ARTICLE 6</u> <u>FORGERY AND COUNTERFEITING</u>		
1	Forgery, penalty	7-1
2	Counterfeiting coin, passing, penalty	Omitted
3	Possessing with intent to pass	Omitted
4	Possession of counterfeit notes, bonds or blanks, penalty	7-1
5	Counterfeit gold or silver, penalty	Omitted
6	Mingling base metal, penalty	Omitted
7	Clipping or scaling coin, penalty	Omitted
8	Spurious bills, checks or notes, penalty	7-1
9	Possessing tools for counterfeiting, penalty	Omitted
10	Trial, need not prove incorporation	Omitted
11	Testimony of experts	Omitted
12	Forging or defacing official seals, penalty	7-1

(1) Present Penal Law Section	(2) Subject Matter	(3) Proposed Penal Law Section
<u>ARTICLE 7</u>		
<u>OFFENSES AGAINST ADMINISTRATION OF JUSTICE</u>		
1	Perjury, subornation, penalty	32-2, 32-8
2	False verified statement, perjury	32-4
3	Procuring conviction of murder by perjury, penalty	32-2, 32-8
4	Indictment, allegations	Omitted
5*	Bribery of judge or legislator, penalty	29-2
6*	Bribery of public officer, penalty	29-2
7	Inducing witness to secrete him- self	32-8
8	Bribery of water commissioner	29-2
9*	Officer purloining records, penalty	7-1, 8-1, 32-12
10	Inhumanity of jailer, penalty	30-3
11*	Coercion of prisoners, felony	2-1, 2-2, 2-3, 2-4, 30-3
12	Rules of evidence not affected	Omitted
13	Detaining office records, penalty	29-4, 32-12
14	False instruments, procuring, penalty	32-14
15*	Simulating judicial process	7-1, 32-13
16*	Penalty for simulating judicial process	7-1, 32-13
17*	Resisting officer, penalty	31-2
18	Insurrection, penalty	28-4
19	Obstructing messenger of state	Omitted
20	Rescue after conviction, penalty	31-4
21	Rescue before conviction, penalty	31-4
22	Officer, aiding escape, penalty	31-5
23	Officer suffering convict to be at large, penalty	31-6
24	Inducing prisoners to absent selves	31-7
25	Conveying tools to prisoner, penalty	31-8
26	Furnishing weapons to convicts and other persons, penalty	31-9
27	Aiding escape, penalty	31-10
28	Furnishing drugs or liquor to convicts, penalty	31-11
29	Rescue on civil process, penalty	31-12
30	Aiding in escape attempt, penalty	31-13

(1)	(2)	(3)
Present Penal Law Section	Subject Matter	Proposed Penal Law Section
<u>ARTICLE 7</u>	<u>OFFENSES AGAINST ADMINISTRATION OF JUSTICE, contd.</u>	
31*	Aiding escape from officer, penalty	31-14
32*	Officer allowing escape, penalty	31-15
33*	Officer refusing to receive or arrest prisoner, penalty	29-4
34	Compounding offense, penalty	31-3
35	Conspiracy in general, penalty	34-1
36	Conspiring to bring about receivership	34-1
37	Exercising office unlawfully, penalty	32-13, 32-14
38	Embracery, penalty	29-2
39	Barratry, penalty	Omitted
40	Maintenance, penalty, exception	Omitted
41	Unlawful to solicit personal injury claims	Omitted
42	Misdemeanor, soliciting personal injury claims	Omitted
43*	Judge or officer receiving reward, penalty	29-2
44*	Taking illegal fees, penalty	29-2
45*	Officer taking reward for omission of duty	29-2
46*	Malfeasance in office, removal	29-2, 29-4, 30-3
47	Public officer violating oath, penalty	29-4
48*	Refusing to aid in arrest, penalty	31-1
49	Persons under life sentence, assault during escape, death penalty	31-16
50	Persons under less than life sentence, assault during escape, penalty	31-16
51	Holding hostage during escape, penalty	31-17
52	State pay costs of prosecution	Omitted
53	Escapes by felons	31-18
<u>ARTICLE 8</u>	<u>OFFENSES AGAINST PUBLIC PEACE</u>	
1*	Disturbance, jurisdiction of county court	25-2
2	Fighting by agreement, penalty	Omitted
3*	Unlawful assembling, penalty	25-3
4	Unlawful assemblage, penalty	Omitted
5	Rout, penalty	Omitted

