

**SUPPLEMENT
TO THE
CODE OF IOWA
1977**

CONTAINING

**CRIMINAL LAW AND
CRIMINAL PROCEDURE**

PREPARED FOR PUBLICATION BY
LEGISLATIVE SERVICE BUREAU

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UNDER AUTHORITY OF ACTS OF THE SIXTY-SEVENTH GENERAL ASSEMBLY,
FIRST SESSION, CHAPTER FORTY

PREFACE

This supplement to the Code 1977 contains the criminal law of Iowa. It is published pursuant to Acts of the Sixty-seventh General Assembly, 1977 Session, chapter 40. That chapter states in part: "The staff of the legislative service bureau shall, subject to guidelines and policies established by the house and senate committees on judiciary or an appropriate joint subcommittee of such committees, prepare an interim supplement to the Code of 1977 which shall contain the text of the criminal code revision." The members of the joint subcommittee of the house and senate committees on judiciary are Senator Gene W. Glenn, Representative Norman G. Jesse, Senator Philip B. Hill, Senator Earl M. Willits, Representative Julia B. Gentleman, and Representative Carl V. Nielsen.

The supplement substantially follows the style of the Code 1977. It contains an index and the following four tables:

- 1. Table of New Numbers for Criminal Law and Procedure Sections and Chapters.*
- 2. Table of Supplement Sections and Sources.*
- 3. Table of Coordinating Amendment Sections and Sources.*
- 4. Table of Chapters and Sections Repealed and Source of Repeal.*

The supplement also contains part or all of the following information for each section:

- 1. Historical references which give access to the source and history of the section.*
- 2. Prior law from the Code 1977.*
- 3. Cross references to other supplement sections where desirable for clarification.*
- 4. Where a supplement section is referred to in another supplement section.*
- 5. Editorial notes where an explanation appears necessary or desirable.*

Three provisions of the criminal code revision went into effect on July 1, 1976:

- 1. The accommodation offense, section 204.410, Code 1977, was changed.*
- 2. The requirement that motorcyclists wear helmets was repealed.*
- 3. The supreme court was authorized to propose changes in the rules of criminal procedure for consideration by the Sixty-seventh General Assembly, 1977 Session.*

The remainder of the criminal code revision takes effect on January 1, 1978. It strikes and either replaces or reorganizes most of Titles 35 and 36 of the Code 1977 which embrace chapters 687 through 795. The supplement sections are numbered so that provisions dealing with substantive criminal law have

section numbers in the "700's," provisions dealing with criminal procedure have section numbers in the "800's," and provisions dealing with sentencing and post-conviction procedures have section numbers in the "900's." This numbering system supersedes the numbering system in the 1977 Code and will be used in the 1979 Code of Iowa.

The sections and chapters in Titles 35 and 36 of the Code 1977 which were not repealed by the criminal code revision have been renumbered and placed in the supplement. The list of these old and new section and chapter numbers can be found in the table entitled "Table of New Numbers for Criminal Law and Procedure Sections and Chapters." These sections and chapters appear both in the Code 1977 and in this supplement. Particular attention should be paid to the new section and chapter numbers assigned. These sections and chapters contain all amendments adopted by the Sixty-seventh General Assembly, 1977 Session. The 1977 bound Code does not contain the 1977 amendments.

Pursuant to section 14.17, Code 1977, this supplement shall be known and cited as "Supplement to the Code 1977."

The Legislative Service Bureau wishes to thank Vern Lundquist, Superintendent of Printing, and Wayne Faupel, Code Editor, for their cooperation in publishing this supplement.

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* These sections were deleted from the Supplement for the reasons stated.

** This section appears as section 82.6 of the Supplement.

*** These sections appear as sections 725.5, 725.7, 725.8, 725.12, 725.16, 725.17, and 725.18 respectively of the Supplement.

**** These sections appear as sections 721.7 and 721.9 respectively of the Supplement..

***** This section appears as section 692.7 of the Supplement.

***** These sections appear as sections 805.6 through 805.13 of the Supplement.

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CHAPTER 701
GENERAL PROVISIONS

701.1	Short Title	701.7	Felony Defined and Classified
701.2	Public Offense	701.8	Misdemeanor Defined and Classified
701.3	Presumption of Innocence	701.9	Merger of Lesser Included Offenses
701.4	Insanity	701.10	Civil Remedies Preserved
701.5	Intoxicants or Drugs		
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701.1 SHORT TITLE.

Chapters 701 through 728 shall be known and may be cited as "Iowa Criminal Code."

(Ch 1245, 66 GA, ch 1, s 101)

Editorial note: The following text was not condifed because of its temporary nature: A citation to the Iowa Criminal Code shall identify this Act together with all amendments which may be made so as to reflect the current state of the law

701.2 PUBLIC OFFENSE.

A public offense is that which is prohibited by statute and is punishable by fine or imprisonment.

(Ch 1245, 66 GA, ch 1, s 102)

Prior law: ss 687.1, 687.2, 687.4, Code 1977

701.3 PRESUMPTION OF INNOCENCE.

Every person is presumed innocent until proved guilty. No person shall be convicted of any offense unless his or her guilt thereof is proved beyond a reasonable doubt.

(Ch 1245, 66 GA, ch 1, s 103)

Prior law: ss 687.5, 785.3, Code 1977

Cross reference: rule 21, subsection 9, R Cr P, Supplement

701.4 INSANITY.

No person shall be convicted of any crime if at the time such crime is committed the person suffers from such a diseased or deranged condition of the mind so as to render the person incapable of knowing the nature and quality of the act he or she is committing or incapable of distinguishing between right and wrong in relation to that act. Insanity need not exist for any specific length of time before or after the commission of the alleged criminal act.

(Ch 1245, 66 GA, ch 1, s 104)

701.5 INTOXICANTS OR DRUGS.

The fact that a person is under the influence of intoxicants or drugs neither excuses the person's act nor aggravates his or her guilt, but may be shown where it is relevant in proving the person's specific intent or recklessness at the time of the person's alleged criminal act or in proving any element of the public offense with which the person is charged.

(Ch 1245, 66 GA, ch 1, s 105)

701.6 IGNORANCE OR MISTAKE.

All persons are presumed to know the law. Evidence of an accused person's ignorance or mistake as to a matter of either fact or law shall be admissible in any case where it shall tend to prove the existence or nonexistence of some element of the crime with which the person is charged.

(Ch 1245, 66 GA, ch 1, s 106)

701.7 FELONY DEFINED AND CLASSIFIED.

A public offense is a felony of a particular class when the statute defining the crime declares it to be a felony. Felonies are class A felonies, class B felonies, class C felonies, and class D felonies. Where the statute defining the offense declares it to be a felony but does not state what class of felony it is or provide for a specific penalty, that felony shall be a class D felony.

(Ch 1245, 66 GA, ch 1, s 107; 67 GA, ch 147, s 2)

Prior law: s 687.2, Code 1977

701.8 MISDEMEANOR DEFINED AND CLASSIFIED.

All public offenses which are not felonies are misdemeanors. Misdemeanors are aggravated misdemeanors, serious misdemeanors, or simple misdemeanors. Where an act is declared to be a public offense, crime or misdemeanor, but no other designation is given, such act shall be a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 108)

Prior law: ss 687.4, 687.6, Code 1977

701.9 MERGER OF LESSER INCLUDED OFFENSES.

No person shall be convicted of a public offense which is necessarily included in another public offense of which the person is convicted. If the jury returns a verdict of guilty of more than one offense and such verdict conflicts with this section, the court shall enter judgment of guilty of the greater of the offenses only.

(Ch 1245, 66 GA, ch 1, s 109)

Cross reference: rule 6, subsection 1; rule 21, subsection 3, R Cr P, Supplement

701.10 CIVIL REMEDIES PRESERVED.

The fact that one may be subjected to a criminal prosecution in no way limits the right which anyone may have to a civil remedy.

(Ch 1245, 66 GA, ch 1, s 110)

CHAPTER 702
DEFINITIONS

702.1	Policy of Uniformity	702.11	Forcible Felony
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702.3	Animal	702.13	Participating in a Public Offense
702.4	Brothel	702.14	Property
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702.7	Dangerous Weapon	702.17	Sex Act
702.8	Death	702.18	Serious Injury
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702.10	Dwelling	702.20	Viability

702.1 POLICY OF UNIFORMITY.

Wherever a term, word or phrase is defined in the criminal code, such meaning shall be given wherever it appears in the Code, unless it is being specially defined for a special purpose.

(Ch 1245, 66 GA, ch 1, s 201)

702.2 ACT.

The term "act" includes a failure to do any act which the law requires one to perform.

(Ch 1245, 66 GA, ch 1, s 202)

702.3 ANIMAL.

An "animal" is a nonhuman vertebrate.

(Ch 1245, 66 GA, ch 1, s 203; 67 GA, ch 147, s 3)

Editorial note: The quotation marks were editorially added.

702.4 BROTHEL.

A "brothel" is any building, structure, or part thereof, or other place offering shelter or seclusion, which is principally or regularly used for the purpose of prostitution, with the consent or connivance of the owner, tenant, or other person in possession of it.

(Ch 1245, 66 GA, ch 1, s 204)

Editorial note: The quotation marks were editorially added.

702.5 CHILD.

For purposes of this Act, unless another age is specified, a "child" is any person under the age of fourteen years.

(Ch 1245 66 GA, ch 1, s 205)

Referred to in s 726.2, Supplement

Editorial note: The quotation marks were editorially added.

702.6 CONTROLLED SUBSTANCE.

The term "controlled substance" means controlled substance as that term is defined and used in chapter 204.

(Ch 1245, 66 GA, ch 1, s 206)

702.7 DANGEROUS WEAPON.

A "dangerous weapon" is any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the defendant intends to inflict death or serious injury upon the other, and which, when so used, is capable of

inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include, but are not limited to, any offensive weapon, pistol, revolver, or other firearm, dagger, razor, stiletto, or knife having a blade of three inches or longer in length.

(Ch 1245, 66 GA, ch 1, s 207)

Prior law: ss 695.1, 695.2, Code 1977

Editorial note: The quotation marks were editorially added.

702.8 DEATH.

"Death" means the condition determined by the following standard: A person will be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of two physicians, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased.

(Ch 1245, 66 GA, ch 1, s 208)

702.9 DECEPTION.

"Deception" consists of knowingly doing any of the following:

1. Creating or confirming another's belief or impression as to the existence or nonexistence of a fact or condition which is false and which the actor does not believe to be true.

2. Failing to correct a false belief or impression as to the existence or nonexistence of a fact or condition which the actor previously has created or confirmed.

3. Preventing another from acquiring information pertinent to the disposition of the property involved in any commercial or noncommercial transaction or transfer.

4. Selling or otherwise transferring or encumbering property and failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record.

5. Promising payment, the delivery of goods, or other performance which the actor does not intend to perform or knows he or she will not be able to perform. Failure to perform, standing alone, is not evidence that the actor did not intend to perform.

6. Inserting anything other than lawful money or authorized token into the money slot of any machine which dispenses goods or services.

(Ch 1245, 66 GA, ch 1, s 209)

Editorial note: The quotation marks were editorially added.

702.10 DWELLING.

A "dwelling" is any building or structure, permanent or temporary, or any land, water or air vehicle, adapted for overnight accommodation of persons, and actually in use by some person or persons as permanent or temporary sleeping quarters, whether such person is present or not.

(Ch 1245, 66 GA, ch 1, s 210)

Cross reference: s 704.1, Supplement

Editorial note: The quotation marks were editorially added.

702.11 FORCIBLE FELONY.

A "forcible felony" is any felonious assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree.

(Ch 1245, 66 GA, ch 1, s 211)

Editorial note: The quotation marks were editorially added.

702.12 OCCUPIED STRUCTURE.

An "occupied structure" is any building, structure, land, water or air vehicle, or similar place adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or other activity therein, or for the storage or safekeeping of anything of value. Such a structure is an "occupied structure" whether or not a person is actually present.

(Ch 1245, 66 GA, ch 1, s 212)

Editorial note: The first set of quotation marks were editorially added.

702.13 PARTICIPATING IN A PUBLIC OFFENSE.

A person is "participating in a public offense," during part or the entire period commencing with the first act done directly toward the commission of the offense and for the purpose of committing that offense, and terminating when the person has been arrested or has withdrawn from the scene of the intended crime and has eluded pursuers, if any there be. A person is "participating in a public offense" during this period whether the person is successful or unsuccessful in committing the offense.

(Ch 1245, 66 GA, ch 1, s 213)

Editorial note: The quotation marks were editorially added.

702.14 PROPERTY.

"Property" is anything of value, whether publicly or privately owned. The term includes both tangible and intangible property, labor and services. The term includes all that is included in the terms "real property" and "personal property".

(Ch 1245, 66 GA, ch 1, s 214)

Editorial note: The first set of quotation marks were editorially added.

702.15 PROSTITUTE.

A "prostitute" is a person who sells or offers for sale his or her services as a participant in a sex act.

(Ch 1245, 66 GA, ch 1, s 215)

Editorial note: The quotation marks were editorially added.

702.16 RECKLESS.

A person is "reckless" or acts recklessly when he or she willfully or wantonly disregards the safety of persons or property.

(Ch 1245, 66 GA, ch 1, s 216)

Editorial note: The quotation marks were editorially added.

702.17 SEX ACT.

The term "sex act" or "sexual activity" means any sexual contact between two or more persons, by penetration of the penis into the vagina or anus, by contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person or by use of artificial

sexual organs or substitutes therefore in contact with genitalia or anus.

(Ch 1245, 66 GA, ch 1, s 217)

Prior law: s 725.1(7), Code 1977

702.18 SERIOUS INJURY.

"Serious injury" means disabling mental illness, or bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(Ch 1245, 66 GA, ch 1, s 218)

Prior law: s 693.1, Code 1977

702.19 STEAL.

"Steal" means to take by theft.

(Ch 1245, 66 GA, ch 1, s 219)

702.20 VIABILITY.

"Viability" is that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life support systems. The time when viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is a matter of responsible medical judgment.

(67 GA, ch 148, s 1)

Editorial note: The quotation marks were editorially added.

CHAPTER 703
PARTIES TO CRIME

703.1	Aiding and Abetting	703.4	Responsibility of Employers
703.2	Joint Criminal Con- duct	703.5	Liability of Corporations, Partnerships and Voluntary Associations
703.3	Accessory after the Fact		

703.1 AIDING AND ABETTING.

All persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense or aid and abet its commission, shall be charged, tried and punished as principals. The guilt of a person who aids and abets the commission of a crime must be determined upon the facts which show the part he or she had in it, and does not depend upon the degree of another person's guilt.

(Ch 1245, 66 GA, ch 1, s 301)
Prior law: s 688.1, Code 1977

703.2 JOINT CRIMINAL CONDUCT.

When two or more persons, acting in concert, knowingly participate in a public offense, each is responsible for the acts of the other done in furtherance of the commission of the offense or escape therefrom, and his or her guilt will be the same as that of the person so acting, unless the act was one which the person could not reasonably expect to be done in the furtherance of the commission of the offense.

(Ch 1245, 66 GA, ch 1, s 302)

703.3 ACCESSORY AFTER THE FACT.

1. Any person having knowledge that a felony has been committed, and who does not stand in the relation of husband or wife to the person accused of committing the felony, who, with intent to prevent the apprehension of the accused person, harbors, aids or conceals the accused person, shall be guilty of an aggravated misdemeanor.

2. Any person having knowledge that a misdemeanor has been committed, and who does not stand in the relation of husband or wife to the person accused of committing the misdemeanor, who, with intent to prevent the apprehension of the accused person, harbors, aids or conceals the accused person, shall be guilty of a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 303)
Prior law: s 688.2, Code 1977

703.4 RESPONSIBILITY OF EMPLOYERS.

An employer or an employer's agent, officer, director, or employee who supervises or directs the work of other employees, is guilty of the same public offense committed by an employee acting under the employer's control, supervision, or direction in any of the following cases:

1. The person has directed the employee to commit a public offense.

2. The person knowingly permits an employee to commit a public offense, under circumstances in which the employer expects to benefit from the illegal activity of the employee.

3. The person assigns the employee some duty or duties which the person knows cannot be accomplished, or are not likely to be accomplished, unless the employee commits a public offense, provided that the offense committed by the employee is one which the employer can reasonably anticipate will follow from this assignment.

(Ch 1245, 66 GA, ch 1, s 304; 67 GA, ch 147, s 4)

703.5 LIABILITY OF CORPORATIONS, PARTNERSHIPS AND VOLUNTARY ASSOCIATIONS.

A public or private corporation, partnership, or other voluntary association shall have the same level of culpability as an individual committing the crime when any of the following is true:

1. The conduct constituting the offense consists of an omission to discharge a specific duty or an affirmative performance imposed on the accused by law.

2. The conduct or act constituting the offense is committed by an agent, officer, director, or employee of the accused while acting within the scope of the authority of the agent, officer, director or employee and in behalf of the accused and when said act or conduct is authorized, requested, or tolerated by the board of directors or by a high managerial agent.

"High managerial agent" means an officer of the corporation, partner, or other agent in a position of comparable authority with respect to the formulation of policy or the supervision in a managerial capacity of subordinate employees.

(Ch 1245, 66 GA, ch 1, s 305; 67 GA, ch 147, s 5)

CHAPTER 704
JUSTIFICATION

704.1	Reasonable Force	704.7	Resisting Forcible
704.2	Deadly Force		Felony
704.3	Defense of Self or Another	704.8	Escape from Place of Confinement
704.4	Defense of Property	704.9	Death
704.5	Aiding Another in the Defense of Property	704.10	Compulsion
704.6	When Defense not Available	704.11	Police Activity
		704.12	Use of Force in Making an Arrest

704.1 REASONABLE FORCE.

"Reasonable force" is that force which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss, and no more, except that the use of deadly force against another is reasonable only to resist a like force or threat. Reasonable force, including deadly force, may be used even if an alternative course of action is available if the alternative entails a risk to one's life or safety, or the life or safety of a third party, or requires one to abandon or retreat from his or her* dwelling or place of business or employment.

(Ch 1245, 66 GA, ch 1, s 401)

Prior law: s 691.1, Code 1977

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

Editorial note: The quotation marks were editorially added.

704.2 DEADLY FORCE.

The term "deadly force" means any of the following:

1. Force used for the purpose of causing serious injury.
2. Force which the actor knows or reasonably should know will create a strong probability that serious injury will result.
3. The discharge of a firearm in the direction of some person with the knowledge of his or her* presence there, even though no intent to inflict serious physical injury can be shown.
4. The discharge of a firearm at a vehicle in which a person is known to be.

(Ch 1245, 66 GA, ch 1, s 402)

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

704.3 DEFENSE OF SELF OR ANOTHER.

A person is justified in the use of reasonable force when he or she* reasonably believes that such force is necessary to defend himself or herself or another from any imminent use of unlawful force.

(Ch 1245, 66 GA, ch 1, s 403)

Prior law: ss 691.1, 691.2(1), 691.3, Code 1977

**Editorial note: The words "or she" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

Editorial note: The comma after the word "herself" was editorially removed.

704.4 DEFENSE OF PROPERTY.

A person is justified in the use of reasonable force to prevent or terminate criminal interference with his or her* possession or other right in property. Nothing in this section

authorizes the use of any spring gun or trap which is left unattended and unsupervised and which is placed for the purpose of preventing or terminating criminal interference with the possession of or other right in property.

(Ch 1245, 66 GA, ch 1, s 404)

Prior law: s 691.2(2), Code 1977

*Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.

704.5 AIDING ANOTHER IN THE DEFENSE OF PROPERTY.

A person is justified in the use of reasonable force to aid another in the lawful defense of his or her* rights in property or in any public property.

(Ch 1245, 66 GA, ch 1, s 405)

Prior law: s 691.3, Code 1977

*Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.

704.6 WHEN DEFENSE NOT AVAILABLE.

The defense of justification is not available to the following:

1. One who is participating in a forcible felony, or riot, or a duel.

2. One who initially provokes the use of force against himself or herself, with the intent to use such force as an excuse to inflict injury on the assailant.

3. One who initially provokes the use of force against himself or herself by his or her unlawful acts, unless:

a. Such force is grossly disproportionate to the provocation, and is so great that the person reasonably believes that he or she is in imminent danger of death or serious injury or

b. The person withdraws from physical contact with the other and indicates clearly to the other that the person desires to terminate the conflict but the other continues or resumes the use of force.

(Ch 1245, 66 GA, ch 1, s 406)

704.7 RESISTING FORCIBLE FELONY.

A person who knows that a forcible felony is being perpetrated is justified in using, against the perpetrator, reasonable force to prevent the completion of that felony.

(Ch 1245, 66 GA, ch 1, s 407)

704.8 ESCAPE FROM PLACE OF CONFINEMENT.

A correctional officer or peace officer is justified in using reasonable force, including deadly force, which is necessary to prevent the escape of any person from any jail, penal institution, correctional facility, or similar place of confinement, or place of trial or other judicial proceeding, or to prevent the escape from custody of any person who is being transported from any such place of confinement, trial or judicial proceeding to any other such place, except that deadly force may not be used to prevent the escape of one who the correctional officer or peace officer knows or should know is confined on a charge or conviction of any class of misdemeanor.

(Ch 1245, 66 GA, ch 1, s 408; 67 GA, CH 147, s 6)

Cross reference: s 246.32, Code 1977

704.9 DEATH.

A physician or a person acting on the direct orders of a physician who ceases to provide medical attention to a person

who is dead, as death is defined in section 702.8, shall not be criminally liable for such cessation of medical attention.

(Ch 1245, 66 GA, ch 1, s 409)

704.10 COMPULSION.

No act, other than an act by which one intentionally or recklessly causes physical injury to another, is a public offense if the person so acting is compelled to do so by another's threat or menace of serious injury, provided that the person reasonably believes that such injury is imminent and can be averted only by his or her doing such act.

(Ch 1245, 66 GA, ch 1, s 410)

704.11 POLICE ACTIVITY.

A peace officer or person employed by any police agency who joins in the participation of a crime by another person solely for the purpose of gathering evidence leading to the prosecution of such other person shall not be guilty of that crime, provided that all of the following are true:

1. He or she is not the instigator of the criminal activity.

2. He or she does not intentionally injure a nonparticipant in the crime.

3. He or she acts with the consent of his or her superiors or the necessity of immediate action precludes his or her obtaining such consent.

4. His or her actions are reasonable under the circumstances.

(Ch 1245, 66 GA, ch 1, s 411)

704.12 USE OF FORCE IN MAKING AN ARREST.

A peace officer or other person making an arrest or securing an arrested person may use such force as is permitted by sections 804.11 through 804.16.

(Ch 1245, 66 GA, ch 1, s 412)

Prior law: s 755.8, Code 1977

CHAPTER 705
SOLICITATION

705.1 Solicitation

705.2 Renunciation

705.1 SOLICITATION.

Any person who commands, entreats, or otherwise attempts to persuade another to commit a particular felony or aggravated misdemeanor, with the intent that such act be done and under circumstances which corroborates that intent by clear and convincing evidence, solicits such other to commit that felony or aggravated misdemeanor. One who solicits another to commit a felony of any class commits a class D felony. One who solicits another to commit an aggravated misdemeanor commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 501)

705.2 RENUNCIATION.

It is a defense to a prosecution for solicitation that the defendant, after soliciting another person to commit a felony or aggravated misdemeanor, persuaded the person not to do so or otherwise prevented the commission of the offense, under circumstances manifesting a complete and voluntary renunciation of the defendant's criminal intent. A renunciation is not "voluntary and complete" if it is motivated in whole or in part by (a) the person's belief that circumstances exist which increase the possibility of detection or apprehension of the defendant or another or which makes more difficult the consummation of the offense or (b) the person's decision to postpone the offense until another time or to substitute another victim or another but similar objective.

(Ch 1245, 66 GA, ch 1, s 502; 67GA, ch 147, s 7)

CHAPTER 706
CONSPIRACY

706.1 Conspiracy	706.3 Penalties
706.2 Locus of Conspiracy	706.4 Multiple Convictions

706.1 CONSPIRACY.

Conspiracy is an agreement or combination between two or more persons to engage in a course of conduct which will consist, in whole or in part, of criminal acts to be committed by one or more of the conspirators. A person shall not be convicted of a conspiracy without proof of an overt act by one or more of the conspirators evidencing a design to accomplish the purpose of the conspiracy by criminal means.

(Ch 1245, 66 GA, ch 1, s 601)

Prior law: ss 719.1, 782.6, Code 1977

706.2 LOCUS OF CONSPIRACY.

A person commits a conspiracy in any county where the person is physically present when he or she makes such agreement or combination, and in any county where the person with whom he or she makes such agreement or combination is physically present at such time, whether or not any of the other conspirators are also present in that county or in this state, and in any county in which any criminal act is done by any person pursuant to the conspiracy, whether or not the person is or has ever been present in such county; provided, that a person may not be prosecuted more than once for a conspiracy based on the same agreement or combination.

(Ch 1245, 66 GA, ch 1, s 602)

Prior law: ss 753.1(2), 753.4, Code 1977

706.3 PENALTIES.

A person who commits a conspiracy to commit a forcible felony is guilty of a class C felony. A person who commits a conspiracy to commit a felony, other than a forcible felony, is guilty of a class D felony. A person who commits a conspiracy to commit a misdemeanor is guilty of a misdemeanor of the same class.

(Ch 1245, 66 GA, ch 1, s 603)

Prior law: s 719.1, Code 1977

Cross reference to definition of forcible felony: s 702.11, Supplement

706.4 MULTIPLE CONVICTIONS.

A conspiracy to commit a public offense is an offense separate and distinct from any public offense which might be committed pursuant to such conspiracy. A person may not be convicted and sentenced for both the conspiracy and for the public offense.

(Ch 1245, 66 GA, ch 1, s 604)

CHAPTER 707
MURDER

707.1	Murder Defined	707.7	Feticide
707.2	Murder in the First Degree	707.8	Nonconsensual Termination
707.3	Murder in the Second Degree	707.9	Murder of Fetus Aborted Alive
707.4	Voluntary Manslaughter	707.10	Duty to Preserve the Life of the Fetus
707.5	Involuntary Manslaughter	707.11	Attempt to Commit Murder
707.6	Civil Liability		

707.1 MURDER DEFINED.

A person who kills another person with malice aforethought either express or implied commits murder.

(Ch 1245, 66 GA, ch 1, s 701)

Prior law: ss 690.1, 697.1, Code 1977

707.2 MURDER IN THE FIRST DEGREE.

A person commits murder in the first degree when he or she commits murder under any of the following circumstances:

1. The person willfully, deliberately, and with premeditation kills another person.

2. The person kills another person while participating in a forcible felony.

3. The person kills another person while escaping or attempting to escape from lawful custody.

4. The person intentionally kills a peace officer, correctional officer, public employee, or hostage while such person is imprisoned in a correctional institution under the jurisdiction of the department of social services, or in a city or county jail.

