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## Supplement: Swiss Federal Criminal Code

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# THE SWISS FEDERAL CRIMINAL CODE

## BOOK I. GENERAL PROVISIONS

### Part 1. FELONIES AND MISDEMEANORS

#### TITLE ONE: THE JURISDICTION OF THE CRIMINAL CODE

*Sec. 1. ART. 1. NO PUNISHMENT WITHOUT LAW*]. Only offenses explicitly declared punishable by law shall be punished.

*Sec. 2. Time Application. ART. 2*]. A felony or misdemeanor committed after the effective date of this Code shall be punished in accordance with this Code. A felony or misdemeanor committed before the effective date of this Code but where sentence is imposed after the effective date of this Code, shall be punished in accordance with whichever Code carries the lesser penalty for the offense.

*Sec. 3. Territorial Application. ART. 3. OFFENSES IN SWITZERLAND*]. 1. All felonies and misdemeanors committed in Switzerland are subject to this Code. If the offender has served a sentence for his act, either fully or partially in another country, the Swiss Court shall credit him with the portion so served.<sup>1</sup>

2. An alien who has been prosecuted in a foreign country at the request of the Swiss authorities shall not be punished for the

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<sup>1</sup> This refers to offenses committed in contiguous areas. The International Treaties between Switzerland and other countries concern themselves mainly with the extradition of accused or convicted persons charged with specified crimes. The most important of these treaties are the Swiss-Italian-German Treaty of July 25, 1873, and the Swiss-German Treaty of January 24, 1874. Other agreements were made by Switzerland with England, France and Austria. They did not include the extradition of persons for political crimes.

same offense in Switzerland if: the foreign court has acquitted him, or if the penalty to which he had been sentenced in the foreign country has been served, suspended or has come within the statute of limitations.<sup>2</sup> In event the offender has not served or only partially served it, the whole sentence or the remainder shall be served in Switzerland.

ART. 4. OFFENSES ABROAD AGAINST THE STATE]. Whoever commits in a foreign country any felony or misdemeanor against the State (of Switzerland) (Art. 265 to 268, 270, 271), carries on an illegal news service (Art. 272 to 274), establishes an illegal organization (Art. 275), or disturbs military security (Art. 276 and 277), shall be subject to this law. Whenever the offender has served a sentence fully or partially for this offense in a foreign country, the Swiss Court shall credit him with the sentence served.

ART. 5. OFFENSES ABROAD AGAINST SWISS CITIZENS]. Whoever commits a felony or misdemeanor against a Swiss citizen in a foreign country, is subject to the Swiss law, provided that the offense is punishable in the country where the offense was committed and that the offender remains in Switzerland and is not surrendered to the foreign country, or is surrendered to the Swiss Federation<sup>3</sup> for this offense. In case the law of the country where the offense was committed is less severe, that provision shall be applied. An offender shall not be prosecuted for a felony or misdemeanor, if he has been sentenced abroad and the sentence has been served, suspended, or has come within the statute of limitations. In case the offender has not served his sentence or has served it partially, the sentence or its unserved portion shall be executed in Switzerland.

ART. 6. OFFENSES OF SWISS CITIZENS ABROAD]. 1. A Swiss citizen who commits a felony or misdemeanor abroad for which the Swiss laws provide extradition, is subject to this law, provided that the act is punishable also at the place of its commitment and provided that the offender remains in Switzerland or is surrendered to the Federation (of Switzerland)<sup>4</sup> for this offense. If the law of the country of commitment is less severe, that provision shall be applied.

2. An offender shall not be punished in Switzerland, if he has

<sup>2</sup> In Switzerland, as in most European countries, there is a statute of limitations both for prosecution and for sentences. See Art. 70, ff. below for specific time limits.

<sup>3</sup> By "Swiss Federation" or "Federation" as used in this text, reference is made to the Union of Swiss Cantons.

<sup>4</sup> The translators have inserted some words in parentheses to clarify the meaning of the text.

been acquitted abroad for this felony or misdemeanor, or if the penalty to which he has been sentenced abroad has been executed, suspended, or has come within the statute of limitations. If the penalty has been partially served abroad, the served portion shall be credited to him (and the remainder served in Switzerland).

ART. 7. PLACE OF THE OFFENSE]. A felony or misdemeanor shall be considered committed at that place where the offender committed it or where the effect has occurred. An attempted offense shall be considered committed at that place where the offender attempted it and where the effect was designed to occur.

Sec. 4. Application. ART. 8. EXEMPTION]. This law shall not be applicable to persons subject to military criminal law.

#### TITLE TWO: RESPONSIBILITY FOR OFFENSES

Sec. 1. ART. 9. FELONY AND MISDEMEANOR]. Felonies are offenses punishable in the penitentiary at hard labor. Misdemeanors are offenses punishable by no greater penalty than confinement in the prison.<sup>5</sup>

Sec. 2. Responsibility. ART. 10. LACK OF RESPONSIBILITY]. Whoever because of insanity, idiocy, or grave disturbance of mental competency at the time of commitment of the offense shall be incapable of recognizing the illegality of his act, or whoever by these reasons shall be incapable of acting in accordance with his insight into the illegality of his act, shall not be punished.

ART. 11. PARTIAL RESPONSIBILITY]. If the offender, at the time of his act, was mentally disturbed or his mental competency diminished or if he was mentally retarded to the extent that his capacity to recognize the illegality of his act or his capacity to act in accordance with this insight was diminished, the court, in its discretion, may impose a less severe penalty (Art. 66).<sup>6</sup>

ART. 12. EXCEPTION]. The provisions of Art. 10 and 11 shall not be applicable if the serious disturbance or retardation of the mental competency of the offender was occasioned by himself with

<sup>5</sup> *Zuchthaus* was translated as "penitentiary"; *Gefängnis* as "prison" and, later, *Haft* as "jail"—as the most suitable equivalent for American readers. It must, however, be kept in mind that the three categories of confinement are quite different from one another in Switzerland, than penitentiary, prison, and jail are in this country. In many later places we have uniformly used "confinement" for *Freiheitsstrafe* or incarceration in any of these three categories of penal institutions.

<sup>6</sup> This Code makes provision for mitigation of sentence where the offender is only partially responsible (because of mental condition, etc.). The three types of situations recognized in the Code are: mental disturbance (sanity), mental competency (consciousness), and mental retardation (intelligence). See also Footnote No. 7, Art. 12.

the intent of committing the offense while in that mental condition.<sup>7</sup>

ART. 13. MENTAL EXAMINATION]. The prosecutor or the court, when in doubt as to the responsibility of the accused, shall order a mental examination of him by one or more experts. A mental examination shall be ordered if the accused is a deaf-mute or if it is alleged that he is an epileptic. The experts shall state the condition of the accused and also give their opinion whether he requires care in a mental hospital and whether his condition is dangerous to public security and order.

ART. 14. DETENTION OF INCOMPETENTS, ETC.]. If the incompetent or partially responsible offender is considered so dangerous to public security and order as to necessitate his confinement in a mental hospital, the court shall order his detention. The court shall suspend the execution of the sentence against a convicted person who is partially responsible.

ART. 15. CARE OF INCOMPETENTS]. If the condition of the incompetent or partially responsible offender requires his treatment and care in a mental hospital, the court shall order that treatment and care. The court shall suspend the execution of the sentence against the convicted person who is partially responsible.<sup>8</sup>

ART. 16. EXCLUSION]. The court may deny to an alien considered dangerous to the commonwealth (a permit of) residence in Switzerland, if he has been acquitted because of irresponsibility or if prosecution has been dismissed for the same reason or if he has been punished less severely because of his partial responsibility.

ART. 17. ARRANGING DETENTION AND CARE]. 1. The Cantonal administrative authority shall execute the order of the court concerning detention, treatment or care of the irresponsible or partially responsible person.<sup>9</sup>

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<sup>7</sup> This article gives an exception to the rule of Art. 11, where the partial responsibility was the result of purposeful action by the offender for the purpose of the crime committed.

<sup>8</sup> The last sentence of this Article applies only to the partially responsible offender and *not* to the insane offender, who cannot be sentenced, according to Art. 10.

<sup>9</sup> While this is a Federal Code, the constitutional rights of the Cantons (corresponding to the rights of the States in the United States) have been carefully preserved. The Code, however, tries to secure by certain provisions some uniformity of penal procedure which is lacking under former legislation and practice in Switzerland. The regulation of administration and execution of sentences and other provisions (parole, probation, preventive measures, institutional treatment, and supervision) is left to the Cantonal legislation and the Cantonal administrative authorities.

2. The proper official<sup>10</sup> shall suspend the detention, treatment, or commitment as soon as the reason for this measure has ceased. The Court shall determine whether and to what extent the sentence against the convicted person who is partially responsible remains to be executed.

*Sec. 3. Guilt.* ART. 18. INTENT AND NEGLIGENCE]. If the law does not explicitly provide otherwise, a person is punishable only if he commits a felony or misdemeanor with intent. Whoever commits an act knowingly and willingly commits a felony or misdemeanor with intent. The offender shall be deemed to have committed a felony or misdemeanor by negligence, if the act is due to the offender not foreseeing or not taking into consideration the result of his culpable conduct. The negligence is culpable if the offender did not act as cautiously as was his duty under the circumstances and with regard to his personal situation.

ART. 19. ERRONEOUS CONCEPTION OF THE FACTS]. If the offender acts in an erroneous conception of the actual facts, the court shall render a decision favorable to the offender on the basis of the latter's conception of the existing facts. If the offender had been able to avoid the error by acting with due caution, he shall be punished for negligence, provided that the negligible commission of the act is punishable.

ART. 20. ERRONEOUS CONCEPTION OF THE LAW]. If the offender commits the act believing he has legal justification for it, the court in its discretion may reduce the punishment (Art. 66) or may refrain from imposing sentence.

*Sec. 4. Attempt.* ART. 21. INCOMPLETED ATTEMPT AND WITHDRAWAL]. If the offender, having initiated the commission of a felony or misdemeanor, does not complete it, he may be punished less severely (Art. 65). If on his own initiative, the offender does not complete the criminal act, the court may refrain from imposing sentence for the attempt.

ART. 22. COMPLETED ATTEMPT AND ACTIVE REPENTANCE]. If a criminal act had been completed but without resulting in the commission of the intended felony or misdemeanor, the offender may be punished less severely (Art. 65). If (after completing the criminal act) the offender, by his own initiative takes measures to

<sup>10</sup> "Proper official"—is our translation for *zuständige Behörde* and is a general term in the Code. The latter does not indicate whether this official is an administrative person, the state's attorney, or any judge. The designation of this person is to be made by Cantonal enforcement rules in each Canton. See Art. 342, No. 2 and 401.

nullify the result or prevents it, the court, in its discretion, may impose a less severe sentence.

ART. 23. UNSUITABLE ATTEMPT]. If the means used for attempting a felony or misdemeanor or the object against which he attempted it was such that the offense could not be committed at all with such means or against such an object, the court, in its discretion, may impose a less severe sentence (Art. 66). In case the offender acted through want of judgment, the court may refrain from imposing sentence.

Sec. 5. Accessory. ART. 24. ABETTING]. Whoever intentionally encourages or directs or plans a completed felony or misdemeanor shall be punished equally with the principal. Whoever attempts to induce another to commit a felony shall be punished for the attempt of this felony.

ART. 25. AIDING A FELONY OR MISDEMEANOR]. Whoever intentionally assists in the commission of a felony or misdemeanor may be punished less severely (than the principal) (Art. 65).

ART. 26. PERSONAL BACKGROUND]. The personal conditions, characteristics and situation of an offender, an abettor or an accessory, where applicable, shall be taken into consideration in determining whether a more severe or a less severe penalty or none shall be imposed.<sup>11</sup>

Sec. 6. Responsibility of the Press. ART. 27. LIBEL]. 1. Where an offense has been committed by the use of the printing press, the author alone, except as provided later, shall be responsible, provided that the offense is limited to the printed material.

2. If the author of a non-periodical publication cannot be identified, or if publication occurred without his knowledge or against his wishes, the publisher is punishable as principal, and in his absence, the printer.

3. If the author of an article printed in any newspaper or magazine cannot be identified or cannot be brought before the court in Switzerland or if publication occurred without his knowledge or desire, the responsible editor<sup>12</sup> is punishable as principal. The editor is not obligated to disclose the author's name. No legal

<sup>11</sup> This article, as do many others, indicates the legislative intent of the Code-makers as to the proper elements entering into judicial mitigation of sentence or the imposition of a more severe penalty.

<sup>12</sup> "Responsible editor" is to be taken literally as the editor who is personally responsible for the acts of his paper or periodical. By law the "responsible editor" (usually different from the chief editor) must be designated for each copy of the paper. He is the person against whom suits for libel, for violation of this and similar articles are begun, and he is the person paying fines and serving jail sentences upon conviction for libelous acts.

process shall be used against the editor, printer, and his personnel, compiler or publisher to disclose the identity of the author.

4. If the person inserting an advertisement cannot be located, the person responsible for placing the advertisement, or if his identity cannot be determined, the publisher or printer shall be punished as principal. If the person responsible for the advertisement is fined, the publisher shall also guarantee (the payment of) the fine.

5. A true report of public hearings of a public authority shall not be punishable.

6. The statute of limitations shall take effect one year after the printed material has been published.

7. The provisions of no. 3, par. 2 and no. 6 (above) shall not be applied in cases of high treason and treason against the State (Art. 265 to 267, no. 1, par. 1), in cases of prohibited news service (Art. 272, 273, no. 1, par. 2 and nos. 2 and 3, and 274), and in cases of disturbance of military security (Art. 276, 277).

*Sec. 7. Petition.* ART. 28. PETITION FOR PROSECUTION]. Where an offense is punishable by petition<sup>13</sup> (of the injured person), any person injured by such action may petition for punishment of the offender. In the incapacity of the injured person, his legal representative or the guardianship authority may petition for punishment. If the injured person is eighteen years of age (or over) and capable of judgment, he also has the right to petition.<sup>14</sup> If the injured person dies without having petitioned for punishment, or without explicitly waiving it, any relative<sup>15</sup> may petition. If the person entitled to petition has explicitly waived the right of petition, this waiver shall be final.

ART. 29. TIME LIMIT]. The right to petition shall expire three months from the day on which the identity of the offender becomes known to the person entitled to petition.

ART. 30. INDIVISIBILITY]. If one person entitled to petition shall petition against one of the offenders, all persons involved in the offense shall be prosecuted.

<sup>13</sup> "Petition" refers to initiation of a criminal court process by complaint or initiative of an individual citizen rather than by action of an official person. It is especially used in this Code for minor offenses. It is also used in this Code where the aggrieved person is a relative of the offender (see larceny, Art. 137; embezzlement, Art. 140, No. 3 and fraud, Art. 140, No. 3 and fraud, Art. 148, etc.).

<sup>14</sup> "Right to petition." The text adds the word "also" for a minor over 18 years of age; until he becomes 21 years of age, the minor's legal representative (father, guardian) also has the right to petition.

<sup>15</sup> Any "relative" is a general term here but the Code defines it in Art. 110, No. 2.



ART. 31. WITHDRAWAL]. The person entitled to petition may withdraw his petition for punishment (at any time) up to the imposition of the sentence in the first instance.<sup>16</sup> Having (once) withdrawn his petition, the person entitled to petition cannot again file the petition. Withdrawal of a petition with regard to one defendant shall be held valid against all defendants. A withdrawal shall not be effective against one defendant protesting the withdrawal of the petition.

Sec. 8. *Justifiable Conduct*. ART. 32. OFFICIAL DUTY]. An act ordered by law or professional duty or which the law declares permissible or not punishable, is not a felony or misdemeanor.

ART. 33. SELF-DEFENSE]. If a person is assaulted without cause or is presently threatened with an assault, the assaulted person and every one else (around him) are authorized to resist the assault by suitable means. Where the assaulted person exceeds the limits of self-defense, the court, in its discretion, may impose a less severe penalty (Art. 66). If the assaulted person exceeds the limits of self-defense because of justifiable excitement or surprise resulting from the assault, he shall be acquitted.

ART. 34. PRESENT DANGER]. 1. An act committed by a person to save his life, person, freedom, honor, or property from an immediate danger which cannot be averted otherwise, shall not be punishable if the danger was not caused by the offender and further if he could not be expected under the circumstances to make this sacrifice. If the danger was caused by the offender or if he could be expected to make this sacrifice, the court, in its discretion, may impose a less severe sentence (Art. 66).

2. The acts committed by one person to save the life, person, freedom, honor, or property of another from an immediate danger which cannot be averted otherwise, is not punishable. If the offender was able to recognize that the threatened person might be expected to make the sacrifice of the endangered thing, the court, in its discretion, shall impose a less severe penalty (Art. 66).

### TITLE THREE: PENALTIES, PREVENTION, AND OTHER MEASURES

#### *Sub-Title 1. Specific Penalties and Measures*

Sec. 1. *Imprisonment*. ART. 35. PENITENTIARY SENTENCES].  
1. Confinement in the penitentiary (at hard labor) is the most severe penalty. Its minimum shall be one year, its maximum twenty

<sup>16</sup> "In the first instance"—reference is here made to the imposition of a sentence originally and before an appeal confirms or reverses the conviction.

years. A life sentence is permissible by express provisions of the law.

2. A penitentiary sentence shall be carried out in an institution or in a division of an institution exclusively designed for that purpose. Prisoners shall wear uniforms and receive institutional food. Visiting and corresponding with prisoners shall be permitted only within narrow limits and under (rigorous) control.

ART. 36. PRISON SENTENCES]. 1. The minimum terms of confinement in the prison shall be three days. Where no (other) provision is made by law, the maximum term shall be three years.