(1)	(2)	(3)
Present Penal Law Section	Subject Matter	Proposed Penal Law Section
<u>ARTICLE 8</u> <u>OFFENSES AGAINST PUBLIC PEACE, contd.</u>		
6	Riot, penalty	25-4
7*	Officers shall prevent dueling	Omitted
8	Publications of abuse for refusal to duel, penalty	Omitted
9	Duel, abettors, penalty	2-4
10	Dueling, challenge, penalty	Omitted
11	Carrying challenge, second, penalty	Omitted
12	Libel, penalty	21-1, 21-2
13	Disturbing peace on Sunday, penalty	Omitted
14	Disturbance on Sunday, penalty	Omitted
15	Disturbing worship, penalty	25-5
16*	County court, jurisdiction	Omitted
17	Trial by jury, collecting fine	Omitted
18**	Appeals allowed	Omitted
19*	Vagrancy, arrest, fine	25-6
20	Vagrancy, trial by jury	25-6
<u>ARTICLE 9</u> <u>OFFENSES RELATING TO MORALS</u>		
1	Bigamy	16-1
2	Marrying spouse of another, penalty	16-2
3	Adultery, fornication, punishment	20-1, 20-2
4	Incestuous marriages	(Transferred to Chapter 46, Divorce, Separate Maintenance, Annulment)
5	Penalty for incestuous marriages	17-1
6	Father and daughter cohabiting, penalty	17-2
7	Seduction, penalty, subsequent marriage	13-1
8	Enticement, chaste women	Omitted
9	Enticement, single persons	Omitted
10	Procurers, penalty	Omitted
11	Prostitution, employee, pimp, penalty	19-2, 19-4, 19-6
12	Witnesses	19-7
13	Not to affect other laws	Omitted
14	Prostitute making display, penalty	19-1, 20-4
15	Open lewdness, keeping lewd house, penalty	19-4, 20-4
16	Importing obscene books or prints, penalty	18-1, 18-2

(1) Present Penal Law Section	(70) Subject Matter	(3) Proposed Penal Law Section
<u>ARTICLE 9</u> <u>OFFENSES RELATING TO MORALS, contd.</u>		
17	Exhibiting, selling or possessing obscene books, penalty	18-1, 18-2
18	Mailing obscene books, penalty	18-1, 18-2
19*	Search warrant for obscene books	Omitted
20	Definitions	Omitted
21	Action, by whom instituted	Omitted
22	Temporary writ of injunction	Omitted
23	Who named defendants	Omitted
24	Actions have precedence	Omitted
25	Violation of injunction, penalty	Omitted
26	Advertising cures for sexual diseases	Omitted
27	Penalty, agent	Omitted
<u>ARTICLE 10</u> <u>GAMBLING AND CONFIDENCE GAMES</u>		
1	Confidence game, penalty	8-1
2	Indictment or information, sufficiency	Omitted
3	Construed liberally	Omitted
4	Bunco steerer defined	8-1
5	Fakirs defined	8-1
6	Penalty if convicted of bunco steering, etc.	8-1
7	Gambling rooms, penalties	26-4
8	Keeping gaming table, gambling for livelihood, penalty	26-4
9	Wagering upon games, penalty	26-2
10	Inducing minors to gamble, penalty	Omitted
11	Penalty, information, fines, informer	Omitted
12*	Seizure of property	Omitted
13	Gaming contracts void	Omitted
<u>ARTICLE 11</u> <u>OFFENSES RELATING TO FIREARMS</u>		
1*	Carrying concealed weapons, penalty	27-1
2	Carrying weapon with intent to assault, penalty	27-1
3	Explosive contrivances	Omitted
4	Violation, explosive contriv- ances, penalty	Omitted
5	Hunting under influence of liquor or drugs	25-7
6	Hunting in careless or reck- less manner	25-7

(1) Present Penal Law Section	(2) Subject Matter	(3) Proposed Penal Law Section
<u>ARTICLE 11</u>	<u>OFFENSES RELATING TO FIREARMS, contd.</u>	
7	Hunting violations, penalty	25-7
8	Mechanical knives, unlawful	27-1
9	Violation, mechanical knives, penalty	27-1
10	Possession of firearms or deadly weapons by certain felons	27-1
<u>ARTICLE 12</u>	<u>OFFENSES RELATING TO PUBLIC HEALTH AND SAFETY</u>	
1	Blackmail, penalty	8-1
2	Bribery of athletes, umpires, judges	23-1
3	Participants, defined	23-1
4	Violation, bribery of athletes, penalty	23-1
5	Body snatching, penalty	25-8
6	Public drinking vessels pro- hibited	Omitted
7	Violation, public drinking vessels, penalty	Omitted
8*	Jurisdiction	Omitted
9	Exercise of police powers	Omitted
10	Endurance contests, conducting, time limit	25-10
11	Endurance contests, conducting, number limited	25-10
12	Endurance contests, partici- pants, time limit	25-10
13	Endurance contests, particip- pants, number limited	25-10
14	Violation, physical endurance contests, penalty	25-10
15	Contests exempt	25-10
16	Nuisances	Omitted
17	Information, abatement	Omitted
18	Support of parent, penalty	Omitted
19*	Jurisdiction, appeal	Omitted
20	Sunday barbering	25-11
21	Penalty for Sunday barbering	25-11
22	Polluting streams, penalty	25-12
23	Unlawful to flow oil into stream, penalty	25-12
24	Use of white canes	25-13
25	Duty to stop	25-13
26	Penalty	25-13