Murder in the first degree is a class A felony.

(Ch 1245, 66 GA, ch 1, s 702)

Prior law: ss 690.2, 692.1, 697.1, Code 1977

Cross reference to definition of forcible felony: s 702.11, Supplement

Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

707.3 MURDER IN THE SECOND DEGREE.

A person commits murder in the second degree when he or she commits murder which is not murder in the first degree.

Murder in the second degree is a class B felony.

(Ch 1245, 66 GA, ch 1, s 703)

Prior law: s 690.3, Code 1977

Cross reference to definition of forcible felony: s 702.11, Supplement

Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

707.4 VOLUNTARY MANSLAUGHTER.

A person commits voluntary manslaughter when that person causes the death of another person, under circumstances which would otherwise be murder, if he or she acts solely as the result of sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a person and there is not an interval between the provocation and the killing in which a person of ordinary reason and temperament would regain his or her control and suppress the impulse to kill.

Voluntary manslaughter is an included offense under an indictment for murder in the first or second degree.

Voluntary manslaughter is a class C felony.

(Ch 1245, 66 GA, ch 1, s 704)

Prior law: s 690.10, Code 1977

707.5 INVOLUNTARY MANSLAUGHTER.

1. A person commits a class D felony when the person unintentionally causes the death of another person by the commission of a public offense other than a forcible felony or escape.

2. A person commits an aggravated misdemeanor when the person unintentionally causes the death of another person by the commission of an act in a manner likely to cause death or serious injury.

Involuntary manslaughter as defined in this section is an included offense under an indictment for murder in the first or second degree or voluntary manslaughter.

(Ch 1245, 66 GA, ch 1, s 705)

Prior law: ss 690.10, 690.11, Code 1977

Cross reference to definition of forcible felony: s 702.11, Supplement

707.6 CIVIL LIABILITY.

No person who injures the aggressor through application of reasonable force in defense of his or her person or property may be held civilly liable for such injury.

No person who injures the aggressor through application of reasonable force in defense of a second person may be held civilly liable for such injury.

(Ch 1245, 66 GA, ch 1, s 706)

707.7 FETICIDE.

Any person who intentionally terminates a human pregnancy after the end of the second trimester of the pregnancy where death of the fetus results commits feticide. Feticide is a class C felony.

Any person who attempts to intentionally terminate a human pregnancy after the end of the second trimester of the pregnancy where death of the fetus does not result commits attempted feticide. Attempted feticide is a class D felony.

This section shall not apply to the termination of a human pregnancy performed by a physician licensed in this state to practice medicine or surgery when in the best clinical judgment of the physician the termination is performed to preserve the life or health of the pregnant person or of the fetus and every reasonable medical effort not inconsistent with preserving the life of the pregnant person is made to preserve the life of a viable fetus.

Any person who terminates a human pregnancy who is not a person licensed to practice medicine and surgery under the provisions of chapter 148, or an osteopathic physician and surgeon licensed to practice osteopathic medicine and surgery under the provisions of chapter 150A, commits a class C felony.

(Ch 1245, 66GA, ch 1, s 707; 67 GA, ch 148, s 2)

Prior law: s 701.1, Code 1977

Cross reference to definition of viability: s 702.20, Supplement

707.8 NONCONSENSUAL TERMINATION.

1. A person who terminates a human pregnancy without the consent of the pregnant person during the commission of a felony or felonious assault is guilty of a class B felony.

2. A person who intentionally terminates a pregnancy without the knowledge and voluntary consent of the pregnant

person is guilty of a class C felony. This subsection shall not apply to a termination performed without the consent or knowledge of the pregnant person by a physician licensed in this state to practice medicine and surgery when circumstances preclude the pregnant person from providing her consent and the termination is performed to preserve the life or health of the pregnant person or of the fetus.

3. A person who by force or intimidation procures the consent of the pregnant person to a termination of a pregnancy is guilty of a class C felony.

(Ch 1245, 66 GA, ch 1, s 708; 67 GA, ch 147, s 8)

707.9 MURDER OF FETUS ABORTED ALIVE.

A person who intentionally kills a viable fetus aborted alive shall be guilty of a class B felony.

*(Ch 1245, 66 GA, ch 1, s 709; 67 GA, ch 148, s 3;
67 GA, ch 147, s 9)*

*Cross reference to definition of viability: s 702.2,
Supplement.*

707.10 DUTY TO PRESERVE THE LIFE OF THE FETUS.

A person who performs or induces a termination of a human pregnancy and who willfully fails to exercise that degree of professional skill, care, and diligence available to preserve the life and health of a viable fetus shall be guilty of a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 710; 67GA, ch 148, s 4)

*Cross reference to definition of viability: s 702.20, Sup-
plement*

707.11 ATTEMPT TO COMMIT MURDER.

A person commits a class C felony when, with the intent to cause the death of any person and not under circumstances which would justify the person's actions, the person does any act by which he or she expects to set in motion a force or chain of events which will cause or result in the death of such other person.

It is not a defense to an indictment for attempt to commit murder that the acts proved could not have caused the death of any person, provided that the actor intended to cause the death of some person by so acting, and the actor's expectations were not unreasonable in the light of the facts known to the actor.

(Ch 1245, 66 GA, ch 1, s 711; 67GA, ch 147, s 10)

Prior law: ss 690.6, 690.9, 697.2, Code 1977

CHAPTER 708
ASSAULT

Referred to in s 724.8, Supplement

708.1	Assault Defined	708.6	Terrorism
708.2	Penalties for Assault	708.7	Harassment
708.3	Assault while Participating in a Felony	708.8	Going Armed with Intent
708.4	Willful Injury	708.9	Spring Guns and Mantraps
708.5	Administering Harmful Substances		

708.1 ASSAULT DEFINED.

A person commits an assault when, without justification, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

Provided, that where the person doing any of the above enumerated acts, and such other person, are voluntary participants in a sport, social or other activity, not in itself criminal, and such act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk of serious injury or breach of the peace, the act shall not be an assault.

(Ch 1245, 66 GA, ch 1, s 801)

Prior law: ss 694.1, 694.2, 694.6, Code 1977

Referred to in ss 708.2, 708.3, 724.8, Supplement

708.2 PENALTIES FOR ASSAULT.

1. A person who commits an assault, as defined in section 708.1, with the intent to inflict a serious injury upon another, shall be guilty of an aggravated misdemeanor.

2. Any other assault is a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 802)

Prior law: ch 694, Code 1977

708.3 ASSAULT WHILE PARTICIPATING IN A FELONY.

Any person who commits an assault as defined in section 708.1 while participating in a felony is guilty of a class C felony if the person thereby causes serious injury to any person; if no serious injury results, the person is guilty of a class D felony.

(Ch 1245, 66 GA, ch 1, s 803)

Prior law: ss 694.5, 694.7, 698.4, Code 1977

Cross reference to definition of forcible felony: s 702.11, Supplement

Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

708.4 WILLFUL INJURY.

Any person who does an act which is not justified and which is intended to cause and does cause serious injury to another commits a class C felony.

(Ch 1245, 66 GA, ch 1, s 804)

Prior law: ss 693.1, 694.6, 697.2, Code 1977

Substitutes for mayhem chapter which was repealed

708.5 ADMINISTERING HARMFUL SUBSTANCES.

Any person who administers to another or causes another to take, without the other person's consent or by threat or deception, and for other than medicinal purposes, any poisonous, stupefying, stimulating, depressing, tranquilizing, narcotic, hypnotic, hallucinating, or anesthetic substance in sufficient quantity to have such effect, commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 805)

708.6 TERRORISM.

A person commits a class D felony when the person does any of the following with the intent to injure or provoke fear or anger in another:

1. Shoots, throws, launches, or discharges a dangerous weapon at or into any building, vehicle, airplane, railroad engine or railroad car, or boat occupied by another person, and thereby places the occupants thereof in reasonable apprehension of serious injury.

2. Threatens to commit a forcible felony under circumstances raising a reasonable expectation that the threat will be carried out.

(Ch 1245, 66 GA, ch 1, s 806)

Prior law: ss 714.2, 716.11, Code 1977

708.7 HARASSMENT.

A person commits harassment when, with intent to intimidate, annoy or alarm another person, the person does any of the following:

1. Communicates with another by telephone, telegraph, or writing without legitimate purpose and in a manner likely to cause the other person annoyance or harm.

2. Places any simulated explosive or simulated incendiary device in or near any building, vehicle, airplane, railroad engine or railroad car, or boat occupied by such person.

3. Orders merchandise or services in the name of another, or to be delivered to another, without such other person's knowledge or consent.

4. Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the same did not occur.

Harassment is a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 807)

Prior law: ss 714.37, 714.42, Code 1977

Referred to in s 724.8, Supplement

708.8 GOING ARMED WITH INTENT.

A person who goes armed with any dangerous weapon with the intent to use without justification such weapon against the person of another commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 808)

Prior law: s 695.1, Code 1977

708.9 SPRING GUNS AND MANTRAPS.

Any person who in any place sets a spring gun or a trap which is intended to be sprung by a person and which can cause such person serious injury commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 809)

CHAPTER 709
SEXUAL ABUSE

709.1	Sexual Abuse Defined	709.6	Jury Instructions for
709.2	Sexual Abuse in the		Offenses of Sexual Abuse
	First Degree	709.7	Detention in Brothel
709.3	Sexual Abuse in the	709.8	Lascivious Acts with a
	Second Degree		Child
709.4	Sexual Abuse in the	709.9	Indecent Exposure
	Third Degree	709.10	Cost of Medical Examina-
709.5	Resistance to Sexual		tion in Crimes of Sexual
	Abuse		Abuse

709.1 SEXUAL ABUSE DEFINED.

Any sex act between persons is sexual abuse by either of the participants when the act is performed with the other participant in any of the following circumstances:

1. Such act is done by force or against the will of the other. In any case where the consent or acquiescence of the other is procured by threats of violence toward any person, the act is done against the will of the other.

2. Such other participant is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.

3. Such other participant is a child.

(Ch 1245, 66 GA, ch 1, s 901)

Prior law: ss 698.1, 698.3, Code 1977

Cross reference to definition of sex act: s 702.17, Supplement

Term "sexual abuse" is used instead of "rape" in new criminal code

709.2 SEXUAL ABUSE IN THE FIRST DEGREE.

A person commits sexual abuse in the first degree when in the course of committing sexual abuse the person causes another serious injury.

Sexual abuse in the first degree is a class A felony.

(Ch 1245, 66 GA, ch 1, s 902)

Prior law: s 698.1, Code 1977

Cross reference to definition of forcible felony: s 702.11, Supplement

Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

Spouses may be charged with sexual abuse in the first degree

709.3 SEXUAL ABUSE IN THE SECOND DEGREE.

A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances:

1. During the commission of sexual abuse the person displays in a threatening manner a deadly weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.

2. The other participant is under the age of twelve.

3. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other participant.

Sexual abuse in the second degree is a class B felony.

(Ch 1245, 66 GA, ch 1, s 903)

Prior law: s 698.1, Code 1977

Cross reference to definition of forcible felony: s 702.11, Supplement

Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

Spouses may be charged with sexual abuse in the second degree

709.4 SEXUAL ABUSE IN THE THIRD DEGREE.

Any sex act between persons who are not at the time cohabiting as husband and wife is sexual abuse in the third degree by either of the participants when the act is performed with the other participant in any of the following circumstances:

1. Such act is done by force or against the will of the other.

2. The other participant is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.

3. The other participant is a child.*

4. The other person is fourteen years of age but less than sixteen years of age and the defendant is a member of the same household as the victim, the defendant is related to the victim by blood or affinity to the fourth degree, or the defendant is in a position of authority over the victim and used this authority to coerce the victim to submit.

Sexual abuse in the third degree is a class C felony.

(Ch 1245, 66 GA, ch 1, s 904; 67 GA, ch 147, s 12)

Prior law: ss 698.1, 698.3, Code 1977

Cross reference to definition of forcible felony: s 702.11, Supplement

Cross reference to definition of sex act: s 702.17, Supplement

Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

*Substitutes for statutory rape which was repealed

709.5 RESISTANCE TO SEXUAL ABUSE.

Under the provisions of this chapter it shall not be necessary to establish physical resistance by a participant in order to establish that an act of sexual abuse was committed by force or against the will of the participant. However, the circumstances surrounding the commission of the act may be considered in determining whether or not the act was done by force or against the will of the other.

(Ch 1245, 66 GA, ch 1, s 905)

709.6 JURY INSTRUCTIONS FOR OFFENSES OF SEXUAL ABUSE.

No instruction shall be given in a trial for sexual abuse cautioning the jury to use a different standard relating to a victim's testimony than that of any other witness to that offense or any other offense.

(Ch 1245, 66 GA, ch 1, s 906)

709.7 DETENTION IN BROTHEL.

Any person who, by force, intimidation, or false pretense entices another who is not a prostitute to enter a brothel with the intent to cause such other to become an inmate thereof, or who detains another, whether a prostitute or not, in any brothel, against the will of such other, with the intent that

such other engage in prostitution therein, commits a class C felony.

(Ch 1245, 66 GA, ch 1, s 907)

Prior law: ss 724.8, 724.9, Code 1977

709.8 LASCIVIOUS ACTS WITH A CHILD.

It is unlawful for any person eighteen years of age or older to perform any of the following acts with a child with or without his or her consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the pubes or genitals of a child.
2. Permit a child to fondle or touch his or her genitals or pubes.
3. Solicit a child to engage in a sex act.
4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on him or her.

Any person who violates a provision of this section shall, upon conviction, be guilty of a class D felony.

(Ch 1245, 66 GA, ch 1, s 908)

Prior law: s 725.10, Code 1977

Cross reference to definition of sex act: s 702.17, Supplement

Referred to in s 907.3, Supplement

709.9 INDECENT EXPOSURE.

A person who exposes his or her genitals or pubes to another not his or her spouse, or who commits a sex act in the presence of or view of a third person, commits a serious misdemeanor, if:

1. The person does so to arouse or satisfy the sexual desires of either party; and
2. The person knows or reasonably should know that the act is offensive to the viewer.

(Ch 1245, 66 GA, ch 1, s 909; 67 GA, ch 147, s 13)

Cross reference to definition of sex act: s 702.17, Supplement

709.10 COST OF MEDICAL EXAMINATION IN CRIMES OF SEXUAL ABUSE.

The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be borne by the state department of health.

(Ch 1245, 66 GA, ch 1, s 910)

CHAPTER 710
KIDNAPPING AND RELATED OFFENSES

710.1 Kidnapping Defined	710.4 Kidnapping in the Third Degree
710.2 Kidnapping in the First Degree	710.5 Child Stealing
710.3 Kidnapping in the Second Degree	710.6 Violating Custodial Order
	710.7 False Imprisonment

710.1 KIDNAPPING DEFINED.

A person commits kidnapping when he or she either confines a person or removes a person from one place to another, knowing that he or she has neither the authority nor the consent of the other to do so; provided, that to constitute kidnapping the act must be accompanied by one or more of the following:

1. The intent to hold such person for ransom.
2. The intent to use such person as a shield or hostage.
3. The intent to inflict serious injury upon such person, or to subject the person to a sexual abuse.
4. The intent to secretly confine such person.
5. The intent to interfere with the performance of any government function.

(Ch 1245, 66 GA, ch 1, s 1001)
Prior law: ss 706.1, 706.3, Code 1977

710.2 KIDNAPPING IN THE FIRST DEGREE.

Kidnapping is kidnapping in the first degree when the person kidnapped, as a consequence of the kidnapping, suffers serious injury, or is intentionally subjected to torture or sexual abuse.

Kidnapping in the first degree is a class A felony.
(Ch 1245, 66 GA, ch 1, s 1002)
Prior law: s 706.1, Code 1977
Cross reference to definition of forcible felony: s 702.11, Supplement
Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

710.3 KIDNAPPING IN THE SECOND DEGREE.

Kidnapping where the purpose is to hold the victim for ransom or where the kidnapper is armed with a dangerous weapon is kidnapping in the second degree. Kidnapping in the second degree is a class B felony.

(Ch 1245, 66 GA, ch 1, s 1003)
Prior law: ss 706.1, 706.3, Code 1977
Cross reference to definition of forcible felony: s 702.11, Supplement
Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

710.4 KIDNAPPING IN THE THIRD DEGREE.

All other kidnappings are kidnappings in the third degree. Kidnapping in the third degree is a class C felony.

(Ch 1245, 66 GA, ch 1, s 1004)
Prior law: s 706.1, Code 1977
Cross reference to definition of forcible felony: s 702.11, Supplement
Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

710.5 CHILD STEALING.

A person commits a class C felony when, knowing that he or she has no authority to do so, forcibly or fraudulently takes, decoys, or entices away any child with intent to detain or

conceal such child from its parents or guardian, or other persons or institution having the lawful custody of such child, unless the person is a relative of such child, and the person's sole purpose is to assume custody of such child.

(Ch 1245, 66 GA, ch 1, s 1005)

Prior law: s 706.2, Code 1977

710.6 VIOLATING CUSTODIAL ORDER.

Any relative of a child who, acting in violation of any order of any court which fixes, permanently or temporarily, the custody of such child in another, takes such child and removes him or her* from the state, without the consent of the person having lawful custody, commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 1006)

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

710.7 FALSE IMPRISONMENT.

A person commits false imprisonment when, having no reasonable belief that he or she has any right or authority to do so, the person intentionally confines another against his or her will. A person is confined when the person's freedom to move about is substantially restricted by force, threat, or deception. False imprisonment is a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1007)

CHAPTER 711
ROBBERY AND EXTORTION

Prior law: Ch 711, Code 1977

711.1	Robbery Defined	711.3	Robbery in the Second Degree
711.2	Robbery in the First Degree	711.4	Extortion

711.1 ROBBERY DEFINED.

A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without the stolen property:

1. Commits an assault upon another.
2. Threatens another with or purposely puts another in fear of immediate serious injury.
3. Threatens to commit immediately any forcible felony.

It is immaterial to the question of guilt or innocence of robbery that property was or was not actually stolen.

(Ch 1245, 66 GA, ch 1, s 1101)

Cross reference to definition of forcible felony: s 702.11, Supplement

Editorial note: The comma after "intended theft" was editorially removed.

711.2 ROBBERY IN THE FIRST DEGREE.

A person commits robbery in the first degree when, while perpetrating a robbery, the person purposely inflicts or attempts to inflict serious injury, or is armed with a dangerous weapon. Robbery in the first degree is a class B felony.

(Ch 1245, 66 GA, ch 1, s 1102)

Cross reference to definition of forcible felony: s 702.11, Supplement

Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

711.3 ROBBERY IN THE SECOND DEGREE.

All robbery which is not robbery in the first degree is robbery in the second degree. Robbery in the second degree is a class C felony.

(Ch 1245, 66 GA, ch 1, s 1103)

Cross reference to definition of forcible felony: s 702.11, Supplement

Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

711.4 EXTORTION.

A person commits extortion if the person does any of the following with the purpose of obtaining for oneself or another anything of value, tangible or intangible, including labor or services:

1. Threatens to inflict physical injury on some person, or to commit any public offense.
2. Threatens to accuse another of a public offense.
3. Threatens to expose any person to hatred, contempt, or ridicule.
4. Threatens to harm the credit or business or professional reputation of any person.
5. Threatens to take or withhold action as a public officer or employee, or to cause some public official or employee to take or withhold action.

6. Threatens to testify or provide information or to withhold testimony or information with respect to another's legal claim or defense.

7. Threatens to wrongfully injure the property of another.

It is a defense to a charge of extortion that the person making a threat other than a threat to commit a public offense, reasonably believed that he or she had a right to make such threats in order to recover property, or to receive compensation for property or services, or to recover a debt to which the person has a good faith claim.

Extortion is a class D felony.

(Ch 1245, 66 GA, ch 1, s 1104)

CHAPTER 712
ARSON

Prior law: Generally, Ch 707, Code 1977

712.1	Arson Defined	712.5	Reckless Use of Fire or Explosives
712.2	Arson in the First Degree	712.6	Possession of Explosive or Incendiary Materials or Devices
712.3	Arson in the Second Degree	712.7	False Reports
712.4	Arson in the Third Degree	712.8	Threats

712.1 ARSON DEFINED.

Causing a fire or explosion, or placing any burning or combustible material, or any incendiary or explosive device or material, in or near any property with the intent to destroy or damage such property, or with the knowledge that such property will probably be destroyed or damaged, is arson, whether or not any such property is actually destroyed or damaged. Provided, that where a person who owns said property which the defendant intends to destroy or damage, or which he or she* knowingly endangers, consented to the defendant's acts, and where no insurer has been exposed fraudulently to any risk, and where the act was done in such a way as not to unreasonably endanger the life or property of any other person the act shall not be arson.

(Ch 1245, 66 GA, ch 1, s 1201)

**Editorial note: The words "or she" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

712.2 ARSON IN THE FIRST DEGREE.

Arson is arson in the first degree when the property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, is property in which the presence of one or more persons can be reasonably anticipated.

Arson in the first degree is a class B felony.

(Ch 1245, 66 GA, ch 1, s 1202)

Cross reference to definition of forcible felony: s 702.11, Supplement

Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

712.3 ARSON IN THE SECOND DEGREE.

Arson which is not arson in the first degree is arson in the second degree when the property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, is a building or a structure, or real property of any kind, or standing crops, or is personal property the value of which exceeds five hundred dollars. Arson in the second degree is a class C felony.

(Ch 1245, 66 GA, ch 1, s 1203)

712.4 ARSON IN THE THIRD DEGREE.

Arson which is not arson in the first degree or arson in the second degree is arson in the third degree. Arson in the third degree is an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1204)

712.5 RECKLESS USE OF FIRE OR EXPLOSIVES.

Any person who shall so use fire or any incendiary or explosive device or material as to recklessly endanger the

property or safety of another shall be guilty of a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1205)

712.6 POSSESSION OF EXPLOSIVE OR INCENDIARY MATERIALS OR DEVICES.

Any person who shall possess any incendiary or explosive device or material with the intent to use such device or material to commit any public offense shall be guilty of a class C felony.

(Ch 1245, 66 GA, ch 1, s 1206)

Prior law: s 697.11, Code 1977

712.7 FALSE REPORTS.

A person who, knowing the information to be false, conveys or causes to be conveyed to any person any false information concerning the placement of any incendiary or explosive device or material or other destructive substance or device in any place where persons or property would be endangered commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 1207)

Prior law: s 697.6, Code 1977

712.8 THREATS.

Any person who threatens to place or attempts to place any incendiary or explosive device or material, or any destructive substance or device in any place where it will endanger persons or property, commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 1208)

Prior law: s 697.7, Code 1977

CHAPTER 713
BURGLARY

Prior law: Ch 708, Code 1977

- | | | | |
|-------|------------------------------|-------|-------------------------------|
| 713.1 | Burglary Defined | 713.3 | Burglary in the Second Degree |
| 713.2 | Burglary in the First Degree | 713.4 | Possession of Burglar's Tools |

713.1 BURGLARY DEFINED.

Any person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an occupied structure or area enclosed in such a manner as to provide a place for the keeping of valuable property secure from theft or criminal mischief, such occupied structure or place not being open to the public, or who remains therein after it is closed to the public or after the person's right, license or privilege to be there has expired, or any person having such intent who breaks an occupied structure or other place where anything of value is kept, commits burglary.

(Ch 1245, 66 GA, ch 1, s 1301)

*Cross reference to definition of occupied structure:
s 702.12, Supplement*

713.2 BURGLARY IN THE FIRST DEGREE.

A person commits burglary in the first degree if, while perpetrating a burglary, the person has in his or her possession an explosive or incendiary device or material, or a dangerous weapon, or intentionally or recklessly inflicts physical injury on any person. Burglary in the first degree is a class B felony.

(Ch 1245, 66 GA, ch 1, s 1302)

Cross reference to definition of forcible felony: s 702.11, Supplement

Cross reference to eligibility for deferred judgment, deferred sentence, suspended sentence: s 907.2, Supplement

713.3 BURGLARY IN THE SECOND DEGREE.

All burglary which is not burglary in the first degree is burglary in the second degree. Burglary in the second degree is a class C felony.

(Ch 1245, 66 GA, ch 1, s 1303)

713.4 POSSESSION OF BURGLAR'S TOOLS.

Any person who possesses any key, tool, instrument, device or any explosive, with the intent to use it in the perpetration of a burglary, shall be guilty of possessing burglar's tools. Possessing burglar's tools is a class C felony.

(Ch 1245, 66 GA, ch 1, s 1304)

CHAPTER 714
THEFT

Prior law: Generally, Chs 709, 710, 712, 713, Code 1977

714.1	Theft Defined	714.13	Fraudulent Practice in the Fifth Degree
714.2	Degrees of Theft		
714.3	Value	714.14	Value for Purposes of Fraudulent Practices
714.4	Claim of Right		
714.5	Evidence of Intention	714.15	Reproduction of Sound Recordings
714.6	Land		
714.7	Operating Vehicle without Owner's Consent	714.16	Consumer Frauds
714.8	Fraudulent Practices Defined	714.17	Unlawful Advertising and Selling of Courses of Instruction
714.9	Fraudulent Practice in the First Degree	714.18	Bond Filed
714.10	Fraudulent Practice in the Second Degree	714.19	Nonapplicability
714.11	Fraudulent Practice in the Third Degree	714.20	One Contract Per Person
714.12	Fraudulent Practice in the Fourth Degree	714.21	Penalty
		714.22	Trade and Vocational Schools--Exemption--Conditions

714.1 THEFT DEFINED.

A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.

2. Misappropriates property which the person has in trust, or property of another which the person has in his or her possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to his or her own use, when the owner of such property is known to him or her. Failure by a bailee or lessee of personal property to return the property within seventy-two hours after a time specified in a written agreement of lease or bailment shall be evidence of misappropriation.

3. Obtains the labor or services of another, or a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another, by deception. Where compensation for goods and services is ordinarily paid immediately upon the obtaining of such goods or the rendering of such services, the refusal to pay or leaving the premises without payment or offer to pay or without having obtained from the owner or operator the right to pay subsequent to leaving the premises gives rise to an inference that the goods or services were obtained by deception.

4. Exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen, unless the person's purpose is to promptly restore it to the owner or to deliver it to an appropriate public officer. The fact that the person is found in possession of property which has been stolen from two or more persons on separate occasions, or that the person is a dealer or other person familiar with the value of such property and has acquired it for a consideration which is far below its reasonable value, shall be evidence from which the court or jury may infer that the person knew or believed that the property had been stolen.

5. Takes, destroys, conceals or disposes of property in which someone else has a security interest, with intent to defraud the secured party.