2. A prison sentence shall be carried out in an institution or in a division of an institution exclusively designed for that purpose. Prisoners shall wear uniforms and receive institutional food. They may be allowed to wear their own clothing in individual confinement.<sup>17</sup> Visiting and corresponding with prisoners shall be limited only as required by institutional management and permitted only under control.

ART. 37. SERVICE OF SENTENCES]. Confinement in the penitentiary and the prison shall be designed to improve the prisoner educationally and prepare him for return to civil life. The conditions and extent of the gradual relaxation of discipline to be applied to prisoners shall be determined by institutional rules. Generally, the penitentiary inmate shall be kept in individual confinement for the first three months (of his sentence) and the prison inmate for the first month only. The institution may shorten or lengthen the period of individual confinement or return the inmate to individual confinement if his mental or physical condition or discipline requires it. Prisoners shall be required to work. Where possible, they shall be assigned to work in accordance with their abilities and at work which will enable them to earn a living after release. As a rule, they shall work in congregate groups; during leisure hours they shall be in individual confinement. Prison labor shall be assigned so that penitentiary inmates are kept separate from prison inmates, also when working in congregate groups. Exceptions shall be made only as required by the work.

ART. 38. PAROLE]. 1. An inmate of the penitentiary or prison who has served two-thirds of his sentence may be paroled by the proper official provided that his institutional conduct has been satis-

<sup>17</sup>"Individual confinement" is here used instead of "solitary confinement," which is a more exact translation because this Code does not carry with it the American implication of discipline. It actually means single-cell housing, that is, one prisoner per cell. The word "individual" is used in a classificatory sense.

factory, that he may be expected to conduct himself properly after release, and that he has made restitution to the best of his ability, as ordered by the court or as agreed upon. A penitentiary inmate, sentenced for life, who has served fifteen years may be paroled by the proper official. The proper official shall obtain the viewpoint of the institutional personnel regarding the parole of an inmate.

2. The proper official shall order a parole period for the inmate conditionally released. Generally, the parole shall correspond to the remainder of the sentence; it shall be for at least one year and not longer than five years. The parole period of an inmate with a life sentence shall be five years.<sup>18</sup>

3. The proper official may impose conditions for the parolee's conduct during the parole period, such as abstaining from alcoholic liquor, remaining within a specified locality, or in a specified institution, such as a workers' home or a workers' colony, with a specified employer.<sup>19</sup>

4. If, during the parole period, the parolee commits a felony or misdemeanor intentionally, or acts contrary to the orders after formal warning<sup>20</sup> of the proper official, or persistently evades supervision, or abuses the confidence reposed in him, the proper official shall return him to the penitentiary or prison. No credit shall be given (to a returned parolee) for the period served on parole.<sup>21</sup>

5. If the parolee observes the total parole period, he shall be discharged.

ART. 39. JAIL SENTENCES]. 1. The minimum term of confinement shall be one day; the maximum, three months.

2. The sentence shall be carried out in a special institution or in quarters<sup>22</sup> which are not used for the execution of other sentence

<sup>18</sup> The Code recognizes that time is an essential element of parole supervision and so provides. The parole period, it should be noted, is not limited to the expiration of the maximum of the sentence imposed but may go beyond this.

<sup>19</sup> Legislative intent is shown here also by specifying the general nature of the parole conditions to be imposed. This is again progressive thinking, in that the general situation is specified but wide discretion is given to the administrative acts within these general provisions.

<sup>20</sup> "After formal warning" indicates that the parolee (or probationer, in other places) is first reminded in a hearing or in an interview as to his obligations and is admonished that the sentence will be ordered executed if he continues to violate the parole (or probation) orders.

<sup>21</sup> Contrary to most American provisions for parole, no credit is here given to parole violators for such part of the parole supervision period as was creditably served, prior to the violation.

<sup>22</sup> The Code recognizes the probability that many of the Cantons would not be able to provide separate institutions for all types of offenders and therefore orders strict separation of "types of offenders." While there is something to be said for classification of prisoners by types of offenses, it is felt that this perpetuates a theory of treatment of crime which is being slowly discarded—the

categories. Prisoners may wear their own clothing. They shall receive institutional food but may be permitted to furnish their own food within the rules of the institution. Visiting and corresponding with prisoners shall be limited only as required by institution administration.

3. The prisoner shall be assigned to work. However, he shall be permitted to find adequate work for himself. If he does not use this opportunity, he shall be required to do the work assigned to him.<sup>23</sup>

4. The prisoner shall be kept in individual confinement at night.

ART. 40. RULES OF CONFINEMENT]. The execution of the sentence shall be interrupted only for important reasons. If a convicted person is transferred to a mental hospital during the service of the sentence, he shall be credited with the time spent in this hospital. No credit shall be given where the transfer was effected or extended by malingering of the prisoner.

ART. 41. SUSPENDED SENTENCE]. 1. The court may suspend a prison sentence of not over one year or a jail sentence, if the past record and character of the convicted person justifies the belief that such action may prevent further crime, that—furthermore—the convicted person has not, within the past five years in Switzerland or abroad, served for an intentionally committed felony or misdemeanor; and that he has made restitution to the best of his ability, as ordered by the court or as agreed. Where the court suspends sentence, it shall order a probation period of from two to five years.

2. The court may place the convicted person under probation. It may impose on him, during the probation period, certain conditions such as learning a trade, remaining within a specified area, abstaining from liquor, and making restitution within a specified period. The circumstances justifying the suspended sentence and the court conditions (for probation) shall be stated in the sentence.<sup>24</sup>

3. If, during the probation period, the probationer intentionally commits a crime, acts contrary to the orders after formal warning of the court, or persistently evades supervision or violates, in any

“moral contamination” theory which belongs more to the nineteenth century and not to twentieth century penal philosophy.

<sup>23</sup> The provisions for jail prisoners are unusually liberal here, permitting them to find work and furnish both their clothes and food, if able.

<sup>24</sup> Restriction against sub-rosa granting of probation is made by this article providing for an explicit statement, at the time of the probation order, of its reasons—that is, the specific circumstances in each case justifying its use—and also that the conditions of probation shall be indicated in the sentence of the court.

(other) way, the confidence reposed in him, the court shall order the execution of the sentence.

4. If the probationer fulfills for the entire period the conditions laid down, the court shall order the sentence expunged from the register of criminals.<sup>25</sup>

*Sec. 2. Preventive Measures.* ART. 42. DETENTION OF HABITUAL CRIMINAL].<sup>26</sup> 1. Whoever has already served many sentences for felonies or misdemeanors and is inclined to felonies, misdemeanors, disorderly conduct or idleness, and again commits a felony or a misdemeanor punishable by confinement, may be placed under detention by the court for an unlimited period. In this instance, the detention shall take the place of the sentence imposed. If the convicted person is an alien, the court may order deportation in addition to the sentence, instead of detention.

2. Detention shall be carried out in an institution or in a division of an institution exclusively designed for that purpose. Persons in detention shall wear special institutional clothes and receive institutional food. Visiting and corresponding with persons in detention shall be permitted under control.

3. Persons in detention shall be required to work at assigned tasks.

4. Persons in detention generally shall be kept in individual confinement at night.

5. Persons in detention shall serve at least three years and if the sentence is longer, the maximum term. After this period, the proper official may parole him for three years after consulting the institution officials and providing further that detention is no longer deemed necessary.

6. The proper official shall place him under parole supervision and order special conditions (Art. 38, no. 3). If he commits a new offense within three years or violates the given orders after formal warning of the parole authority, or persistently evades supervision, the proper official may return him to detention for an additional five years. If he observes the parole conditions for three years, he shall be discharged.

7. If ten years have elapsed since the sentence was ordered

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<sup>25</sup> The Swiss Code is here and elsewhere careful to "clear the name" of the offender after a successful termination of probation, by expunging the record from the register of criminals (Art. 61). Other provisions for expunging are given later in this Code (Art. 80, 81, 96, 97).

<sup>26</sup> With reference to the detention of habitual offenders, see: Thorsten Sellin: "Prison Tendencies in Europe"; 1930 *Proc. Nat. Conf. Soc. Work*, p. 124, note 14.

and detention could not be executed,<sup>27</sup> the proper official shall determine whether punishment or detention is still to be executed. If the statute of limitations intervenes, detention shall no longer be executed.

ART. 43. TRAINING OF DISORDERLY PERSONS AND IDLERS IN WORK HABITS]. 1. If the offender has been sentenced to a prison term for a felony or misdemeanor, the court may suspend sentence and commit him to a house of correction for an unlimited period provided that he is disorderly or idle and that his offense is related thereto, that he may be trained to work, and that he has not previously been sentenced to a penitentiary or detention institution. The court shall order an examination of the physical and mental condition and of the work capacity of the offender and also obtain accurate reports of his education and background.

2. Training in work habits shall be carried out in an institution exclusively designed for this purpose or attached to an institution for inebriates. The combination of house of correction and institution for inebriates shall be permitted only if there is a separation of the institutional management and inmates (of each kind).

3. The committed person shall be trained for the kind of work to which he is suited, and which will enable him to support himself after release. The physical, mental and particularly the industrial development of the committed person shall be furthered by the instruction given. The committed person shall be generally kept in individual confinement at night.

4. If it becomes apparent that the committed person cannot be trained in work habits, the court shall order the execution of the original sentence, fully or partly.

5. After the committed person has remained in the house of correction for two-thirds of the sentence and for at least one year, the proper official may parole him for one year if he considers the parolee capable and willing to work. He shall place him under supervision<sup>28</sup> and may order special conditions (Art. 38, no. 3). If the parolee intentionally commits a felony or misdemeanor during

<sup>27</sup> "Inability to execute the sentence" by reason of the absence of the offender from the jurisdiction of the court, by reason of illness, etc.

<sup>28</sup> The text uses the term *Aufsicht* which we have uniformly translated as "supervision" and here specifically as "parole supervision." There may be some technical objection to calling this "parole supervision" since the individual has not yet served a penal term but only a training period in a training institution. The text, however, uses these words as translated and we have followed the text exactly. The "House of Correction" in Switzerland is an institution for re-training in work and not an institution for the service of minor penal sentences.

the parole period, the original sentence shall be executed. If the parolee again becomes disorderly or idle during the parole period or acts contrary to the given orders after formal warning of the parole office or evades supervision, the proper official may return him to the institution or may petition the court for execution of the (original) sentence. If the parolee observes the entire parole period, he shall be discharged (from supervision) and the sentence shall no longer be executed.

6. If after three years the inmate has not demonstrated his readiness for parole, the court shall order the execution of the entire sentence or part of it.

7. If the commitment is not executed within five years, it shall lapse by limitation.<sup>29</sup>

ART. 44. TREATMENT OF HABITUAL DRUNKARDS]. 1. If a person sentenced to a prison or jail for felony or misdemeanor is a habitual drunkard and if the offense is related thereto, the court may order the offender committed to an institution for inebriates after the service of the sentence. The court may also suspend the sentence and order his commitment to an institution for inebriates if the convicted person requires it.

2. The habitual drunkard shall be treated in an institution exclusively designed for this purpose or connected with a house of correction. The combination of institution for inebriates and house of correction shall be permitted only if there is a separation of institutional management and inmates (of each kind).

3. The proper official shall release the committed person from the curative institution as soon as he has been cured, and in all cases after two years. Where the sentence was suspended the court, before the inmate's release from this institution, shall determine, after consulting the superintendent of the institution, whether the sentence shall be executed fully or in part.

4. The proper official may place the released inmate under parole and may order him to abstain from liquor for a certain period and may impose other conditions. If he acts contrary to these orders after formal warning by the parole authority, or evades supervision, the proper official may return him to the institution. These measures may be extended for a maximum of two years.

5. If the parolee observes the parole period, he shall be dis-

<sup>29</sup> Provision is made here for a time limitation of the sentence, so that it is not legally possible to execute the original sentence if it has not been carried out within five years. The same provision is made for alcoholics (Art. 44, No. 6) and, by implication, for narcotic addicts (Art. 45).

charged (from supervision) and the sentence shall not be executed.

6. If the commitment has not been executed within five years, it shall be void.

ART. 45. DRUG ADDICTS]. The provisions of Art. 44 shall be correspondingly applied to persons using habit-forming drugs. The court shall determine which institution is suitable for treatment.

Sec. 3. General Rules. ART. 46. SEPARATION OF SEXES, ETC.]. In all institutions, men and women shall be completely separated. Religious services, pastoral service, and a library shall be established in all institutions.

ART. 47. PROBATION]. The objects of probation are: giving probationers counsel and aid, particularly by providing shelter and opportunity for work to assist them in honest living and the supervision of probationers in a discreet manner which does not aggravate their situation.

Sec. 4. Fines. ART. 48. AMOUNT OF FINE]. 1. Unless otherwise stated by the law, the maximum amount of fine shall be twenty thousand francs. Whenever the offender's motives were gainful, the court shall not be limited by this amount.<sup>30</sup>

2. The court shall decide the amount of the fine in accordance with the financial situation of the offender so that the punishment shall be commensurate with his guilt. Of importance in determining the situation of the offender (for assessment of the fine) shall be particularly his income, property, family status and family obligations, vocation and trade, age and health.

3. A fine is not collectible after the death of the convicted person.

ART. 49. COLLECTION OF THE FINE]. 1. The proper official shall fix a period of one to three months for the payment (of the fine). If the offender has no permanent residence in Switzerland, he shall pay the fine immediately or give security for its payment. The proper official may permit the convicted person to pay the fine in installments whose amount and due-dates he shall determine according to the circumstances of the convicted person. He may also permit him to work out the fine by voluntary labor, particularly for the State or community. In the latter case, the proper official may extend the period of payment.

2. If the convicted person neither pays the fine within the fixed period nor works it out, the proper official shall order his goods

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<sup>30</sup> This again is a provision for adjusting the sentence to the offender's circumstances and to those of the offense. Here too, wide discretion is given to the court.



seized and sold to satisfy the fine, provided there is a probability of realizing the fine by such action.<sup>31</sup>

3. If the convicted person neither pays the fine nor works it out, the court shall convert the fine into a jail sentence. The court may, by the sentence or subsequent order, withhold converting the fine into a jail sentence whenever the convicted person proves his inability to pay the fine, although he has made a reasonable effort to do so. In this latter case, no costs shall be assessed to him. Where the fine is converted into a jail sentence, the court shall reckon ten francs' fine equivalent to one day's imprisonment, but the alternative imprisonment shall not exceed three months. The rules for suspended sentence are applicable to the conversion of a fine into a jail sentence.

ART. 50. FINE AND IMPRISONMENT]. Whenever the offender acts from gainful motives, the court may sentence him to both fine and imprisonment. Whenever the law provides the alternative of fine or imprisonment, the court may, in any case, impose both.

Sec. 5. *Removal From Office. Loss of Civil Rights.*<sup>32</sup> ART. 51. REMOVAL FROM OFFICE]. Any convicted official who has made himself unworthy of his public office by his felony or misdemeanor shall be removed from office by the court and shall be declared ineligible for any office from two to ten years. The consequences of dismissal from office and the ineligibility for office shall be effective with the validity of the sentence.<sup>33</sup> If the official was sentenced to imprisonment the period of ineligibility shall begin with the day on which the sentence was completed or the date of pardon. If he has observed the parole period, the term of ineligibility shall begin with the day of parole.

ART. 52 LOSS OF CIVIL RIGHTS]. 1. All persons sentenced to the penitentiary shall lose civil rights for a period of two to ten years. All persons sentenced to prison may be deprived of civil rights for a period of one to five years, provided that the offense involved moral turpitude. All persons sentenced to a detention

<sup>31</sup> The Code is explicit, however, that the seizure of the defendant's property shall not be made indiscriminately but only if there is a reasonable prospect of satisfying the fine by this action.

<sup>32</sup> We have translated *Nebenstrafen* as "loss of civil rights" as a more extensive term than "infamy" although the latter is included. Civil rights in Switzerland include other rights in addition to voting and holding office. See Art. 53 ff.

<sup>33</sup> "Validity of the sentence"—in Switzerland there is a specified period of time (which varies in different Cantons) in which to perfect an appeal from the lower courts. The sentence becomes "valid" or takes effect when the appeal has been denied or when the appeal has not been perfected within the allotted time.

institution as habitual criminals shall lose civil rights for a period of ten years.

2. The person deprived of civil rights loses the right to vote, to participate in public elections and is ineligible (to public office). He cannot function as an official, a member of an authority, guardian, custodian, or witness to documents.

3. The consequences of the civil deprivation shall take effect with the validity of the sentence. The deprivation shall begin with the day on which the sentence was completed, or the date of pardon, or the date (when) the convicted person was discharged from the detention institution. If he has observed the parole period, civil deprivation shall commence with the day of parole.

ART. 53. DEPRIVATION OF PARENTAL POWER AND GUARDIANSHIP]. Whoever violates his parental or guardianship or custodial duties by committing a felony or misdemeanor for which he is sentenced to confinement, may be deprived of his parental rights or of his function as guardian or custodian by the court and may be declared incapable of performing parental rights or acting as guardian or custodian. In other cases in which the court, because of the commission of a felony or misdemeanor, deems the convicted person unworthy to exercise parental rights or to function as a guardian or custodian, it shall communicate this information to the guardianship office.

ART. 54. DEPRIVATION OF RIGHT TO A VOCATION, TRADE OR BUSINESS]. Any person in a vocation, trade, or business which requires a public license who has committed a felony or misdemeanor and is sentenced to more than three months' confinement, may be prohibited by the court from exercising this vocation, trade, or business for six months to five years, if there is any danger of further abuse. The prohibition shall go into effect with the validity of the sentence. The period of prohibition shall begin on the day the sentence was completed or the date of pardon. In case of parole, the prohibition shall go into effect only if the parolee does not observe his parole and shall be applied after he has completed his penal term for violation of parole.