(1) Present Penal Law Section	(2) Subject Matter	(3) Proposed Penal Law Section
<u>ARTICLE 13</u>	<u>OFFENSES AGAINST CHILDREN</u>	
1	Child, health or life endangered	Omitted
2	Cigarettes, sale to children	25-14
3	Penalty	25-14
4*	Judge may issue warrant	Omitted
5	Penalty for selling or giving tobacco to children	25-14
6*	Jurisdiction of county court	Omitted
<u>ARTICLE 14</u>	<u>FRAUD IN OBTAINING PROPERTY OR SERVICES</u>	
1	Fraud to delay creditors, indictment	8-1
2	Obtaining goods or services under false pretenses, penalty	8-1
3	Selling land twice, penalty	8-1
4	Obtaining vehicle with intent not to pay, penalty	8-1
5	Copy of section 40-10-4 posted	Omitted
6*	Jurisdiction of county court	Omitted
7	Purchase under fictitious name, penalty	8-1
8	Unlawful to purchase on credit and hypothecate	8-1
9	Purchase on credit and abscond, penalty	8-1
10	Giving no account check, draft or order, penalty	8-1
11	False weights and scales, penalty	8-1
12	False weights in making toll at mill, penalty	8-1
13	False pretenses of responsibility, penalty	8-1
14	Fraudulent operation of coin machines	8-1
15	Manufacture, sale or gift of slug	8-1
16	Obtaining hospital services fraudulently, penalty	8-1
17	Prima facie evidence of fraud	Omitted
18	Notice to be posted	Omitted
19*	County courts to have jurisdiction, appeals	Omitted
20	Short checks, penalty	8-1
21	Obtaining goods or services by fraudulent use of credit devices	8-1
22	Stealing credit card	8-1
23	Possession of fictitious card or device	8-1
24	Venue	Omitted

(1)	(2)	(3)
Present Penal Law Section	Subject Matter	Proposed Penal Law Section

ARTICLE 15 FRAUD TO EFFECT SALES

1	Misrepresentations to effect sale, penalty	8-1
2	Violation, penalty	8-1
3	Not to apply to newspaper	Omitted
4*	Jurisdiction	Omitted
5	False representations, corporate stock	8-1
6	Description of offense	Omitted
7	Defense	Omitted
8	Sections liberally construed	Omitted
9	Foreign produce, reshipment, penalty	Omitted
10	Shipping bill, contents	Omitted
11	Violation, penalty	Omitted
12	False statements as to circulation, penalty	Omitted
13	False registration of livestock, penalty	8-1
14	Signing fraudulent stock certificate, penalty	8-1
15	Issuing or transferring stock fraudulently, penalty	8-1
16	Mingling base matter with ore, penalty	8-1
17	Misrepresent fineness of gold in article, test	8-1
18	Use of words "sterling" and "coin," penalty	8-1
19	Unlawful use of "gold plate" and "gold filled"	8-1
20	Unlawful use of "silver plate" and "silver electro-plate"	8-1
21	Violation of sections, penalty	8-1
22	Changing farm machinery serial numbers prohibited, penalty	8-1
23	American Indian handicrafts	Omitted
24	Imitation American Indian handicrafts	Omitted
25	Penalty	Omitted

ARTICLE 16 LOTTERIES AND TRADING STAMPS

1	Lotteries unlawful, penalty	26-2
2	Lotteries for lands forbidden, penalty	26-2
3	Advertising lottery, penalty	Omitted
4	Newspapers advertising lottery, penalty	Omitted