6. Makes, utters, draws, delivers, or gives any check, draft, or written order on any bank, person or corporation, and obtains property or service in exchange therefor, if the person knows that such check, draft or written order will not be paid when presented.

Whenever the drawee of such instrument has refused payment because of insufficient funds, and the maker has not paid the holder of the instrument the amount due thereon within ten days of the maker's receipt of notice from the holder that payment has been refused by the drawee, the court or jury may infer from such facts that the maker knew that the instrument would not be paid on presentation. Notice of refusal of payment shall be by certified mail, or by personal service in the manner prescribed for serving original notices.

Whenever the drawee of such instrument has refused payment because the maker has no account with the drawee, the court or jury may infer from such fact that the maker knew that the instrument would not be paid on presentation.

7. Any act that is declared to be theft by any provision of the Code.

(Ch 1245, 66 GA, ch 1, s 1401; 67 GA, ch 147, s 14)

714.2 DEGREES OF THEFT.

1. The theft of property exceeding five thousand dollars in value, or the theft of property from the person of another, or from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing, or the proximity of battle, or the theft of property which has been removed from a building because of a physical disaster, riot, bombing, or the proximity of battle, is theft in the first degree. Theft in the first degree is a class C felony.

2. The theft of any property not exceeding five hundred dollars in value by one who has before been twice convicted of theft, or the theft by any other person of property exceeding five hundred dollars but not exceeding five thousand dollars in value or theft of a motor vehicle as defined in chapter 321, irrespective of value, is theft in the second degree. Theft in the second degree is a class D felony.

3. The theft of property exceeding one hundred dollars but not exceeding five hundred dollars in value is theft in the third degree. Theft in the third degree is an aggravated misdemeanor.

4. The theft of property exceeding fifty dollars in value but not exceeding one hundred dollars in value is theft in the fourth degree. Theft in the fourth degree is a serious misdemeanor.

5. The theft of property not exceeding fifty dollars in value is theft in the fifth degree. Theft in the fifth degree is a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1402; 67 GA, ch 147, s 15)

714.3 VALUE.

The value of property is its normal market or exchange value within the community at the time that it is stolen. If money or property is stolen by a series of acts from the same person or location, or from different persons by a series of acts which occur in approximately the same location or time period so that the thefts are attributable to a single scheme, plan or conspiracy, such acts may be considered a single theft and the value may be the total value of all the property stolen.

(Ch 1245, 66 GA, ch 1, s 1403)

714.4 CLAIM OF RIGHT.

No person who takes, obtains, disposes of, or otherwise uses or acquires property, is guilty of theft by reason of such act if the person reasonably believes that he or she has a right, privilege or license to do so, or if the person does in fact have such right, privilege or license.

(Ch 1245, 66 GA, ch 1, s 1404)

714.5 EVIDENCE OF INTENTION.

The fact that any person has concealed unpurchased property of any store or other mercantile establishment, either on the premises or outside the premises of such store, shall be material evidence of intent to deprive the owner thereof, and the finding of such unpurchased property concealed, upon the person or among the belongings of such person, shall be material evidence of intent to deprive and, if such person conceals, or causes to be concealed, such unpurchased property, upon the person or among the belongings of another, the finding of the same shall also be material evidence of intent to deprive on the part of the person concealing such goods.

(Ch 1245, 66 GA, ch 1, s 1405)

Referred to in s 808.12, Supplement

714.6 LAND.

The mere trespass on or occupation of land, contrary to the rights of the owner thereof, is not theft.

(Ch 1245, 66 GA, ch 1, s 1406)

714.7 OPERATING VEHICLE WITHOUT OWNER'S CONSENT.

Any person who shall take possession or control of any railroad vehicle, or any self-propelled vehicle, aircraft, or motor boat, the property of another, without the consent of the owner of such, but without the intent to permanently deprive the owner thereof, shall be guilty of an aggravated misdemeanor. A violation of this section may be proved as a lesser included offense on an indictment or information charging theft.

(Ch 1245, 66 GA, ch 1, s 1407; 67 GA, ch 147, s 16)

Prior law: s 321.76, Code 1977

714.8 FRAUDULENT PRACTICES DEFINED.

A person who does any of the following acts is guilty of a fraudulent practice.

1. Makes, tenders or keeps for sale any warehouse receipt, bill of lading, or any other instrument purporting to represent any right to goods, with knowledge that the goods represented by such instrument do not exist.

2. Knowingly attaches or alters any label to any goods offered or kept for sale so as to materially misrepresent the quality or quantity of such goods, or the maker or source of such goods.

3. Knowingly executes or tenders any false affidavit or certificate, which is required by law, or which is given in support of any claim for compensation, indemnification, restitution, or other payment.

4. Makes any entry in or alteration of any public records, or any records of any corporation, partnership, or other business enterprise or nonprofit enterprise, knowing the same to be false.

5. Removes, alters or defaces any serial or other identification number, or any owners' identification mark, from any property not his or her own.

6. For the purpose of soliciting assistance, contributions, or other thing of value, falsely represents oneself to be a veteran of the armed forces of the United States,

or a member of any fraternal, religious, charitable, or veterans organization, or any pretended organization of a similar nature, or to be acting on behalf of such person or organization.

7. Manufactures, sells, or keeps for sale any token or device suitable for the operation of a coin-operated device or vending machine, with the intent that such token or device may be so used, or with the representation that they can be so used; provided, that the owner or operator of any coin-operated device or vending machine may sell slugs or tokens for use in his or her own devices.

8. Manufactures or possesses any false or counterfeit label, with the intent that it be placed on merchandise to falsely identify its origin or quality, or who sells any such false or counterfeit label with the representation that it may be so used.

9. Alters or renders inoperative or inaccurate any meter or measuring device used in determining the value of or compensation for the purchase, use or enjoyment of property, with the intent to defraud any person.

10. Does any act expressly declared to be a fraudulent practice by any other section of the Code.

(Ch 1245, 66 GA, ch 1, s 1408; 67 GA, ch 149, s 3; 67 GA, ch 147, s 17)

Referred to in s 714.11, Supplement

714.9 FRAUDULENT PRACTICE IN THE FIRST DEGREE.

Fraudulent practice in the first degree is a fraudulent practice where the amount of money or value of property involved exceeds five thousand dollars.

Fraudulent practice in the first degree is a class C felony.

(67 GA, ch 149, s 4)

714.10 FRAUDULENT PRACTICE IN THE SECOND DEGREE.

Fraudulent practice in the second degree is the following:

1. A fraudulent practice where the amount of money or value of property or services involved exceeds five hundred dollars but does not exceed five thousand dollars.

2. A fraudulent practice where the amount of money or value of property or services involved does not exceed five hundred dollars by one who has been convicted of a fraudulent practice twice before.

Fraudulent practice in the second degree is a class D felony.

(67 GA, ch 149, s 4)

714.11 FRAUDULENT PRACTICE IN THE THIRD DEGREE.

Fraudulent practice in the third degree is the following:

1. A fraudulent practice where the amount of money or value of property or service involved exceeds one hundred dollars but does not exceed five hundred dollars.

2. A fraudulent practice as set forth in subsections 2, 8, and 9 of section 714.8.

3. A fraudulent practice where it is not possible to determine an amount of money or value of property and service involved.

Fraudulent practice in the third degree is an aggravated misdemeanor.

(67 GA, ch 149, s 4)

714.12 FRAUDULENT PRACTICE IN THE FOURTH DEGREE.

Fraudulent practice in the fourth degree is a fraudulent practice where the amount of money or value of property or

services involved exceeds fifty dollars but does not exceed one hundred dollars.

Fraudulent practice in the fourth degree is a serious misdemeanor.

(67 GA, ch 149, s 4)

714.13 FRAUDULENT PRACTICE IN THE FIFTH DEGREE.

Fraudulent practice in the fifth degree is a fraudulent practice where the amount of money or value of property or services involved does not exceed fifty dollars.

Fraudulent practice in the fifth degree is a simple misdemeanor.

(67 GA, ch 149, s 4)

714.14 VALUE FOR PURPOSES OF FRAUDULENT PRACTICES.

The value of property or service is its normal market or exchange value, if any, within the community at the time the fraudulent practice is committed.

If money or property or service is obtained by a series of acts from the same person or location, or from different persons by a series of acts which occur in approximately the same location or time period so that the fraudulent practices are attributable to a single scheme, plan, or conspiracy, such acts may be considered as a single fraudulent practice and the value may be the total value of all money, property, and service involved.

(67 GA, ch 149, s 4)

714.15 REPRODUCTION OF SOUND RECORDINGS.

1. Except as provided in subsection 3, it is unlawful for a person knowingly to:

a. Transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film or other article without the consent of the owner; or

b. Sell; distribute; circulate; offer for sale, distribution or circulation; possess for the purpose of sale, distribution or circulation; or cause to be sold, distributed, circulated; offered for sale, distribution or circulation; or possessed for sale, distribution or circulation, any article or device on which sounds have been transferred without the consent of the person who owns the master phonograph record, master disc, master tape or other device or article from which the sounds are derived.

2. It is unlawful for a person to sell, distribute, circulate, offer for sale, distribution or circulation or possess for the purposes of sale, distribution or circulation, any phonograph record, disc, wire, tape, film or other article on which sounds have been transferred unless the phonograph record, disc, wire, tape, film or other article bears the actual name and address of the transferor of the sounds in a prominent place on its outside face or package.

3. This section does not apply to a person who transfers or causes to be transferred sounds intended for or in connection with radio or television broadcast transmission or related uses, synchronized sound tracks of motion pictures or sound tracks recorded for synchronizing with motion pictures, for archival purposes or for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.

4. A person who violates the provisions of this section is guilty of theft.

(67 GA, ch 147, s 18)

714.16 CONSUMER FRAUDS.

1. Definitions:

a. The term "advertisement" includes the attempt by publication, dissemination, solicitation or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise;

b. The term "merchandise" includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services;

c. The term "person" includes any natural person or his legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof;

d. The term "sale" includes any sale, offer for sale, or attempt to sell any merchandise for cash or on credit.

e. The term "subdivided lands" refers to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels; provided, however, it does not apply to the leasing of apartments, offices, stores or similar space within an apartment building, industrial building or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in said structure.

2. a. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

b. The advertisement for sale, lease or rent, or the actual sale, lease, or rental of any merchandise at a price or with a rebate or payment or other consideration to the purchaser which is contingent upon the procurement of prospective customers provided by the purchaser, or the procurement of sales, leases, or rentals to persons suggested by the purchaser, is declared to be an unlawful practice rendering any obligation incurred by the buyer in connection therewith, completely void and a nullity. The rights and obligations of any contract relating to such contingent price, rebate, or payment shall be interdependent and inseverable from the rights and obligations relating to the sale, lease, or rental.

c. It shall be unlawful for any person to advertise the sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first such advertisement remain in business under the same, or substantially the same, ownership, under the same, or substantially the same trade name, or continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days.

d. (1) No person shall offer or advertise within this state for sale or lease, any subdivided lands without first filing with the real estate commission, true and accurate copies of all road plans, plats, field notes and diagrams of water, sewage and electric power lines as they exist at the time of such filing, provided such filing shall not be required for a subdivision subject to section 306.21 or chapter 409. Each such filing shall be accompanied by a fee of fifty dollars for each subdivision included, payable to the real estate commission.

(2) False or misleading statements filed pursuant to subparagraph 1 of paragraph "d" of this subsection or section 306.21 or chapter 409, and advertising, offers to sell, or contracts not in substantial conformity with the filings made pursuant to section 306.21 or chapter 409 are unlawful.

e. Any violations of chapter 123 or any other provisions of law by a manufacturer, distiller, vintner, importer, or any other person participating in the distribution of alcoholic liquor or beer as defined in chapter 123.

3. When it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this section or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, he may:

a. Require such person to file on such forms as he may prescribe a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as he may deem necessary;

b. Examine under oath any person in connection with the sale or advertisement of any merchandise;

c. Examine any merchandise or sample thereof, record, book, document, account or paper as he may deem necessary; and

d. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this section, and retain the same in his possession until the completion of all proceedings in connection with which the same are produced.

4. a. To accomplish the objectives and to carry out the duties prescribed by this section, the attorney general, in addition to other powers conferred upon him by this section, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules and regulations as may be necessary, which rules and regulations shall have the force of law.

b. No information or evidence provided the attorney general by a person pursuant to subsections 3 and 4 of this section shall be admitted in evidence, or used in any manner whatsoever, in any criminal prosecution. If a criminal prosecution under the provisions of this section is initiated in a state court against a person who has provided information pursuant to subsections 3 and 4 of this section, the state shall have the burden of proof that the information so provided was not used in any manner to further the criminal investigation or prosecution.

c. In any civil action brought pursuant to this chapter, the attorney general shall have the right to require any defendant to give testimony, and no criminal prosecution based upon transactions or acts about which he is questioned and required to give testimony shall thereafter be brought against such defendant.

5. Service by the attorney general of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

a. Personal service thereof without this state; or

b. The mailing thereof by registered mail to the last known place of business, residence or abode within or without this state of such person for whom the same is intended; or

c. As to any person other than a natural person, in the manner provided in the Rules of Civil Procedure as if a petition had been filed; or

d. Such service as a district court may direct in lieu of personal service within this state.

6. If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a district court and, after hearing thereof, request an order:

a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;

b. Dissolving a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

c. Granting such other relief as may be required; until the person files the statement or report, or obeys the subpoena.

7. Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any practice declared to be unlawful by this section he may seek and obtain in an action in a district court an injunction prohibiting such person from continuing such practices or engaging therein or doing any acts in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any prohibited practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal which may have been acquired by means of any practice in this section declared to be unlawful including the appointment of a receiver in cases of substantial and willful violation of the provisions of this section.

8. When a receiver is appointed by the court pursuant to this section, he shall have the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this section, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

9. Subject to an order of the court terminating the business affairs of any person after receivership proceedings held pursuant to this section, the provisions of this section shall not bar any claim against any person who has acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

10. In any action brought under the provisions of this section, the attorney general is entitled to recover costs for the use of this state.

11. If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions of applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

12. Nothing contained in this section shall apply to the owner or publisher of newspapers, magazines, publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser; and provided, further, that nothing herein contained shall apply to any advertisement which complies with the rules and regulations of, and the statutes administered by the federal trade commission.

(S13, s 5051-a; C24, 27, 31, 35, 39, ss 13069, 13070; C46, 50, 54, 58, 62, ss 713.24, 713.25; C66, 71, 73, 75, 77, s 713.24)
Referred to in ss 123.19(6), 154A.24, 154A.26, 162.13, 322.6(9), 496A.91(3), 537.3309, Code 1977; s 714.22, Supplement
Real estate contracts, dual prohibited, s 117.45, Code 1977

714.17 UNLAWFUL ADVERTISING AND SELLING OF COURSES OF INSTRUCTION.

It shall be unlawful for any person, firm, association, or corporation maintaining, advertising, or conducting in Iowa any course of instruction for profit, or for tuition charge, whether by classroom instructions or by correspondence, to:

1. Falsely advertise or represent to any person any matter material to such course of instruction. All advertising of such courses of instruction shall adhere to and comply with the rules and regulations of the federal trade commission as of the effective date of this chapter.

2. Collect tuition or other charges in excess of one hundred fifty dollars in the case of correspondence courses of study, in advance of the receipt and approval by the pupil of the first assignment or lesson of such course. Any contract providing for advance payment of more than one hundred fifty dollars shall be voidable on the part of the pupil or any person liable for the tuition provided for in the contract.

3. Promise or guarantee employment utilizing information, training, or skill purported to be provided or otherwise enhanced by a course, unless the promisor or guarantor offers the student or prospective student a bona fide contract of employment agreeing to employ said student or prospective student for a period of not less than one hundred twenty days in a business or other enterprise regularly conducted by the promisor or guarantor and in which such information, training, or skill is a normal condition of employment.

(C66, 71, 73, 75, 77, s 713A.1)

Referred to in ss 714.19, 714.21, 714.22, Supplement

714.18 BOND FILED.

Every person, firm, association, or corporation maintaining or conducting in Iowa any such course of instruction, by classroom instruction or by correspondence, or soliciting in Iowa the sale of such course, shall file with the superintendent of public instruction:

1. A continuous corporate surety bond to the state of Iowa in the sum of fifty thousand dollars conditioned for the faithful performance of all contracts and agreements with students made by such person, firm, association, or corporation, or their salesmen; provided, however, that the

aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the sum of said bond. The surety on the bond shall have the right to cancel said bond upon giving thirty days' written notice to the superintendent of public instruction and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation.

2. A statement designating a resident agent for the purpose of receiving service in civil actions. In the absence of such designation, service may be had upon the superintendent of public instruction if service cannot otherwise be made in this state.

3. A copy of any catalog, prospectus, brochure, or other advertising material intended for distribution in Iowa. Such material shall state the cost of the course offered, the schedule of refunds for portions of the course not completed, and if no refunds are to be paid, the material shall so state. Any contract induced by advertising materials not previously filed as provided in this chapter shall be voidable on the part of the pupil or any person liable for the tuition provided for in the contract.

(C66, 71, 73, 75, 77, s 713A.2)

Referred to in ss 714.19, 714.21, 714.22, Supplement

714.19 NONAPPLICABILITY.

None of the provisions of sections 714.17, 714.18, or 714.20* shall apply to the following:

1. Colleges or universities authorized by the laws of Iowa or any other state or foreign country to grant degrees.

2. Schools of nursing accredited by the board of nurse examiners or an equivalent public board of another state or foreign country.

3. Public schools.

4. Private and nonprofit schools recognized by the state department of public instruction or a local school board for the purpose of complying with chapter 299 and employing certified teachers.

5. Nonprofit schools exclusively engaged in training physically handicapped persons in the state of Iowa.

6. Schools and educational programs conducted by firms, corporations, or persons for the training of their own employees, for which no fee is charged.

7. Seminars, refresher courses and schools of instruction sponsored by professional, business, or farming organizations or associations for the members and employees of members of such organizations or associations.

8. Private business schools accredited by the accrediting commission for business schools or an acknowledged accrediting agency.

9. Any school licensed under the provisions of sections 157.9 or 158.11.**

10. Private college preparatory schools approved or probationally approved under the provisions of section 257.25, subsection 13.

(C66, 71, 73, 75, 77, s 713A.3)

**Editorial note: Applicability of section editorially specified.*

***Chapters 157 and 158 are repealed by 65 GA, ch 1093, s 95; effective July 1, 1975*

714.20 ONE CONTRACT PER PERSON.

It shall be unlawful to sell more than one lifetime contract to any one person.

(C66, 71, 73, 75, 77, s 713A.4)

Referred to in ss 714.19, 714.21, 714.22, Supplement

714.21 PENALTY.

Violation of any of the provisions of sections 714.17, 714.18, or 714.20* shall be punishable upon conviction by a fine not exceeding five hundred dollars or six months in jail, or both.

(C66, 71, 73, 75, 77, s 713A.5)

Constitutionality, 61 GA, ch 440, S 6

Penalty re-enacted, See 169 NW2d 832

**Editorial note: Applicability of section editorially specified.*

714.22 TRADE AND VOCATIONAL SCHOOLS--EXEMPTION--CONDITIONS.

The provisions of sections 714.17, 714.18, or 714.20* shall not apply to trade or vocational schools if they meet either of the following conditions:

1. File a bond or a bond is filed on their behalf by a parent corporation with the superintendent of public instruction as required by section 714.18, subsection 2.

2. File an annual sworn statement, or such statement is filed on their behalf by a parent corporation, certified by a certified public accountant, showing all assets and liabilities of the trade or vocational school and the assets of a parent corporation. The statement shall show the trade or vocational school's net worth, or the net worth of the parent corporation, to be not less than five times the amount of the bond required by section 714.18, subsection 2. In the event that a parent corporation files such statement or its net worth is included therein to comply with this subsection, such parent corporation shall appoint a registered agent and otherwise be subject to section 714.18, subsection 2 and shall be liable for the breach of any contract or agreement with students as well as liable for any fraud in connection therewith or for any violation of section 714.16 by such trade or vocational school or any of its agents or salesmen.

(C73, 75, 77, s 713A.6)

**Editorial note: Applicability of section editorially specified.*

CHAPTER 715
FALSE USE OF A FINANCIAL INSTRUMENT

Prior law: Ch 718, ss 713.35, 713.39, Code 1977

715.1	Financial Instrument Defined	715.4	Proof of Intent
		715.5	Person Defined
715.2	Use of a Financial Instrument	715.6	False Use of a Financial Instrument
715.3	Intent and Knowledge		

715.1 FINANCIAL INSTRUMENT DEFINED.

A financial instrument is any of the following:

1. A check, bill note, draft, bond receipt, or any writing which ostensibly evidences an obligation of, or surrender of right or claim by, the person who has purportedly executed it or authorized its execution. "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

2. Any deed, will or testamentary document, bill of sale, warehouse receipt, bill of lading, or any writing which purports to convey an interest in some property, or to be evidence of or to establish a right in some property.

3. Any letter, credit card, charge plate, or other device which is designed to identify the person tendering such device as one to whom credit may be extended, or as one to whom goods or services may be furnished and charged to the account of another.

4. Any endorsement, acceptance, acknowledgement, codicil, or any writing of any kind upon or ancillary to any financial instrument which does or purports to affect such instrument or the rights or obligations evidenced thereby.

(Ch 1245, 66 GA, ch 1, s 1501; 67 GA, ch 147, s 19)

715.2 USE OF FINANCIAL INSTRUMENT DEFINED.

One uses a financial instrument when he or she does any of the following:

1. Makes or executes such instrument or an endorsement thereon, or alters such instrument so as to materially change its nature or the right or obligation which it purports to represent.

2. Tenders or offers such instrument to another in the course of a financial or commercial transaction, with the representation, either express or by implication, that the instrument is what it purports to be and that he or she is a person who is shown on its face to be one who may rightfully so use such instrument.

3. Possesses such instrument, knowing it to be false or knowing that he or she has no right to use or possess it.

(Ch 1245, 66 GA, ch 1, s 1502)

715.3 INTENT AND KNOWLEDGE.

The term "intent to obtain fraudulently anything of value" includes the intent to deliver a financial instrument to another, knowing that the other person intends to use the instrument to obtain fraudulently something of value.

One acts with knowledge of facts when the person has information which would put a reasonable person on inquiry as to such facts, but acts without making a reasonable inquiry.

(Ch 1245, 66 GA, ch 1, s 1503)

715.4 PROOF OF INTENT.

The intent to obtain fraudulently anything of value shall not be proved by the mere possession of a falsified financial

instrument or a financial instrument which the possessor has no right to use.

(Ch 1245, 66 GA, ch 1, s 1504)

715.5 PERSON DEFINED.

The term "person" as used in this chapter means a natural person, a fiduciary, a state, a private or public corporation or de facto corporation of any kind, or an officer or agent thereof, and includes fictitious persons or corporations. It is immaterial that any person whom the instrument on its face identifies as having the right to use it, does or does not have such a right, or whether such person does or does not actually exist.

(Ch 1245, 66 GA, ch 1, s 1505)

715.6 FALSE USE OF A FINANCIAL INSTRUMENT.

The use of a financial instrument with the intent to obtain fraudulently anything of value by one who knows that the instrument is not what it purports to be, or who knows that he or she is not the person nor the authorized agent of the person who, as shown on the instrument, has the right to so use the instrument, shall constitute the false use of a financial instrument. False use of a financial instrument is a class C felony.

(Ch 1245, 66 GA, ch 1, s 1506)

CHAPTER 716
DAMAGE AND TRESPASS TO PROPERTY

Prior law: Generally, Ch 714, Code 1977

716.1 Criminal Mischief Defined	716.5 Criminal Mischief in the Third Degree
716.2 Multiple Acts	716.6 Criminal Mischief in the Fourth Degree
716.3 Criminal Mischief in the First Degree	716.7 Trespass Defined
716.4 Criminal Mischief in the Second Degree	716.8 Penalties

716.1 CRIMINAL MISCHIEF DEFINED.

Any damage, defacing, alteration, or destruction of tangible property is criminal mischief when done intentionally by one who has no right to so act.

(Ch 1245, 66 GA, ch 1, s 1601)

716.2 MULTIPLE ACTS.

Whenever criminal mischief is committed upon more than one item of property at approximately the same location or time period, so that all of these acts of mischief can be attributed to a single scheme, plan or conspiracy, such acts shall be considered as a single act of criminal mischief.

(Ch 1245, 66 GA, ch 1, s 1602)

716.3 CRIMINAL MISCHIEF IN THE FIRST DEGREE.

Criminal mischief is criminal mischief in the first degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed is more than five thousand dollars, or if such acts are intended to or do in fact cause a substantial interruption or impairment of service rendered to the public by a gas, electric, steam or waterworks corporation, telephone or telegraph corporation, common carrier, or a public utility operated by a municipality. Criminal mischief in the first degree is a class C felony.

(Ch 1245, 66 GA, ch 1, s 1603)

716.4 CRIMINAL MISCHIEF IN THE SECOND DEGREE.

Criminal mischief is criminal mischief in the second degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds five hundred dollars but does not exceed five thousand dollars. Criminal mischief in the second degree is a class D felony.

(Ch 1245, 66 GA, ch 1, s 1604)

716.5 CRIMINAL MISCHIEF IN THE THIRD DEGREE.

Criminal mischief is criminal mischief in the third degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds one hundred dollars, but does not exceed five hundred dollars, or if the property is a deed, will, commercial paper or any civil or criminal process or other instrument having legal effect, or if the act consists of rendering substantially less effective than before any light, signal, obstruction, barricade, or guard which has been placed or erected for the purpose of enclosing any unsafe or dangerous place or of alerting persons to an unsafe or dangerous condition. Criminal mischief in the third degree is an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1605)

716.6 CRIMINAL MISCHIEF IN THE FOURTH DEGREE.

All criminal mischief which is not criminal mischief in the first degree, second degree or third degree is criminal

mischief in the fourth degree. Criminal mischief in the fourth degree is a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1606)

716.7 TRESPASS DEFINED.

1. The term "property" shall include any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure whether publicly or privately owned.

2. The term "trespass" shall mean one or more of the following acts:

a. Entering upon or in property without justification or without the implied or actual permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense or to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate.

b. Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.

c. Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.

d. Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

3. The term "trespass" shall not mean entering upon the property of another for the sole purpose of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property.