ART. 55. BANISHMENT]. The court may banish from Switzerland for a period of three to fifteen years an alien sentenced to the penitentiary or to the prison. The banishment shall take effect on the day the sentence was completed or a pardon granted. If a parolee has observed the period of parole, the court may suspend

the order of banishment. In cases of repeated offenses, banishment may be ordered for life.

ART. 56. EXCLUSION FROM TAVERNS]. If the felony or misdemeanor was caused by immoderate drinking of liquor the court may, in addition to sentence, order the convicted person to remain away from taverns serving liquor for six months to two years. In special circumstances the exclusion may be restricted to a specified area. The Cantons shall make rules for the publication of such exclusion from taverns. The exclusion shall go into effect with the validity of the sentence. If the sentence is confinement, the period of exclusion shall begin with the day of completion of the sentence or date of pardon. If he has observed the parole period, the period of exclusion shall begin with the day of parole. The court may suspend this exclusion from taverns after the parole period has been observed.

Sec. 6. *Other Measures.* ART. 57. PEACE BOND]. 1. If there is a possibility that a person threatening to commit a felony or misdemeanor will do so, or if a person convicted of a felony or misdemeanor shows his intent to repeat the act, the court, on petition of the person threatened, may require the offender's promise not to carry out the act and may demand an adequate bond therefor.<sup>34</sup>

2. If the prospective offender refuses to so promise or with malicious intent does not furnish the bond within the allotted time, the court may place him under protective custody. The period of protective custody shall not exceed two months and shall be executed like jail confinement.

3. If the (above) felony or misdemeanor is committed by him within two years after providing bond, the bond shall be forfeited to the state. Otherwise, the bond shall be returned (to him).

ART. 58. CONFISCATION OF DANGEROUS OBJECTS]. The court shall order the confiscation, regardless of whether or not any person is punishable, of objects which were used to commit any crime or which were intended therefor or which have been produced by crime, provided that these objects endanger human beings or morality or public order. The court may order the dismantling or destruction of the confiscated objects.

<sup>34</sup>This is a "proceeding to prevent crime" by compelling the offender who threatens to commit a crime to furnish adequate surety against it. Some of the Cantons, in their individual Codes, provide for such a peace bond. (See Hafter: *Lehrbuch des Schweizerischen Strafrechtes*, p. 384, ff.). In the United States such bond is generally used for misdemeanors, particularly neighborhood and domestic quarrels. In the Swiss Code it may be used for felonies as well as for misdemeanors.

ART. 59. FORFEITURE OF GIFTS, ETC.]. Gifts and other considerations given for the purpose of committing or rewarding the commission of a crime shall be forfeited to the State. If they have been spent, the receiver shall pay their equivalent to the State. Also forfeited to the State shall be any article obtained by crime, provided the identity of the (rightful) owner has not been established within five years after official publication.

ART. 60. MEASURES IN AID OF THE INJURED PERSON]. The court may award to a person injured by a felony or misdemeanor, where there is no probability that the offender will or can recompense him, the proceeds of the confiscated objects, gifts and other considerations (which have been) forfeited to the State or their value, in addition to the amount of the peace bond, not exceeding an amount of compensation for his loss judicially determined or agreed upon. Whoever, because of extensive injury incurred through a felony or misdemeanor (of another) is needy and where there is no probability that he will be recompensed for his loss by the offender, may also be awarded, by the court, the fine paid by the convicted person. These awards shall be made only on petition of the injured person, who shall transfer to the State a corresponding portion of his claim (against the offender).

ART. 61. PUBLICATION OF THE SENTENCE]. Whenever the publication of a sentence is indicated by public interest or that of the injured person or person entitled to petition (for prosecution), the court shall order such publication at the expense of the convicted person. Whenever the publication of an acquittal is indicated in public interest or that of the acquitted person, the court shall order such publication at the expense of the State or the complainant. The publication in the interest of the injured person or of the person entitled to petition (for prosecution) or of the acquitted person shall be made only at his request. The court shall determine the manner and extent of publication.

ART. 62. REGISTER OF CRIMINALS]. All sentences and orders for preventive measures shall be recorded in the (criminal) registers (Art. 359 to 364).

### *Sub-Title 2. Imposition of Penalties*

*Sec. 1. General Rules.* ART. 63]. The court shall mete out penalties in accordance with the guilt of the offender, considering the motives, previous conduct and the personal situation of the convicted person.

*Sec. 2. Mitigation of Sentence.* ART. 64. EXTENUATING CIRCUMSTANCES]. The court may mitigate the sentence: if the offender acted from honest motives, because of pressure of personal need, under serious threat, or at the suggestion of a person to whom he owed obedience or on whom he was dependent; if the offender was seriously tempted by the conduct of the injured person; if he was overcome by anger or considerable anguish because of an unjust provocation or outrage; if he has proved himself sincerely repentant and particularly if he has made restitution for the damage, insofar as he was able to do so or if a comparatively long period of time has elapsed since the offense and the offender has lived uprightly for that entire period.

ART. 65. LESSER PENALTIES]. If the court determines to mitigate the sentence, it shall order: at least ten years' confinement in the penitentiary instead of a life sentence; a penitentiary sentence for less than the statutory minimum, instead of a penitentiary sentence for the statutory minimum term; a prison sentence from six months to five years, instead of a penitentiary sentence; a prison sentence for less than the statutory minimum, instead of a prison sentence for the statutory minimum term; or a jail sentence or fine, instead of a prison sentence.

ART. 66. MITIGATION DISCRETIONARY WITH THE COURT]. Wherever the law provides for mitigation of sentence, the court is not bound to the sentence category and the length of the term provided (by law) for this felony or misdemeanor. The court is bound by the legal minimum term of a sentence category, however.

*Sec. 3. Increased Penalties.* ART. 67. RECIDIVISM]. 1. The court shall impose a more severe penalty, in prison or penitentiary sentences, if the offender within (the past) five years had fully or partially served a penitentiary or prison sentence or had been discharged from one of the institutions mentioned in Art. 42 to 45 above. The court shall not be limited to the maximum legal penalty for that crime but it cannot exceed the legal maximum for that category of penalties. A pardon shall be considered the equivalent of serving a sentence.<sup>35</sup>

2. A sentence served abroad shall be considered as the basis for recidivism if it involves an offense for which the Swiss law provides extradition.

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<sup>35</sup> For the computation of sentences, a pardon apparently does not wipe out a conviction but merely mitigates the sentence. It is here reckoned as a sentence served.

ART. 68. CONCURRENT OFFENSES]. 1. The court, respecting a person who has been convicted of several crimes punishable by different terms of confinement, shall base its sentence on the gravest offense and shall increase the length (of the sentence) accordingly. The court, however, cannot exceed the maximum limit of the penalty provided (by law) by more than fifty per cent (of the individual sentence) or the legal maximum term for that category of penalties. Instead of imposing several fines (on the offender), the court shall impose one fine adequate to his guilt. Additional punishment and measures may be imposed if they are provided for in one of the joint offenses or in one of the several penal statutes.

2. Where a penal sentence is to be imposed for an offense committed by the offender before he has been sentenced for another offense, the court shall impose sentence so that the offender is not more severely punished than if the several crimes had been sentenced together.

*Sec. 4. Credit for Detention Pending Trial.* ART. 69. The court shall credit the convicted person with the period of detention pending trial, if the offender did not cause or extend the detention by his (own) conduct after the offense.<sup>36</sup> The court may consider the period of detention equivalent to the fine, where a fine is the sole penalty possible.<sup>37</sup>

### *Sub-Title 3. Statute of Limitations*

*Sec. 1. Prosecution.* ART. 70. TIME LIMITS]. Prosecution comes within the statute of limitations in twenty years if the offense is punishable with a life sentence in the penitentiary; in ten years if the offense is punishable with confinement in the penitentiary (for less than life); in five years if the offense is otherwise punishable.<sup>38</sup>

ART. 71. START]. The time of limitation commences: on the day when the offense was committed; where the crime was committed on several dates, on the day of the last action; and if the crime is continuous, on the day when the criminal conduct ceases.

<sup>36</sup> "Causing or extending detention" by refusal to cooperate with the police in disclosing the whereabouts of stolen articles, in refusing to name accomplices, or to aid the police in their investigation.

<sup>37</sup> European judicial systems generally do not provide for bond or bail or for release on bond pending trial; most offenders being held in jail for trial. Apparently bail is not a right of the offender in this Code, as it is in the U. S. and State Constitutions.

<sup>38</sup> The Swiss Code imposes a time limit for both the execution of sentence and the initiation of prosecution. The time limits are in relation to the length of sentence possible for the offense, rather than to specific offenses. The limits for more minor offenses are given in Art. 109.

ART. 72. INTERRUPTIONS]. 1. The statute of limitations does not include the time of service of a sentence in a foreign country.

2. The statute of limitations is interrupted by a citation of the offender to a Swiss prosecuting official or court as well as by any (official) interview with the offender pending trial. With every interruption the period of limitations runs anew. Prosecution, however, comes within the statute of limitations in any event, if the usual period of limitations has been exceeded by one-half; in case of libel, slander and minor offenses, if it has been exceeded by the entire period.

Sec. 2. Sentences. ART. 73. TIME LIMITS]. 1. Sentences come within the statute of limitations (as follows): a life sentence to the penitentiary in thirty years; a penitentiary sentence of ten or more years, in twenty-five years; a penitentiary sentence of from five to ten years, in twenty years; penitentiary sentences for less than five years, in fifteen years; prison sentences of more than one year, in ten years; and all other sentences in five years.

2. The statute of limitations for the principal sentences shall include the period of limitations for loss of civil and other rights.

ART. 74. START]. The time of limitations shall begin with the validity of the sentence; if the offender was under a suspended sentence and the sentence ordered executed (later), with the day on which this order was issued.

ART. 75. INTERRUPTIONS]. The statute of limitations is interrupted by the execution of the sentence and by any act of the authority directed to execute judgment.<sup>39</sup> With every interruption, the period of limitations runs anew. The sentence, however, comes within the statute of limitations, in any event, if the normal period of limitation has been exceeded by one-half.

#### *Sub-Title 4. Restoration*

ART. 76. RESTORATION OF CIVIL RIGHTS]. If the offender has lost his civil rights and at least two years have elapsed since the completion of the sentence, the court may restore civil rights to the offender, on his petition, providing that his conduct justifies this measure and that he has made restitution to the best of his ability for the damage as stated by the court or as agreed upon.<sup>40</sup>

ART. 77. RESTORATION OF ELIGIBILITY TO PUBLIC OFFICE]. If the offender has been sentenced to removal from office and at least

<sup>39</sup> For specific provisions, see Art. 345, ff.

<sup>40</sup> Emphasis is here placed upon restitution as a condition of restoration.

two years have elapsed since the sentence was completed, the court may declare the offender again eligible for (public) office on his petition, provided that his conduct justifies this decision and that he has made restitution to the best of his ability for the damage, as stated by the court or as agreed upon.

ART. 78. RESTORATION OF PARENTAL RIGHTS AND GUARDIANSHIP ELIGIBILITY]. If the offender has been declared incapable of exercising parental, guardianship or custodial rights and at least two years have elapsed since the completion of the sentence, the court, after hearing the guardianship authority, may restore the convicted person, on his petition, to these capacities, provided that his conduct justifies this decision and that he has made restitution to the best of his ability for the damage, as stated by the court or as agreed upon.

ART. 79. REMOVAL OF BAR TO TRADE, VOCATION OR BUSINESS]. If the court has barred the offender from exercising a vocation, trade or business and at least two years have elapsed since the completion of the sentence, the court, on petition of the convicted person, may permit him to again engage in the trade, vocation or business, provided that there is no further danger of abuse and that the convicted person has made restitution to the best of his ability for the damage as stated by the court or as agreed upon.

ART. 80. EXPUNGING THE SENTENCE FROM THE REGISTER OF CRIMINALS]. If the offender has been sentenced to imprisonment or fine and at least fifteen years have elapsed since the sentence was served by confinement in the penitentiary or commitment to a detention institution, or at least ten years for other penalties or measures, the court, on petition of the convicted persons, may order the expunging of the sentence from the register of criminals, provided that the conduct of the convicted person justifies it and that he has made restitution to the best of his ability for the damage as ordered by the court or as agreed upon. The expunging may be ordered earlier (than the above periods) if a particularly meritorious act of the convicted person justifies it.

ART. 81. GENERAL RULES]. The suspension of a sentence by a pardon shall be considered the equivalent of a sentence served. If the convicted person was committed to a detention institution, restoration cannot be obtained prior to five years after discharge or release. If the court refuses to approve a petition for restoration, it may order the petitioner to wait for a period of not over two years before filing a new petition.



## TITLE FOUR: TREATMENT OF MINORS

*Sub-Title 1. Children*

ART. 82. GENERAL PROVISIONS]. Children under six years are not subject to this Code. The following provisions shall be applied to acts punishable by this Code when committed by a child over six years of age and under fourteen years of age.

ART. 83. INVESTIGATION]. The proper official shall ascertain the facts. Insofar as the adjudication of the child requires it, the proper official shall inquire into the conduct, education, and social situation of the child and obtain information and reports of experts as to his physical and mental condition. This official may order observation of the child for a stated period.

ART. 84. EDUCATION UNDER SUPERVISION]. If the child is wayward, delinquent, or neglected, the proper official shall order the child cared for either by placement in a reliable foster home or by commitment to a children's institution. The child may also remain with his own family for training. In all cases the proper official shall supervise the child's training. He shall suspend the measures applied if their purpose has been accomplished. These measures shall cease, at the latest, when the child reaches his twenty-first birthday. Whenever the child reaches the age of fourteen years, he may be trained in accordance with the provisions for juveniles.

ART. 85. SPECIAL TREATMENT]. If the condition of the child requires special treatment, particularly if he is insane, feeble-minded, blind, a deaf-mute or epileptic, the proper official shall order the necessary treatment.

ART. 86. CHANGE OF MEASURES]. The proper official may, at any time, substitute for the measures ordered, any other measures.<sup>41</sup>

ART. 87. DISCIPLINARY MEASURES]. If the child is neither wayward, nor delinquent, nor neglected, and no special treatment is necessary, the proper official shall reprimand him or order him to attend a special disciplinary class at school,<sup>42</sup> provided that he committed the act charged. In minor cases, the official may refrain from any action and may leave the discipline to the person having parental authority.

<sup>41</sup> "Measures" and "substitution of measures" give the sense that training and treatment, being non-penal in character, are inter-changeable, by administrative order.

<sup>42</sup> "Special disciplinary class at school"—*Schularrest*—a European custom of making children remain after school and attend special disciplinary classes, as one means of juvenile court treatment in minor offenses, as well as a form of school punishment ordered by the teacher or principal.

ART. 88. ABSTAINING FROM ANY ACTION]. The proper official may refrain from all action provided that the person exercising parental rights has already made the necessary provisions or that three months have passed since the child's act was committed.

*Sub-Title 2. Juveniles*

ART. 89. GENERAL RULES]. The following provisions shall be applied to a juvenile fourteen years of age and over but under eighteen years of age who commits an offense punishable by this Code.

ART. 90. INVESTIGATION]. The proper official shall ascertain the facts. Insofar as the adjudication of the child requires it, an investigation of his conduct, education and social condition shall be made and reports of experts as to his physical and mental condition be requested (by the proper official). He may also order observation of the juvenile for a specified period.

ART. 91. TRAINING SCHOOL, FOSTER CARE]. 1. If the juvenile is wayward, delinquent or neglected, the proper official shall commit him to a training school for juveniles. The ward shall remain in the institution as long as is required for his readjustment and not less than one year. He shall be discharged (in all events) when he has completed his twenty-second year.<sup>43</sup>

2. The proper official may also transfer the juvenile to a reliable foster family for readjustment. If foster home placement is not effective, institutional care shall be ordered. The juvenile may also be permitted to remain with his own family for adjustment.

3. If the juvenile is seriously delinquent, or has committed a felony or grave misdemeanor highly dangerous to public order, he shall be committed to a training school where he shall be separated from other inmates. In this latter case he shall remain in the training school until he has improved, for not less than three years but not longer than ten years.<sup>44</sup>

<sup>43</sup> Unlike other provisions of this Code, this article calls for judicial control of minors (persons under their majority) and young persons up to the end of the twenty-second year. In other legal provisions, only this group of persons under age is concerned, e.g., until the completion of the twenty-first year. The latter marks majority in Switzerland.

<sup>44</sup> For serious offenses committed by a person who has not yet reached his majority and where his "social dangerousness" is such that the usual training school methods and period of detention are held to be ineffective, a more extensive period of control, apart from other offenders, is provided. However, this "special detention" must never be in a penal institution for adults, but rather in a special section or institution for juveniles.

4. In all cases the proper official shall supervise the training of the juvenile.

ART. 92. SPECIAL TREATMENT]. If the condition of a juvenile requires special treatment, especially if he is insane, feeble-minded, a deaf-mute, epileptic, alcoholic, or unusually retarded mentally or morally, the proper official shall order the necessary treatment.

ART. 93. CHANGE OF MEASURES]. The proper official may, at any time, substitute for the measures ordered, any other measures. If the juvenile over eighteen years of age proves to be unadjustable in the institutional period or his conduct is detrimental to the adjustment of other inmates, the proper official may transfer him to a penal institution, where he shall be separated, generally, from adult inmates.