(1)	(2)	(3)
Present Penal Law Section	Subject Matter	Proposed Penal Law Section
<u>ARTICLE 16</u>		
<u>LOTTERIES AND TRADING STAMPS</u>		
5	Selling tickets, penalty	Omitted
6	Proof, presumption, evidence	Omitted
7	Indictment, when	Omitted
8	Purchaser, competent witness	Omitted
9	Gift enterprise business forbidden	Omitted
10	Penalty	Omitted
11	Trading stamps and premium devices unlawful	Omitted
12	Premiums prohibited	Omitted
13	Giving evidences of liability prohibited	Omitted
14	Premium devices prohibited	Omitted
15	Redeemable bonuses prohibited	Omitted
16	Violation, penalty	Omitted
17	Municipal regulation	Omitted
<u>ARTICLE 17</u>		
<u>FALSE IMPERSONATION -- MES- SAGES -- EMBLEMS</u>		
1	False impersonation defined	32-13, 32-14
2	False impersonation in character of relative	Omitted
3	False impersonation, penalty	32-13, 32-14
4	Divulging telegraph message, penalty	Omitted
5	Sending false message, penalty, damages	Omitted
6	Opening message, personating another, penalty	Omitted
7	Clandestinely reading message, penalty, damages	Omitted
8	Bribing operator, penalty	Omitted
9	Unauthorized wearing of insignia, penalty	Omitted
10	Unauthorized use of letters G.A.R., penalty	Omitted
11	Unlawful to counterfeit or sell badge	Omitted
12	Counterfeiting or selling badge, penalty	Omitted
13	Unlawful wearing of badge of society, penalty	Omitted
14	Facsimile of badge filed, fees	Omitted
15	Action for unlawful manufacture, sale or wearing	Omitted
16	Action on behalf of society	Omitted
17	Badge must be distinctive	Omitted

(1) Present Penal Law Section	(2) Subject Matter	(3) Proposed Penal Law Section
<u>ARTICLE 17</u>	<u>FALSE IMPERSONATION -- MES- SAGES -- EBLEMS</u>	
18 19 20	Penalty Jurisdiction of justice Application of law	Omitted Omitted Omitted
<u>ARTICLE 18</u>	<u>FRAUDULENT AND MALICIOUS MISCHIEF</u>	
1 2 3 4 5 6 7 8** 9 10 11* 12 13 14 15 16 17 18 19 20 21 22** 23 24	Unlawful to destroy or damage property belonging to another person Killing, entrapping homing pigeons False statements of bank's solvency unlawful Misdemeanor, penalty Injuring fences, penalty Destroying or injuring jail, penalty Removal of timber from state lands, penalty Jurisdiction of courts, prosecution Firing woods or prairie, penalty Extinguish camp fire, penalty Cemeteries, trespass of animals, penalty Trespass to injure dam or em- bankment, penalty Trespass upon garden or orchard, penalty Taking specimens from cave, penalty Wrecking train, penalty Attack on train, penalty Stopping or delaying train, penalty Whoever counsels, aids or abets, deemed principal Intention, how proved Unlawful handling of switches Penalty for maliciously turning switch Jurisdiction, appeal Unlawful use of railroad tracks Penalty for unlawfully using railroad track	6-1, 6-2 Omitted Omitted Omitted 6-1, 6-2 6-1, 6-2 8-1 Omitted 4-2, 4-4 4-2, 4-4 6-1 6-1, 6-2, 6-4 6-4 6-2, 6-4 6-1, 6-2, 9-1, 9-2 Omitted Omitted Omitted Omitted 6-2 6-2 Omitted 6-4 6-4

(1) Present Penal Law Section	(2) Subject Matter	(3) Proposed Penal Law Section
<u>ARTICLE 18</u>	<u>FRAUDULENT AND MALICIOUS MISCHIEF</u>	
25**	Jurisdiction, appeal	Omitted
26	Molesting railroad or mine carriage or attachment	6-2
27	Throwing stones at train, penalty	6-2
28	Removing landmark, penalty	6-2
29	Destroying landmarks, penalty	6-2
30	Defacing historical monuments, penalty	6-2
31	Removing guard around shaft, penalty	6-2
32	Effacing instruments, books or records, penalty	6-2, 8-1
33	Defacing law or proclamation posted, penalty	6-2
34	Injuring animals, penalty	24-1
35	Liability, triple damages, at- tachments	Omitted
36	Automobile defined	Omitted
37	Tampering with automobile, penalty	8-1, 8-2
38**	Jurisdiction	Omitted
39	Fire prohibited, highways, private lands, penalty	4-4
40	Dumping trash on private pro- perty, penalty	6-2, 6-4
41	Dumping trash on public pro- perty, penalty	6-2, 6-4
<u>ARTICLE 19</u>	<u>OFFENSES INVOLVING PUBLIC FUNDS</u>	
1	State and county officers not to deal in warrants, penalty	29-4, 30-2
2	County and municipal officers not to deal in warrants, penalty	29-4, 30-2
3	Public funds for private purposes, penalty	29-4
4	Loan of public money, penalty	29-4
5	No officer to derive benefit from contract	29-4, 30-2
6	Making unlawful contract, penalty	29-4, 30-2
7	Refusing to pay warrant, penalty	29-4
8	Failure to call warrants, penalty	29-4
9	Emitting bill or note for circula- tion, penalty	Omitted
10	Interest in contract prohibited	29-4, 30-2
11	Penalty for violation of section	29-4, 30-2