(Ch 1245, 66 GA, ch 1, s 1607; 67 GA, ch 147, s 20)

Referred to in s 716.8, Supplement

716.8 PENALTIES.

1. Any person who knowingly trespasses upon the property of another commits a simple misdemeanor.

2. Any person committing a trespass as defined in section 716.7 which results in injury to any person or damage in an amount more than one hundred dollars to anything, animate or inanimate, located thereon or therein commits a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1608)

CHAPTER 717
INJURY TO ANIMALS

Prior law: Ch 717, Code 1977

717.1 Injury to Animals 717.3 Exhibitions and Fights
717.2 Cruelty to Animals

717.1 INJURY TO ANIMALS.

Any person who, having no right to do so, shall maliciously kill, maim, or disfigure any animal of another, or maliciously administer poison to any such animal, or expose any poisonous substance with the intent that the same should be taken by any such animal, shall be guilty of an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1701)

717.2 CRUELTY TO ANIMALS.

Any person who shall impound or confine or cause to be impounded or confined, in any place, any domestic animal, or fowl, or any dog or cat, and fail to supply such animal during confinement with a sufficient quantity of food and water, or who shall torture, torment, deprive of necessary sustenance, mutilate, overdrive, overload, drive when overloaded, beat, or kill any such animal by any means which shall cause unjustified pain, distress or suffering, whether intentionally or negligently, shall be guilty of a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1702)

717.3 EXHIBITIONS AND FIGHTS.

A person who arranges, promotes, or stages an exhibition at which any animal is tormented, or any fight between animals or between a person and an animal, or who keeps a place where such exhibitions and fights are staged for the entertainment of spectators, commits a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1703)

CHAPTER 718
OFFENSES AGAINST THE GOVERNMENT

- | | | | |
|-------|---------------------------------|-------|--|
| 718.1 | Insurrection | 718.5 | Falsifying Public Documents |
| 718.2 | Impersonating a Public Official | 718.6 | False Reports to Law Enforcement Authorities |
| 718.3 | Willful Disturbance | | |
| 718.4 | Harassment of Public Officers | | |

718.1 INSURRECTION.

An insurrection is three or more persons acting in concert and using physical violence against persons or property, with the purpose of interfering with, disrupting, or destroying the government of the state or any subdivision thereof, or to prevent any executive, legislative, or judicial officer or body from performing its lawful function. Participation in insurrection is a class C felony.

(Ch 1245, 66 GA, ch 1, s 1801)

Prior law: ss 689.1, 689.2, 689.4, 689.8, Code 1977

Substitutes for treason which was repealed

718.2 IMPERSONATING A PUBLIC OFFICIAL.

Any person who falsely holds himself or herself out or assumes to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of the state or any subdivision thereof, having no authority to do so, commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1802)

Prior law: ss 740.4, 740.5, Code 1977

718.3 WILLFUL DISTURBANCE.

Any person who willfully disturbs any deliberative body or agency of the state, or subdivision thereof, with the purpose of disrupting the functioning of such body or agency by tumultuous behavior, or coercing by force or the threat of force any official conduct or proceeding, commits a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1803)

718.4 HARASSMENT OF PUBLIC OFFICERS AND EMPLOYEES.

Any person who willfully prevents or attempts to prevent any public officer or employee from performing the officer's or employee's duty commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1804)

718.5 FALSIFYING PUBLIC DOCUMENTS.

A person who, having no right or authority to do so, makes or alters any public document, or any instrument which purports to be a public document, or who possesses a seal or any counterfeit seal of the state or of any of its subdivisions, or of any officer, employee, or agency of the state or of any of its subdivisions, commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 1805)

Prior law: ss 718.3, 718.18, 738.21, 740.12, Code 1977

718.6 FALSE REPORTS TO LAW ENFORCEMENT AUTHORITIES.

A person who reports or causes to be reported false information to a fire department or a law enforcement authority, knowing that the information is false, or who reports the alleged occurrence of a criminal act knowing the same did not occur, commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1806)

Prior law: ss 714.31, 714.42, Code 1977

CHAPTER 719
OBSTRUCTING JUSTICE

- | | | | |
|-------|--|-------|---|
| 719.1 | Interference with
Official Acts | 719.5 | Permitting Prisoner to
Escape |
| 719.2 | Refusing to Assist
Officer | 719.6 | Assisting Prisoner to
Escape |
| 719.3 | Preventing Apprehension,
Obstructing Prosecution,
or Obstructing Defense | 719.7 | Furnishing Intoxicant
to Inmates |
| 719.4 | Escape from Custody | 719.8 | Furnishing Controlled
Substance to Inmates |

719.1 INTERFERENCE WITH OFFICIAL ACTS.

A person who knowingly resists or obstructs anyone known by the person to be a peace officer in the performance of any act which is within the scope of the officer's lawful duty or authority, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a simple misdemeanor. If a person commits an interference with official acts, as defined in this section, and in so doing purposely inflicts or attempts to inflict serious injury, or displays a dangerous weapon, or is armed with a firearm, that person commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1901; 67 GA, ch 147, s 21)

Prior law: s 742.1, Code 1977

719.2 REFUSING TO ASSIST OFFICER.

Any person who is requested or ordered by any magistrate or peace officer to render the magistrate or officer assistance in making or attempting to make an arrest, or to prevent the commission of any criminal act, shall render assistance as required. A person who, unreasonably and without lawful cause, refuses or neglects to render assistance when so requested commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1902)

Prior law: ss 742.2, 742.3, 742.5, 743.6, Code 1977

719.3 PREVENTING APPREHENSION, OBSTRUCTING PROSECUTION, OR OBSTRUCTING DEFENSE.

A person who, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, knowingly does any of the following acts, commits an aggravated misdemeanor:

1. Destroys, alters, conceals or disguises physical evidence which would be admissible in the trial of another for a public offense, or makes available false evidence or furnishes false information with the intent that it be used in the trial of that case.

2. Induces a witness having knowledge material to the subject at issue to leave the state or conceal himself or herself, or to fail to appear when subpoenaed.

(Ch 1245, 66 GA, ch 1, s 1903)

Prior law: s 723.1, Code 1977

719.4 ESCAPE FROM CUSTODY.

1. A person convicted of a felony, or charged with the commission of a felony, who intentionally escapes from any detention facility or institution to which the person has been committed by reason of such conviction or charge, or from the custody of any public officer or employee to whom the person has been entrusted, commits a class D felony.

2. A person convicted or charged with a misdemeanor, who intentionally escapes from any detention facility or institution to which the person has been committed by reason of such

conviction or charge, or from the custody of any public officer or employee to whom the person has been entrusted, commits a serious misdemeanor.

3. Any person who has been committed to any institution under the control of the division of adult corrections, or to any jail or correctional institution, who knowingly and voluntarily absents himself or herself from any place where the person is required to be, commits a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1904)

Prior law: ss 745.1, 745.3, 745.8, Code 1977

Referred to in ss 218.91, 245.11, 356A.3, Supplement

719.5 PERMITTING PRISONER TO ESCAPE.

Any jailer or other public officer or employee who voluntarily permits, aids or abets in the escape or attempted escape of any person in custody by reason of a conviction or charge of any crime, commits the crime of permitting a prisoner to escape which is subject to the following penalties:

1. If the prisoner is in custody by reason of a conviction or charge of a class A felony, the defendant commits a class C felony.

2. If the prisoner is in custody by reason of a conviction or charge of any public offense other than a class A felony, the defendant commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 1905)

Prior law: ss 745.9-745.11, Code 1977

719.6 ASSISTING PRISONER TO ESCAPE.

Any person who introduces into any detention facility or correctional institution any weapon, explosive or incendiary substance, rope, ladder, or any instrument or device by which that person intends to facilitate the escape of any prisoner, or any person who, not being authorized by law, knowingly causes any such weapon, explosive or incendiary substance, rope, ladder, instrument or device to come into the possession of any prisoner, commits the crime of assisting a prisoner to escape which is subject to the following penalties:

1. If the prisoner was confined by reason of a conviction of a class A felony, the defendant commits a class C felony.

2. If the prisoner was confined by reason of a conviction of any public offense other than a class A felony, the defendant commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 1906; 67 GA, ch 147, s 22)

Prior law: ss 745.12-745.18, Code 1977

719.7 FURNISHING INTOXICANT TO INMATES.

Any person not authorized by law who furnishes or knowingly makes available any intoxicating beverage to any inmate at any detention facility, correctional institution or any institution under the management of the department of social services, or who introduces any intoxicating beverage into the premises of any such institution, commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 1907)

Prior law: ss 745.15, 745.16, 745.18, Code 1977

719.8 FURNISHING CONTROLLED SUBSTANCE TO INMATES.

Any person not authorized by law who furnishes or knowingly makes available any controlled substance to any inmate at any detention facility or correctional institution, or at any institution under the management of the department of social services, or who introduces any controlled substance into the premises of any such institution, commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 1908)

Prior law: ss 745.15, 745.16, 745.18, Code 1977

CHAPTER 720
INTERFERENCE WITH JUDICIAL PROCESS

- | | | | |
|-------|---|-------|---|
| 720.1 | Compounding a Felony | 720.4 | Tampering with Witnesses
or Jurors |
| 720.2 | Perjury, Contradictory
Statements, and
Retraction | 720.5 | False Representation of
Records or Process |
| 720.3 | Suborning Perjury | 720.6 | Malicious Prosecution |

720.1 COMPOUNDING A FELONY.

A person having knowledge of the commission by another of a felony indictable in this state who receives any consideration for a promise to conceal such crime, or not to prosecute or aid or give evidence to the prosecution of such crime, compounds that felony. Compounding any felony is an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2001)
Prior law: ss 722.1, 722.2, Code 1977

720.2 PERJURY, CONTRADICTORY STATEMENTS, AND RETRACTION.

A person who, while under oath or affirmation in any proceeding or other matter in which statements under oath or affirmation are required or authorized by law, knowingly makes a false statement of material facts or who falsely denies knowledge of material facts, commits a class D felony. Where, while under oath or affirmation, in the same proceeding or different proceedings where oath or affirmation is required, a person has made contradictory statements, the indictment will be sufficient if it states that one or the other of the contradictory statements was false, to the knowledge of such person, and it shall be sufficient proof of perjury that one of the statements must be false, and that the person making the statements knew that one of them was false when the person made the statement, provided that both statements have been made within the period prescribed by the applicable statute of limitations. No person shall be guilty of perjury if the person retracts the false statement in the course of the proceedings where it was made before the false statement has substantially affected the proceeding.

(Ch 1245, 66 GA, ch 1, s 2002)
Prior law: ss 721.1, 738.28, Code 1977

720.3 SUBORNING PERJURY.

A person who procures or offers any inducement to another to make a statement under oath or affirmation in any proceeding or other matter in which statements under oath or affirmation are required or authorized, with the intent that such person will make a false statement, or who procures or offers any inducement to one who the person reasonably believes will be called upon for a statement in any such proceeding or matter, to conceal material facts known to such person, commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 2003)
Prior law: ss 721.2, 721.3, Code 1977

720.4 TAMPERING WITH WITNESSES OR JURORS.

A person who offers any bribe to any person who he or she believes has been or may be summoned as a witness or juror in any judicial or arbitration proceeding, or any legislative hearing, or who makes any threats toward such person or who forcibly or fraudulently detains or restrains such person, with the intent to improperly influence such witness or juror with respect to his or her testimony or decision in such case, or to prevent such person from testifying or serving in such case, or who, in retaliation for anything lawfully done by any witness

or juror in any case, harasses such witness or juror, commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2004)

Prior law: ss 721.3, 723.1, Code 1977

720.5 FALSE REPRESENTATION OF RECORDS OR PROCESS.

Any person who represents any document or paper to be any public record or any civil or criminal process, when the person knows such representation to be false, commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2005)

Prior law: ss 713.43, 718.2, Code 1977

720.6 MALICIOUS PROSECUTION.

A person who causes or attempts to cause another to be indicted or prosecuted for any public offense, having no reasonable grounds for believing that the person committed the offense commits a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2006)

Prior law: s 719.2, Code 1977

CHAPTER 721
OFFICIAL MISCONDUCT

721.1	Felonious Misconduct in Office	721.6	Exception to Sections 721.3 to 721.5
721.2	Non-Felonious Misconduct in Office	721.7	Penalty for Violating Sections 721.3 to 721.6
721.3	Solicitation for Political Purposes	721.8	Labeling Publicly Owned Motor Vehicles
721.4	Using Public Motor Vehicles for Political Purposes	721.9	Penalty for Violating Section 721.8
721.5	State Employees Not to Participate in Political Activities During Working Hours	721.10	Misuse of Public Records and Files
		721.11	Interest in Public Contracts

721.1 FELONIOUS MISCONDUCT IN OFFICE.

Any public officer or employee, who knowingly does any of the following, commits a class D felony:

1. Makes or gives any false entry, false return, false certificate, or false receipt, where such entries, returns, certificates, or receipts are authorized by law.

2. Falsifies any public record, or issues any document falsely purporting to be a public document.

(Ch 1245, 66 GA, ch 1, s 2101)

Prior law: ss 738.21, 740.9, 740.12, Code 1977

721.2 NON-FELONIOUS MISCONDUCT IN OFFICE.

Any public officer or employee, or any person acting under color of such office or employment, who knowingly does any of the following, commits a serious misdemeanor:

1. Makes any contract which contemplates an expenditure known by him or her to be in excess of that authorized by law.*1

2. Fails to report to the proper officer the receipt or expenditure of public monies, together with the proper vouchers therefor, when such is required of him or her by law.*2

3. Requests, demands, or receives from another for performing any service or duty which is required of him or her by law, or which is performed as an incident of his or her office or employment, any compensation other than the fee, if any, which he or she is authorized by law to receive for such performance.*3

4. By color of his or her office and in excess of the authority conferred on him or her by that office, requires any person to do anything or to refrain from doing any lawful thing.*4

5. Uses or permits any other person to use the property owned by the state or any subdivision or agency of the state for any private purpose and for personal gain, to the detriment of the state or any subdivision thereof.*5

6. Fails to perform any duty required of him or her by law.*6

7. Demands that any public employee contribute or pay anything of value, either directly or indirectly, to any person, organization or fund, or in any way coerces or attempts to coerce any public employee to make any such contributions or

payments, except where such contributions or payments are expressly required by law.*7

(Ch 1245, 66 GA, ch 1, s 2102)

*1 Prior law: s 740.11, Code 1977

*2 Prior law: ss 740.7-740.9, 740.11, Code 1977

*3 Prior law: ss 740.1, 740.10, 741.1, 741.2, Code 1977

*4 Prior law: ss 740.3, 740.4, Code 1977

*5 Prior law: ss 740.15, 740.20, Code 1977

*6 Prior law: ss 738.18, 740.19, 742.8, 743.7, Code 1977

*7 Prior law: s 740.13, Code 1977

721.3 SOLICITATION FOR POLITICAL PURPOSES.

It shall be unlawful for any person or political organization either directly or indirectly to solicit or demand from any employee of any commission, board or agency created under the statutes of Iowa, any contribution of money or any other thing of value for election purposes or for the purpose of paying expenses of any political organization or any person seeking election to public office.

(S13, s 2727-a36; C24, 27, 31, 35, s 13315; C39, s 13315.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 740.13)

Referred to in ss 721.6, 721.7, Supplement

721.4 USING PUBLIC MOTOR VEHICLES FOR POLITICAL PURPOSES.

It shall be unlawful for any person to use or permit to be used any motor vehicle owned by the state of Iowa or any political subdivision thereof for the purpose of transporting any political literature or any person or persons engaging in a political campaign for any political party or any person seeking an elective office.

(C39, s 13315.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 740.15)

Referred to in ss 721.6, 721.7, Supplement

721.5 STATE EMPLOYEES NOT TO PARTICIPATE IN POLITICAL ACTIVITIES DURING WORKING HOURS.

It shall be unlawful for any state officer, any state appointive officer, or state employee to leave the place of his or her employment or the duties of his or her office for the purpose of soliciting votes or engaging in campaign work during the hours of employment of any such officer or employee.

(C39, s 13315.4; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 740.16)

Referred to in ss 721.6, 721.7, Supplement

721.6 EXCEPTION TO SECTIONS 721.3 TO 721.5.

The provisions of sections 721.3 to 721.5, inclusive, shall not be construed as prohibiting any such officer or employee who is a candidate for political office to engage in campaign at any time or at any place for himself.

(C39, s 13315.5; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 740.17)

Referred to in s 721.7, Supplement

721.7 PENALTY FOR VIOLATING SECTIONS 721.3 TO 721.6.

Any person who violates any provision of sections 721.3 to 721.6, inclusive, shall be guilty of a serious misdemeanor.

(S13, s 2727-a36; C24, 27, 31, 35, s 13315; C39, s 13315.6; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 740.18; ch 1245, 66 GA, ch 4, s 507)

721.8 LABELING PUBLICLY OWNED MOTOR VEHICLES.

All publicly owned motor vehicles shall bear at least two labels in a conspicuous place, one on each side of said vehicle. This label shall be designed to cover not less than one

square foot of surface. This section shall not apply to any motor vehicle which shall be specifically assigned by the head of the department or office owning or controlling it, to enforcement of police regulations.

(C35, s 13316-e2; C39, s 13316.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 740.21)

Referred to in s 721.9, Supplement

721.9 PENALTY FOR VIOLATING SECTION 721.8.

A violation of section 721.8 shall be a serious misdemeanor.

(C35, s 13316-e3; C39, s 13316.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 740.22; 67 GA, ch 147, s 135)

Punishment: s 701.8, Supplement

721.10 MISUSE OF PUBLIC RECORDS AND FILES.

A public officer or employee who, by reason of his or her employment, has access to any public record, or to any file, dossier, or accumulation of information of any kind, and who gives or transfers to any person, in exchange for anything of value other than fees authorized by law, any such record, file, dossier, or accumulation of information, or any part thereof, or who imparts to any person any information contained therein, in exchange for anything of value other than fees authorized by law, commits a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2103)

Prior law: ch 749B, Code 1977

721.11 INTEREST IN PUBLIC CONTRACTS.

Any officer or employee of the state or of any subdivision thereof who is directly or indirectly interested in any contract to furnish anything of value to the state or any subdivision thereof where such interest is prohibited by statute commits a serious misdemeanor. This section shall not apply to any contract awarded as a result of open, public and competitive bidding.

(Ch 1245, 66 GA, ch 1, s 2104)

Prior law: . Ch 68B and ss 18.5, 86.7, 252.29, 262.10, 314.2, 347.15, 362.5, 403.16, 403A.22, 741.11, Code 1977

CHAPTER 722
BRIBERY AND CORRUPTION

722.1	Bribery	722.6	Bribery of Election Of-
722.2	Accepting Bribe		officials
722.3	Bribery in Sports	722.7	Misconduct by Election
722.4	Bribery of Elector		Official
722.5	Improper Voting	722.8	Duress to Prevent Voting
		722.9	Duress to Procure Voting

722.1 BRIBERY.

A person who offers, promises or gives anything of value or any benefit to any person who is serving or has been elected, selected, appointed, employed or otherwise engaged to serve in a public capacity, including any public officer or employee, any referee, juror or venireman, or any witness in any judicial or arbitration hearing or any official inquiry, or any member of a board of arbitration, with intent to influence the act, vote, opinion, judgment, decision or exercise of discretion of such person with respect to his or her services in such capacity commits a class D felony. In addition, any person convicted under this section shall be disqualified from holding public office under the laws of this state.

(Ch 1245, 66 GA, ch 1, s 2201)

Prior law: ch 739, Code 1977

Referred to in ss 88A.10, 104.17, Supplement

722.2 ACCEPTING BRIBE.

Any person who is serving or has been elected, selected, appointed, employed or otherwise engaged to serve in a public capacity, including any public officer or employee, any referee, juror or venireman, or any witness in any judicial or arbitration hearing or any official inquiry, or any member of a board of arbitration who shall solicit or knowingly receive any promise or anything of value or any benefit given with the intent to influence the act, vote, opinion, judgment, decision or exercise of discretion of such person commits a class C felony. In addition, any person convicted under this section shall be disqualified from holding public office under the laws of this state.

(Ch 1245, 66 GA, ch 1, s 2202)

Prior law: ch 739, 1977

722.3 BRIBERY IN SPORTS.

A person who offers, solicits, gives or receives anything of value or any benefit or promise of anything of value or any benefit, with the intent that the recipient thereof do any of the following, commits an aggravated misdemeanor:

1. If the person is a participant or prospective participant in any professional or amateur sport, match, or contest as a contestant or player, lose or in some way affect the outcome of such sport, match, or contest.

2. If the person is an umpire, referee, judge, or other official in any professional or amateur sport, match, or contest, or an owner, manager, coach, trainer or relative of any participant, use his or her* position or influence to affect the outcome of any such sport, match, or contest or the score thereof.

(Ch 1245, 66 GA, ch 1, s 2203)

Prior law: s 739.12, Code 1977

Editorial note: The comma after "thereof" in the first un-numbered paragraph was editorially removed.

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

722.4 BRIBERY OF ELECTOR.

A person who offers, promises or gives anything of value or benefit to any elector for the purpose of influencing the elector's vote, in any election authorized by law, or any elector who receives anything of value or any benefit knowing that it was given for such purpose, commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2204)

Prior law: ss 738.1-738.3, Code 1977

722.5 IMPROPER VOTING.

Any person who does any of the following commits a serious misdemeanor:

1. Votes more than once in any election which may be held by virtue of any law of this state.

2. Votes at any election authorized by law, knowing himself or herself not to be qualified.

(Ch 1245, 66 GA, ch 1, s 2206)

Prior law: ss 738.7, 738.8, 738.24, 738.25, Code 1977

722.6 BRIBERY OF ELECTION OFFICIALS.

A person who offers, promises or gives anything of value or any benefit to any precinct election official authorized by law, or to any executive officer attending the same, conditioned on some act done or omitted to be done contrary to his or her official duty in relation to such election, commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2205)

Prior law: ss 738.14, Code 1977

722.7 MISCONDUCT BY ELECTION OFFICIAL.

A precinct election official who knowingly does any of the following commits a serious misdemeanor:

1. Furnishes a voter with a ballot other than the proper ballot to be used at that election.

2. Causes a voter to cast his or her vote contrary to the voter's intention or wishes.

3. Changes any ballot, or in any way causes any vote to be recorded contrary to the intent of the person casting that vote.

4. Makes or consents to any false entry on the list of voters or poll books.

5. Places or permits another election official to place into a ballot box anything other than a ballot as provided in section 49.85, or who permits any person other than an election official to place anything into a ballot box.

6. Takes out of a ballot box, or permits to be so taken out, any ballot deposited therein, except in the manner prescribed by law.

7. Destroys or alters any ballot which has been given to an elector.

8. Permits any person to vote in a manner prohibited by law.

9. Refuses or rejects the vote of any qualified voter.

10. Wrongfully does any act or refuses to act for the purpose of avoiding an election, or of rendering invalid the ballots cast from any precinct or other district.

11. Having been deputized to carry the poll books of any election to the place where they are to be canvassed, willfully or negligently fails to deliver them to such place, safe, with seals unbroken, and within the time specified by law.

(Ch 1245, 66 GA, ch 1, s 2207)

Prior law: ss 738.12, 738.16-738.19, Code 1977

722.8 DURESS TO PREVENT VOTING.

A person who unlawfully and by force, or threats of force, prevents or endeavors to prevent an elector from giving his or her vote at any public election commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2208)

Prior law: s 738.13, Code 1977

722.9 DURESS TO PROCURE VOTING.

A person who procures, or endeavors to procure the vote of an elector for or against any candidate or for or against any issue by means of violence, threats of violence or by any means of duress commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2209)

Prior law: s 738.15, Code 1977

CHAPTER 723
PUBLIC DISORDER

723.1 Riot
723.2 Unlawful Assembly

723.3 Failure to Disperse
723.4 Disorderly Conduct

723.1 RIOT.

A riot is three or more persons assembled together in a violent manner, to the disturbance of others, and with any use of unlawful force or violence by them or any of them against another person, or causing property damage. A person who willingly joins in or remains a part of a riot, knowing or having reasonable grounds to believe that it is such, commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2301)

Prior law: ss 743.2, 743.3, 743.9, Code 1977

723.2 UNLAWFUL ASSEMBLY.

An unlawful assembly is three or more persons assembled together, with them or any of them acting in a violent manner, and with intent that they or any of them will commit a public offense. A person who willingly joins in or remains a part of an unlawful assembly, knowing or having reasonable grounds to believe that it is such, commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2302)

Prior law: ss 743.1, 743.3, Code 1977

723.3 FAILURE TO DISPERSE.

A peace officer may order the participants in a riot or unlawful assembly or persons in the immediate vicinity of a riot or unlawful assembly to disperse. Any person within hearing distance of such command, who refuses to obey, commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2303)

Prior law: ss 743.4, 743.5, 743.8, Code 1977

723.4 DISORDERLY CONDUCT.

A person commits a simple misdemeanor when the person does any of the following:

1. Engages in fighting or violent behavior in any public place or in or near any lawful assembly of persons, provided, that participants in athletic contests may engage in such conduct which is reasonably related to that sport.

2. Makes loud and raucous noise in the vicinity of any residence or hospital which causes unreasonable distress to the occupants thereof.

3. Directs abusive epithets or makes any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.

4. Without lawful authority or color of authority, the person disturbs any lawful assembly or meeting of persons by conduct intended to disrupt the meeting or assembly.

5. By words or action, initiates or circulates a report or warning of fire, epidemic, or other catastrophe, knowing such report to be false or such warning to be baseless.

6. Knowingly and publicly uses the flag of the United States in such a manner as to show disrespect for the flag as a symbol of the United States, with the intent or reasonable expectation that such use will provoke or encourage another to commit a public offense.

7. Without authority or justification, the person obstructs any street, sidewalk, highway, or other public way, with the intent to prevent or hinder its lawful use by others.

(Ch 1245, 66 GA, ch 1, s 2304)

Prior law: ch 32 and ss 714.31, 714.32, 714.42, 727.1, 728.1, 744.1, 744.2, Code 1977

CHAPTER 724
WEAPONS

724.1	Offensive Weapons	724.16	Permit to Purchase Required
724.2	Authority to Possess Offensive Weapons	724.17	Application for Permit to Purchase
724.3	Unauthorized Possession of Offensive Weapons	724.18	Mailing of Application for Permit to Purchase
724.4	Carrying Weapons	724.19	Issuance of Permit to Purchase
724.5	Duty to Carry Permit to Carry Weapons	724.20	Validity of Permit to Purchase
724.6	Professional Permit to Carry Weapons	724.21	Giving False Information When Purchasing Weapon
724.7	Nonprofessional Permit to Carry Weapons	724.22	Sale to Minors
724.8	Persons Eligible for Permit to Carry Weapons	724.23	Records Kept by Commissioner
724.9	Firearm Training Program	724.24	Purchase or Sale of Firearms in Contiguous States
724.10	Application for Permit to Carry Weapons	724.25	Felony Defined
724.11	Issuance of Permit to Carry Weapons	724.26	Receipt, Transportation, and Possession of Firearms and Destructive Devices by Felons
724.12	Permit to Carry Weapons Not Transferable	724.27	Exception to Section 724.26
724.13	Revocation of Permit to Carry Weapons		
724.14	Existing Permits		
724.15	Report and Record of Sales		

724.1 OFFENSIVE WEAPONS.

An offensive weapon is any device or instrumentality of the following types:

1. A machine gun. A machine gun is a firearm which shoots or is designed to shoot more than one shot, without manual reloading, by a single function of the trigger.