ART. 94. PAROLE]. The proper officials, after consulting with the superintendent of the institution, may parole the juvenile who has been in the training school at least one year (generally) or who, in case of Art. 91, No. 3, has been in the institution for at least three years. The proper officials shall place him under parole supervision and, in cooperation with the parole officers, provide for control and shall assist him in obtaining shelter and training. The proper official shall specify a definite period for at least one year and may impose definite conditions for his conduct, as learning a trade, remaining in a specified locality or abstaining from liquor. If, during the parole period, the parolee violates the orders or misuses in any way the liberty given him, the proper official shall return him to the institution. Otherwise, he shall be discharged.

ART. 95. PUNISHMENT]. If the juvenile is neither wayward nor delinquent nor neglected and has not committed a felony or misdemeanor highly dangerous (to public order) and no special treatment seems necessary, the proper official shall reprimand or fine him, or order his detention for a period of one day to one year, provided he committed the act charged. Detention and fine may both be imposed. Where a fine is ordered, the provisions of this Code on fines are applicable. Detention shall not be carried out in an institution used as a penal institution or as a house of correction for adults. Appropriate work shall be assigned. Detention shall be carried out similar to a jail sentence. Detention shall lapse (by limitation) if it is not carried out within three years.

ART. 96. SUSPENDED SENTENCE]. The proper official may suspend the execution of the sentence or fine and may place the con-

victed person<sup>45</sup> under probation for six months to three years if, by his conduct and character, the juvenile may be expected to refrain from further crimes, especially if he has committed no previous or only minor offenses. In this event the juvenile shall be placed on probation, unless special circumstances require an exception to be made. The proper official may order special conditions for his conduct, as learning a trade, remaining within a specified area, or abstaining from liquor. If, during the probation period, the juvenile violates the probation order after formal warning or otherwise abuses the confidence placed in him, the proper official shall order the execution of the sentence. If the juvenile observes the entire probation period, the (proper) official shall order the expunging of the record from the register of criminals.

ART. 97. DELAYED DECISION]. If it cannot be stated with certainty that a juvenile is to be considered wayward, delinquent or neglected or in need of special treatment, the proper official may suspend the imposition of a penalty or of other measures under the conditions mentioned in the preceding article. The juvenile shall be placed on probation for a period of six months to one year. If he does not fulfill the conditions of his probation, the official shall order detention or a fine or other measures which are provided for juveniles. If the juvenile fulfills the probation conditions for the entire period, the official shall order the expunging of the record from the register of criminals.

ART. 98. ABSTAINING FROM ALL MEASURES]. The proper official may refrain from taking any action, if half of the period of limitations has elapsed since the offense was committed.

ART. 99. EXPUNGING ENTRY FROM REGISTER OF CRIMINALS]. The proper official may order, on petition of the offender, that the measures imposed against an offender be expunged from the register of criminals provided that at least ten years have elapsed since their execution, that the conduct of the offender justifies expunging of the record, and that he has made restitution to the best of his ability, as ordered by the court or agreed upon.

### *Sub-Title 3. Minors Eighteen to Twenty Years of Age*

ART. 100]. 1. Whoever, at the time of the offense, has completed his eighteenth year but not his twentieth year,<sup>46</sup> shall be

<sup>45</sup> "Convicted person" is an exact translation and an unusual term in these provisions for juveniles. Generally, the offender is called "the juvenile."

<sup>46</sup> Young persons between the ages of 18 and 21 years are under the jurisdiction of the criminal courts, not under that of the juvenile courts.

sentenced according to the following provisions: Instead of confinement in the penitentiary for life, confinement in the penitentiary from five to twenty years. If the felony or misdemeanor is punishable by imprisonment with a statutory minimum, the court is not bound by this sentence limitation. In case of extenuating circumstances the court may order confinement in a prison from six months to five years instead of confinement in a penitentiary, and jail confinement instead of a prison sentence.

2. This group of convicted persons shall be kept separate, generally, from adult prisoners.

## Part 2. MINOR OFFENSES

ART. 101. MINOR OFFENSES]. Minor offenses are those punishable by jail confinement or fine or by fine only.

ART. 102. APPLICATION]. The (general) provisions of Part One are applicable to minor offenses with the following exceptions.

ART. 103. NON-APPLICATION]. The provisions for the detention of habitual criminals and for loss of civil rights are not applicable (to minor offenses).

ART. 104. LIMITED APPLICATION]. Attempting and aiding minor offenses are punishable only by specific provision of this Code. Commitment to one of the institutions mentioned in Art. 43 to 45 above, deprivation of parental rights and guardianship, deprivation of the right to exercise a vocation, trade or business, banishment and publication of the sentence are applicable (to minor offenses) only where specific provision is made by this Code.

ART. 105. SUSPENDED SENTENCE]. The period of probation under suspended sentence shall be one year.

ART. 106. FINE]. Unless the law specifically provides otherwise, the maximum fine shall be two thousand francs. Whenever the offender's motives were gainful, the court shall not be limited by this maximum.

ART. 107. MITIGATION OF SENTENCE]. Under extenuating circumstances, a fine shall be substituted for jail confinement.

ART. 108. REPEATED OFFENSES]. Repeated (minor) offenses shall not be considered recidivism if, at the time of the commitment of the minor offense, at least one year has elapsed since the offender has served a sentence of imprisonment or was discharged from one of the institutions mentioned in Art. 42 to 45 above.

ART. 109. STATUTE OF LIMITATIONS]. The prosecution of a minor offense shall come within the statute of limitations in six

months; the execution of a sentence for a minor offense within one year.

#### DEFINITION OF LEGAL TERMS

ART. 110]. The following terminology is used in this Code: 1. A woman is any female person sixteen years of age and over.

2. The relatives of a person are the husband or wife, persons in direct line of descent, full-blooded and half-blooded siblings, and adoptive parents and adopted children.

3. Family members are persons living together in a common household.

4. Officials are all officers and employees of a public administrative or juridical body and persons employed or holding public office temporarily or acting temporarily in official capacities.

5. Documents are writings intended or suitable for proving a fact of legal significance or marks intended for the same purpose. Public documents are those drawn by an official holding public office or by a person entrusted with public confidence in that capacity. Writings drawn up by the administration of economic establishments and monopoly industries of the State or of other public authorities and institutions in civil business are not considered public documents.

6. DAY, MONTH AND YEAR]. The day has twenty-four consecutive hours. The month and year are reckoned according to calendar time.

7. Detention pending trial is considered any confinement in jail, detention in the process of investigation or any custodial confinement ordered in a penal procedure.

### BOOK II. SPECIAL PROVISIONS

#### TITLE ONE: OFFENSES AGAINST BODY AND LIFE

*Sec. 1. Homicide.* ART. 111. INTENTIONAL HOMICIDE]. Whoever intentionally kills a human being, except where the following conditions are applicable, shall be confined in the penitentiary for at least five years.

ART. 112. MURDER]. If the offender committed the homicide under circumstances or with such deliberation as to prove specific malice or danger, he shall be confined in the penitentiary for life.

ART. 113. MANSLAUGHTER]. If the offender committed the homicide in a highly emotional state justifiable by the circumstances,

he shall be confined in the penitentiary for not over ten years, or in the prison for not over five years.

ART. 114. MANSLAUGHTER ON REQUEST]. Whoever kills a human being upon the latter's earnest and urgent request, shall be confined in the prison.

ART. 115. INDUCING OR AIDING A SUICIDE]. Whoever, from selfish motives, induces another person to commit suicide or aids him in it, shall be confined in the penitentiary for not over five years, or in the prison, provided that the suicide has either been completed or attempted.

ART. 116. INFANTICIDE]. If a mother intentionally kills her child during delivery or while under the influence of child-birth, she shall be confined in the penitentiary for not over three years, or in the prison for a minimum term of six months.

Sec. 2. Abortion. ART. 118. ABORTION BY A PREGNANT WOMAN]. Whenever a pregnant woman procures the abortion of the foetus or permits an abortion to be done (on herself), she shall be punishable with confinement in the prison. This offense comes within the statute of limitations in two years.

ART. 119. ABORTION BY OTHER PERSONS]. 1. Whoever procures the abortion of the foetus in a pregnant woman with her consent (or) whoever aids a pregnant woman to procure an abortion shall be confined in the penitentiary for not over five years or shall be confined in the prison. This offense comes within the statute of limitations in two years.

2. Whoever procures an abortion of the foetus in a pregnant woman without her consent, shall be confined in the penitentiary for not over ten years.

3. Any person who makes a business of procuring abortions (or) whenever the pregnant woman dies as a consequence of the abortion and if the offender was able to anticipate this consequence, he shall be confined in the penitentiary for at least three years.

ART. 120. PERMISSIBLE INTERRUPTION OF PREGNANCY]. 1. An abortion performed under the following circumstances is not a crime within the meaning of this Code: where the pregnant woman gives her written consent to an abortion to be performed by a licensed physician after the latter has secured the opinion of a second licensed physician (and) where it is necessary (to perform the abortion) to save the life of the pregnant woman which cannot be saved in any other manner, or where there is serious danger of a permanent and serious health damage for the pregnant woman (if the

abortion is not performed). The opinion required in the foregoing shall be given by a specialist in obstetrics who is generally or specially authorized (to give such opinions) by the proper official of the Canton in which the pregnant woman resides or where the operation is to be performed. If the pregnant woman is incapable of making her own judgment, the written consent of her legal representative shall be required.

2. The provisions of an emergency situation (Art. 34, No. 2) are applicable (here) insofar as there exists an otherwise not avertable danger for the life or a grave danger for permanent and serious health damage of the pregnant woman as well as that the interruption of pregnancy was performed by a licensed physician. In such cases the physician, within twenty-four hours after the operation, shall report to the proper official of the Canton in which the abortion was performed.

3. In cases in which the interruption of pregnancy was performed because of other (than the above) emergency situations of the pregnant woman, the court in its discretion may mitigate the sentence (Art. 66).

4. Article 32 is not applicable (here).

ART. 121. FAILURE TO REPORT]. The physician failing to make the required report to the proper authority of an interruption of pregnancy performed by him in accordance with Art. 120, No. 2, shall be punishable with jail confinement or fine.

Sec. 3. Assaults. ART. 122. MAJOR ASSAULTS]. Whoever intentionally injures a human being so as to endanger his life (or) mutilates or disables a part of the body, an important organ or limb of a human being or permanently incapacitates him for work or handicaps him, or causes him to become insane, or seriously and permanently deforms the face of a human being (or) intentionally causes other serious damage to the body or to the physical or mental health of another, shall be confined in the penitentiary for not over ten years or in the prison from six months to five years.

2. If the injured person dies as a consequence of the assault and if the offender was able to anticipate this effect, the penalty shall be confinement in the penitentiary.

ART. 123. SIMPLE ASSAULT]. 1. Whoever intentionally or otherwise injures the person or health of another shall be confined in the prison on petition (of the injured person). In minor cases, the court in its discretion may mitigate the sentence (Art. 66). Where the offender used a poison, weapon, or a dangerous instrument or



injured a helpless person, he shall be prosecuted officially<sup>47</sup> and shall be confined in the prison.

2. If the offender intended a simple assault but caused a serious assault and if he was able to anticipate this, he shall be prosecuted officially and sentenced to the prison from one month to five years.

3. If the injured person dies as a consequence of the assault and if the offender was able to anticipate this, he shall be prosecuted officially and shall be confined in the penitentiary for not over five years or in the prison from one to five years.

ART. 124. ACCIDENTAL RESULTS]. If serious consequences were not intended or not anticipatable by the offender, he shall be punished for the assault which he intended.

ART. 125. NEGLIGENCE]. Whoever, by negligence, injures the body or health of a human being shall be punishable, on petition, with prison confinement or a fine. If the injury is serious, the offender shall be prosecuted officially.

ART. 126. ACTS OF VIOLENCE]. Whenever acts of violence against another person do not cause bodily or health damage, the offender shall be confined to jail or fined, on petition (of the injured person).

*Sec. 4. Endangering Life and Health.* ART. 127. ABANDONMENT]. 1. Whoever exposes a helpless person under his protection or care to danger of his life or to grave immediate danger of his health or similarly abandons such a person, shall be confined in the penitentiary for not over five years or in the prison for at least one month.

2. In case the abandonment resulted in the death of the exposed person and the offender was able to anticipate this, he shall be confined in the penitentiary.

ART. 128. ABANDONMENT OF AN INJURED PERSON]. Whoever fails to render aid to a person whom he has injured or who has been injured by the offender's vehicle, riding or draught animal, shall be confined in the prison or fined.

ART. 129. ENDANGERING LIFE]. Whoever knowingly and unscrupulously places a human being in immediate danger of his life shall be confined in the penitentiary for not over three years or in the prison for a minimum term of one month. If the offender acted from gainful motives, a fine shall also be imposed. If the act re-

<sup>47</sup> "Official prosecution"—where the prosecution is initiated by the state, rather than by "petition" of the injured person. See Art. 28 to 31, footnote No. 13, on "petition."

sulted in death, the offender shall be confined in the penitentiary for not over ten years.

ART. 130. CHALLENGE TO DUEL], omitted.

ART. 131. DUEL], omitted.

ART. 132. AIDING DUEL], omitted.

ART. 133. RIOTING]. Whoever participates in a brawl which causes the death or bodily injury of a participant shall be punishable by confinement in the prison or by a fine, unless he only defended himself or separated the participants.

ART 134. MISTREATMENT OR NEGLECT OF CHILDREN]. 1. Whoever mistreats or neglects or brutalizes a child under sixteen years of age under his protection or care so that the child's health or mental development is injured or endangered, shall be confined in the prison for not less than one month. If the mistreatment or neglect results in serious injury to the person of the child and if the offender was able to anticipate this, he shall be confined in the penitentiary for not over ten years or in the prison for not less than six months. If it results in the death of the child and if the offender was able to anticipate this, he shall be confined in the penitentiary.

2. The court shall inform the guardianship authorities (in these cases) so that the necessary protective measures may be taken for the child.

ART. 135. OVER-WORKING CHILDREN AND SUBORDINATES]. 1. Whoever, from selfish or malicious motives, over-works the physical or mental capacities of his minor child or of a subordinate, minor, female, disabled or feeble-minded employee, worker, apprentice, domestic servant, pupil, or foster-child so that its health is damaged or seriously endangered, shall be imprisoned or fined. If the over-work has caused a permanent health injury and if the offender was able to anticipate this, the punishment shall be confinement in the penitentiary for not over five years or in the prison for a minimum of six months. If the over-work results in death and the offender was able to anticipate this, he shall be confined in the penitentiary for not over ten years.

2. The court shall inform the proper authorities (in order) to provide the necessary measures for the protection of the over-worked person.

ART. 136. GIVING LIQUOR TO CHILDREN], omitted.

## TITLE TWO: OFFENSES AGAINST PROPERTY

*Sec. 1. Offenses Against Ownership.*<sup>48</sup> ART. 137. LARCENY].

1. Whoever (feloniously) takes away a movable object belonging to another for his own or another's unlawful profit shall be confined in the penitentiary for not over five years or in the prison.

2. The sentence shall be confinement in the penitentiary for not over ten years or in the prison for not less than three months: if the thief<sup>49</sup> commits the larceny with associates who have banded together for repeated commission of robbery or larceny; if the offender makes a business of larceny; (or) if the larceny proves in other ways the extraordinary (social) danger of the offender.

3. Theft from a relative or a member of the same family shall be prosecuted only on petition.

ART. 138. PETIT LARCENY<sup>50</sup>]. Whoever appropriates a movable object, of minor value, belonging to another because of his need, thoughtlessness, or desire, shall, on petition, be confined in jail for not over eight days or fined. If the offender acted because of need, the court may refrain from sentence.

ART. 139. ROBBERY]. 1. Whoever uses force against a person with the intent of committing larceny, or when surprised in a larceny, or threatens his person or life or renders him incapable of resisting, shall be confined in the penitentiary, or in the prison for not less than six months.<sup>51</sup>

2. The robber<sup>52</sup> shall be confined in the penitentiary for not less than five years: if he threatens another with death or if he commits a major assault (on him); or if he commits the robbery as a member of a group which has banded together for repeated robbery or larceny; or if the robbery proves in other ways the special (social) danger of the offender. A life sentence in the penitentiary may be imposed if the person against whom force was used dies and if the offender was able to anticipate this, or if he acted with unusual cruelty against another person.

ART. 140. EMBEZZLEMENT]. 1. Whoever embezzles a movable

<sup>48</sup> "Offenses against ownership" is the exact translation of *Eigentum*—the ultimate right to dispose of anything.

<sup>49</sup> Only in this article does the Code use the term *Dieb* which is translated exactly as "thief." This is an unusual usage for the Code. In all other places the word is *Täter* or the "offender." See also Art. 139, No. 2, for a similar term.

<sup>50</sup> In marked contrast to American Codes, the distinction here between petit larceny and grand larceny is not on a monetary basis.

<sup>51</sup> The minimum term of six months refers to prison sentences, not to penitentiary sentences.

<sup>52</sup> In this article the original Code word is *Räuber* which we have translated exactly as "robber."

object belonging to another (but) entrusted to him, with the felonious intent of his own or another's profit, or whoever converts entrusted goods, particularly money, fraudulently to his or another's profit, shall be confined in the prison for not over five years.

2. Whoever commits the offense in his capacity as a member of an authority, as an official, guardian, custodian, professional trustee or manager or in the exercise of a vocation, trade or business for which he has been officially licensed, shall be confined in the penitentiary for not over ten years or in the prison for not less than one month.

3. Embezzlement from a relative or a member of the same family shall be prosecuted only on petition.

ART. 141. CONVERSION.] Whoever, for his own or another's profit, fraudulently appropriates movable goods belonging to another but which have come to the offender by accident (of nature), error, fortuity or otherwise without the offender's initiative or embezzles an animal belonging to another which has come into his possession, or embezzles a movable object belonging to another which he has found, shall, on petition, be confined in the prison or fined.