(1) Present Penal Law Section	(2) Subject Matter	(3) Proposed Penal Law Section
<u>ARTICLE 20</u> <u>CRUELTY TO ANIMALS</u>		
1	Overdriving, starving, penalty	24-1
2	Care of impounded animals	24-1
3	Failure to feed impounded animals, seizure	24-1
4	Keeping fowls or animals to fight	24-1
5*	Arrest, trial, fine	Omitted
6	Officers shall prevent cruelty to animals	Omitted
7	Bureau agents to make arrest and take animal, action for expense	Omitted
8	Animals detained until expense paid	Omitted
9	Officers may take charge of abandoned animals	Omitted
10	Injured animals may be killed	Omitted
11	Lien upon animals for care and maintenance	Omitted
12	Proceeds of sale, disposition	Omitted
13	Badges and certificates of bureau officers	Omitted
14	Bureau may require arrest, fees	Omitted
15	Construction of words	24-1
16	Shepherd abandoning sheep without notice	24-1
17	Violation, penalty	24-1
18	Unlawful to dock horse's tail	Omitted
19	When docked horses may be imported	Omitted
20	Prima facie evidence of docking	Omitted
21	Penalty for docking	Omitted
22	Killing animals in contest	24-1
23	Violation, penalty	24-1
24	Dumb animals, malicious use, sport or wager	Omitted
25	Spectators held as accessories	Omitted
26	Penalty	Omitted
27	Influencing results of race, stimulating or depressing dog or horse	24-2
<u>ARTICLE 21</u> <u>DEFACING NATURAL SCENERY</u>		
1	Painting, penalty	6-2
2	Actions for damages, exception	Omitted
3	Effaced by county, expense	Omitted
4	Presumption from benefit	Omitted
5	Using name of another wrongfully, penalty	Omitted
6	Defacing any sign or notice	6-2

(1) Present Penal Law Section	(2) Subject Matter	(3) Proposed Penal Law Section
<u>ARTICLE 22</u> <u>SABOTAGE</u>		
1	Definitions	Omitted
2	Intentional injury to or interference with property	Omitted
3	Intentionally defective workman- ship	Omitted
4	Wrongful discovery of secrets	Omitted
5	Unlawful entry on property	Omitted
6	Questioning and detaining suspected persons	Omitted
7	Closing and restricting highway	Omitted
8	Going upon closed highway, penalty	Omitted
9	Rights of labor	Omitted
10	Short title	Omitted
11	Relation to other statutes	Omitted
12	When article is in force	Omitted
<u>ARTICLE 23</u> <u>ANARCHY - SEDITION - DISLOYALTY</u>		
1	Unlawful to display foreign flag, exception	28-2
2	Penalty	28-2
3	Mutilation of flag, penalty	28-1
4	Display of red flag prohibited	Omitted
5	Penalty	Omitted
6*	Peace officers to enforce sections	Omitted
7	Anarchy and sedition defined	Omitted
8	Inciting to destruction of life or property	Omitted
9	Anarchistic and seditious associations	Omitted
10	Membership in unlawful associa- tion	Omitted
11	Distribution of literature	Omitted
12	Unlawful conspiracy	34-1
13	Penalty	Omitted
14	Death caused in violation of sections	Omitted
15	Person defined	Omitted
16	Star Spangled Banner, regulations	28-3
17	Penalty	28-3
<u>ARTICLE 24</u> <u>CLAIRVOYANCY</u>		
1	Practice of clairvoyancy, unlawful	22-1

(1)	(2)	(3)
Present Penal Law Section	Subject Matter	Proposed Penal Law Section
<u>ARTICLE 24</u>	<u>CLAIRVOYANCY</u>	
2	Advertisements barred	22-1
3	Penalty	22-1
<u>ARTICLE 25</u>	<u>INCHOATE CRIMES</u>	
1	Criminal attempt	33-1
2	Conduct in aid of another	33-2
3	Defenses available, not available	33-3
4	Multiple convictions	33-4
5	Penalties	33-5