2. A shotgun having a barrel or barrels shorter than eighteen inches in length, or a rifle having a barrel or barrels shorter than sixteen inches in length.

3. Any weapon other than a shotgun or muzzle loading rifle, cannon, pistol, revolver or musket, which fires or can be made to fire a projectile by the explosion of a propellant charge, which has a barrel or tube with the bore of more than six-tenths of an inch in diameter, or the ammunition or projectile therefor, but not including antique weapons kept for display or lawful shooting.

4. A bomb, grenade, or mine, whether explosive, incendiary, or poison gas; any rocket having a propellant charge of more than four ounces; any missile having an explosive charge of more than one-quarter ounce; or any device similar to any of these.

5. Any part or combination of parts either designed or intended to be used to convert any device into an offensive weapon as described in subsections 1 through 4, inclusive, of this section, or to assemble into such an offensive weapon, except magazines or other parts, ammunition, or ammunition components used in common with lawful sporting firearms or parts including but not limited to barrels suitable for refitting to sporting firearms.

(Ch 1245, 66 GA, ch 1, s 2401)

Prior law: ss 696.1, 697.10, 697.11, Code 1977

724.2 AUTHORITY TO POSSESS OFFENSIVE WEAPONS.

Any of the following is authorized to possess an offensive weapon when his or her duties or lawful activities require or permit such possession:

1. Any peace officer.
2. Any member of the armed forces of the United States or of the national guard.
3. Any person in the service of the United States.
4. Any correctional officer, serving in an institution under the authority of the division of adult corrections.
5. Any person who under the laws of this state and the United States, is lawfully engaged in the business of supplying those authorized to possess such devices.
6. Any person, firm or corporation who under the laws of this state and the United States is lawfully engaged in the improvement, invention or manufacture of firearms.
7. Any museum or similar place which possesses, solely as relics, offensive weapons which are rendered permanently unfit for use.

(Ch 1245, 66 GA, ch 1, s 2402; 67 GA, ch 150, s 1)

Prior law: ss 696.4-696.7, Code 1977

724.3 UNAUTHORIZED POSSESSION OF OFFENSIVE WEAPONS.

Any person, other than a person authorized herein, who knowingly possesses an offensive weapon commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 2403)

Prior law: ss 696.3, 697.11, Code 1977

724.4 CARRYING WEAPONS.

A person who goes armed with a dangerous weapon concealed on or about his or her* person, or who, within the limits of any city, goes armed with a pistol or revolver, or any loaded firearm of any kind, whether concealed or not, or who knowingly carries or transports in a vehicle a pistol or revolver, commits an aggravated misdemeanor, provided that this section shall not apply to any of the following:

1. A person who goes armed with a dangerous weapon in his or her own dwelling or place of business, or on land owned or possessed by the person.
2. Any peace officer, when his or her duties require the person to carry such weapons.
3. Any member of the armed forces of the United States or of the national guard or person in the service of the United States, when the weapons are carried in connection with his or her duties as such.
4. Any correctional officer, when his or her duties require, serving under the authority of the division of adult corrections.
5. Any person who for any lawful purpose carries an unloaded pistol, revolver, or other dangerous weapon inside a closed and fastened container or securely wrapped package which is too large to be concealed on the person.
6. Any person who for any lawful purpose carries or transports an unloaded pistol or revolver in any vehicle inside a cargo or luggage compartment where the pistol or revolver will not be readily accessible to any person riding in the vehicle or common carrier.
7. Any person while he or she is lawfully engaged in target practice on a range designed for that purpose or while engaged in lawful hunting for game in any place designated by local law as a hunting area.
8. Any person who has in his or her possession and who displays to any peace officer on demand a valid permit to carry weapons which has been issued to the person, and whose conduct is within the limits of that permit. No person shall be

convicted of a violation of this section if the person produces at his or her trial a permit to carry weapons which was valid at the time of the alleged offense and which would have brought the person's conduct within this exception if the permit had been produced at the time of the alleged offense.**

(Ch 1245, 66 GA, ch 1, s 2404)

Prior law: ss 695.2-695.5, Code 1977

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

***Referred to in s 724.5, Supplement*

724.5 DUTY TO CARRY PERMIT TO CARRY WEAPONS.

It shall be the duty of any person armed with a revolver, pistol, or pocket billy concealed upon his or her person to have in his or her immediate possession the permit provided for in section 724.4, subsection 8 and to produce same for inspection at the request of any peace officer. Failure to so produce such permit shall constitute a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2424)

Prior law: s 695.15, Code 1977

724.6 PROFESSIONAL PERMIT TO CARRY WEAPONS.

A person may be issued a permit to carry weapons when the person's employment as a security guard, private detective licensed under chapter 80A, bank messenger or other person transporting property of a value requiring security, or in police work, reasonably justifies that person going armed. Such permits shall be on a form prescribed and published by the commissioner of public safety, shall identify the holder thereof, and shall state the nature of the employment requiring his or her going armed. A permit so issued shall authorize the person to whom it is issued to go armed anywhere in the state, only while engaged in such employment, and while going to and from the place of such employment. Any such permit shall expire twelve months after the date when issued. When such employment is terminated, the holder of such permit shall surrender his or her permit to the issuing officer for cancellation.

(Ch 1245, 66 GA, ch 1, s 2405)

Prior law: ss 695.5, 695.11-695.13, Code 1977

Referred to in ss 724.11, 724.13, Supplement

724.7 NONPROFESSIONAL PERMIT TO CARRY WEAPONS.

Any person who can reasonably justify his or her going armed may be issued a nonprofessional permit to carry weapons. Such permits shall be on a form prescribed and published by the commissioner of public safety, which shall be readily distinguishable from the professional permit, and shall identify the holder thereof, and state the reason for the issuance of the permit, and the limits of the authority granted by such permit. All permits so issued shall be for a definite period as established by the issuing officer, but in no event shall exceed a period of twelve months.

(Ch 1245, 66 GA, ch 1, s 2406)

Prior law: ss 695.4, 695.13, Code 1977

Referred to in ss 724.11, 724.13, Supplement

724.8 PERSONS ELIGIBLE FOR PERMIT TO CARRY WEAPONS.

No person shall be issued a professional or nonprofessional permit to carry weapons unless:

1. The person is eighteen years of age or older.
2. The person has never been convicted of a forcible felony.

3. The person is not addicted to the use of alcohol or any controlled substance.

4. The person has no history of repeated acts of violence.

5. The issuing officer reasonably determines from competent evidence that the applicant does not constitute a danger to any person.

6. The person has never been convicted of any crime defined in chapter 708, except "assault" as defined in section 708.1 and "harrassment" as defined in section 708.7.

(Ch 1245, 66 GA, ch 1, s 2408; 67 GA, ch 147, s 23)

Referred to in ss 724.11, 724.13, Supplement

724.9 FIREARM TRAINING PROGRAM.

A training program to qualify persons in the safe use of firearms shall be provided by the issuing officer of permits, as provided in section 724.11. The commissioner of public safety shall approve the training program, and the county sheriff or the commissioner of public safety conducting the training program within their respective jurisdictions may contract with a private organization or use the services of other agencies, or may use a combination of the two, to provide such training. Any person eligible to be issued a permit to carry weapons may enroll in such course. A fee sufficient to cover the cost of the program may be charged each person attending. Certificates of completion, on a form prescribed and published by the commissioner of public safety, shall be issued to each person who successfully completes the program. No person shall be issued either a professional or nonprofessional permit unless he or she* has received a certificate of completion or is a certified peace officer. No peace officer or correctional officer, except a certified peace officer, shall go armed with a pistol or revolver unless he or she has received a certificate of completion, provided that this requirement shall not apply to persons who are employed in this state as peace officers on January 1, 1978 until July 1, 1978, or to peace officers of other jurisdictions exercising their legal duties within this state.

(Ch 1245, 66 GA, ch 1, s 2407)

Referred to in ss 724.11, 724.13, Supplement

**Editorial note: The words "or she" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

724.10 APPLICATION FOR PERMIT TO CARRY WEAPONS.

No person shall be issued a permit to carry weapons unless the person has completed and signed an application on a form to be prescribed and published by the commissioner of public safety. The application shall state the full name, social security number, residence, and age of the applicant, and shall state whether the applicant has ever been convicted of a felony, whether the person is addicted to the use of alcohol or any controlled substance, and whether the person has any history of mental illness or repeated acts of violence. Any person who knowingly makes a false statement on such application commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2409; 67 GA, ch 147, s 24)

Prior law: ss 695.5, 695.6, Code 1977

Referred to in ss 724.11, 724.13, Supplement

724.11 ISSUANCE OF PERMIT TO CARRY WEAPONS.

Applications for permits to carry weapons shall be made to the sheriff of the county in which the applicant resides. Applications from persons who are nonresidents of the state, or whose need to go armed arises out of employment by the state, shall be made to the commissioner of public safety. In either

case, the issuance of the permit shall be by and at the discretion of the sheriff or commissioner, who shall, before issuing the permit, determine that the requirements of sections 724.6 through 724.10, inclusive, have been satisfied. However, the training program requirements in section 724.9 may be waived for renewal permits. The issuing officer shall collect a fee of five dollars, except from a duly appointed peace officer, for each permit issued. Renewal permits shall be issued for a fee of two dollars. The issuing officer shall notify the commissioner of public safety of the issuance of any permit at least monthly and forward to the commissioner an amount equal to two dollars for each permit issued and one dollar for each renewal permit issued. All such fees received by the commissioner shall be paid to the treasurer of state and deposited in the operating account of the department of public safety to offset the cost of administering this chapter. Any unspent balance as of June thirtieth of each year shall revert to the general fund as provided by section 8.33.

(Ch 1245, 66 GA, ch 1, s 2410; 67 GA, ch 151, s 1)

Prior law: ss 695.7-695.9, Code 1977

Referred to in s 724.9, Supplement

724.12 PERMIT TO CARRY WEAPONS NOT TRANSFERABLE.

Permits to carry weapons shall be issued to a specific person only, and may not be transferred from one person to another.

(Ch 1245, 66 GA, ch 1, s 2411)

Prior law: s 695.10, Code 1977

724.13 REVOCATION OF PERMIT TO CARRY WEAPONS.

The issuing officer may revoke any permit to carry weapons when the officer learns that any of the conditions required for the issuance of that permit as stated in sections 724.6 through 724.10, inclusive, have ceased to exist, or when the officer learns that that permit was improperly issued. When the issuing officer revokes a permit, the officer shall notify the permit holder of such revocation on a form prescribed and published by the commissioner of public safety, and shall forward a copy of the form to the commissioner of public safety. From the time the permit holder receives notice of revocation, the permit shall cease to have any force or effect. Permit revocations may be reviewed by writ of certiorari.

(Ch 1245, 66 GA, ch 1, s 2415)

Prior law: s 695.14, Code 1977

724.14 EXISTING PERMITS.

Any permit issued by virtue of the authority granted by chapter 695 prior to January 1, 1978 shall remain in effect until its normal expiration date.

(Ch 1245, 66 GA, ch 1, s 2423)

724.15 REPORT AND RECORD OF SALES.

Any person who sells or transfers ownership of a revolver or pistol, whether such person is a dealer or otherwise, shall report within five days to the county sheriff the sale or transfer of such weapon, on forms prescribed and published by the commissioner of public safety, and on the forms shall set forth the time of selling or transfer, the age, occupation, place of employment or business, name and residence of such recipient of such weapon, together with the model, caliber, serial number, and make of such weapon, and the sheriff on receipt of such information shall make a permanent record of the same in a book specially kept for that purpose. A copy of this report shall be forwarded by the sheriff to the commissioner of public safety. Any person who fails to make a

report as required by this section shall be guilty of a simple misdemeanor. Any person who transfers the ownership of a revolver or pistol to a person related to him or her within the second degree of consanguinity or affinity shall be exempt from the reporting requirements of this section.

(Ch 1245, 66 GA, ch 1, s 2412)

Prior law: ss 695.21, 695.22, Code 1977

724.16 PERMIT TO PURCHASE REQUIRED.

Any person who purchases a pistol or revolver without a valid permit to purchase pistols or revolvers or any person who sells a pistol or revolver to a person who does not have in his or her possession a valid permit to purchase pistols or revolvers is guilty of a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2417)

New concept; replaces permit to sell, s 695.19, Code 1977

724.17 APPLICATION FOR PERMIT TO PURCHASE.

The application for a permit to purchase pistols or revolvers may be made to the sheriff of any county and shall be on a form prescribed and published by the commissioner of public safety. The application shall state the full name of the applicant, the social security number of the applicant, the residence of the applicant, and the age of the applicant.

(Ch 1245, 66 GA, ch 1, s 2418)

724.18 MAILING OF APPLICATION FOR PERMIT TO PURCHASE.

A person may by mail or personally request the sheriff to mail an application for a permit to purchase pistols or revolvers and the sheriff shall immediately forward to such person an application for a permit to purchase pistols or revolvers. A person may upon completion of the application mail such application to the sheriff who shall note the period of validity on the application and shall immediately forward the permit to purchase pistols or revolvers to the applicant. For the purposes of this section the date of application shall be the date on which the sheriff received the completed application.

(Ch 1245, 66 GA, ch 1, s 2421)

724.19 ISSUANCE OF PERMIT TO PURCHASE.

The permit to purchase pistols or revolvers shall be issued to the applicant immediately upon completion of the application and shall be on a form prescribed and published by the commissioner of public safety. The permit shall contain the name of the permittee, the social security number of the permittee, the residence of the permittee, and the effective date of the permit.

(Ch 1245, 66 GA, ch 1, s 2419)

724.20 VALIDITY OF PERMIT TO PURCHASE.

The permit shall be valid throughout the state and shall be valid three days after the date of application and shall be invalid one year after the date of application.

(Ch 1245, 66 GA, ch 1, s 2420)

724.21 GIVING FALSE INFORMATION WHEN PURCHASING WEAPON.

A person who gives a false name or presents false identification, or otherwise gives false information to one from whom the person seeks to purchase a pistol or revolver, commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2413)

Prior law: s 695.23, Code 1977

724.22 SALE TO MINORS.

A person who sells, loans, gives or makes available a firearm or ammunition for a firearm, to any person below the age of eighteen years commits a simple misdemeanor; provided, that a rifle or shotgun or the ammunition therefor, which lawfully may be used for hunting, may be given to such person by his or her parent or guardian, or by another with the express consent of his or her parent or guardian; and further provided, that any such person may allow a minor to possess a rifle, shotgun, or pistol, and the ammunition therefor, while on military duty, when such duty requires the possession of such a weapon, or while receiving instruction in the proper use thereof from an adult instructor.

(Ch 1245, 66 GA, ch 1, s 2414)

Prior law: s 695.26, Code 1977

724.23 RECORDS KEPT BY COMMISSIONER.

The commissioner of public safety shall maintain a permanent record of all permits authorized by this chapter of permit revocations and reports of sales of weapons required by this chapter.

(Ch 1245, 66 GA, ch 1, s 2416)

724.24 PURCHASE OR SALE OF FIREARMS IN CONTIGUOUS STATES.

A resident of Iowa not otherwise precluded by applicable law, may purchase firearms, rifles, shotguns, ammunition, reloading components, or firearms accessories in states contiguous to Iowa. This authorization is enacted in conformance with the Gun Control Act of 1968, 18 U.S.C., section 922 (b) (3) (A). In the event that presently enacted federal restrictions on the purchase of firearms, rifles, shotguns, ammunition, reloading components, or firearms accessories are repealed or set aside by courts of competent jurisdiction, this section shall in no way be interpreted to prohibit or restrict the purchase of firearms, shotguns, rifles, ammunition, reloading components, or firearms accessories by residents of Iowa otherwise competent to purchase the same in contiguous or other states.

A dealer licensed in Iowa may sell or deliver a rifle or shotgun, and a collector licensed in Iowa may sell or deliver a rifle or shotgun if it is a curio or relic, to a resident of an adjacent state, if the purchaser's state of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of Iowa and the adjacent state, and the purchaser and licensee have, prior to the sale or delivery for sale of the rifle or shotgun, complied with all the requirements of the federal Gun Control Act of 1968.

(Ch 1245, 66 GA, ch 1, s 2422)

Prior law: s 695.29, Code 1977

724.25 FELONY DEFINED.

As used in section 724.26 the word "felony" means any offense punishable in the jurisdiction where it occurred by imprisonment for a term exceeding one year.

(Ch 1245, 66 GA, ch 1, s 2425)

724.26 RECEIPT, TRANSPORTATION, AND POSSESSION OF FIREARMS AND DESTRUCTIVE DEVICES BY FELONS.

Any person who is convicted of a felony in any state or federal court and who subsequently possesses, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2426)

Referred to in ss 724.25, 724.27, Supplement

724.27 EXCEPTION TO SECTION 724.26.

The provisions of section 724.26 shall not apply to a person who is pardoned or has had his or her civil rights restored by the President of the United States or the chief executive of a state and who is expressly authorized by the President of the United States or such chief executive to receive, transport, or possess firearms or destructive devices.

(Ch 1245, 66 GA, ch 1, s 2427)

Editorial note: The comma after the word "restored" was editorially removed.

CHAPTER 725
VICE

Prior law: Generally, Ch 724, Code 1977

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725.1 PROSTITUTION.

A person who sells or offers for sale his or her services as a partner in a sex act, or who purchases or offers to purchase such services, commits an aggravated misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2501)

725.2 PIMPING.

A person who solicits a patron for a prostitute, or who knowingly takes or shares in the earnings of a prostitute, or who knowingly furnishes a room or other place to be used for the purpose of prostitution, whether for compensation or not, commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 2502)

725.3 PANDERING.

A person who persuades or arranges for another to become an inmate of a brothel, or to become a prostitute, such person not having previously engaged in prostitution, or to return to the practice of prostitution after having abandoned it, or who keeps or maintains a brothel or who knowingly takes a share in the income from a brothel, commits a class D felony.

(Ch 1245, 66 GA, ch 1, s 2503)

725.4 LEASING PREMISES FOR PROSTITUTION.

A person who has rented or let any building, structure or part thereof, boat, trailer or other place offering shelter or seclusion, and who knows, or has reason to know, that the lessee or tenant is using such for the purposes of prostitution, and who does not, immediately upon acquiring such knowledge, terminate the tenancy or effectively put an end to such practice of prostitution in such place, commits a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2504)

Prior law: s 724.6, Code 1977

725.5 KEEPING GAMBLING HOUSES.

Any person who keeps a house, shop, or place resorted to for the purpose of gambling, or permits any person in any house, shop, or other place under his or her control or care to conduct bookmaking or to play at cards, dice, faro, roulette,

equality, punchboard, slot machine or other game for money or other thing, commits a serious misdemeanor.

(C51, s 2721; R60, s 4363; C73, s 4026; C97, s 4962; C24, 27, 31, 35, 39, s 13198; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 726.1; 67 GA, ch 147, s 133)

Referred to in ss 725.6, 725.15, Supplement
C97, s 4962, editorially divided

Cross reference: s 725.16, Supplement

725.6 "KEEPER" DEFINED.

In a prosecution under section 725.5, any person who has the charge of or attends to any such house, shop, or place is the keeper thereof.

(C51, s 2721; R60, s 4363; C73, s 4026; C97, s 4962; C24, 27, 31, 35, 39, s 13199; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 726.2)

Referred to in s 725.15, Supplement

725.7 GAMING AND BETTING--PENALTY.

Any person who participates in any game for any sum of money or other property of any value, or who makes any bet or wager for money or other property of value, or who engages in bookmaking commits a serious misdemeanor.

(C51, s 2723; R60, s 4365; C73, s 4028; C97, s 4964; C24, 27, 31, 35, 39, s 13202; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 726.3; 67 GA, ch 147, s 133)

Referred to in s 725.15, Supplement

Cross reference to penalty: s 725.16, Supplement

725.8 WAGERS--FORFEITURE.

Property, whether real or personal, offered as a stake, or any moneys, property, or other thing of value staked, paid, bet, wagered, laid, or deposited in connection with or as a part of any game of chance, lottery, gambling scheme or device, gift enterprise, or other trade scheme unlawful under the laws of this state shall be forfeited to the state and said personal property may be seized and disposed of under chapter 809.

(C24, 27, 31, 35, 39, s 13203; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 726.4; Ch 1245, 66 GA, ch 4, s 506)

Referred to in s 725.15, Supplement

725.9 POSSESSION OF GAMBLING DEVICES PROHIBITED.

No one shall, in any manner or for any purpose whatever, except under proceeding to destroy the same, have, keep, or hold in possession or control any gambling device. The term "gambling device" means and includes every device used or adapted or designed to be used for gambling. Roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, pinball machines, push cards, jar tickets and pull-tabs are gambling devices per se. The term "gambling device" does not include any device regularly manufactured and offered for sale and sold as a toy, except that any use of such a device for gambling purposes constitutes unlawful gambling.

(S13, s 4965-a; C24, 27, 31, 35, 39, s 13210; C46, 50, 54, 58, 62, 66, 71, 73, 77, s 726.5)

Referred to in ss 99A.1, 99B.18, Code 1977; s 725.15, Supplement

See ch 99A, Code 1977

725.10 POOL SELLING--PLACES USED FOR.

Any person who records or registers bets or wagers or sells pools upon the result of any trial or contest of skill, speed, or power of endurance of man or beast, or upon the result of any political nomination or election, and any person who keeps

a place for the purpose of doing any such thing, and any owner, lessee, or occupant of any premises, who knowingly permits the same, or any part thereof, to be used for any such purpose, and anyone who, as custodian or depository thereof, for hire or reward, receives any money, property, or thing of value staked, wagered, or bet upon any such result, shall be fined not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year, or both.

(C97, s 4966; C24, 27, 31, 35, 39, s 13216; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 726.6)
Referred to in s 99.1, Code 1977; s 725.15, Supplement

725.11 BULLFIGHTS AND OTHER CONTESTS.

If any person keep or use, or in any way be connected with, or be interested in the management of, or receive money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, dog, cock, or other creature, or engage in, aid, abet, encourage, or assist in any bull, bear, dog, or cock fight, or a fight between any other creatures, he shall be guilty of a misdemeanor.

(C73, s 4033; C97, s 4971; C24, 27, 31, 35, 39, s 13217; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 726.7)
Referred to in s 99B.11, Code 1977
Cross reference to penalty: s 725.16, Supplement

725.12 LOTTERIES AND LOTTERY TICKETS--DEFINITION.

If any person make or aid in making or establishing, or advertise or make public any scheme for any lottery; or advertise, offer for sale, sell, negotiate, dispose of, purchase, or receive any ticket or part of a ticket in any lottery or number thereof; or have in his or her possession any ticket, part of a ticket, or paper purporting to be the number of any ticket of any lottery, with intent to sell or dispose of the same on his or her own account or as the agent of another, the person commits a serious misdemeanor.

When used in this section, lottery shall mean any scheme, arrangement, or plan whereby a prize is awarded by chance or any process involving a substantial element of chance to a participant who has paid or furnished a consideration for such chance.

For the purpose of determining the existence of a lottery under this section, a consideration shall be deemed to have been paid or furnished only in such cases where as a direct or indirect requirement or condition of obtaining a chance to win a prize, the participants are required to make an expenditure of money or something of monetary value through a purchase, payment of an entry or admission fee, or other payment or the participants are required to make a substantial expenditure of effort; provided, however, that no substantial expenditure of effort shall be deemed to have been expended by any participant solely by reason of the registration of the participant's name, address, and related information, the obtaining of an entry blank or participation sheet, by permitting or taking part in a demonstration of any article or commodity, by making a personal examination of posted lists of prize winners, or by acts of a comparable nature, whether performed or accomplished in person at any store, place of business, or other designated location, through the mails, or by telephone; and further provided, that no participant shall be required to be present in person or by representative at any designated location at the time of the determination of the

winner of the prize, and that the winner shall be notified either by the same method used to communicate the offering of the prize or by regular mail.

(C51, s 2730; R60, s 4377; C73, s 4043; C97, s 5000; C24, 27, 31, 35, 39, s 13218; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 726.8; 67 GA, ch 147, s 134)
Referred to in s 725.15, Supplement

725.13 MINORS IN BILLIARD ROOMS--DUTY OF OWNER.

No person who keeps a billiard hall where beer is sold, or the agent, clerk, or servant of any such person, or any person having charge or control of any such hall, shall permit any minor to remain in such hall, or to take part in any of the games known as billiards. The council in any city shall have power by ordinance to establish minimum age limits for minors for the purpose of regulating their admittance to billard halls which do not sell beer and their participation while therein in the games known as pool and billiards.

(C97, s 5002; C24, 27, 31, 35, 39, s 13219; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 726.9)
Referred to in s 725.14, Supplement
C97, s 5002, editorially divided

725.14 PUNISHMENT FOR SECTION 725.13.

A violation of the provisions of section 725.13 shall be punished by a fine not less than five nor exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days.

(C97, s 5002; C24, 27, 31, 35, 39, s 13220; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 726.10)

725.15 EXCEPTIONS FOR LEGAL GAMBLING.

Sections 725.5 to 725.10, and section 725.12 shall not apply to any game, activity or device when lawfully possessed, used, conducted or participated in pursuant to chapter 99B.

(C75, 77, s 726.11)

725.16 GAMBLING PENALTY.

A person who commits an offense declared in sections 725.5 through 725.18 or chapter 99B to be a misdemeanor shall be guilty of a serious misdemeanor.

(C51, ss 2721, 2730; R60, ss 4363, 4377; C73, ss 4026, 4043; C97, ss 4962, 5000; C24, 27, 31, 35, 39, ss 13198, 13218; C46, 50, 54, 58, 62, 66, 71, 73, ss 726.1, 726.8; C75, ss 99B.9, 726.1, 726.8; C77, s 726.14; Ch 1245, 66 GA, ch 4, s 509; 67 GA, ch 147, s 134)

725.17 PROTECTION MONEY PROHIBITED.

Any officer or employee of this state, or of a county, city, or judicial district who asks for, receives or collects any money or other consideration for and with the understanding that the officer or employee will aid, exempt, or otherwise protect another person from detection, arrest or conviction of any violation of this chapter or chapter 99B commits an aggravated misdemeanor.

(C77, s 726.15; Ch 1245, 66 GA, ch 4, s 510; 67 GA, ch 147, s 134)

725.18 COLLECTION SERVICE PROHIBITED.

Any person who knowingly offers, gives or sells his or her services for use in collecting or enforcing any debt arising from gambling, whether or not lawful gambling, commits an aggravated misdemeanor.