ART. 142. MINOR EMBEZZLEMENT AND CONVERSION]. The embezzlement and conversion of goods and the conversion of found goods of minor value shall, on petition, be punished with confinement in jail for not over eight days or by a fine.

ART. 143. REMOVING GOODS]. Whoever, with no selfish intent, takes away a movable object from its owner and thereby injures him shall, on petition, be confined in the prison or fined. In particularly minor cases, the penalty shall be (only) a fine.

ART. 144. RECEIVING]. Whoever receives or accepts as a gift goods which he knows to be stolen or which he may be expected to know were obtained by crime, or takes them as a pawn, conceals them, or aids in selling them, shall be confined in the penitentiary for not over five years or in the prison. In particularly minor cases, the court may order a fine. If the offender makes a business of concealing stolen goods, he shall be confined in the penitentiary for not over ten years and shall be fined.

ART. 145. DAMAGE]. Whoever damages, destroys or ruins an object belonging to another shall, on petition, be confined in the prison or fined. If the offender maliciously caused serious damage, he shall be officially prosecuted and confined in the penitentiary for not over five years.

ART. 146. LARCENY OF POWER]. Whoever unlawfully takes

power belonging to another from an institution producing natural power, especially from an electric power plant, shall be confined in the prison or fined. If the offender intended to make an unlawful profit for himself or another, he shall be confined in the penitentiary for not over five years or in the prison.

ART. 147. REMOVAL OF PAWNED GOODS]. The debtor who sells the movable pawn left in his possession or destroys, devaluates, or ruins the immovable or the movable pawn left in his possession, with intent to injure his creditor (or) the debtor who removes, damages, devaluates or ruins the pawned or pledged object<sup>53</sup> in the possession of the creditor with intent to injure the creditor (or) any third person acting similarly for the advantage of the owner (or) any third person who takes away from the creditor the pawned or pledged object or damages or destroys or devaluates or ruins it, shall, on petition, be confined in the prison.

Sec. 2. *General Offenses Against Property.* ART. 148. FRAUD]. Any person who, with intent to make an unlawful profit for himself or another, shall fraudulently mislead another person by falsely representing or concealing facts or shall fraudulently use the error of another and thus cause the deceived person to act detrimentally against his own or another's property, shall be confined in the penitentiary for not more than five years or in the prison. The offender shall be punishable with a penitentiary term of not over ten years and fined if he makes a business of committing frauds. Defrauding a relative or a member of (one's) own family shall be prosecuted on petition only.

ART. 149. MALICIOUS DAMAGE OF PROPERTY]. Whoever maliciously misleads another by false representation or concealment of facts or whoever maliciously uses the error of another to cause the deceived person to damage his own or another's property, shall, on petition, be confined to jail or fined. Abettors and accessories to this offense are also punishable.

ART. 150. DEFRAUDING AN INNKEEPER]. Whoever lodges in a hotel or boarding house, has food or drinks served him in an inn or a boarding house and defrauds the proprietor of the amount of the bill shall, on petition, be confined in the prison or jail or fined.

ART. 151. TRICKERY], omitted.

ART. 152. FALSE BUSINESS DECLARATIONS], omitted.

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<sup>53</sup> "Pledged object" is more literally translated as "object of retention," which includes, besides pawned objects, goods which have been left for repairs and not yet paid for; the personal property of tenants or lodgers which the landlord may seize (up to double the amount owed) for unpaid rent, etc.

ART. 153. ADULTERATED GOODS], omitted.

ART. 154. SELLING ADULTERATED GOODS], omitted.

ART. 155. IMPORT AND STORAGE OF ADULTERATED GOODS], omitted.

ART. 156. EXTORTION]. 1. Whoever, by force or grave threats or having made a person otherwise incapable of resisting, forces another to grant him or another an unlawful material advantage (or) whoever, by threat of publication, accusation or disclosure of information detrimental to him or to a person close to him, causes another to purchase his silence by material advantage, shall be confined in the penitentiary for not over five years or in the prison. A fine may also be imposed.

2. The offender shall be confined in the penitentiary for not over ten years and fined if he makes a practice of extortion or if he repeatedly extorts from the same person.

ART. 157. USURY]. 1. Whoever exploits the precarious situation, the dependency, the feeble-mindedness, the inexperience, the weakness of character or the thoughtlessness of another, for his own or another's material advantage or promise of such advantage for work in obvious disproportion to the recompense (or) whoever acquires a usurious claim knowing the facts and assigns it or demands its satisfaction shall be confined in the penitentiary for not over five years or in the prison. A fine may also be imposed.

2. The usurer shall be confined in the penitentiary for not over ten years and fined if he knowingly caused the economic ruin of another (or) if he makes a practice of usury.

ART. 158. INDUCING SPECULATION]. Whoever, with intent of material advantage for himself or another, exploits the inexperience of another on the stock market or his thoughtlessness to induce him to speculate in stock or goods knowing or able to know that the speculation is in obvious disproportion to his resources, shall be confined in the prison or fined.

ART. 159. UNFAITHFUL MANAGEMENT]. Whoever dissipates the resources of another person entrusted to him by law or contract shall be confined in the prison. If the offender acted from selfish motives, he shall be confined in the prison for not over five years and fined. Unfaithful management to the disadvantage of a relative or a member of the (same) family shall be prosecuted on petition only.

*Sec. 3. Offenses Against Intangible Legal Rights.*

ART. 160. DAMAGING CREDIT], omitted.

ART. 161. UNFAIR COMPETITION], omitted.

ART. 162. VIOLATION OF BUSINESS SECRETS], omitted.

*Sec. 4. Bankruptcy Offenses.*

ART. 163. FRAUDULENT BANKRUPTCY], omitted.

ART. 164. FRAUDULENT EXECUTION], omitted.

ART. 165. BANKRUPTCY BY THOUGHTLESSNESS], omitted.

ART. 166. FAILURE TO RENDER AN ACCOUNTING], omitted.

ART. 167. PRIVILEGE TO ONE CREDITOR], omitted.

ART. 168. PURCHASING VOTES], omitted.

ART. 169. DISPOSAL OF RECORDED ASSETS], omitted.

ART. 170. TRICKERY IN AGREEMENTS], omitted.

ART. 171. LOSS OF CIVIL RIGHTS], omitted.

*Sec. 5. Application to Juridical Persons and Business Associations.*

ART. 172. APPLICATION OF ART. 147 AND 163 TO ART. 170], omitted.

TITLE THREE: OFFENSES AGAINST HONOR

*Sec. 1. Violations of Honor.*

ART. 173. SLANDER], omitted.

ART. 174. MALICIOUS SLANDER], omitted.

ART. 175. SLANDER AND MALICIOUS SLANDER AGAINST A DECEASED PERSON], omitted.

ART. 176. GENERAL RULES], omitted.

ART. 177. INSULT], omitted.

ART. 178. STATUTE OF LIMITATIONS], omitted.

*Sec. 2. ART. 179. TAMPERING WITH MAIL], omitted.*

TITLE FOUR: OFFENSES AGAINST LIBERTY

ART. 180. THREATS]. Whoever frightens or terrifies another by grave threats shall, on petition, be confined in the prison or be fined.

ART. 181. DURESS]. Whoever compels another person by force or threat of serious damage or by other limitation of his freedom of acting, to do, to omit, or to tolerate anything, shall be confined in the prison or be fined.

ART. 182. DEPRIVATION OF LIBERTY]. 1. Whoever illegally arrests another person, keeps him a prisoner, or otherwise deprives him of his liberty, shall be confined in the prison.

2. The offender shall be confined in the penitentiary, if he deprives a female of her liberty in order to rape her or to force her

into prostitution; (or) if he deprives a person of his liberty or causes such deprivation by a false accusation of insanity; (or) if he treats the person cruelly or if the deprivation of liberty lasted over one month.

ART. 183. ABDUCTION]. Whoever forcibly abducts a woman against her will or after obtaining her consent by trickery or threats shall, on petition, be confined in the prison for not less than three months. If the abducted person marries the abductor, she may petition (for prosecution) only if on her complaint the marriage has been annulled. The period for (filing a) petition begins with the validity of the annulment. If the offender abducts a woman in order to rape her or to force her into prostitution, he shall be prosecuted officially and confined in the penitentiary.

ART. 184. ABDUCTION OF A HELPLESS PERSON]. Whoever abducts an insane, imbecilic, feebleminded, or mentally disturbed woman, or a woman incapable of defending herself, knowing her condition, shall be confined in the prison for not less than three months. If the offender abducts the woman in order to rape her or to force her into prostitution, he shall be confined in the penitentiary for not over ten years.

ART. 185. KIDNAPPING]. Whoever abducts a child under sixteen years of age for monetary gain or for ransom shall be confined in the penitentiary for not over five years or in the prison for not less than six months. If the offender abducts the child in order to rape it, or to have it raped, he shall be confined in the penitentiary for not less than three years.

ART. 186. DISTURBANCE OF DOMESTIC PEACE], omitted.

#### TITLE FIVE: OFFENSES AGAINST MORALITY

*Sec. 1. Violation of Sexual Liberty and Honor.* ART. 187. RAPE]. Whoever forcibly or by grave threats compels a woman to tolerate illicit copulation shall be confined in the penitentiary. Whoever copulates illicitly with a woman after having rendered her unconscious or incapable of resisting shall be confined in the penitentiary for not less than three years.

ART. 188. OTHER IMMORAL ACTS]. Whoever, forcibly or by grave threats or having otherwise made her incapable of resisting, compels a woman to tolerate or perform other immoral acts, shall be confined in the penitentiary for not over five years or in the prison.

ART. 189. RAPE OF HELPLESS PERSON]. Whoever copulates il-



licitly with an imbecile, an insane or unconscious woman, or with a woman incapable of resisting, knowing her condition, shall be confined in the penitentiary for not over ten years. Whoever performs other immoral acts with an imbecile, an insane or an unconscious woman or a woman incapable of resisting, knowing her condition, shall be confined in the penitentiary for not over five years or in the prison.

ART. 190. IMMORALITY WITH THE FEEBLEMINDED]. Whoever copulates illicitly with a feeble-minded woman or with a woman of considerably disturbed mental health, knowing her condition, shall be confined in the penitentiary for not over five years or in the prison for not less than one month. Whoever performs (any) other immoral act with a feeble-minded woman or with a woman of considerably disturbed mental health, knowing her condition, shall be confined in the prison.

ART. 191. IMMORALITY WITH CHILDREN]. 1. Whoever abuses a child under sixteen years of age for copulation or similar act, shall be confined in the penitentiary. If the child is the student, pupil,<sup>54</sup> apprentice, domestic servant or the child, grandchild, adopted or step-child, the ward or the foster child of the offender, he shall be confined in the penitentiary for not less than three years.

2. Whoever performs an immoral act (other than copulation or similar sexual offense) with a child under sixteen years of age or whoever induces such a child to immorality (or) whoever performs an immoral act before such a child, shall be confined in the penitentiary for not over five years or in the prison. If the child is the student, pupil, apprentice, domestic servant, or the child, grandchild, adopted child, step-child, ward or foster child of the offender, he shall be confined in the penitentiary, or in the prison for a minimum term of six months.

3. If the offender committed the offense in the erroneous belief that the child was at least sixteen years of age but if, by due caution, he could be expected to avoid this error, he shall be confined in the prison.

ART. 192. IMMORALITY WITH MINOR CHILD]. 1. Whoever copulates with a minor older than sixteen years of age who is his adopted child, step-child, foster-child, ward, student, pupil, apprentice, or domestic servant—over sixteen but under eighteen years of

<sup>54</sup> "Student"—where a teacher-student relationship is involved; "pupil"—where a custodial relationship is involved, as between an institution official and a child under official custody or commitment.

age<sup>55</sup>—shall be confined in the penitentiary for not over five years or in the prison for not less than three months.

2. Whoever performs (any) other immoral act with a minor over sixteen years of age who is his child, grand-child, adopted child, step-child, foster-child, ward, student, pupil, apprentice, or domestic servant—over sixteen but under eighteen years of age—(or) whoever induces such a person to commit an immoral act, shall be confined in the penitentiary for not over three years or in the prison.

ART. 193. IMMORALITY WITH INSTITUTIONAL PUPILS, ETC.]. Whoever copulates with a person in the care of a hospital, of an institution for the poor or aged, or with a person committed to an institution by official order, (or) with a prisoner, an arrested or accused person, shall be confined in the penitentiary for not over three years or in the prison for not less than one month, provided that the person is under the offender's supervision or is dependent upon him. If the offender commits any other immoral act with such a person, he shall be confined in the prison.

ART. 194. CRIME AGAINST NATURE]. Whoever induces a minor person of the same sex over sixteen years of age to commit or tolerate an immoral act (or) whoever obtains the tolerance or performance of an immoral act by a person of the same sex by abusing an emergency or a dependency based on an official or employment or similar relationship, (or) whoever habitually practices immoral acts with a person of the same sex, shall be confined in the prison.

ART. 195. AGGRAVATING CIRCUMSTANCES]. The following provisions are applicable to the crimes mentioned in Art. 187 to 194: If a person dies as a consequence of the offense and if the offender was able to anticipate this, he shall be confined in the penitentiary for not less than five years. If the health of the person was seriously damaged by the offense and if the offender was able to anticipate this, or if the offense was committed under brutal conditions, he shall be confined in the penitentiary for not less than three years.

ART. 196. SEDUCTION]. Whoever induces a minor female between sixteen and eighteen years of age to copulate (with him) by abusing her lack of experience or her confidence shall, on petition, be confined in the prison. The offender shall not be punishable if the seduced person marries him.

ART. 197. ABUSE OF THE EMERGENCY OR DEPENDENCY OF A WOM-

<sup>55</sup> The age limits "16 to 18 years" apply only to domestic servants; for all others, they remain "16 to 21 years." The same restriction applies equally to Art. 192, No. 2.

AN]. Whoever influences a woman to copulate with him by abuse of her emergency<sup>56</sup> or her dependency caused through an official or an employment relation or through other similar situation, shall be confined in the prison. The offender shall not be punishable if the woman marries him.

*Sec. 2. Aiding or Exploiting Prostitution.* ART. 198 PIMPING]. Whoever, from gainful motives, assists in prostitution, shall be confined in the prison. If the pandered person is a minor, the penalty shall be confinement in the penitentiary for not over five years or in the prison for not less than three months. In all cases a fine shall also be imposed.

ART. 199. KEEPING A BAWDY HOUSE]. If the offender makes a practice of pimping, especially if he operates a brothel, he shall be confined in the penitentiary for not over five years or in the prison for not less than six months and shall be deprived of his civil rights. If the pimping involved a minor, the offender shall be confined in the penitentiary for not over ten years. In all cases a fine shall also be imposed and, if the offender is an alien, banishment also.<sup>57</sup>

ART. 200. AIDING PROSTITUTION]. Whoever, without gainful motives, aids in prostitution with persons under eighteen years of age or encourages such a person in prostitution, shall be confined in the prison.

ART. 201. PANDERING]. Whoever is supported fully or partially by a person engaged in prostitution and thus exploits her immoral earnings, (or) whoever, from gainful motives, protects such a person in the exercise of her trade, shall be confined in the penitentiary for not over five years or in the prison for not less than six months and shall be deprived of his civil rights.

ART. 202. TRADING IN WOMEN AND CHILDREN]. 1. Whoever, with the purpose of assisting in the practice of prostitution by another person, trades in women and children, especially in hiring, kidnapping or abducting them, shall be confined in the penitentiary.<sup>58</sup>

2. The penalty shall be confinement in the penitentiary for not

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<sup>56</sup> The sense of "influences a woman to couple with him" gives the meaning of persuasion by a male of a female for sex purposes and also where advantage is taken of the woman's necessity to work or to retain her position.

<sup>57</sup> Legislative intent is shown also in this provision against keepers of brothels. Mandatory loss of civil rights follows conviction. Apparently the Swiss do not believe that such persons are desirable as participants in communal and civic affairs.

<sup>58</sup> This mild attitude is understandable by the fact that trading in women and children is rarely found in Switzerland.

less than three years: if the person<sup>59</sup> has not yet completed the eighteenth year; if she is the wife, child, grandchild, adopted or step-child of the offender, or if she was entrusted to him for care, protection or supervision; if the offender used trickery, force, or threats or coercion; if he exploited the emergency or the dependency of this person resulting from an employment relation; if the person was transported into a foreign country; if the person is to be handed over to a bawdy-house keeper, (or) if the offender makes a practice of trading in women or children.

3. Whoever makes special provisions for trading in women and children shall be confined in the penitentiary or in the prison.

4. In all cases a fine shall also be imposed and, if the offender is an alien, banishment also.

5. The offender shall be punishable also if the crime was committed abroad and the offender is seized in Switzerland and not extradited, provided that the offense is punishable also at the place of commitment.

*Sec. 3. Violation of Public Decency.* ART. 203. PUBLIC OBSCENITY]. Whoever commits an obscene act publicly shall be confined in the prison or fined.

ART. 204. OBSCENE PUBLICATIONS]. 1. Whoever produces obscene documents, pictures, films, or other obscene things or stores them for sale, distribution or public exhibition, (or) whoever shall import, forward, export, or otherwise carry them for such purpose, (or) whoever publicly or secretly shall sell, distribute, publicly exhibit, or make a practice of renting such matter, (or) whoever with the intent to further the illegal distribution or the illegal trade shall advertise or otherwise announce that a person is engaged in the offenses mentioned, (or) whoever shall advertise or announce the manner and the person through whom the matters above mentioned may be directly or indirectly obtained, shall be confined in the prison or fined.

2. Whoever shall give or demonstrate such things to a person under eighteen years of age, shall be confined in the prison or fined.

3. The court shall order the destruction of the obscene objects (involved).

*Sec. 4. Minor Offenses Against Morals.* ART. 205. OBSCENE MOLESTATION]. Whoever, without cause, shall publicly molest another person, with obscene intent, shall, on petition, be confined in the jail or fined.

<sup>59</sup> "The person," that is, the victim.

ART. 206. SOLICITING]. Whoever makes a practice of soliciting another person for prostitution, by demands or offers, shall be confined in the jail or fined.

ART. 207. MOLESTATION BY PROSTITUTION]. Whoever annoys the fellow-lodgers of a house or the neighbors by the practice of prostitution as a business, shall, on petition, be confined in the jail or fined.

ART. 208. PROVISIONS FOR MINORS]. If a minor person over eighteen years of age commits a minor offense against Art. 206 or 207 (offenses against morals), the court shall order a thorough investigation of her physical and mental health and her education and, in all dubious cases, shall request a medical report. The court may commit the minor to a house of correction or may transfer her to the guardianship authority or to a private agency for the correction of depraved minors.

ART. 209. TOLERANCE OF PROSTITUTION], omitted.

ART. 210. ADVERTISING PROSTITUTION], omitted.

ART. 211. CONTRACEPTIVE DEVICES], omitted.

ART. 212. ENDANGERING MORALS OF YOUTH], omitted.

#### TITLE SIX: OFFENSES AGAINST THE FAMILY

ART. 213. INCEST]. Copulation between persons in the direct line of consanguinity and between full- and half-blooded siblings shall be punishable with confinement in the penitentiary for not over three years or in the prison for not less than one month. Whoever shall copulate with his minor relative, over sixteen years of age, in the direct line of consanguinity shall be confined in the penitentiary for not over ten years. Minors shall not be punishable if they are seduced by adults. This provision shall come within the statute of limitations in two years.

ART. 214. ADULTERY]. A married person<sup>60</sup> committing adultery and the partner guilty with him (or her) shall, on petition of the injured lawful spouse, be confined in the prison for not over one year or shall be fined, if a divorce or legal separation ensued as a result of this offense. If at the time of the commission of the offense there was a legal separation or if the petitioner had himself (or herself) committed adultery or was guilty of one of the acts

<sup>60</sup> "Adultery"—both partners involved are held here equally guilty of the offense and equally punishable; contrast with American provisions where the married person is more severely punished.

mentioned in Art. 138 to 140 of the Civil Code,<sup>61</sup> the court may refrain from imposing any penalty. The petition shall be filed within three months from the day on which judgment of divorce or (legal) separation becomes valid. The spouse who consents to or condones the adultery shall not be entitled to petition. If the injured spouse dies, the prosecution and the execution of the sentence shall void.

ART. 215. BIGAMY]. Whoever, being already married, marries another person shall be confined in the penitentiary for not over five years or in the prison for not less than three months. The unmarried person who knowingly contracts a marriage with a married person shall be confined in the penitentiary for not over three years or in the prison.

ART. 216. PERSONAL STATUS]. Whoever conceals or falsifies the personal status<sup>62</sup> of another person, especially whoever substitutes a child, shall be confined in the prison, or, in serious cases, in the penitentiary for not over five years.

ART. 217. NON SUPPORT]. Whoever maliciously or by idleness or disorderliness does not fulfill his family obligation to support or assist his relatives (or) does not fulfill his legal or voluntarily agreed upon material obligations toward a woman illegitimately pregnant by him or toward his illegitimate child, shall be confined in the prison.

ART. 218. ABANDONMENT OF A PREGNANT WOMAN]. Whoever abandons a woman knowing she is illicitly pregnant by him and in straitened circumstances and thereby surrenders her to distress shall, on petition, be confined in the prison.

ART. 219. VIOLATION OF EDUCATIONAL DUTY]. Parents who shed their responsibilities by surrendering their child for permanent foster care to persons with whom they know he is morally or physically endangered or may expect him to be so endangered shall be confined in the prison. If the surrender was made from gainful motives, the sentence shall be to the prison for not less than three months.

ART. 220. WITHHOLDING MINORS]. Whoever shall remove or withhold a minor from the lawful representative of parental or guardianship rights shall, on petition, be confined in the prison or fined.

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<sup>61</sup> Art. 138 to 140 of the Civil Code relate to violations of marital duties by attempt at homicide, by mistreatment, slander, criminal conduct, dishonesty or desertion.

<sup>62</sup> "Personal status" includes all statements as to the identity of a person, family, relationship, etc.

## TITLE SEVEN: OFFENSES AGAINST SAFETY

ART. 221. ARSON]. Any person who wilfully sets a fire which causes damage to another or which provokes a common danger shall be confined in the penitentiary. If the offender knowingly endangers the person and life of human beings, he shall be sentenced to the penitentiary for not less than three years. If only minor damage has resulted, the court may order a prison sentence.

ART. 222. CAUSING A FIRE BY NEGLIGENCE]. Whoever negligently sets a fire which causes damage to another or which creates a common danger shall be sentenced to the prison or fined. If the offender, by negligence, endangers the person or life of human beings, he shall be sentenced to the prison.

ART. 223. CAUSING AN EXPLOSION]. 1. Any person who wilfully causes an explosion of gas, benzine, petroleum, or similar products, and thereby knowingly endangers the person and life of human beings or the property of another shall be confined in the penitentiary. A prison sentence may be ordered if only minor damage has resulted.

2. If the offender acted negligently, the penalty shall be confinement in the prison or fine.

ART. 224. MALICIOUS EXPLOSIONS]. Whoever wilfully and with criminal intent endangers the person, life or property of another by explosives or poison gas shall be sentenced to the penitentiary. A prison sentence may be imposed if property of minor value only was endangered.

ART. 225. NO CRIMINAL INTENT OR NEGLIGENCE ONLY]. Any person who wilfully, but without criminal intent, or negligently endangers the person or life or property of another by explosives or poison gas shall be sentenced to the prison for not over five years. In minor cases a fine may be imposed.

ART. 226. MANUFACTURE, ETC., OF EXPLOSIVES OR POISON GAS]. Whoever manufactures explosives or poison gas which he knows or may expect will be used for criminal purposes shall be sentenced to the penitentiary for not over ten years or to the prison for not less than six months. Whoever acquires, transfers to another, obtains from another, stores, conceals, or forwards explosives, poison gas or materials suitable for their manufacture shall be sentenced to the penitentiary for not over five years or to the prison for not less than one month. Whoever gives instruction in the manufacture of explosives or poison gas to another who, as he knows, will or may be expected to use them for criminal purposes shall be sen-

tenced to the penitentiary for not over five years or to the prison for not less than one month.

ART. 227. CAUSING A DROUGHT OR CRASH], omitted.

ART. 228. DAMAGING ELECTRIC POWER WORKS], omitted.

ART. 229. DANGER BY VIOLATING ARCHITECTURAL RULES], omitted.

ART. 230. SAFETY DEVICES], omitted.

#### TITLE EIGHT: OFFENSES AGAINST PUBLIC HEALTH

ART. 231. SPREADING HUMAN DISEASES]. 1. Whoever wilfully distributes a dangerous, contagious human disease shall be sentenced to the prison for not less than one month and not over five years. If the offender acted with malicious intent, the penalty shall be confinement in the penitentiary for not over five years.<sup>63</sup>

2. If the offender acted negligently, he shall be confined in the prison or fined.

ART. 232. SPREADING ANIMAL DISEASES]. 1. Whoever wilfully spreads an epidemic among domestic animals shall be confined in the prison. If the offender, by malicious intent, has caused serious damage, he shall be sentenced to the penitentiary for not over five years.

2. If the offender acted negligently, he shall be sentenced to the prison or fined.

ART. 233. SPREADING PARASITES]. 1. Whoever intentionally spreads parasites dangerous to agriculture or forestry shall be confined in the prison. If the offender maliciously caused serious damage, he shall be sentenced to the penitentiary for not over five years.

2. If the offender acted negligently, he shall be sentenced to the prison or fined.

ART. 234. SOILING DRINKING WATER], omitted.

ART. 235. FOOD DANGEROUS TO ANIMALS], omitted.

ART. 236. SELLING UNWHOLESOME ANIMAL FOOD], omitted.

#### TITLE NINE: OFFENSES AGAINST PUBLIC TRAFFIC

ART. 237. DISTURBING PUBLIC TRAFFIC], omitted.

ART. 238. DISTURBING RAILWAY TRANSPORTATION], omitted.

ART. 239. DISTURBING ESTABLISHMENTS SERVING THE COMMUNITY], omitted.

<sup>63</sup> "Spreading human diseases" is also applicable to the control of venereal diseases, where a person actively contagious refuses to undergo medical treatment. In this sense, it becomes one manner of controlling vice.



## TITLE TEN: COUNTERFEITING

- ART. 240. COUNTERFEITING], omitted.  
ART. 241. DEBASING CURRENCY AND COINS], omitted.  
ART. 242. DISTRIBUTING COUNTERFEIT MONEY], omitted.  
ART. 243. DEPRECIATION OF COINS], omitted.  
ART. 244. DEALING IN COUNTERFEIT MONEY], omitted.  
ART. 245. COUNTERFEITING OFFICIAL STAMPS], omitted.  
ART. 246. COUNTERFEITING OFFICIAL SIGNS], omitted.  
ART. 247. TOOLS FOR COUNTERFEITING], omitted.  
ART. 248. COUNTERFEITING WEIGHTS AND MEASURES], omitted.  
ART. 249. FORFEITURE], omitted.  
ART. 250. FOREIGN MONEY AND STAMPS], omitted.

## TITLE ELEVEN: FORGERY

ART. 251. FORGERY]. 1. Whoever with the intent of injuring the property or other rights of another, or to obtain an unlawful profit for himself or another falsifies or tampers with a document, uses the original signature or mark of another to produce a false document, or falsely deposes a fact of legal importance or causes it to be deposed, (or) uses for deception a document of this sort produced by another shall be sentenced to the penitentiary for not over five years or to the prison.

2. In case the forgery or misuse concerns a public register (or) document, a hand-written will, bonds, drafts, or other negotiable papers, the penalty shall be confinement in the penitentiary for not over five years or in the prison for not less than six months.

3. In particularly minor cases, the court may impose a prison sentence or a fine.

ART. 252. COUNTERFEITING IDENTIFICATIONS]. 1. Whoever, with the intent of facilitating his or another's gain, counterfeits or tampers with certificates, diplomas or identification papers, (or) uses for deception a document of this sort produced by another (or) uses for deception a genuine document of this sort not made for him, shall be sentenced to the prison or fined.

2. Whoever makes a practice of counterfeiting or falsifying or trading in such documents shall be sentenced to the prison for not less than one month.

ART. 253. OBTAINING FALSE CERTIFICATE BY TRICK]. Any person causing an official or other public authority to certify falsely to a fact of legal significance, especially to identify a wrong sig-

nature or copy, (or) whoever uses such a document obtained by trick to deceive another respecting the fact stated therein, shall be sentenced to the penitentiary for not over five years or to the prison.

ART. 254. SUPPRESSION OF DOCUMENTS]. Whoever, with intent to injure the property or other rights of another, damages, destroys, conceals, or steals a document which he is not entitled to dispose of alone, shall be sentenced to the penitentiary for not over five years or to the prison. The suppression of documents to the disadvantage of relatives or members of the (same) family shall be prosecuted only on petition.

ART. 255. FOREIGN DOCUMENTS]. The provisions of Art. 251 to 254 are also applicable to documents of foreign countries.

ART. 256. REMOVAL OF LAND-MARKS], omitted.

ART. 257. REMOVAL OF SURVEYOR'S SIGNS], omitted.

#### TITLE TWELVE: OFFENSES AGAINST PUBLIC PEACE

ART. 258. COMMON INTIMIDATION]. Any person who shall intimidate the population by threats to the person, life or property, especially by threats of murder, looting or arson, shall be sentenced to the penitentiary for not over three years or to the prison.

ART. 259. PUBLIC PROVOCATION OF CRIME]. Whoever publicly provokes a felony shall be sentenced to the penitentiary for not over three years or to the prison.

ART. 260. VIOLATION OF PUBLIC PEACE]. Whoever participates in a public riot in which assaults are committed by a mob against humans or objects shall be sentenced to the prison or fined. Those participants dispersing upon official demand shall not be punishable provided that they did not use force or initiate the violence.

ART. 261. VIOLATION OF LIBERTY OF CREED AND WORSHIP]. Whoever publicly and maliciously insults or ridicules the religious creed of others, especially faith in God, or desecrates things of religious sanctity, (or) whoever maliciously prevents, disturbs or publicly ridicules a worship guaranteed by the Constitution, (or) whoever maliciously profanes any place or any object serving a cult guaranteed by the Constitution or such a worship, shall be sentenced to the prison for not over six months or fined.

ART. 262. VIOLATION OF THE SANCTITY OF THE DEAD], omitted.

ART. 263. OFFENSES COMMITTED WHILE UNCONSCIOUS]. Whoever becomes unconscious as a result of drunkenness or because of stupefaction caused by himself and in this condition commits an act

punishable as a felony or misdemeanor, shall be sentenced to the prison for not over six months or fined. If the offender in this self-induced condition committed an act punishable only by a penitentiary term, he shall be sentenced to the prison.<sup>64</sup>

ART. 264. CRUELTY TO ANIMALS], omitted.

TITLE THIRTEEN: OFFENSES AGAINST THE STATE AND PUBLIC DEFENSE

*Sec. 1. Offenses Against the State.* ART. 265. HIGH TREASON]. Whoever commits an act designed forcibly to change the Constitution of the (Swiss) Federation or of any Canton, (or) to remove the state authorities designated by the Constitution or to deprive them of the exercise of their authority (or) to separate Swiss territory from the Federation or territory from any Canton, shall be sentenced to the penitentiary or to the prison for a term of one to five years.

ART. 266. OFFENSES AGAINST THE INDEPENDENCE OF THE FEDERATION]. 1. Whoever commits an act designed to violate or endanger the independence of the Federation (or) to induce the interference of a foreign power in the affairs of the Federation dangerous to her independence, shall be sentenced to the penitentiary or to the prison for a term of one to five years.

2. Whoever communicates with the government or the agents of a foreign country with intent to cause a war against the Federation, shall be sentenced to the penitentiary for not less than three years.

ART. 267. DIPLOMATIC HIGH TREASON], omitted.

ART. 268. REMOVAL OF STATE LAND-MARKS], omitted.

ART. 269. VIOLATION OF SWISS TERRITORIAL SOVEREIGNTY]. Whoever intrudes into Swiss territory violating the right of nations, shall be sentenced to the penitentiary or to the prison.

ART. 270. FORCE AGAINST SWISS EMBLEMS], omitted.

ART. 271. ILLEGAL ACTION FOR A FOREIGN STATE], omitted.

*Sec. 2. Prohibited News Service.* ART. 272. POLITICAL NEWS SERVICE], omitted.

ART. 273. INDUSTRIAL NEWS SERVICE]. 1. Whoever ferrets out a business or industrial secret of a Swiss establishment where it is in the public interest to keep this secret, in order to use it for

<sup>64</sup> "Offenses committed while unconscious" provides for a mitigated sentence where the offense was committed while intoxicated or under the influence of drugs. Contrast this with Art. 12. This is provided so that persons are not acquitted when they did not intend to commit a crime while in such condition. See Art. 10.

himself or to disclose it to others, (or) whoever discloses to others such a secret known to him, shall be sentenced to the prison and fined not over twenty thousand francs.

2. If this is done with the intent to disclose the secret to foreign authorities or to a foreign private enterprise or organization, or if it is disclosed to a foreign official or a foreign private enterprise or organization, a penitentiary term and a fine of not over fifty thousand francs may be imposed.

3. Whoever negligently causes such a secret to be disclosed to persons not entitled to it, shall be fined not over ten thousand francs.

ART. 274. MILITARY NEWS SERVICE], omitted.

Sec. 3. *Illegal Associations*. ART. 275], omitted.

Sec. 4. *Disturbance of Military Security*. ART. 276. ENCOURAGING VIOLATION OF MILITARY DUTY], omitted.

ART. 277. FALSIFYING CONSCRIPTIONS], omitted.

ART. 278. DISTURBANCE OF MILITARY SECURITY], omitted.

#### TITLE FOURTEEN: OFFENSES AGAINST THE PEOPLE'S WILL

ART. 279. DISTURBANCE OF ELECTIONS AND VOTING], omitted.

ART. 280. INTERFERENCE WITH RIGHT TO VOTE AND ELECT], omitted.

ART. 281. ELECTION BRIBE], omitted.

ART. 282. COUNTERFEITING ELECTION DOCUMENTS], omitted.

ART. 283. VIOLATION OF THE SECRECY OF VOTING], omitted.

ART. 284. LOSS OF CIVIL RIGHTS], omitted.

#### TITLE FIFTEEN: OFFENSES AGAINST PUBLIC AUTHORITY

ART. 285. FORCE OR THREATS AGAINST OFFICIALS]. 1. Whoever, by force or threats, prevents an authority or an official from executing his official duties, or coerces him to take official action or assaults him during an official act, shall be confined in the prison or fined.

2. If the offense was committed by a mob, every member of the group shall be confined in the prison. Any participant using force against persons or objects shall be sentenced to the penitentiary for not over three years or to the prison for not less than one month.

ART. 286. PREVENTION OF AN OFFICIAL ACT]. Whoever prevents an authority or an official from performing an act within his

official duties shall be confined in the prison for not over one month or fined.

ART. 287. USURPATION OF OFFICE]. Whoever, with an unlawful purpose, usurps the function of a public office or of a military command, shall be sentenced to the prison or fined.