(C77, s 726.16; Ch 1245, 66 GA, ch 4, s 510; 67 GA, ch 147, s 134)

CHAPTER 726
PROTECTION OF THE FAMILY

726.1	Bigamy	726.5	Nonsupport
726.2	Incest	726.6	Wanton Neglect of a Minor
726.3	Abandonment of De- pendent Person	726.7	Wanton Neglect of a Resident of a Health Care Facility
726.4	Husband or Wife May Be Witness		

726.1 BIGAMY.

Any person, having a living husband or wife, who marries another, commits bigamy. Any of the following is a defense to the charge of bigamy:

1. The prior marriage was terminated in accordance with applicable law, or the person reasonably believes on reasonably convincing evidence that the prior marriage was so terminated.

2. The person believes, on reasonably convincing evidence, that the prior spouse is dead.

3. The person has, for three years, had no evidence by which he or she can reasonably believe that the prior spouse is alive.

Any person who marries another who the person knows has another living husband or wife commits bigamy. Bigamy is a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2601)

Prior law: ch 703, Code 1977

726.2 INCEST.

A person, except a child as defined in section 702.5, who has sexual intercourse with any person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew, commits incest. Incest is a class D felony.

(Ch 1245, 66 GA, ch 1, s 2602; 67 GA, ch 147, s 25)

Prior law: ch 704, Code 1977

726.3 ABANDONMENT OF DEPENDENT PERSON.

A person who is the father, mother, or some other person having custody of a child, or of any other person who by reason of mental or physical disability is not able to care for himself or herself, who knowingly or recklessly exposes such person to a hazard or danger against which such person cannot reasonably be expected to protect himself or herself or who deserts or abandons such person, knowing or having reason to believe that the person will be exposed to such hazard or danger, commits a class C felony.

(Ch 1245, 66 GA, ch 1, s 2603)

Prior law: s 731.7, Code 1977

Referred to in s 726.4, Supplement

726.4 HUSBAND OR WIFE MAY BE WITNESS.

In all prosecutions under sections 726.3, 726.5, or 726.6, the husband or wife shall be a competent witness for the state and may testify to any relevant acts or communications between them, anything in previous statutes to the contrary notwithstanding, provided, however, that no husband or wife shall be called or compelled to testify against the other under section 726.3, 726.5, or 726.6 except upon consent of such witness.

(Ch 1245, 66 GA, ch 1, s 2604; 67 GA, ch 147, s 26)

Prior law: s 731.2, Code 1977

726.5 NONSUPPORT.

A person, who being able to do so, fails or refuses to provide support for his or her child or ward under the age of eighteen years commits nonsupport; provided that no person shall be held to have violated this section who fails to support any child or ward under the age of eighteen who has left the home of the parent or other person having legal custody of him or her without the consent of that parent or person having legal custody of him or her. Support, for the purposes of this section, means any support which has been fixed by court order, or, in the absence of any such order or decree, the minimal requirements of food, clothing, or shelter. Nonsupport is a class D felony.

(Ch 1245, 66 GA, ch 1, s 2605)

Prior law: s 731.1, Code 1977

Referred to in s 726.4, Supplement

726.6 WANTON NEGLECT OF A MINOR.

A person who is the parent or adoptive parent or any person having custody of any minor commits wanton neglect of a minor when the person does any of the following:

1. The person knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of such minor.

A parent or adoptive parent or person having custody who provides his or her minor child exclusively with nonmedical treatment by a religious method of healing permitted under the laws of this state shall not, for this reason alone, be considered in violation of this subsection.

2. The person abandons such minor to fend for himself or herself, knowing that the minor is unable to do so.

Wanton neglect of a minor is a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2606; 67 GA, ch 147, s 27)

Prior law: ch 731A, Code 1977

Referred to in s 726.4, Supplement

726.7 WANTON NEGLECT OF A RESIDENT OF A HEALTH CARE FACILITY.

A person commits wanton neglect of a resident of a health care facility when the person knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a resident of a health care facility as defined in section 135C.1. Wanton neglect of a resident of a health care facility is a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2607)

CHAPTER 727
HEALTH, SAFETY AND WELFARE

727.1	Distributing Dangerous Substances	727.6	Falsely Claiming Emergency
727.2	Fireworks	727.7	Publication Required
727.3	Abandoned or Unattended Refrigerators	727.8	Electronic and Mechanical Eavesdropping
727.4	Exposing Persons to X-Ray Radiation	727.9	Transacting Business Without a License
727.5	Obstructing Emergency Telephone Calls	727.10	Exhibiting Deformed or Abnormal Persons
		727.11	Pay Toilets

727.1 DISTRIBUTING DANGEROUS SUBSTANCES.

Any person who distributes samples of any drugs or medicine, or any corrosive, caustic, poisonous or other injurious substance, commits a simple misdemeanor unless the person delivers such into the hands of a competent person, or otherwise takes reasonable precautions that the substance will not be taken by children or animals from the place where the substance is deposited.

*(Ch 1245, 66 GA, ch 1, s 2701)
Prior law: ss 732.8, 732.9, Code 1977*

727.2 FIREWORKS.

The term "fireworks" shall mean and include any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, firecrackers, torpedoes, skyrockets, roman candles, or other fireworks of like construction and any fireworks containing any explosive or inflammable compound, or other device containing any explosive substance. The term "fireworks" shall not include goldstar-producing sparklers on wires which contain no magnesium or chlorate or perchlorate, no flitter sparklers in paper tubes that do not exceed one-eighth of an inch in diameter, nor toy snakes which contain no mercury nor caps used in cap pistols. Except as hereinafter provided, any person, firm, copartnership, or corporation who offers for sale, exposes for sale, sells at retail, or uses or explodes any fireworks, commits a serious misdemeanor; provided the council of any city or the county board of supervisors may, upon application in writing, grant a permit for the display of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals approved by such city or such county board of supervisors when such fireworks display will be handled by a competent operator but no such permit shall be required for such display of fireworks at the Iowa state fairgrounds by the Iowa state fair board nor of incorporated county fairs nor of district fairs receiving state aid. Sales of fireworks for such display may be made for that purpose only; provided further, that nothing in this section shall be construed to prohibit any resident, dealer, manufacturer, or jobber from selling such fireworks as are not herein prohibited; or the sale of any kind of fireworks provided the same are to be shipped out of the state; or the sale or use of blank cartridges for a show or the theater, or for signal purposes in athletic sports or by railroads or trucks, for signal purposes, or by a recognized military organization; and provided further that nothing in this section

shall apply to any substance or composition prepared and sold for medicinal or fumigation purposes.

(Ch 1245, 66 GA, ch 1, s 2702)

Prior law: ss 732.17-732.19, Code 1977

Referred to in s 101A.1, Supplement

727.3 ABANDONED OR UNATTENDED REFRIGERATORS.

Any person who abandons or otherwise leaves unattended any refrigerator, ice box, or similar container, with doors that may become locked, outside of buildings and accessible to children, or any person who allows any such refrigerator, ice box, or similar container, to remain outside of buildings on premises in the person's possession or control, abandoned or unattended and so accessible to children, commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2703)

Prior law: ss 732.20-732.23, Code 1977

727.4 EXPOSING PERSONS TO X-RAY RADIATION.

Any person other than one licensed to practice medicine, osteopathic medicine, chiropractic, or dentistry, or one acting under the direction of a person so licensed, who knowingly exposes any other person to X-ray radiation, commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2704)

Prior law: s 732.24, Code 1977

727.5 OBSTRUCTING EMERGENCY TELEPHONE CALLS.

An emergency call is any call to a fire department or police department for aid, or a call for medical aid or ambulance service, when human life or property is in jeopardy and the prompt summoning of aid is essential. Any person who fails to relinquish any telephone or telephone line which the person is using when informed that such phone or line is needed for an emergency call commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2705)

Prior law: ss 714.33, 714.34, Code 1977

Referred to in s 727.7, Supplement

727.6 FALSELY CLAIMING EMERGENCY.

Any person who secures the use of a telephone or telephone line by falsely stating that such telephone or line is needed for an emergency call commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2706)

Prior law: s 714.35, Code 1977

Referred to in s 727.7, Supplement

727.7 PUBLICATION REQUIRED.

Every telephone company doing business in this state shall print a copy of sections 727.5 and 727.6 in a prominent place in every telephone directory published by it. Any person, firm, or corporation providing telephone service which distributes or causes to be distributed in this state copies of a telephone directory which is subject to the provisions of this section which does not contain the notice herein provided for commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2707)

Prior law: s 714.36, Code 1977

727.8 ELECTRONIC AND MECHANICAL EAVESDROPPING.

Any person, having no right or authority to do so, who taps into or connects a listening or recording device to any telephone or other communication wire, or who by any electronic or mechanical means listens to, records, or otherwise intercepts a conversation or communication of any kind, commits

a serious misdemeanor; provided, that the sender or recipient of a message or one who is openly present and participating in or listening to a communication shall not be prohibited hereby from recording such message or communication; and further provided, that nothing herein shall restrict the use of any radio or television receiver to receive any communication transmitted by radio or wireless signal.

(Ch 1245, 66 GA, ch 1, s 2708)

Prior law: s 716.8, Code 1977

727.9 TRANSACTING BUSINESS WITHOUT A LICENSE.

Unless another penalty is specifically provided, any person who without a license carries on or transacts any business or occupation for which a license is required by any law of this state, commits a simple misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2709)

Prior law: s 713.27, Code 1977

727.10 EXHIBITING DEFORMED OR ABNORMAL PERSONS.

Any person who shall exhibit, place on exhibition, or cause to be exhibited any deformed, maimed, idiotic or abnormal person or human monstrosity without his or her consent, and receive any fee or compensation therefor, commits a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2506)

Prior law: s 725.12, Code 1977

727.11 PAY TOILETS.

No person shall make a charge or require any special device, key or slug for the use of a toilet located in a room provided for use of the public. Violation of this section is a simple misdemeanor.

(C24, 27, 31, 35, 39, s 2839; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 170.34; C77, s 732.25; 67 GA, ch 147, s 136)

CHAPTER 728
OBSCENITY

728.1	Definitions	728.6	Civil Suit to Determine Obscenity
728.2	Dissemination and Exhibition of Obscene Material to Minors	728.7	Exemptions for Public Libraries and Educational Institutions
728.3	Admitting Minors to Premises Where Obscene Material is Exhibited	728.8	Suspension of Licenses or Permits
728.4	Sale of Hard Core Pornography	728.9	Evidence Considered
728.5	Public Indecent Exposure in Certain Establishments	728.10	Affirmative Defense
		728.11	Uniform Application

728.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Obscene material" is any material depicting or describing the genitals, sex acts, masturbation, excretory functions or sado-masochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political or artistic value.

2. "Material" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

3. "Disseminate" means to transfer possession, with or without consideration.

4. "Knowingly" means being aware of the character of the matter.

5. "Sado-masochistic abuse" means the infliction of physical or mental pain upon a person or the condition of a person being fettered, bound or otherwise physically restrained.

6. "Minor" means any person under the age of eighteen.

7. "Sex act" means any sexual contact, actual or simulated, either natural or deviate, between two or more persons, or between a person and an animal, by penetration of the penis into the vagina or anus, or by contact between the mouth or tongue and genitalia or anus, or by contact between a finger of one person and the genitalia of another person or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

(Ch 1245, 66 GA, ch 1, s 2801; 67 GA, ch 147, s 28)

Prior law: s 725.1, Code 1977

728.2 DISSEMINATION AND EXHIBITION OF OBSCENE MATERIAL TO MINORS.

Any person, other than the parent or guardian of the minor, who knowingly disseminates or exhibits obscene material to a minor, including the exhibition of obscene material so that it can be observed by a minor on or off the premises where it is displayed, is guilty of a public offense and shall upon conviction be guilty of a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2802)

Prior law: s 725.2, Code 1977

Referred to in ss 728.8, 728.9, Supplement

728.3 ADMITTING MINORS TO PREMISES WHERE OBSCENE MATERIAL IS EXHIBITED.

Any person who knowingly sells, gives, delivers, or provides a minor with a pass or admits a minor to premises where obscene material is exhibited is guilty of a public offense and shall upon conviction be guilty of a serious misdemeanor.

(Ch 1245, 66 GA, ch 1, s 2803)

Prior law: s 725.3, Code 1977

Referred to in ss 728.8, 728.9, Supplement

728.4 SALE OF HARD CORE PORNOGRAPHY.

Any person who knowingly sells or offers for sale material depicting a sex act involving sado-masochistic abuse, excretory functions, a child, or bestiality which the average adult taking the material as a whole in applying contemporary community standards would find that it appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value shall, upon conviction be guilty of a simple misdemeanor. Charges under this section may only be brought by a county attorney, the attorney general, or a grand jury.

(Ch 1245, 66 GA, ch 1, s 2804)

728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.

A holder of a liquor license or beer permit or any owner, manager, or person who exercises direct control over any licensed premises defined in section 123.3, subsection 31 shall be guilty of a serious misdemeanor under any of the following circumstances:

1. If such person allow or permit the actual or simulated public performance of any sex act upon or in such licensed premises.

2. If such person allow or permit the exposure of the genitals or buttocks or female breast of any person who acts as a waiter or waitress.

3. If such person allow or permit the exposure of the genitals or female breast nipple of any person who acts as an entertainer, whether or not the owner of the licensed premises in which the activity is performed employs or pays any compensation to such person to perform such activity.

4. If such person allow or permit any person to remain in or upon the licensed premises who exposes to public view his or her genitals, pubic hair, or anus.

5. If such person allow or permit the displaying of moving pictures, films, or pictures depicting any sex act or the display of the pubic hair, anus, or genitals upon or in such licensed premises.

Provided that the provisions of this section shall not apply to a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances.

(Ch 1245, 66 GA, ch 1, s 2505)

728.6 CIVIL SUIT TO DETERMINE OBSCENITY.

Whenever the county attorney of any county has reasonable cause to believe that any person is engaged or plans to engage in the dissemination or exhibition of obscene material within his or her county to minors the county attorney may institute a civil proceeding in the district court of the county to enjoin the dissemination or exhibition of obscene material to minors. Such application for injunction is optional and not mandatory

and shall not be construed as a prerequisite to criminal prosecution for a violation of this chapter.

(Ch 1245, 66 GA, ch 1, s 2805)

Prior law: s 725.4, Code 1977

728.7 EXEMPTIONS FOR PUBLIC LIBRARIES AND EDUCATIONAL INSTITUTIONS.

Nothing in this chapter prohibits the use of appropriate material for educational purposes in any accredited school, or any public library, or in any educational program in which the minor is participating. Nothing in this chapter prohibits the attendance of minors at an exhibition or display of art works or the use of any materials in any public library.

(Ch 1245, 66 GA, ch 1, s 2806)

Prior law: s 725.5, Code 1977

728.8 SUSPENSION OF LICENSES OR PERMITS.

Any person who knowingly permits a violation of section 728.2 or 728.3 to occur on premises under the person's control shall have all permits and licenses issued to the person under state or local law as a prerequisite for doing business on such premises revoked for a period of six months. The county attorney shall notify all agencies responsible for issuing licenses and permits of any conviction under section 728.2 or 728.3.

(Ch 1245, 66 GA, ch 1, s 2807)

Prior law: s 725.6, Code 1977

728.9 EVIDENCE CONSIDERED.

At a trial for violation of section 728.2 or 728.3 the court may consider the material, and receive into evidence in addition to other competent evidence, the offered testimony of experts pertaining to:

1. The artistic, literary, political, or scientific value, if any, of the challenged material.
2. The degree of public acceptance within the community of the material or material of similar character.
3. The intent of the author, artist, producer, publisher, or manufacturer in creating the material.
4. The advertising promotion and other circumstances relating to the sale of the material.

(Ch 1245, 66 GA, ch 1, s 2808)

Prior law: s 725.7, Code 1977

728.10 AFFIRMATIVE DEFENSE.

In any prosecution for disseminating or exhibiting obscene material to minors, it is an affirmative defense that the defendant had reasonable cause to believe that the minor involved was eighteen years old or more and the minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more or was accompanied by a parent or spouse eighteen years of age or more.

(Ch 1245, 66 GA, ch 1, s 2809)

Prior law: s 725.8, Code 1977

728.11 UNIFORM APPLICATION.

In order to provide for the uniform application of the provisions of this chapter relating to obscene material applicable to minors within this state, it is intended that the sole and only regulation of obscene material shall be under the provisions of this chapter, and no municipality, county or other governmental unit within this state shall make any law, ordinance or regulation relating to the availability of obscene

materials. All such laws, ordinances or regulations shall be or become void, unenforceable and of no effect on January 1, 1978. Nothing in this section shall restrict the zoning authority of cities and counties.

(Ch 1245, 66 GA, ch 1, s 2810)

Prior law: s 725.9, Code 1977

CHAPTER 729
INFRINGEMENT OF CIVIL RIGHTS

See also 601A, Code 1977

729.1 Religious Test 729.3 Penalty
729.2 Evidence 729.4 Fair Employment Practices

729.1 RELIGIOUS TEST.

Any violation of section 4, Article I of the Constitution of Iowa is hereby declared to be a misdemeanor.

(C35, s 13252-f1; C39, s 13252.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 735.3)

Referred to in ss 729.2, 729.3, Supplement

729.2 EVIDENCE.

If any person, agency, bureau, corporation, or association employed or maintained to obtain, or aid in obtaining, positions for others in the public schools, or positions in any other public institutions in the state, or any individual or official connected with any public school or public institution shall ask, indicate, or transmit orally or in writing the religion or religious affiliations of any person seeking employment in the public schools or any other public institutions, it shall constitute evidence of a violation of section 729.1.

(C35, s 13252-f2; C39, s 13252.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 735.4)

Referred to in s 729.3, Supplement

729.3 PENALTY.

Any person, agency, bureau, corporation, or association that violates provisions of sections 729.1 and 729.2 shall be guilty of a misdemeanor and upon conviction be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned not more than thirty days, or by both such fine and imprisonment.

(C35, s 13252-f3; C39, s 13252.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 735.5)

729.4 FAIR EMPLOYMENT PRACTICES.

1. Every person in this state is entitled to the opportunity for employment on equal terms with every other person. It shall be unlawful for any person or employer to discriminate in the employment of individuals because of race, religion, color, national origin or ancestry. However, as to employment such individual must be qualified to perform the services or work required.

2. It shall be unlawful for any labor union or organization or an officer thereof to discriminate against any person as to membership therein because of race, religion, color, national origin or ancestry.

3. Any person, employer, labor union or organization or officer of a labor union or organization convicted of a violation of subsections 1 or 2 shall be punished by a fine not to exceed one hundred dollars or imprisonment in the county jail not to exceed thirty days.

(C66, 71, 73, 75, 77, s 735.6)

CHAPTER 730
BLACKLISTING EMPLOYEES

- | | | | |
|-------|--------------------------|-------|------------------------|
| 730.1 | Punishment | 730.3 | False Charges Concern- |
| 730.2 | Blacklisting Employees-- | | ing Honesty |
| | Treble Damages | | |

730.1 PUNISHMENT.

If any person, agent, company, or corporation, after having discharged any employee from his or its service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company, or corporation, except by furnishing in writing on request a truthful statement as to the cause of his discharge, such person, agent, company, or corporation shall be punished by a fine not exceeding five hundred nor less than one hundred dollars, and shall be liable for all damages sustained by any such person.

*(C97, s 5027; C24, 27, 31, 35, 39, s 13253; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 736.1)
Referred to in s 730.2, Supplement*

730.2 BLACKLISTING EMPLOYEES--TREBLE DAMAGES.

If any railway company or other company, partnership, or corporation shall authorize or allow any of its or their agents to blacklist any discharged employee, or attempt by word or writing or any other means whatever to prevent such discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with any other person or company, except as provided for in section 730.1, such company or copartnership shall be liable in treble damages to such employee so prevented from obtaining employment.

(C97, s 5028; C24, 27, 31, 35, 39, s 13254; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 736.2)

730.3 FALSE CHARGES CONCERNING HONESTY.

Every person who shall by any letter, mark, sign, or designation whatever, or by any verbal statement, falsely and without probable cause, report to any railroad or any other company or corporation, or to any person or firm, or to any of the officers, servants, agents, or employees of any such corporation, person, or firm, that any conductor, brakeman, engineer, fireman, station agent, or any employee of such railroad company, corporation, person, or firm has received any money or thing of value for the transportation of persons or property or for other service for which he has not accounted to such corporation, person, or firm, or shall falsely and without probable cause report that any conductor, brakeman, engineer, fireman, station agent, or other employee of any railroad company, corporation, firm, or person, neglected, failed, or refused to collect any money or ticket for transportation of persons or property or other service when it was their duty so to do, shall, on conviction, be adjudged guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars or be imprisoned in the county jail for a period not exceeding thirty days.

(SS15, s 5028-w1; C24, 27, 31, 35, 39, s 13255, C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 736.3)

CHAPTER 731
LABOR UNION MEMBERSHIP

731.1	Right to Join Union	731.5	Deducting Dues from Pay
731.2	Refusal to Employ Prohibited		Unlawful
731.3	Contracts to Exclude Unlawful	731.6	Penalty
731.4	Union Dues as Prerequisite to Employment--Prohibited	731.7	Injunction
		731.8	Exception

731.1 RIGHT TO JOIN UNION.

It is declared to be the policy of the state of Iowa that no person within its boundaries shall be deprived of the right to work at his chosen occupation for any employer because of membership in, affiliation with, withdrawal or expulsion from, or refusal to join, any labor union, organization, or association, and any contract which contravenes this policy is illegal and void.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736A.1)

731.2 REFUSAL TO EMPLOY PROHIBITED.

It shall be unlawful for any person, firm, association or corporation to refuse or deny employment to any person because of membership in, or affiliation with, or resignation or withdrawal from, a labor union, organization or association, or because of refusal to join or affiliate with a labor union, organization or association.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736A.2)

731.3 CONTRACTS TO EXCLUDE UNLAWFUL.

It shall be unlawful for any person, firm, association, corporation or labor organization to enter into any understanding, contract, or agreement, whether written or oral, to exclude from employment members of a labor union, organization or association, or persons who do not belong to, or who refuse to join, a labor union, organization or association, or because of resignation or withdrawal therefrom.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736A.3)

731.4 UNION DUES AS PREREQUISITE TO EMPLOYMENT--PROHIBITED.

It shall be unlawful for any person, firm, association, labor organization or corporation, or political subdivision, either directly or indirectly, or in any manner or by any means as a prerequisite to or a condition of employment to require any person to pay dues, charges, fees, contributions, fines or assessments to any labor union, labor association or labor organization.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736A.4)

731.5 DEDUCTING DUES FROM PAY UNLAWFUL.

It shall be unlawful for any person, firm, association, labor organization or corporation to deduct labor organization dues, charges, fees, contributions, fines or assessments from an employee's earnings, wages or compensation, unless the employer has first been presented with an individual written order therefor signed by the employee, which written order shall be terminable at any time by the employee giving at least thirty days' written notice of such termination to the employer.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736A.5)

731.6 PENALTY.

Any person, firm, association, labor organization, or corporation or any director, officer, representative, agent or

member thereof, who shall violate any of the provisions of this chapter or who shall aid and abet in such violation shall be deemed guilty of a misdemeanor.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736A.6)

731.7 INJUNCTION.

Additional to the penal provisions of this chapter, any person, firm, corporation, association, or any labor union, labor association or labor organization, or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and things prohibited by this chapter, and all of the provisions of the law relating to the granting of restraining orders and injunctions, either temporary or permanent, shall be applicable.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736A.7)

731.8 EXCEPTION.

The provisions of this chapter shall not apply to employers or employees covered by the federal Railroad Labor Act.*

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736A.8)

Constitutionality, 52 GA, ch 296, s 8

**45 USC s 151 et seq.*

CHAPTER 732
LABOR BOYCOTTS AND STRIKES

- | | |
|---|---|
| 732.1 Contracting to Boycott
or Strike in Sympathy | 732.4 Penalty |
| 732.2 Carrying Out Boycott
or Strike | 732.5 Injunction |
| 732.3 Jurisdictional Strike
or Slow-down | 732.6 Hiring Professional
Strikebreakers Pro-
hibited |

732.1 CONTRACTING TO BOYCOTT OR STRIKE IN SYMPATHY.

It shall be unlawful for any labor union, association, or organization, or the officers, representatives, agents or members thereof, to enter into any contract, agreement, arrangement, combination or conspiracy for the purpose of, by strikes or threats of strikes, by violence or threats of violence, by coercion, or by concerted refusal to make, manufacture, assemble, or use, handle, transport, deliver or otherwise deal with any articles, products or materials:

1. To force or require any person, firm or corporation to cease using, selling, handling, transporting or dealing in the goods or products of any other person, firm or corporation, or

2. To force or require any person, firm or corporation to cease selling, transporting or delivering goods or products to any other person, firm or corporation, or

3. To force or require any employer other than their own employer to recognize, deal with, comply with the demands of, or employ members of any labor union, association or organization, or

4. To force or require any employer to break an existing collective bargaining agreement which such employer may have with any labor union, association or organization.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736B.1)

Referred to in s 20.10, Code 1977; s 732.2, Supplement

732.2 CARRYING OUT BOYCOTT OR STRIKE.

It shall be unlawful for any labor union, association or organization, or the officers, representatives, agents, or a member or members thereof to carry out or attempt to carry out in this state any contract, agreement, arrangement, combination or conspiracy declared unlawful in section 732.1.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736B.2)

Referred to in s 20.10, Code 1977

732.3 JURISDICTIONAL STRIKE OR SLOW-DOWN.

It shall be unlawful for any labor union, group, association or organization, or the officers, representatives, agents or members thereof, to cause a stoppage or slow-down of the work or a part of the work of an employer because of a dispute between labor unions, groups, associations or organizations, or the officers, representatives, agents or members thereof, with respect to jurisdiction over, or the right to do the work or a part of the work of such employer.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736B.3)

Referred to in s 20.10, Code 1977

732.4 PENALTY.

Any person, or any labor union, labor association or labor organization or any officer, representative, agent or member thereof who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than one

hundred dollars or by imprisonment in the county jail for a period of not more than thirty days.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 736B.4)

732.5 INJUNCTION.

Additionally to the penal provisions of this chapter, any person, or any labor union, labor association or labor organization or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and things prohibited by this chapter, and all of the provisions of the law relating to the granting of restraining orders and injunctions, either temporary or permanent, shall be applicable.

(C50, 54, 58, 62, 66, 71, 73, 75, 77 s 736B.5)

Constitutionality, 52 GA, ch 297, s 6

732.6 HIRING PROFESSIONAL STRIKEBREAKERS PROHIBITED.

It shall be unlawful for any person, persons, partnership, agency, firm, or corporation, or agent thereof:

1. Unless directly involved in a labor dispute, to knowingly recruit, procure, supply or refer for employment in the place of employees involved in such labor dispute any person or persons who customarily or repeatedly offer themselves as replacements for employees involved in labor disputes.

2. If directly involved in a labor dispute, to knowingly employ in place of employees involved in such dispute persons who customarily or repeatedly offer themselves as replacements for employees involved in labor disputes.

3. To solicit or advertise for employees to replace employees involved in a labor dispute without notice in such solicitation or advertisement that the employment offered is in place of employees engaged in a labor dispute.

4. To enter into an agreement, contract or arrangement with other persons, partnerships, agencies, firms or corporations, or agents thereof, to commit acts prohibited by subsections 1, 2 or 3 of this section.

(C66, 71, 73, 75, 77, s 736B.6)

CHAPTER 801
CRIMINAL PROCEDURE SCOPE AND DEFINITIONS

801.1	Short Title	801.4	General Definitions
801.2	Scope	801.5	Applicability to
801.3	General Purposes		Offenses Committed
			Before the Effective
			Date

801.1 SHORT TITLE.

Chapters 801 through 819 shall be known and may be cited as the "Iowa code of criminal procedure."

(Ch 1245, 66 GA, ch 2, s 101)

801.2 SCOPE.

The provisions of the Iowa code of criminal procedure shall govern procedure in the courts of Iowa in all criminal proceedings except where a different procedure is specifically provided by law.

(Ch 1245, 66 GA, ch 2, s 102)

801.3 GENERAL PURPOSES.

The provisions of the Iowa code of criminal procedure shall be liberally construed to give effect to the general purposes thereof, which shall be to provide for:

1. Simplicity in criminal procedure.
2. Fairness in administration of the criminal laws.
3. Elimination of unjustifiable delay in pretrial, trial, and post-trial proceedings.
4. Just determination of every criminal proceeding by a fair and impartial trial and review.
5. The effective apprehension and trial of persons suspected of committing public offenses without violation of fundamental human rights.

(Ch 1245, 66 GA, ch 2, s 103)

801.4 GENERAL DEFINITIONS.

For the purposes of this Act, unless the context otherwise requires:

1. "Attorney general" includes an authorized assistant of the attorney general.
2. "Charge" means a written statement presented to a court accusing a person of the commission of a public offense, including but not limited to a complaint, information, or indictment.
3. "County attorney" includes an authorized assistant of the county attorney.
4. "Court" means a place where justice is administered by a magistrate and includes such magistrate while acting in his or her judicial capacity.
5. "Criminal proceeding" is a proceeding in which a person is accused of a public offense.
6. "Magistrate" means all judges of the district court, including district associate judges and judicial magistrates throughout the state.
7. "Peace officers", sometimes designated "law enforcement officers", include:
 - a. Sheriffs and their regular deputies who are subject to mandated law enforcement training.
 - b. Marshals and policemen of cities.
 - c. Peace officer members of the department of public safety as defined in chapter 80.
 - d. Probation and parole agents acting pursuant to section 906.2.

- e. Probation officers acting pursuant to section 231.10.
- f. Special security officers employed by board of regent's institutions as set forth in section 262.13.
- g. Conservation officers as authorized by section 107.13.
- h. Such employees of the department of transportation as are designated "peace officers" by resolution of the department under section 321.477.

i. Such persons as may be otherwise so designated by law.*

8. "Prosecuting attorney", sometimes designated "prosecutor", means any attorney who is authorized by law to appear on the behalf of the state in a criminal case, and includes the attorney general, an assistant attorney general, the county attorney, an assistant county attorney, or a special or substitute prosecutor whose appearance is approved by a court having jurisdiction to try the defendant for the offense with which he or she is charged. In the case of prosecution for a municipal ordinance violation, "prosecuting attorney" means a city attorney or an assistant city attorney.

9. The words "accused person", "accused", "defendant", and similar words mean an individual, a public or private corporation, a partnership, or an unincorporated or voluntary association.

10. "Indigent" is a person with insufficient resources as defined in section 336A.4.

11. "Complaint" means a statement in writing, under oath or affirmation, made before a magistrate, of the commission of a public offense, and accusing someone thereof. A complaint shall be substantially in the form provided in the Iowa rules of criminal procedure.

12. "Prosecution" means the commencement, including the filing of a complaint, and continuance of a criminal proceeding, and pursuit of that proceeding to final judgment on behalf of the state or other political subdivision.

13. "Indictable offense" means an offense other than a simple misdemeanor.

(Ch 1245, 66 GA, ch 2, s 104; 67 GA, ch 147, ss 30, 31)

Prior law: ss 748.1, 748.3, 754.1, Code 1977

**Referred to in ss 7.10, 321.1(45), Supplement*

801.5 APPLICABILITY TO OFFENSES COMMITTED BEFORE THE EFFECTIVE DATE.

1. Except as provided in subsections 2 and 3 of this section, this Act* does not apply to offenses committed before its effective date. Prosecutions for offenses committed before the effective date are governed by the prior law, which is continued in effect for that purpose, as if this Act* were not in force. For purposes of this section, an offense is committed before the effective date if any of the elements of the offense occurred before that date.

2. In any case pending on or commenced after the effective date of this Act*, involving an offense committed before that date:

a. Upon the request of the defendant a defense or mitigation under this Act*, whether specifically provided for herein or based upon the failure of the Act* to define an applicable offense, shall apply; and

b. Upon the request of the defendant and the approval of the court:

(1) Procedural provisions of this Act* shall apply insofar as they are justly applicable; and

(2) The court may impose a sentence or suspended imposition of a sentence under the provisions of this Act* applicable to the offense and the offender.

3. Provisions of this Act* governing the release or discharge of prisoners, probationers, and parolees shall apply to

persons under sentence for offenses committed before the effective date of this Act*, except that the minimum or maximum period of their detention or supervision shall in no case be increased, nor shall the provisions of this Act* affect the substantive or procedural validity of any judgment of conviction entered before the effective date of this Act*, regardless of the fact that appeal time has not run or that an appeal is pending.

(Ch 1245, 66 GA, ch 4, s 528)

**"Act" throughout this section means chapter 1245, 66 GA, 1976 Session, chapters 1 through 4.*

Editorial note: The word "provisions" in subsection 2 b (1) was editorially made plural.

CHAPTER 802
LIMITATIONS OF CRIMINAL ACTIONS

802.1	Murder	802.6	Periods Excluded from Limitation
802.2	Sexual Abuse	802.7	Continuing Crimes
802.3	Felony--Aggravated or Serious Misdemeanor	802.8	Time of Finding Indict- ment and Information
802.4	Simple Misdemeanor-- Ordinance	802.9	Indictment or Informa- tion Where a Defect is Found
802.5	Extension for Fraud, Fiduciary Breach		

802.1 MURDER.

A prosecution for murder in the first or second degree may be commenced at any time after the death of the victim.

(Ch 1245, 66 GA, ch 2, s 201)

Prior law: s 752.1, Code 1977

Referred to in s 802.3, Supplement

802.2 SEXUAL ABUSE.

An indictment or information for sexual abuse or its attempt shall be found within eighteen months after its commission.

(Ch 1245, 66 GA, ch 2, s 202)

Prior law: s 752.2, Code 1977

Referred to in ss 802.3, 802.5, Supplement

802.3 FELONY--AGGRAVATED OR SERIOUS MISDEMEANOR.

In all cases, except those enumerated in sections 802.1 and 802.2, an indictment or information for a felony or aggravated or serious misdemeanor shall be found within three years after its commission.

(Ch 1245, 66 GA, ch 2, s 203)

Prior law: s 752.3, Code 1977

Referred to in s 802.5, Supplement

802.4 SIMPLE MISDEMEANOR--ORDINANCE.

A prosecution for a simple misdemeanor or violation of a municipal or county rule or ordinance shall be commenced within one year after its commission.

(Ch 1245, 66 GA, ch 2, s 204)

Prior law: s 752.4, Code 1977

Referred to in s 802.5, Supplement

802.5 EXTENSION FOR FRAUD, FIDUCIARY BREACH.

If the period prescribed in sections 802.2, 802.3 and 802.4 has expired, prosecution may nevertheless be commenced for any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has legal duty to represent an aggrieved party and who is himself or herself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(Ch 1245, 66 GA, ch 2, s 205)

802.6 PERIODS EXCLUDED FROM LIMITATION.

1. When a person leaves the state with the intention of avoiding prosecution, the indictment or prosecution may be found or commenced within the time herein limited after his or her coming into the state, and no period during which the party charged was not publicly resident within the state is a part of the limitation.

2. The time within which an indictment or information must be found shall not include the time during which the defendant is a public officer or employee and the offense arises from

misconduct relating to the duties and trust of that office or employment.

(Ch 1245, 66 GA, ch 2, s 206)

Prior law: s 752.5, Code 1977

802.7 CONTINUING CRIMES.

When an offense is based on a series of acts committed at different times, the period of limitation prescribed by this division shall commence upon the commission of the last of such acts.

(Ch 1245, 66 GA, ch 2, s 207)

302.8 TIME OF FINDING INDICTMENT AND INFORMATION.

Within the meaning of this chapter:

1. An indictment is found when it is duly presented by the grand jury in open court and filed.

2. An information is found when it is filed.

(Ch 1245, 66 GA, ch 2, s 208)

Prior law: s 752.6, Code 1977

802.9 INDICTMENT OR INFORMATION WHERE A DEFECT IS FOUND.

If a defect, error, or irregularity is discovered in any indictment or information which, on motion of either party, causes same to be dismissed or the prosecution to be set aside or reversed on appeal, a new indictment or information may be found within thirty days after such action notwithstanding the time limitations enumerated in this chapter.

(Ch 1245, 66 GA, ch 2, s 209)

Prior law: ss 776.9, 777.8, 777.9, 795.5, Code 1977

CHAPTER 803
JURISDICTION OF PUBLIC OFFENSES
AND PLACE OF TRIAL

803.1 State Criminal Jurisdiction	803.3 Place of Trial--Special Provisions
803.2 Place of Trial--General	803.4 Bar to Action

803.1 STATE CRIMINAL JURISDICTION.

1. A person is subject to prosecution in this state for an offense which the person commits within or outside this state, by the person's own conduct or that of another for which he or she is legally accountable, if:

a. The offense is committed either wholly or partly within this state.

b. Conduct of the person outside the state constitutes an attempt to commit an offense within this state.

c. Conduct of the person outside the state constitutes a conspiracy to commit an offense within this state.

d. Conduct of the person within this state constitutes an attempt, solicitation or conspiracy to commit an offense in another jurisdiction, which conduct is punishable under the laws of both this state and such other jurisdiction.

2. An offense may be committed partly within this state if conduct which is an element of the offense, or a result which constitutes an element of the offense, occurs within this state. If the body of a murder victim is found within the state, the death is presumed to have occurred within the state.

3. An offense which is based on an omission to perform a duty imposed upon a person by the law of this state is committed within the state, regardless of the location of the person at the time of the omission.

(Ch 1245, 66 GA, ch 2, s 301; 67 GA, ch 147, s 32)
Prior law: s 753.1, Code 1977

803.2 PLACE OF TRIAL--GENERAL.

Criminal actions shall be tried in the county in which the crime is committed, except as otherwise provided by law. All objections to place of trial are waived by a defendant unless the defendant objects thereto prior to trial.

(Ch 1245, 66 GA, ch 2, s 302)
Prior law: s 753.2, Code 1977

803.3 PLACE OF TRIAL--SPECIAL PROVISIONS.

The following special provisions apply:

1. If conduct or results which constitute elements of an offense occur in two or more counties, prosecution of the offense may be had in any of such counties. In such cases, where a dominant number of elements occur in one county, that county shall have the primary right to proceed with prosecution of the offender.

2. If an offense commenced outside the state is consummated within this state, trial of the offense shall be held in the county or counties in which the offense is consummated or the interest protected by the involved penal statute is impaired.

3. If an offense is committed in or upon any conveyance in transit, and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the conveyance passed in the course of its journey.

4. If an offense is committed on the boundary of two or more counties, and it cannot readily be determined within which county the commission took place, trial of the offense may be held in any of the counties concerned.

5. If the offense is a traffic offense, or a scheduled offense under section 753.15, section 805.13 shall apply.

(Ch 1245, 66 GA, ch 2, s 303; 67 GA, ch 147, s 33)

Prior law: s 753.3, Code 1977

803.4 BAR TO ACTION.

A conviction or acquittal of an offense in a court having jurisdiction thereof is a bar to a prosecution of the offense in another court.

(Ch 1245, 66 GA, ch 2, s 304)

Prior law: s 753.4, Code 1977

CHAPTER 804
COMMENCEMENT OF ACTIONS--ARREST--
DISPOSITIONS OF PRISONERS

Referred to in ss 602.62, 805.6(1)(a), Supplement;
rule 7(3)a, 39, R Cr P
Cross reference: Ch 805, Supplement

804.1	Arrest by Warrant-- Complaint and Cita- tion Defined	804.15	Breaking and Entering Premises
804.2	Contents of Arrest Warrant	804.16	Time of Arrest
804.3	Order for Bail--En- dorsed on Warrant	804.17	Summoning Aid
804.4	Manner of Executing Warrant	804.18	Taking Weapons
804.5	Arrest Defined	804.19	Receipt Given
804.6	Persons Authorized to Make an Arrest	804.20	Communications by Ar- rested Persons
804.7	Arrests by Peace Officers	804.21	Initial Appearance Before Magistrate-- Arrest by Warrant
804.8	Use of Force by Peace Officer	804.22	Initial Appearance Before Magistrate-- Arrest Without War- rant
804.9	Arrests by Private Persons	804.23	Initial Appearance Before Magistrate of Arrested Material Witness
804.10	Use of Force in Arrest by Private Person	804.24	Arrests by Private Persons--Disposition of Prisoner
804.11	Arrest of Material Witness	804.25	Bail--Discharge
804.12	Use of Force in Resist- ing Arrest	804.26	Officer's Return
804.13	Use of Force in Pre- venting an Escape	804.27	Conveying Prisoner to Jail--Fees and Expenses
804.14	Manner of Making Ar- rest	804.28	Department of Public Safety Prisoners

804.1 ARREST BY WARRANT--COMPLAINT AND CITATION DEFINED.

A criminal proceeding may be commenced by the filing of a complaint before a magistrate. When such complaint is made, charging the commission of some designated public offense in which such magistrate has jurisdiction, and it appears from the complaint or from affidavits filed with it that there is probable cause to believe an offense has been committed and a designated person has committed it, the magistrate shall, except as otherwise provided, issue a warrant for the arrest of such person.

Whenever the complaint charges a misdemeanor the magistrate may in his or her discretion issue a citation instead of a warrant of arrest. The citation shall set forth substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the magistrate issuing the citation at a time and place stated therein.

The citation may be served in the same manner as an original notice in a civil action.

If the person named in the citation is actually served as provided herein and willfully fails without good cause to appear as commanded by the citation, the person shall be guilty of a simple misdemeanor and the magistrate may issue a warrant of arrest for the offense originally charged.

If after issuing a citation the magistrate becomes satisfied that the person to whom such citation has been directed

will not appear, the magistrate may at once issue a warrant of arrest without waiting for the date mentioned in the citation.

(Ch 1245, 66 GA, ch 2, s 401)

Prior law: ss 754.1-754.3, Code 1977

Cross reference: ss 805.1, 805.4, 805.6, Supplement; rules 35, 53, R Cr P; form A, appendix of forms, R Cr P

304.2 CONTENTS OF ARREST WARRANT.

The warrant must be directed to any peace officer in the state; give the name of the defendant, if known to the magistrate; if unknown, may designate "name unknown"; and must state by name or general description an offense which authorizes a warrant to issue, the date of issuing it, the county or city where issued, and be signed by the magistrate with the magistrate's name of office.

(Ch 1245, 66 GA, ch 2, s 402; 67 GA, ch 147, s 34)

Prior law: s 754.5, Code 1977

Cross reference: Form 2, Appendix of Forms, R Cr P

Referred to in rule 7(2)b, R Cr P

Editorial note: The comma after the word "known" was editorially removed. See section 804.1, unnumbered paragraph 1.

304.3 ORDER FOR BAIL--ENDORSED ON WARRANT.

If the offense stated in the warrant be bailable, the magistrate issuing it must make an endorsement thereon as follows: "Let the defendant, when arrested, be (admitted to bail in the sum of _____ dollars) or (stating other conditions of release)."

(Ch 1245, 66 GA, ch 2, s 403)

Prior law: s 754.6, Code 1977

Cross reference: Form 3, Appendix of forms, R Cr P

304.4 MANNER OF EXECUTING WARRANT.

The warrant may be delivered to any peace officer for execution, and served in any county in the state.

(Ch 1245, 66 GA, ch 2, s 404)

Prior law: s 754.7, Code 1977

304.5 ARREST DEFINED.

Arrest is the taking of a person into custody when and in the manner authorized by law, including restraint of the person or his or her submission to custody.

(Ch 1245, 66 GA, ch 2, s 405)

Prior law: ss 755.1, 755.2, Code 1977

304.6 PERSONS AUTHORIZED TO MAKE AN ARREST.

An arrest pursuant to a warrant shall be made only by a peace officer; in other cases, an arrest may be made by a peace officer or by a private person as provided in this chapter.

(Ch 1245, 66 GA, ch 2, s 406; 67 GA, ch 147, s 35)

Prior law: s 755.3, Code 1977

304.7 ARRESTS BY PEACE OFFICERS.

A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant:

1. For a public offense committed or attempted in the peace officer's presence.

2. Where a public offense has in fact been committed, and the peace officer has reasonable ground for believing that the person to be arrested has committed it.

3. Where the peace officer has reasonable ground for believing that an indictable public offense has been committed

and has reasonable ground for believing that the person to be arrested has committed it.

4. Where the peace officer has received from the department of public safety, or from any other peace officer of this state or any other state or the United States an official communication by bulletin, radio, telegraph, telephone, or otherwise, informing the peace officer that a warrant has been issued and is being held for the arrest of the person to be arrested on a designated charge.

(Ch 1245, 66 GA, ch 2, s 407)

Prior law: s 755.4, Code 1977

Cross reference: Form 3, Appendix of forms, R Cr P

804.8 USE OF FORCE BY PEACE OFFICER MAKING AN ARREST.

A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest or to defend any person from bodily harm while making the arrest. However, the use of deadly force is only justified when a person cannot be captured any other way and either

1. The person has used or threatened to use deadly force in committing a felony or

2. The peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended.

A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which the peace officer would be justified in using if the warrant were valid, unless the peace officer knows that the warrant is invalid.

(Ch 1245, 66 GA, ch 2, s 411; 67 GA, ch 152, s 1)

Prior law: s 755.8, Code 1977

Referred to in s 804.23, Supplement

Cross reference: ss 704.1-704.3, Supplement

804.9 ARRESTS BY PRIVATE PERSONS.

A private person may make an arrest:

1. For a public offense committed or attempted in the person's presence.

2. When a felony has been committed, and the person has reasonable ground for believing that the person to be arrested has committed it.

(Ch 1245, 66 GA, ch 2, s 410)

Prior law: s 755.5, Code 1977

804.10 USE OF FORCE IN ARREST BY PRIVATE PERSON.

A private person who makes or assists another private person in making a lawful arrest is justified in using any force which the person reasonably believes to be necessary to make the arrest or which he or she* reasonably believes to be necessary to prevent serious injury to any person.

A private person who is summoned or directed by a peace officer to assist in making an arrest may use whatever force the peace officer could use under the circumstances, provided that, if the arrest is unlawful, the private person assisting the officer shall be justified as if the arrest were a lawful arrest, unless the person knows that the arrest is unlawful.

(Ch 1245, 66 GA, ch 2, s 412)

Cross reference: ss 704.1-704.3, Supplement

**Editorial note: The words "or she" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

804.11 ARREST OF MATERIAL WITNESS.

When a law enforcement officer has probable cause to believe that a person is a necessary and material witness to a felony and that such person might be unavailable for service of a

subpoena, the officer may arrest such person as a material witness with or without an arrest warrant.

At the time of the arrest, the law enforcement officer shall inform the person of:

1. His or her identity as a law enforcement officer; and
2. The reason for the arrest which is that the person is believed to be a material witness to an identified felony and that the person might be unavailable for service of a subpoena.

(Ch 1245, 66 GA, ch 2, s 408; 67 GA, ch 147, s 36)

Prior law: ss 761.21-761.24, Code 1977

Cross reference: rule 19(1) R Cr P; ss 815.6, Supplement

804.12 USE OF FORCE IN RESISTING ARREST.

A person is not authorized to use force to resist an arrest, either of himself, herself, or another which the person knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if the person believes that the arrest is unlawful or the arrest is in fact unlawful.

(Ch 1245, 66 GA, ch 2, s 413)

Prior law: s 742.1, Code 1977

804.13 USE OF FORCE IN PREVENTING AN ESCAPE.

A peace officer or other person who has an arrested person in his or her custody is justified in the use of such force to prevent the escape of the arrested person from custody as he or she would be justified in using if he or she were arresting such person.

(Ch 1245, 66 GA, ch 2, s 414)

Prior law: s 755.8, Code 1977

Cross reference: ss 704.1-704.3, Supplement

804.14 MANNER OF MAKING ARREST.

The person making the arrest must inform the person to be arrested of the intention to arrest him or her, the reason for arrest, and that he or she is a peace officer, if such be the case, and require him or her to submit to the person's custody, except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that there is no time or opportunity to do so; if acting under the authority of a warrant, the law enforcement officer need not have the warrant in his or her possession at the time of the arrest, but upon request the officer shall show the warrant to the person being arrested as soon as possible. If the officer does not have the warrant in his or her possession at the time of arrest, the officer shall inform the person being arrested of the fact that a warrant has been issued.

(Ch 1245, 66 GA, ch 2, s 415)

Prior law: s 755.7, Code 1977

804.15 BREAKING AND ENTERING PREMISES--DEMAND TO ENTER.

If a law enforcement officer has reasonable cause to believe that a person whom the officer is authorized to arrest is present on any private premises, the officer may upon identifying himself or herself as such, demand that he or she be admitted to such premises for the purpose of making the arrest. If such demand is not promptly complied with, the officer may thereupon enter such premises to make the arrest, using such force as is reasonably necessary.

(Ch 1245, 66 GA, ch 2, s 416)

Prior law: s 755.9, Code 1977

804.16 TIME OF ARREST.

An arrest may be made on any day and at any time of the day or night.

(Ch 1245, 66 GA, ch 2, s 417)
Prior law: s 755.1, Code 1977

804.17 SUMMONING AID.

Any peace officer making a legal arrest may orally summon as many persons as the officer reasonably finds necessary to aid him or her in making the arrest.

(Ch 1245, 66 GA, ch 2, s 418)
Prior law: s 755.11, Code 1977

804.18 TAKING WEAPONS.

Any person who makes an arrest may take from the person arrested all items which are capable of causing bodily harm which the arrested person may have within his or her control to be disposed of according to law.

(Ch 1245, 66 GA, ch 2, s 419)
Prior law: s 755.12, Code 1977

804.19 RECEIPT GIVEN.

When money or other property is taken from the defendant arrested on a charge of a public offense, the officer taking it shall, at the time, give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he or she* must deliver to the defendant, and the other he or she* must forthwith file with the clerk of the district court of the county where the depositions and statements are to be sent by the magistrate.

(Ch 1245, 66 GA, ch 2, s 420)
**Editorial note: The words "or she" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

804.20 COMMUNICATIONS BY ARRESTED PERSONS.

Any peace officer or other person having custody of any person arrested or restrained of his or her* liberty for any reason whatever, shall permit that person, without unnecessary delay after arrival at the place of detention, to call, consult, and see a member of his or her family or an attorney of his or her choice, or both. Such person shall be permitted to make a reasonable number of telephone calls as may be required to secure an attorney. If a call is made, it shall be made in the presence of the person having custody of the one arrested or restrained. If such person is intoxicated, or a person under eighteen years of age, the call may be made by the person having custody. An attorney shall be permitted to see and consult confidentially with such person alone and in private at the jail or other place of custody without unreasonable delay. A violation of this section shall constitute a simple misdemeanor.

(Ch 1245, 66 GA, ch 2, s 421)
Prior law: s 755.17, Code 1977
**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

804.21 INITIAL APPEARANCE BEFORE MAGISTRATE--ARREST BY WARRANT.

1. Any person arrested in obedience to a warrant shall, without unnecessary delay, be taken before the nearest or most accessible magistrate to the place where the arrest occurred, and the officer must at the same time deliver to the magistrate the warrant with the officer's return thereon endorsed and subscribed by the officer with his or her official title.

2. Where the offense is bailable, the magistrate shall fix bail giving due consideration to the bail endorsed on the warrant or other conditions stipulated on the warrant for the defendant's appearance in the court which issued the warrant; if such person is not released on bail, the magistrate must redeliver the warrant to the officer, and the officer shall retain custody of the arrested person until his or her removal to appear before the magistrate who issued the warrant.

3. If the magistrate who issued the warrant is absent or unable to act, the arrested person shall be taken to the nearest or most accessible magistrate in the judicial district where the offense occurred, and all documents on which the warrant was issued must be sent to such magistrate, or if they cannot be procured, the informant and his or her witnesses must be subpoenaed to make new affidavits.

(Ch 1245, 66 GA, ch 2, s 422; 67 GA, ch 147, s 38)

Prior law: ch 757, Code 1977

804.22 INITIAL APPEARANCE BEFORE MAGISTRATE--ARREST WITHOUT WARRANT.

When an arrest is made without a warrant, the person arrested shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the judicial district in which such arrest was made, and the grounds on which the arrest was made shall be stated to the magistrate by complaint, subscribed and sworn to by the complainant, or supported by the complainant's affirmation, and such magistrate shall proceed as follows:

1. If the magistrate believes from such complaint that the offense charged is triable in his or her court, the magistrate shall proceed with the case.

2. If the magistrate believes from such complaint that the offense charged is triable in another court, the magistrate shall by written order, commit the person arrested to a peace officer, to be taken before the appropriate magistrate in the district in which the offense is triable, and shall fix the amount of bail or other conditions of release which the person arrested may give for his or her appearance at the other court.

(Ch 1245, 66 GA, ch 2, s 423)

Prior law: ss 758.1, 758.2, 758.5, Code 1977

Referred to in s 804.25, Supplement

Cross reference: rule 35, R Cr P; s 804.1, 805.1,

805.4, 805.6, ch 811, Supplement

804.23 INITIAL APPEARANCE OF ARRESTED MATERIAL WITNESS BEFORE MAGISTRATE.

The officer shall, without unnecessary delay, take the person arrested pursuant to section 804.8 before the nearest or most accessible magistrate to the place where the arrest occurred.