ART. 288. BRIBERY]. Whoever offers, promises, gives or originates a gift or other consideration to a member of an authority, an official, a justice, an arbiter, a public expert, translator or interpreter, or to any member of the army, with the purpose of inducing this person to violate his official duties, shall be sentenced to the prison. A fine may also be imposed.

ART. 289. VIOLATION OF OFFICIAL FORFEITURE], omitted.

ART. 290. VIOLATION OF OFFICIAL SEALS], omitted.

ART. 291. VIOLATION OF BANISHMENT], omitted.

ART. 292. DISOBEYING OFFICIAL ORDERS], omitted.

ART. 293. DISCLOSURE OF OFFICIAL SECRET PROCEDURES], omitted.

ART. 294. EXERCISE OF PROHIBITED VOCATION], omitted.

ART. 295. VIOLATION OF EXCLUSION FROM TAVERNS], omitted.

#### TITLE SIXTEEN: DISTURBANCE OF INTERNATIONAL RELATIONS

ART. 296. INSULT TO FOREIGN POWERS]. Whoever publicly insults a foreign state in the person of its chief executive, (or its) diplomatic representative or its government, shall be sentenced to the prison or fined.

ART. 297. INSULT TO DELEGATES AND OFFICIALS OF THE LEAGUE OF NATIONS], omitted.

ART. 298. ASSAULT AGAINST FOREIGN EMBLEMS], omitted.

ART. 299. VIOLATION OF FOREIGN TERRITORIAL SOVEREIGNTY], omitted.

ART. 300. HOSTILITY AGAINST FOREIGN TROOPS], omitted.

ART. 301. MILITARY NEWS SERVICE AGAINST FOREIGN STATES], omitted.

ART. 302. PROSECUTION], omitted.

#### TITLE SEVENTEEN: OFFENSES AGAINST ADMINISTRATION OF JUSTICE

ART. 303. FALSE ACCUSATION]. 1. Whoever, against his better knowledge, makes an accusation of a felony or misdemeanor to an official against an innocent person in order to provoke a prosecution against him (or) whoever makes malicious preparations in order

to induce the prosecution of an innocent person, shall be confined in the penitentiary or prison.

2. If a false accusation concerns a minor offense, the penalty shall be a prison sentence or a fine.

ART. 304. MISLEADING JURIDICAL ADMINISTRATION]. 1. Whoever, contrary to his better knowledge, reports to the authorities that a crime was committed, (or) whoever falsely confesses the commission of an offense, shall be sentenced to the prison or be fined.

2. In particularly minor cases, the court may refrain from imposing any penalty.

ART. 305. ACCESSORY AFTER THE FACT]. Whoever shall aid another person to escape from prosecution, execution of the sentence or one of the measures provided for in Art. 42 to 45 (inclusive), shall be sentenced to the prison. If the offender stands in such a close relation to the person concerned (in this provision) that his conduct may be excused, the court may refrain from imposing any penalty.

ART. 306. FALSE CIVIL EVIDENCE]. Whoever, as plaintiff or defendant in a civil procedure, makes a false declaration of the facts (after) having been admonished by the court to tell the truth and (after) being warned of possible prosecution, shall be sentenced to the penitentiary for not over three years or to the prison. If a deposition was affirmed by oath, the penalty shall be confinement in the penitentiary for not over three years or in the prison for not less than three months.

ART. 307. FALSE TESTIMONY, JUDGMENT OR TRANSLATION], omitted.

ART. 308. RECTIFYING FALSE DEPOSITIONS], omitted.

ART. 309. OTHER ADMINISTRATIVE PROCEDURE], omitted.

ART. 310. FREEING CONVICTS]. 1. Any person, who, by force, threats or tricks, shall set free an arrested or convicted person or a person officially committed to an institution, or shall aid him to escape, shall be confined in the prison.

2. If the (above) offense was committed by a mob, every one participating in the mob shall be sentenced to the prison. Any participant who uses force against persons or objects, shall be sentenced to the penitentiary for not over three years or to the prison for not less than one month.

ART. 311. PRISON RIOTS]. 1. Prisoners or persons officially committed to an institution who assemble jointly to insult institution

officers or guards, (or) who by force or by threats coerce institution officers or guards to act or not to act (or) who escape by use of force, shall be sentenced to the prison for not less than one month.

2. Any participant who uses force against persons or objects shall be sentenced to the penitentiary for not over five years or to the prison for not less than three months.

TITLE EIGHTEEN: OFFENSES AGAINST OFFICIAL OR VOCATIONAL DUTIES

ART. 312. ABUSE OF AUTHORITY]. Members of an authority or officials abusing their official powers to obtain for themselves or others unlawful profits or to inflict damage upon others shall be sentenced to the penitentiary for not over five years or to the prison.

ART. 313. EXCESSIVE TAXATION]. Any official who, from gainful motives, collects taxes, fees or compensations which are not due or which exceed the legal schedule, shall be sentenced to the prison or be fined.

ART. 314. DISHONEST PUBLIC ADMINISTRATION]. Members of authorities or officials who, in negotiations, damage public interests entrusted to them to obtain for themselves or others an unlawful profit shall be sentenced to the penitentiary for not over three years or to the prison. A fine shall also be imposed.

ART. 315. ACCEPTING BRIBE]. Members of authorities, officials, justices, arbiters, official experts, translators or interpreters who demand, accept or accept the promise of a gift or another undue profit for a future disloyal official act shall be sentenced to the penitentiary for not over three years or to the prison. If the offender violated his official duty on account of the bribe, he shall be sentenced to the penitentiary for not over five years or to the prison for not less than one month.

ART. 316. ACCEPTING GIFTS]. Members of authorities, officials, justices, arbiters, official experts, translators or interpreters who demand, accept or accept the promise of a gift or other undue profit for a future (but) not disloyal official act, shall be sentenced to the prison for not over six months or fined.

ART. 317. FORGERY BY OFFICIALS]. 1. Officials or persons with public duties who intentionally falsify or tamper with a document or use the genuine signature or mark of another to produce a false document (or) who wilfully (and) falsely certify to a fact of legal significance, especially a false signature, mark or copy, shall

be sentenced to the penitentiary for not over five years or to the prison for not less than six months.

2. If the offender acted negligently, he shall be fined.

ART. 318. FALSE MEDICAL CERTIFICATE]. 1. Physicians, dentists, veterinary surgeons or midwives who intentionally produce a false certificate intended for official use or to obtain an undue profit or which may violate the legal interests of other persons, shall be sentenced to the prison or be fined. If the offender demanded, accepted or received the promise of special remuneration, he shall be sentenced to the prison.

2. If the offender acted negligently, he shall be fined.

ART. 319. AIDING PRISONERS TO ESCAPE]. The official who aids an arrested or convicted person or anyone officially committed to an institution in escaping or permits him to escape shall be sentenced to the penitentiary for not over three years or to the prison.

ART. 320. VIOLATION OF OFFICIAL SECRECY], omitted.

ART. 321. VIOLATION OF VOCATIONAL SECRETS], omitted.

ART. 322. LIBEL, MINOR OFFENSES], omitted.

#### TITLE NINETEEN: OFFENSES AGAINST FEDERAL REGULATIONS..

ART. 323. DISOBEDIENCE OF THE DEBTOR IN BANKRUPTCY], omitted.

ART. 324. DISOBEDIENCE OF OTHERS IN BANKRUPTCY], omitted.

ART. 325. IRREGULAR MANAGEMENT], omitted.

ART. 326. APPLICATION TO CORPORATIONS AND BUSINESS ASSOCIATIONS], omitted.

ART. 327. IMITATION OF MONEY, ETC., OTHER THAN COUNTERFEITING], omitted.

ART. 328. IMITATING POSTAGE STAMPS, OTHER THAN COUNTERFEITING], omitted.

ART. 329. VIOLATION OF MILITARY SECRETS], omitted.

ART. 330. TRADING IN CONFISCATED MILITARY SUPPLIES], omitted.

ART. 331. PROHIBITED UNIFORMS], omitted.

ART. 332. FAILURE TO MAKE REPORT AFTER FINDING], omitted.



## BOOK III. INTRODUCTION AND APPLICATION OF THE CODE

## TITLE ONE: RELATION OF THIS CODE TO OTHER FEDERAL AND CANTONAL LAWS

*Sec. 1. Federal Legislation.* ART. 333. APPLICATION OF THE GENERAL PROVISIONS TO OTHER FEDERAL LAWS]. The general provisions of this Code shall be applied to offenses punishable according to other Federal laws insofar as these (latter) laws do not provide special regulations. If an offense is punishable with confinement for over three months according to another Federal law, the general provisions on felonies and misdemeanors shall be applicable, otherwise the provisions on minor offenses whereby the penalty shall be confinement in the jail instead of in the prison. Minor offenses punishable according to other laws shall be sentenced, even if committed negligently, unless according to the meaning of the provision only wilful commitment shall be punishable. Pardon shall be always regulated by this Code.

ART. 334. REFERENCE TO REPEALED PROVISIONS]. If Federal provisions refer to such legal rules repealed by this Code, they shall be referred to the corresponding provisions of this Code.

*Sec. 2. Cantonal Legislation.* ART. 335. LEGISLATION ON POLICE, ADMINISTRATIVE AND TAX PENALTIES]. 1. Unless provided for by Federal statute, legislation as to minor offenses remains reserved to the Cantons. The Cantons are empowered to make offenses against Cantonal administrative and procedural regulations punishable.

2. The Cantons are empowered to enact penal regulations to protect Cantonal tax legislation.

## TITLE TWO: RELATION OF THIS CODE TO FORMER LAW

ART. 336. EXECUTION OF FORMER CRIMINAL SENTENCES]. The execution of sentences imposed according to former penal laws shall be limited as follows: a) If this Code does not make the offense for which sentence was imposed a punishable crime, the penalty shall not be executed; b) a death sentence shall not be executed after the effective date of this Code;<sup>65</sup> in such case, the death sentence shall be commuted by law to life confinement in the penitentiary; c) if a prisoner was sentenced to confinement before the

<sup>65</sup> With the effective date of this Code, all capital punishment is abolished and the sentence of death, when unexecuted, is commuted to life imprisonment.

effective date of this Code, in the several Cantons or by several courts of the same Canton and still has more than five years to serve (after) the effective date of this Code, the Federal Court, on the offender's petition, shall provide for a combined sentence according to Art. 68. The Federal Court shall order the execution of this combined sentence by one Canton and shall order, in its discretion, the other Cantons thus discharged (of responsibility for providing confinement) to contribute to the expense (of confinement); d) if a prisoner, on the effective date of this Code, is serving a sentence and is charged with another felony or misdemeanor committed before this date and punishable by confinement, the court, in its decision, shall impose a combined sentence and thereby credit the convicted person with the term (already) served for the first sentence; e) the provisions of this Code concerning parole shall be applied also to such persons sentenced before the effective date of this Code.

ART. 337. STATUTE OF LIMITATIONS]. The provisions of this Code as to the statute of limitations for prosecution and execution of sentences shall be applied also if the offense was committed or the offender sentenced before the effective date of this Code, provided that this (Federal) Code carries a less severe penalty. The period before the effective date of this Code shall not be credited.

ART. 338. REHABILITATION]. Rehabilitation is ordered, by the provisions of this Code, also for sentences which have been imposed according to the former penal laws. The expunging of a sentence, imposed before the effective date of this Code, from the register of criminals, is also governed by the provisions of this Code.

ART. 339. OFFENSES PUNISHABLE BY PETITION]. 1. For offenses punishable only on petition, the period of the petition shall be reckoned according to the law under which the offense was committed.

2. For an offense which was prosecuted officially under the former law but which requires a petition under this Code, the period for the petition shall run from the effective date of this Code. If prosecution has been initiated, it shall be continued only following petition.

3. Where this Code orders official prosecution for an offense punishable only on petition according to the former law, the petition remains a prerequisite for those offenses committed under the former law.

## TITLE THREE: FEDERAL AND CANTONAL JURISDICTION

*Sec. 1. Federal Jurisdiction.* ART. 340. EXTENT]. 1. Under Federal jurisdiction come: offenses of Art. 224 to 226; the offenses of Title Ten (Art. 240 to 250) dealing with coinage, currency (etc.); the offenses of Title Eleven (Art. 251 to 257) insofar as (forgery of) Federal documents is concerned; the offenses of Titles Thirteen to Fifteen (inclusive, Art. 265 to 295), as well as Title Seventeen as far as they are directed against the Federation (of Switzerland), the people's will in Federal elections, the Federal authority or the Federal judiciary administration; the offenses of Title Sixteen (Art. 296 to 302) and the offenses against official duty committed by a Federal official (Title Eighteen, Art. 312 to 322) and the minor offenses of Art. 329 to 331; the political offenses which are the cause or the consequence of riots necessitating Federal military intervention.

2. The provisions as to the jurisdiction of the Federal Court contained in special Federal laws shall remain in force.

ART. 341. FEDERAL JURY]. The Federal court shall try, with the aid of a jury, cases of: a) High treason against the Federation (Art. 265); b) riot and force against Federal authorities (Art. 285); c) felonies and misdemeanors according to Art. 299 and 300; d) political felonies and misdemeanors which are the cause or the consequence of revolts by which Federal military intervention is called for; e) offenses for which any Federal authority transfers to the Federal jury crimes of any of its appointed officials.<sup>66</sup>

ART. 342. FEDERAL CRIMINAL COURT]. The Federal Criminal Court shall try those criminal cases which are under Federal jurisdiction and are not, according to this Code, under the jurisdiction of the Federal jury.

*Sec. 2. Cantonal Jurisdiction.* ART. 343]. The Cantonal authorities shall prosecute and try, according to the provisions for the procedure in the Cantonal laws, those offenses regulated in this Code which are not under the Federal jurisdiction.

*Sec. 3. Concurrence of Offenses or Criminal Provisions.* ART. 344]. 1. If any person is charged with several offenses, some of which are under the jurisdiction of the Federal courts (and) others

<sup>66</sup> The legal procedure in criminal process is under the jurisdiction of the different Cantons (Art. 365). There is no unification or centralization provided for by this Code. The Federal jury has jurisdiction of the offenses specified in Art. 341. Cantonal law, however, which may vary from one another, is to determine which offenses shall be tried by the Court and which by a Cantonal jury.

under that of the Cantonal courts, the Federal Council,<sup>67</sup> on petition of the Federal Attorney General, may order the combination of the prosecution and adjudication (of these offenses) either by the Federal or Cantonal authority. The same (procedure) is applicable if one act combines several criminal provisions, some of which are triable by the Federal court (and) others by the Cantonal court.

2. If any person is charged with several offenses, some of which are under the jurisdiction of the Federal jury (and) others under that of the Federal or Cantonal courts, the Federal jury shall have exclusive jurisdiction. The same (procedure) is applicable where one act combines several criminal provisions, some of which are to be tried by the Federal jury (and) others by the Federal or Cantonal courts.

#### TITLE FOUR: CANTONAL ADMINISTRATION, JURISDICTION AND LEGAL COOPERATION

*Sec. 1. Material Jurisdiction.* ART. 345]. 1. The Cantons shall appoint the officials charged with the prosecution and trial of the offenses allotted to Cantonal jurisdiction by this Code. Trial of minor offenses may be assigned to an administrative authority.

2. The Cantons shall appoint the officials charged with the execution of the court's decision for detention, treatment or care of irresponsible or mentally deficient persons or with suspending these measures.

*Sec. 2. Local Jurisdiction.* ART. 346. JURISDICTION OF THE PLACE OF COMMITMENT]. The local authorities of the area where the offense was committed shall have jurisdiction of prosecution and trial of this offense. If only the area where the act culminated or was to take effect is in Switzerland, the authorities of this area shall have jurisdiction. If the offense was committed in several places or the result occurred in several places, the authorities of that place where the first investigation began shall have jurisdiction.

ART. 347. LIBEL JURISDICTION], omitted.

ART. 348. JURISDICTION FOR OFFENSES ABROAD]. If the offense was committed in a foreign country or if the place of commission of the offense cannot be determined, the authorities of the area of the offender's residence shall have jurisdiction. If he has no residence in Switzerland, the authorities of his birthplace shall have jurisdiction. If the offender has neither residence nor birthplace in

<sup>67</sup> "Federal Council" is the Swiss Cabinet, that is, the supreme executive body of the State.

Switzerland, jurisdiction shall be given to the officials where the offender was seized. If none of these jurisdictions is applicable, the Cantonal authorities (which) arranged for extradition shall have jurisdiction. In this case the Cantonal Government shall name the local authority having jurisdiction.

ART. 349. JURISDICTION FOR ACCESSORIES]. The jurisdiction of prosecution and trial for accessories shall be the same as for the principals. If several principals are involved in the offense, the authorities of that place which first began the investigation shall have jurisdiction.

ART. 350. CONCURRENT OFFENSES]. 1. If a person is prosecuted for several offenses committed at different places, jurisdiction of prosecution and trial shall be taken for all offenses by the authorities of the place of commission of the offense which carries the most severe penalty. If the offenses all carry the same penalty, the authorities of the area which began the investigation shall have jurisdiction.

2. If a person, in contrast to the provision for the concurrence of offenses (Art. 68), was sentenced to several terms of confinement by several courts, the court which imposed the most severe penalty shall impose a combined sentence, on petition of the convicted person.

ART. 351. CONTESTED JURISDICTION]. If the jurisdiction is contested by the authorities of several Cantons, the Federal Court shall determine the Canton authorized and obligated to prosecute and try (the case).

*Sec. 3. Legal Cooperation.* ART. 352. OBLIGATION TO THE FEDERATION AND AMONG THE CANTONS]. In penal cases to which this Code or another Federal law is applied, the Federation and the Cantons are obligated to render legal cooperation to one another. Warrants and transportation orders in such penal cases shall be executed throughout Switzerland.<sup>68</sup> A Canton may deny to another (Canton) the transportation of an accused or convicted person (through its area) only in cases of political or libelous offenses. In cases of refusal the Canton is obligated to try the case itself. The transported person shall not be prosecuted by the requesting Canton for any political offense or for libel or for a minor offense

<sup>68</sup> "Shall be executed throughout Switzerland"—the sense of this passage is two-fold: that the authorities are empowered to execute these orders throughout the entire country or these orders are "executable," and that all officials are obligated to serve them.

against Cantonal legislation unless transfer for that offense was agreed upon.

ART. 353. PROCEDURE]. The request for legal cooperation shall be carried out directly between officials. Warrants sent by cable or telephone shall be confirmed immediately by letter. Police officers shall perform legal assistance without being challenged. Any accused or convicted person shall be entitled to a formally recorded hearing by the proper authority before transfer to the requesting authority.

ART. 354. GRATUITOUS AID]. Legal cooperation shall be given (between Cantons and between Cantons and the Federal court) without charge. The requesting authority, however, shall pay for scientific or technical opinions. Art. 27, par. 1 of the Federal Law on Federal Penal Procedure, shall remain in force. If court costs are charged to one party, the expenses for legal cooperation shall also be charged to him in the same proportion, even if the requesting official is not obligated to pay for this service.

ART. 355. OFFICIAL FUNCTIONS IN OTHER CANTONS]. Any prosecuting authority or court may perform official functions in the territory of another Canton only with the consent of the proper authority of the (second) Canton. In urgent cases the official function may be performed without such consent of the proper authority which, however, shall be immediately informed by a report of the facts. The legal procedure of that Canton in which the function is to be performed shall be applied. Persons living in another Canton may be summoned by mail. Witnesses are authorized to request an adequate advance for travel expenses. Witnesses and experts are obligated to follow a citation into another Canton.

ART. 356. PURSUIT]. In urgent cases police officers are empowered to pursue any accused or convicted person into the territory of another Canton and to seize him there. The arrested person shall be brought immediately to the Cantonal authority to issue a warrant.<sup>69</sup> This official shall give the arrested person a formally recorded hearing and shall issue any further decisions necessary.

ART. 357. COMPLAINTS BETWEEN CANTONS]. Complaints concerning legal cooperation between the Federation and Cantons or between the Cantons shall be decided by the Federal Court. Until

<sup>69</sup> "Shall be brought immediately . . ."—this ensures that legal substantiation of arrests, in the form of recognized papers, shall be made and that the seized person shall have the right to an immediate hearing before an official in the determination of the legality of the arrest.

this decision is reached, the security measures ordered shall remain in effect.

ART. 358. IMMORAL PUBLICATIONS IN OTHER STATES], omitted.

#### TITLE FIVE: REGISTER OF CRIMINALS

ART. 359. REGISTRY OFFICIALS]. The register of criminals shall be conducted a) by the Swiss Central Police Bureau for all persons sentenced in the territory of the Federation as well as for all Swiss citizens sentenced abroad; b) in the Cantons, by an official appointed by the Cantons, for all persons sentenced by the Cantonal authorities and for all convicted Cantonal citizens.

ART. 360. CONTENTS]. In the register of criminals shall be recorded: a) the sentences for felonies and misdemeanors; b) the sentences for minor offenses promulgated by a decree of the Federal Council concerning violation of this Code or of other Federal laws; c) reports received from abroad on sentences imposed there which are to be recorded according to this Code; d) the fact that a sentence was imposed with conditional execution; e) those facts which cause any change of recorded facts.

ART. 361. MEASURES AGAINST JUVENILES]. In the register of criminals shall be recorded those measures and penalties which have been ordered against juveniles for a felony or misdemeanor.

ART. 362. REPORT OF FACTS TO BE RECORDED]. All facts to be recorded shall be reported to the Swiss Central Police Bureau. The Central Police Bureau shall record these facts in the central register of criminals and shall notify the Canton or State of birth of the convicted person.

ART. 363. EXCERPTS FROM THE RECORDS]. An official excerpt from the register of criminals shall be given to courts and other authorities of the Federation, the Cantons and the Communes, on their request, but shall not be given to any private person. An individual is entitled to request (and receive) an excerpt concerning himself. A former penalty which has been expunged shall be reported only to prosecuting officials and criminal courts as calling attention to expunging, provided that the person concerned is accused of crime.

ART. 364. ENFORCEMENT]. The Federal Council, by decree, shall prescribe additional regulations for the register of criminals and shall establish the forms.

## TITLE SIX: PROCEDURE

ART. 365. CANTONAL CRIMINAL PROCEDURE]. The Cantons shall regulate the procedure before the Cantonal authorities. The provisions of this Code and the provisions of the Federal Law on Federal Penal Procedure regarding Cantonal Penal Procedure and appeals<sup>70</sup> in the application of Federal penal provisions shall remain in force.

ART. 366. IMMUNITY OF PARLIAMENT. PROSECUTION OF MEMBERS OF THE SUPREME AUTHORITIES]. The provisions of the Federal law on the responsibility of Federal officials and authorities and of the Federal Law on the political and police guarantees for the Federation shall remain in effect. The Cantons are empowered to enact provisions: a) suspending the criminal responsibility of members of the legislature or limiting them for remarks made in the sessions of these officials; b) that the prosecution of their supreme prosecuting officials and judges for offenses in public office are dependent upon the prior decision of another non-juridical authority and that the decision in such cases shall be transferred to a special authority.<sup>71</sup>

ART. 367. PROCEDURE FOR MINOR OFFENSES]. Minor offenses provided for in this Code or in other Federal laws, as far as they

## TITLE SEVEN: PROCEDURE AGAINST CHILDREN AND MINORS

ART. 369. PROPER OFFICIALS]. The Cantons shall appoint the officials having jurisdiction of the treatment of children and juveniles.

ART. 370. COOPERATION OF PRIVATE AGENCIES]. The proper official may ask the cooperation of private agencies, as societies for the care of destitute children and child protective organizations, are under Cantonal jurisdiction, shall be dealt with as provided for by Cantonal procedure for minor offenses.

<sup>70</sup> "Appeals"—two types of appeals are generally possible: a) concerning matters of fact; b) matters of law. The Swiss word *Nichtigkeitsbeschwerde* refers specifically to matters of law in this article.

<sup>71</sup> This law was enacted, at the time of the unification of the Swiss Cantons into the Federation, in order to protect the members of the Federal Council, the supreme executive authority of the Federation, and the members of the Federal Court, i.e., the Supreme Court in Switzerland, against any interference by the Cantonal authorities of the Cantons of Berne and Waadt in which the Federal Council and the Federal Court are located. The members of these two supreme federal authorities are exempt from Cantonal taxation and remain under the jurisdiction of their home Cantons. They cannot be prosecuted without explicit consent of their colleagues. The entire provision means a sort of extra-territoriality for the members of the Federal Council and the Federal Court.



ART. 368. EXPENSES]. The Cantons shall determine, outside of the duty to support relatives (Civil Code, Art. 328), who shall bear the costs of detention, treatment or care of insane or mentally deficient persons (Art. 14 and 15) provided that these persons themselves or, in case they are minors, their parents are not able to bear the costs.

(and societies) for the care and supervision of the training of the child or the juvenile.

ART. 371. PROCEDURE]. The Cantons shall regulate the procedure against children and juveniles. The procedure against juveniles shall also be applied if the offender who was a juvenile (under eighteen years of age) at the date of the offense has reached his eighteenth year at the time of the court decision but not yet passed his twentieth year.

ART. 372. JURISDICTION]. For the procedure against children and juveniles, the authorities of the place of residence (of the offender) shall have jurisdiction or, if the child or juvenile permanently remains at another place, the authorities of the latter place. In the absence of a place of residence or continuous stay, the general rules for the jurisdiction of courts shall be applied. The Federal Council shall render the final decision where a jurisdictional dispute exists between Cantons.

ART. 373. COSTS OF CARE]. The Cantons shall determine who shall bear the costs of care of children and juveniles, apart from the duty (of the individual) for the support of his relatives, if neither the person cared for nor his parents are able to pay for his care (Civil Code, Art. 284).

#### TITLE EIGHT: EXECUTION OF SENTENCE. PAROLE

*Sec. 1. General Rules.* ART. 374. DUTY OF EXECUTING SENTENCE]. The Cantons shall execute the sentences which their criminal courts impose in accordance with this Code. They are obligated to execute the sentences of the Federal criminal authorities for which the Cantons shall be recompensed.<sup>72</sup> This provision for sentences also applies to the penal orders of the police and other proper officials and the decisions of the prosecuting authorities.

ART. 375. CREDIT FOR DETENTION PENDING TRIAL]. The detention period served between the imposition and the beginning of

<sup>72</sup>The Swiss Federal Government has no prisons, no probation or parole facilities, even for offenders convicted of Federal crimes. The Cantons are here obligated to provide such services for the Federal Government. In return, they are to be reimbursed, by the Federation, for the actual money cost of such service.

the execution of the final sentence<sup>73</sup> shall be fully credited to the term of confinement. If the accused person has appealed and withdrawn his appeal, the intervening term shall not be credited.

*Sec. 2. Share of Earnings.* ART. 376. DETERMINATION OF SHARE OF PRISON EARNINGS]. A share of the prison earnings, whose proportion shall be determined by the Cantons, shall be credited, in case of good conduct and satisfactory work, to persons committed to any penal institution, detention or correction house, or institution for juveniles, regardless of the type of work to which (the prisoner is) assigned.

ART. 377. USE OF FUNDS DURING CONFINEMENT]. A share of the prison earnings shall be credited to the account of the inmates of an institution. Institutional rules shall regulate whether and to what extent, during confinement, the expenses of the inmate or his family may be paid from this share of the prison earnings.

ART. 378. USE OF FUNDS AFTER RELEASE]. On release from the institution, the director of the institution, in his discretion, shall determine whether the amount is to be paid fully or partly to the released prisoner, to the agency giving parole supervision, the guardianship or the poor relief authority for the proper use of the released person. The deposit (to the account of the prisoner) from the share of profit as well as the amounts paid out of this account shall not be subject to be taken in pledge, garnishee, nor to be included in bankruptcy assets. Any assignment or hypothecation of the amount from this profit-sharing shall be void.

*Sec. 3. Parole.* ART. 379]. The Cantons shall establish parole service for those cases provided for by the law. They may transfer parole (supervision) to private agencies offering suitable guarantees (for adequate standards of work). Parole supervision shall not be exercised by police officials.<sup>74</sup>

*Sec. 4. Fines, Costs, Collection, Forfeiture of Gifts, Etc.* ART. 380. EXECUTION]. The final sentences issued in accordance with this Code or other Federal or Cantonal laws on minor offenses are executable throughout Switzerland with regard to fines, costs, seizure of objects, forfeiture of gifts and other donations and restitution for damage. This provision for sentences also applies to the penal

<sup>73</sup> "Final sentence"—the confirmation of the sentence of the lower court in an appeal or the sentence originally imposed which has not been appealed.

<sup>74</sup> The Swiss officials apparently believe that police duties and parole supervision are not compatible services. They conclude that parole supervision must consist of more than detective work, that it must embrace constructive assistance to the parolee.

orders of police and other proper officials and the prosecuting authorities.

ART. 381. RIGHT OF DISPOSITION]. The Cantons shall dispose of the fines, seizures, gifts declared forfeited and other donations ordered in accordance with this Code. In criminal cases under the jurisdiction of the Federal jury or the Federal criminal court, the Federal Government shall dispose of them.

#### TITLE NINE: INSTITUTIONS

Sec. 1. *Institutions.* ART. 382. DUTY OF CANTONS TO ESTABLISH]. The Cantons shall establish penal institutions, detention houses, correction houses, institutions for inebriates, and correctional schools for children and juveniles in accordance with the provisions of this Code. Two or more Cantons may unite for the joint establishment of institutions.

ART. 383. DUTIES OF CANTONS TO MANAGE]. The Cantons shall ensure that institutional rules and management correspond to this Code. They shall ensure that vocational training is provided for juveniles committed to training schools. The Cantons are authorized to agree on common management of institutions or they may secure to themselves the right to cooperative use of institutions of other Cantons.

ART. 384. USE OF PRIVATE INSTITUTIONS]. The Cantons are authorized to make agreements for commitment into institutions for inebriates, into training schools for children and juveniles, with private institutions meeting the standards of this Code.

Sec. 2. *Quarters for Juveniles.* ART. 385]. The Cantons shall ensure that adequate quarters are available for the confinement of juveniles (Art. 95).

Sec. 3. *Federal Subsidies.* ART. 386. TO PUBLIC INSTITUTIONS]. 1. The Federal Government shall contribute to the establishment and improvement of the public institutions provided for by this Code. These contributions shall not exceed 50 per cent for penal institutions, 70 per cent for detention institutions, 50 per cent for institutions for the execution of preventive measures, (and) 50 per cent for institutions for children and juveniles.

2. The Federal Government shall contribute also to Cantons which have established or improved institutions in accordance with the provisions of this Code as far as expenses (were) incurred after January 1, 1919. These contributions shall not exceed 25 per cent of the expenses.

3. The Federal Council shall determine the conditions under which the contributions are to be made. It may rule particularly that committed persons from other Cantons shall also be received in such institutions but at the expense of the committing Canton (of the actual Cantonal costs).<sup>75</sup>

ART. 387. SUBSIDIES TO PRIVATE INSTITUTIONS]. The Federal Government may contribute to the establishment or to the improvement of private institutions for inebriates and private training schools for children and juveniles as far as these institutions meet the standards of this Code.

ART. 388. SUBSIDIES FOR OPERATION]. The Federal Government may contribute to the operation of houses of detention and of correction as well as public institutions for inebriates and training schools for children and juveniles. Furthermore, the Federal Government may contribute to the operation of private institutions for inebriates and private training schools for children and juveniles provided that these institutions meet the standards of this Code.

ART. 389. SUBSIDIES TO HOSPITALS FOR INSANE]. The Federal Government may contribute to the establishment of hospitals for the care of dangerous insane committed by the court, as well as for the establishment of special divisions, for that purpose, within hospitals for the insane.

*Sec. 4. Personnel.* ART. 390]. The Federal Government shall encourage and assist the training and the continuation of training of the officials in institutions.

*Sec. 5. Cantonal Supervision.* ART. 391]. The Cantons shall provide for proper supervision, particularly medical supervision, of those private institutions for the execution and preventive measures as well as of foster family placement (Art. 84, 91, and 92).

*Sec. 6. Federal Supervision.* ART. 392]. The Federal Council shall supervise the observance of this Code and the enforcement orders (Art. 102, No. 2 of the Federal Constitution).

*Sec. 7. Provisions for the Transition Period.* ART. 393]. The institutional reforms provided for by this Code shall be carried out by the Cantons within twenty years after this Code takes effect. The Federal Council, after consulting with the Cantons, shall determine which institutional reforms shall be carried out by the individual Cantons and the date of their completion. These orders of

<sup>75</sup>The costs mentioned are the actual money expenditures paid out by the Cantons and hence exclude Federal contributions from the computation. It is also a lesser rate than the Cantons may assess an individual for care (as in an institution for the insane, etc.).

the Federal Council may be appealed to the Federal Assembly by the Cantonal government within sixty days after their transmittal. In the interim, the Federal Council shall provide for the necessary measures.

#### TITLE TEN: PARDON. RE-TRIAL

*Sec. 1. Pardon.* ART. 394. JURISDICTION]. The right of pardon, regarding sentences imposed according to this Code or another Federal law, shall be exercised: a) by the Federal Assembly in cases in which the Federal jury or Federal criminal court or a Federal administrative authority imposed the sentence; b) by the pardon authority of the Canton in cases in which the sentence was imposed by a Cantonal authority.

ART. 395. PETITION FOR PARDON]. The petition for pardon may be filed by the convicted person, by his legal representative, and, with the consent of the convicted person, by his counsel or by his spouse. In political felonies and misdemeanors and in offenses which are connected with political felonies and misdemeanors, the procedure for a pardon may be initiated by the Federal Council or the Cantonal government. The pardon authority may order that a pardon petition, when denied, cannot be filed again for a specified period.

ART. 396. EFFECT]. By pardon all penalties imposed by a final sentence may be fully or partly suspended or the penalties changed into a less severe category of punishment. The effect of the pardon shall be regulated by the (contents of the) pardon decree.

*Sec. 2. Re-trial.* ART. 397]. The Cantons shall give a re-trial to the convicted person in sentences imposed by this Code or other Federal laws where important facts or evidence favorable to the convicted person were unknown to the court during the original trial.

#### TITLE ELEVEN: FINAL PROVISIONS

ART. 398. REPEAL OF FEDERAL LAW]. With the effective date of this Code, the Federal criminal provisions contrary to it are superseded. . . . (*Note: Here follows an enumeration of such previous laws.*)

ART. 399. FEDERAL LAWS AMENDED], omitted.

ART. 400. REPEAL OF CANTONAL LAW]. With the effective date of this Code, the criminal provisions of the Cantons are superseded.

Those criminal provisions of the Cantons in matters which this Code expressly reserves to the legislation of the Cantons, however, remain in effect.

ART. 401. EFFECTIVE DATE OF THIS CODE]. This Code shall take effect on January 1, 1942. Prior to December 31, 1940, the Cantons shall present the necessary enforcement rules to the Federal Council for approval. If a Canton does not make such provision (by December 31, 1940), the Federal Council, instead of the Canton, shall temporarily order the necessary rules and so report to the Federal Assembly.