At the appearance before the magistrate, the law enforcement officer shall make a showing to the magistrate, by sworn affidavit, that probable cause exists to believe that a person is a necessary and material witness to a felony and that such person might be unavailable for service of a subpoena. The magistrate may order the person released pursuant to section 811.2.

(Ch 1245, 66 GA, ch 2, s 409; 67 GA, ch 147, s 37)

Prior law: ss 761.21-761.24, Code 1977

Referred to in s 804.25, Supplement

804.24 ARRESTS BY PRIVATE PERSONS--DISPOSITION OF PRISONER.

A private citizen who has arrested another for the commission of an offense must, without unnecessary delay, take

the arrested person before a magistrate, or deliver the arrested person to a peace officer, who may take the arrested person before a magistrate, but the person making the arrest must also accompany the officer before the magistrate.

(Ch 1245, 66 GA, ch 2, s 424)

Prior law: s 755.14, Code 1977

Referred to in s 815.8, Supplement

804.25 BAIL--DISCHARGE.

Any magistrate who receives bail as provided for in sections 804.22, subsection 2, and 804.23, subsection 2, shall endorse, on the order of commitment or on the warrant, an order for the discharge from custody of the arrested person, who shall forthwith be discharged, and shall transmit by mail, or otherwise, as soon as it can be conveniently done, to the court at which the person is bound to appear, the affidavits, order of commitment or warrant, and discharge, together with the undertaking of bail.

(Ch 1245, 66 GA, ch 2, s 425; 67 GA, ch 147, s 39)

Prior law: ss 757.4, 758.6, Code 1977

Cross reference: forms 6 and 7, Appendix of forms, R Cr P

804.26 OFFICER'S RETURN.

In all cases, the peace officer, when he or she takes a person committed to the officer under an order as provided in this chapter before a magistrate, either for the purpose of giving bail, if bail be taken, or for trial or preliminary examination, must make his or her return on such order, and sign such return with his or her name of office, and deliver the same to the magistrate.

(Ch 1245, 66 GA, ch 2, s 426; 67 GA, ch 147, s 40)

Prior law: s 758.9, Code 1977

804.27 CONVEYING PRISONER TO JAIL--FEES AND EXPENSES.

Every officer or person who shall arrest anyone with a warrant or order issued by any court or officer, or who shall be required to convey a prisoner to such jail on an order of commitment, may be allowed the same fees and expenses as provided for in case of such services by the sheriff.

(Ch 1245, 66 GA, ch 2, s 427)

Prior law: s 755.15, Code 1977

804.28 DEPARTMENT OF PUBLIC SAFETY PRISONERS.

The sheriff of any county shall accept for custody in the county jail of the sheriff's respective county any person handed over to him or her for safekeeping and lodging by any member of the department of public safety.

(Ch 1245, 66 GA, ch 2, s 428)

Prior law: s 755.16, Code 1977

CHAPTER 805
CITATIONS IN LIEU OF ARREST

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Police Citations

805.1 WHEN POLICE CITATION MAY ISSUE.

Whenever it would be lawful for a peace officer to arrest a person without a warrant, the officer may issue a citation instead of making the arrest and taking the person before a magistrate.

(Ch 1245, 66 GA, ch 2, s 501)

Prior law: s 753.5, Code 1977

Cross reference: ss 804.1, 804.7, 805.6, Supplement

805.2 FORM.

The citation shall include the name and address of the person, the nature of the offense, the time and place at which the person is to appear in court, and the penalty for nonappearance.

(Ch 1245, 66 GA, ch 2, s 502)

Prior law: s 753.6, Code 1977

Referred to in s 805.6(1)a, Supplement

805.3 PROCEDURE.

Before he or she is released, the cited person shall sign the citation as a written promise to appear in court at the time and place specified. A copy of the citation shall be given to the person.

(Ch 1245, 66 GA, ch 2, s 503)

Prior law: s 753.7, Code 1977

Referred to in s 805.6(1)a, Supplement

805.4 COMPLAINT.

The law enforcement officer issuing the citation shall cause to be filed a complaint in the court in which the cited person is required to appear, as soon as practicable, charging the crime stated in said notice.

(Ch 1245, 66 GA, ch 2, s 504)

Prior law: s 753.8, Code 1977

Cross reference: s 804.1, Supplement; rule 35, R Cr P

805.5 FAILURE TO APPEAR.

Any person who willfully fails to appear in court as specified by the citation shall be guilty of a simple misdemeanor. Where a defendant fails to make a required court appearance, the court shall issue an arrest warrant for the offense of failure to appear, and shall forward the warrant and the original citation to the clerk. The clerk shall enter a transfer to the issuing agency on the docket, and shall return the warrant with the original citation attached to the law

enforcement agency which issued the original citation for enforcement of the warrant. Upon arrest of the defendant, the warrant and the original citation shall be returned to the court, and the offenses shall be heard and disposed of simultaneously.

(Ch 1245, 66 GA, ch 2, s 505; 67 GA, ch 147, s 41)
Prior law: s 753.9, Code 1977

Traffic and Scheduled Violation Citations

805.6 UNIFORM CITATION AND COMPLAINT.

1. a. The commissioner of public safety and the state conservation director, acting jointly, shall adopt a uniform, combined citation and complaint which shall be used for charging all traffic violations in Iowa under state law or local regulation or ordinance, and which shall be used for charging all other violations which are designated by section 805.8 to be scheduled violations. This subsection shall not be deemed to prevent the charging of any of those violations by information, by private complaint filed under the provisions of chapter 804, or by a simple notice of fine where permitted by section 321.236, subsection 1. Each uniform citation and complaint shall be serially numbered and shall be in quintuplicate, and the officer shall deliver the original and a copy to the court where the defendant is to appear, two copies to the defendant, and a copy to the law enforcement agency of the officer. The court shall forward the copy of the uniform citation and complaint in accordance with section 321.207 when applicable. The uniform citation and complaint shall contain spaces for the parties' names; the address of the alleged offender; the registration number of the offender's vehicle; the information required by section 805.2; a promise to appear as provided in section 805.3 and a place where the cited person may sign the promise to appear; a list of the scheduled fines prescribed by section 805.8, either separately or by group, and a statement that the court costs in scheduled offense cases, whether or not a court appearance is required or is demanded, shall be five dollars; a brief explanation of sections 805.9 and 805.10; a space where the defendant may sign an admission of the violation when permitted by section 805.9; and the uniform citation and complaint shall require that the defendant appear before a court at a specified time and place. The uniform citation and complaint also may contain a space for the imprint of a credit card, and may contain any other information which the commissioner of public safety and the state conservation director may determine.

b. The uniform citation and complaint shall contain the following statement with a space immediately below it for the signature of the person being charged:

"I hereby give my unsecured appearance bond in the amount of _____ dollars and enter my written appearance. I agree that if I fail to appear in person or by counsel to defend against the offense charged in this citation the court is authorized to enter a conviction and render judgment against me for the amount of my appearance bond in satisfaction of the penalty plus court costs."

c. Unless the officer issuing the citation arrests the alleged offender, or permits admission or requires submission of bail as provided in section 805.9, subsection 3, the officer shall enter in the blank contained in the statement required by paragraph "a" of this subsection one of the following amounts and shall require the person to sign the written appearance:

(1) If the offense is one to which a scheduled fine is applicable, an amount equal to one and one-half times the scheduled fine plus five dollars costs; or

(2) If the offense is one for which a court appearance is mandatory, the amount of one hundred dollars plus five dollars costs.

d. The written appearance defined in paragraph "b" of this subsection shall not be used for any offense other than a simple misdemeanor.

2. In addition to those violations which are required by subsection 1 of this section to be charged upon a uniform citation and complaint, a violation of chapter 321 which is punishable as a simple, serious, or aggravated misdemeanor may be charged upon a uniform citation and complaint, whether or not the alleged offender is arrested by the officer making the charge.

3. Supplies of the uniform citation and complaint for municipal corporations and county agencies shall be paid for out of the court expense fund of the county. Supplies of the uniform citation and complaint for all other agencies shall be paid for out of the budget of the agency concerned.

4. The uniform citation and complaint shall contain a place for the verification of the officer issuing the complaint. The complaint may be verified before the chief officer of the law enforcement agency, or his or her designee, and the chief officer of each law enforcement agency of the state is authorized to designate specific individuals to administer oaths and certify verifications.

5. The commissioner of public safety and the state conservation director, acting jointly, shall design and publish a compendium of scheduled violations and scheduled fines, containing other information which they deem appropriate, and shall distribute copies to all courts and law enforcement officers and agencies of the state upon request. The cost of the publication shall be paid out of the budget of the department of public safety and out of the budget of the state conservation commission, each budget being liable for half of those costs. Copies shall be made available to individuals upon request, and a charge may be collected which does not exceed the cost of printing.

6. Nothing contained in this section shall be deemed to invalidate forms of uniform citation and complaint in existence prior to January 1, 1978. Existing forms may be used until supplies are exhausted.

(C73, 75, 77, s 753.13; Ch 1245, 66 GA, ch 4, s 516;

67 GA, ch 147, s 106)

Referred to in s 805.8(2)p, Supplement; rule 53, R Cr P

805.7 TRAFFIC AND SCHEDULED VIOLATIONS OFFICES--FINE COLLECTION BOXES.

1. OFFICES. Each district court clerk's office shall constitute a traffic and scheduled violations office of the district court. Additional offices may be established at other locations, as needed, if authorized by the chief judge of the district.

2. COLLECTION BOXES. The chief judge of the district may permit the maintenance of locked collection boxes to be used at weigh stations. Such boxes shall be used solely for the deposit of fines and costs received upon written admissions of those scheduled violations applicable to commercial carriers. The collection boxes shall remain locked at all times and shall be opened only by the clerk of the district court or his or her designee. The chief judge of the district may prescribe procedures for the system and may discontinue its use if necessary.

(C73, 75, 77, s 753.14; Ch 1245, 66 GA, ch 4, s 517;

67 GA, ch 147, s 107)

Referred to in s 805.8(2)p, Supplement

805.8 SCHEDULED VIOLATIONS.

1. APPLICATION. Except as otherwise indicated, violations of sections of the Code specified in this section shall be scheduled violations, and the scheduled fines for each of those violations shall be as provided in this section, whether the violation is of state law or of county resolution or city ordinance.

2. TRAFFIC VIOLATIONS.

a. For parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, the scheduled fine is five dollars: However, violations charged by a city upon simple notice of a fine instead of a uniform citation and complaint as permitted by section 231.236, subsection 1, paragraph "a" are not scheduled violations, and this section shall not apply to any offense charged in that manner. For a parking violation under section 111.38 or 321.362, the scheduled fine is ten dollars.

b. For registration violations under sections 321.17, 321.32, 321.34, 321.37, 321.38, 321.41, and 321.190, the scheduled fine is five dollars. For violations of section 321.190, the case shall be dismissed without imposition of fine or costs if a license valid at the time of the issuance of the citation is presented by the defendant to the magistrate or scheduled violations office.

c. For improperly used or nonused, or defective or improper equipment, other than brakes, driving lights and brakelights, under sections 321.317, 321.387, 321.388, 321.389, 321.390, 321.391, 321.392, 321.399, 321.422, 321.432, 321.435, 321.436, 321.437, 321.438, 321.439, 321.440, 321.441, 321.442, 321.444, 321.445, and 321.447 the scheduled fine is ten dollars.

d. For improperly used or nonused or defective or improper equipment under sections 321.383, 321.384, 321.385, 321.386, 321.398, 321.400, 321.402, 321.403, 321.404, 321.409, 321.419, 321.420, 321.423, 321.430, 321.433, 321.448, 321.449, and 321.450, the scheduled fine is twenty dollars.

e. For violations of a restricted license under sections 321.180, 321.193, and 321.194, the scheduled fine is twenty dollars.

f. For excessive speed violations when not more than ten miles per hour in excess of the limit under sections 111.36, 321.236, subsections 5 and 11, 321.285, 321.286 and 321.287, the scheduled fine is ten dollars.

Excessive speed in conjunction with a violation of section 321.278 is not a scheduled violation, whatever the amount of excess speed.

For excessive speed violations when in excess of ten but not more than twenty miles per hour in excess of the limit under those sections, the scheduled fine is thirty dollars. Excessive speed more than twenty miles per hour in excess of the limit is not a scheduled violation.

Excessive speed in whatever amount by a school bus is not a scheduled violation under any section listed in a subparagraph of this paragraph.

g. For operating, passing, turning and standing violations under sections 321.225, 321.236, subsections 3, 4, 9 and 12, 321.275, 321.295, 321.297, 321.299, 321.303, 321.304, subsections 1 and 2, 321.305, 321.306, 321.311, 321.312, 321.314, 321.315, 321.316, 321.318, 321.323, 321.335, 321.336, 321.337, 321.338, 321.340, 321.344, 321.353, 321.354, 321.363, 321.364, 321.365, 321.366, 321.368, 321.382, and 321.395, the scheduled fine is fifteen dollars.

h. For violations involving failures to yield or to observe pedestrians and other vehicles under sections 321.257, subsections 1 and 4, 321.288, 321.298, 321.300, 321.307,

321.308, 321.313, 321.319, 321.320, 321.321, 321.329, 321.333, 321.339, and 321.367, the scheduled fine is twenty dollars.

i. For violations by pedestrians and bicyclists under sections 321.236, subsection 10, 321.325, 321.326, 321.328, 321.331, 321.332, 321.397, and 321.434, the scheduled fine is ten dollars.

j. For violations by operators of school buses and emergency vehicles, and for violations by other motor vehicle operators when in vicinity, under sections 321.231, 321.324, 321.372, and 321.377, the scheduled fine is twenty-five dollars: However, excessive speed by a school bus in excess of ten miles over the limit is not a scheduled violation.

k. For violations of traffic signs and signals, and for failure to obey an officer under sections 321.229, 321.236, subsections 2 and 6, 321.256, 321.257, subsections 2 and 3, 321.258, 321.294, 321.304, subsection 3, 321.322, 321.341, 321.342, 321.343, and 321.345, the scheduled fine is twenty dollars.

l. For height, weight, length, width and load violations and towed vehicle violations under sections 321.309, 321.310, 321.381, 321.394, 321.437, 321.454, 321.455, 321.456, 321.457, 321.458, 321.461, 321.462, and 321.474, the scheduled fine is twenty-five dollars. For weight violations under sections 321.459 and 321.466, the scheduled fine is twenty dollars for each two thousand pounds or fraction thereof of overweight.

m. For violation of display of identification required by section 326.2 and violation of trip permits as prescribed by section 326.23 the scheduled fine is twenty dollars.

n. For violation of intrastate hauling on foreign registration under sections 321.54 and 321.55; use of registration under section 321.99; and display of registration or plates under section 321.98, the scheduled fine is twenty dollars.

For no evidence or improper evidence of intrastate authority carried or displayed under section 325.34; operation of vehicle by an unqualified driver under sections 325.34 and 327.22; and operating a vehicle in violation of maximum hours of service or failure to maintain and display evidence of hours of service under sections 325.34 and 327.22, the scheduled fine is twenty-five dollars.

For no or improper carrier identification markings under section 327B.1, the scheduled fine is fifteen dollars.

For no or improper evidence of interstate authority carried or displayed under section 327B.1, the scheduled fine is one hundred dollars.

o. For violations of sections 324.14, 324.52 or 324.74, subsections 2 and 6, the scheduled fine is ten dollars.

p. Violations of the schedule of axle and tandem axle and gross or group of axle weight violations in section 321.463 shall be scheduled violations subject to the provisions, procedures and exceptions contained in sections 805.6 to 805.11, irrespective of the amount of the fine under that schedule. Violations of the schedule of weight violations shall be chargeable, where the fine charged does not exceed one hundred dollars, only by uniform citation and complaint. Violations of the schedule of weight violations, where the fine charged exceeds one hundred dollars: (1) Shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information, (2) but otherwise, shall be chargeable only upon indictment or county attorney's information. In all cases of charges under the schedule of weight violations, the charge shall specify the amount of fine charged under the schedule. Where a defendant is convicted and the fine under the foregoing schedule of weight violations exceeds one hundred dollars, the conviction shall be of an indictable offense

although section 805.9 is employed and whether the violation is charged upon uniform citation and complaint, indictment, or county attorney's information.

3. VIOLATIONS OF NAVIGATION LAWS.

a. For violations of registration, inspection, identification and record provisions under sections 106.4, 106.5, 106.10, 106.35, and 106.37, the scheduled fine is five dollars.

b. For unused or improper or defective lights and warning devices under sections 106.9, subsections 2, 4, 5, 9, 10 and 13, and 106.11, the scheduled fine is ten dollars.

c. For unused or improper or defective equipment under section 106.9, subsections 6, 7 and 8, the scheduled fine is twenty dollars.

d. For operating violations under sections 106.12, 106.26, 106.31, whether of state law or local ordinance, and 106.33, the scheduled fine is twenty dollars: However, violation of section 106.12, subsection 2, is not a scheduled violation.

e. For operating violations under sections 106.15, subsection 1, 106.24 and 106.34, the scheduled fine is twenty-five dollars.

f. For violations of use, location and storage of vessels, devices and structures under sections 106.27, 106.28, and 106.32, the scheduled fine is fifteen dollars.

g. For violations of all subdivision ordinances under section 106.17, subsection 2, except those relating to matters subject to regulation by authority of section 106.31, subsection 5, the scheduled fine is ten dollars, whether or not a different scheduled fine is prescribed elsewhere in this subsection.

4. SNOWMOBILE VIOLATIONS.

a. For registration and identification violations under sections 321G.3 and 321G.5, the scheduled fine is five dollars.

b. For operating violations under sections 321G.9, subsections 1, 2, 3, 4, 5, and 7, 321G.11, and 321G.13, subsections 4 and 9, the scheduled fine is twenty dollars.

c. For improper or defective equipment under section 321G.12, the scheduled fine is ten dollars.

d. For violations of section 321G.19, the scheduled fine is fifteen dollars.

5. FISH AND GAME LAW VIOLATIONS.

a. For violations of section 110.1, the scheduled fine is ten dollars: However, engaging without a license in any activity the license fee for which is greater than ten dollars is not a scheduled violation.

b. For violations of sections 109.54, 109.80, unnumbered paragraph 1, 109.82, 109.91, 109.122, 109.123, and 110.12, the scheduled fine is twenty dollars.

6. VIOLATIONS RELATING TO THE USE AND MISUSE OF PARKS AND PRESERVES.

a. For violations under sections 111.39, 111.45 and 111.50, the scheduled fine is ten dollars.

b. For violations under sections 111.40, 111.43, 111.46 and 111.49, the scheduled fine is fifteen dollars.

7. DESCRIPTION OF VIOLATIONS. The descriptions of offenses used in this section are for convenience only and shall not be construed to define any offense or to include or exclude any offense other than those specifically included or excluded by reference to the Code. A reference to a section or subsection of the Code without further limitation includes every offense defined by that section or subsection.

(C73, 75, 77, s 753.15; Ch 1245, 66 GA, ch 4, s 518;
67 GA, ch 147, s 109)

Referred to in ss 805.6(1)a, 805.11, 805.14, Supplement

805.9 PROCEDURE IN CASES OF SCHEDULED VIOLATIONS.

1. In cases of scheduled violations, the defendant, before the time specified in the citation and complaint for appearance before the court, may sign the admission of violation on the citation and complaint and deliver or mail the citation and complaint, together with the minimum fine for the violation, plus five dollars costs, to a scheduled violations office in the county. The office shall, if the offense is a moving violation under chapter 321, forward a copy of the citation and complaint and admission to the department of transportation as required by section 321.207. Thereupon the defendant shall not be required to appear before the court. The admission shall constitute a conviction.

2. A defendant charged with a scheduled violation by information may obtain two copies of the information from the court and, before the time he or she is required to appear before the court, deliver or mail such copies, together with his or her admission, fine, and five dollars costs, to the scheduled violations office in the county. The procedure, fine, and costs shall be the same as when the charge is by citation and complaint, with the admission and the number of the defendant's operator's or chauffeur's license placed upon the information when the violation involves the use of a motor vehicle.

3. When section 805.8 and this section are applicable but the officer does not deem it advisable to release the defendant and no court in the county is in session:

a. If the defendant wishes to admit the violation, the officer may release the defendant upon observing the person mail the citation and complaint, admission, and minimum fine, together with five dollars costs, to a traffic violations office in the county, in an envelope furnished by the officer. The admission shall constitute a conviction and judgment in the amount of the scheduled fine plus five dollars costs. The officer may allow the defendant to use a credit card pursuant to rules adopted pursuant to section 805.14 by the department of public safety or to mail a check in the proper amount in lieu of cash. If the check is not paid by the drawee for any reason, the defendant may be held in contempt of court. The officer shall advise the defendant of the penalty for nonpayment of the check.

b. If the defendant does not comply with paragraph "a" of this subsection, the officer may release the defendant upon observing him or her* mail to a court in the county the citation and complaint and one and one-half times the minimum fine together with five dollars costs, or in lieu of one and one-half times the fine and the costs, a guaranteed arrest bond certificate as provided in section 321.1, subsection 71, as bail together with the following statement signed by the defendant:

"I agree that either (1) I will appear pursuant to this citation or (2) if I do not appear in person or by counsel to defend against the offense charged in this citation the court is authorized to enter a conviction and render judgment against me for the amount of one and one-half times the scheduled fine plus five dollars costs."

c. If the defendant does not comply with paragraph "a" or "b", or in any event when section 804.7 is applicable, the officer may arrest and confine the defendant if authorized by the latter section, and proceed with him or her* according to chapter 804.

4. Any defendant who admits a scheduled violation may nevertheless appear before court. The procedure, costs, and fine, without suspension of the fine, after the hearing shall be the same as in the traffic violations office.

5. A defendant charged with a scheduled violation who does not fully comply with subsection 1, 2, 3, or 4 of this section before the time required to appear before the court must, at that time, appear before the court. If such defendant admits the violation, the procedure and fine, without suspension, after the hearing shall be the same before the court as before the traffic violations office with five dollars court costs, without prejudice, when applicable, to proceedings under section 321.487.

6. The five dollars in costs imposed by this section shall be the total costs collectible from any defendant upon either an admission of a violation without hearing, or upon a hearing pursuant to subsection 4 of this section. Fees shall not be imposed upon or collected from any defendant for the purposes specified in section 606.15, subsection 9, 10 or 20.

(C73, 75, s 753.16; Ch 1245, 66 GA, ch 4, ss 519, 520; 67 GA, ch 147, s 110)

Referred to in ss 805.6(1)a and c, 805.8(2)p, 805.10(3), Supplement; rule 53, R Cr P

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

805.10 REQUIRED COURT APPEARANCE.

Section 805.9 shall not apply to a scheduled violation in any of the following circumstances:

1. When the violation charged involved or resulted in an accident or injury to person or property.

2. When the violation involved the use of a motor vehicle and the officer believed the defendant did not have in force a valid operator's or chauffeur's license or permit.

3. When the violation created an immediate threat to the safety of other persons or property because of highway conditions, visibility, traffic, repetition, or other circumstances.

In such cases, the defendant shall appear before the court and regular procedure shall apply. If an information is used the officer shall endorse thereon, "Court appearance required." If a citation and complaint is used, the officer shall strike out the space in which the defendant may admit the violation before a scheduled violations office and shall endorse thereon "Court appearance required" and the defendant shall appear before the court either in person or by attorney.

(C73, 75, 77, s 753.17; Ch 1245, 66 GA, ch 4, s 521)

Referred to in ss 805.6(1)a, 805.8(2)p, 805.11, 805.13, Supplement

805.11 OTHER PENALTIES.

If the defendant is convicted of a scheduled violation, the penalty shall be the scheduled fine, without suspension of the fine prescribed in section 805.8 together with costs assessed and distributed as prescribed by section 602.63, unless it appears from the evidence that the violation was of the type set forth in section 805.10, subsection 1 or 3, in which event the scheduled fine shall not apply and the penalty shall be increased within the limits provided by law for the offense.

Upon the conviction of a defendant of a violation specified in section 805.8 or 805.10, fees shall not be imposed or collected for the purposes specified in section 606.15, subsection 9, 10 or 20.

(C73, 75, 77, s 753.18; Ch 1245, 66 GA, ch 4, s 522)

Referred to in s 805.8(2)p, Supplement

805.12 DISPOSITION OF TRAFFIC FINES AND COSTS.

Fines, forfeiture of bail, fees, and costs collected for all traffic violations, whether or not scheduled, and for all other scheduled violations shall be remitted in accordance with section 602.55.

(C73, 75, 77, s 753.19; Ch 1245, 66 GA, ch 4, s 523)

805.13 VENUE.

1. Traffic violations, whether or not scheduled, and all other scheduled violations may be tried before the nearest magistrate in the judicial district in which the offense is committed.

2. Upon written consent of the defendant and the officer issuing the citation, traffic violations, whether or not scheduled, and any other scheduled violations, other than those for which a court appearance is required under section 805.10, may be prosecuted in any county in the state irrespective of where committed, and in such event the documents in the case shall be sent to the court or traffic and scheduled violations office designated by the defendant and the officer.

(C73, 75, 77, s 753.20; Ch 1245, 66 GA, ch 4, s 524)

Referred to in s 803.3, Supplement

805.14 CREDIT CARDS.

Fines for scheduled traffic violations enumerated in section 805.8 may be paid by credit cards, as defined in section 537.1301, subsection 17, approved for that purpose by the commissioner of public safety. The commissioner shall enter agreements with financial institutions extending credit through the use of credit cards to insure reimbursement of the amount of the fine plus appropriate costs to the proper traffic violations office in the state. The commissioner shall adopt rules pursuant to chapter 17A to implement the provisions of this section.

(C77, s 753.21)

Referred to in ss 805.9, 811.9, Supplement

805.15 OTHER CITATION FORMS.

The provisions of sections 321.485 through 321.487 shall govern with respect to offenses charged in the manner provided in section 321.485. The provisions of sections 805.6 through 805.14 shall govern with respect to offenses chargeable upon a uniform citation and complaint.

(67 GA, ch 147, s 79)

CHAPTER 806
UNIFORM FRESH PURSUIT LAW

Referred to in s 602.62, Supplement
Prior law: Chap. 756, Code 1977

- | | |
|---|---|
| 806.1 Authority of Officers
from Another State | 806.4 Officers from District
of Columbia |
| 806.2 Procedure Following
Arrest | 806.5 Definitions of Terms |
| 806.3 Construction of Statute | 806.6 Chapter Title |

806.1 AUTHORITY OF OFFICERS FROM ANOTHER STATE.

Any member of a duly organized state, county, or municipal law enforcing unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest the person on the ground that the person is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county, or municipal law enforcing unit of this state, to arrest and hold in custody a person on the ground that the person is believed to have committed a felony in this state.

(Ch 1245, 66 GA, ch 2, s 601)

Referred to in ss 806.2, 806.3, Supplement

806.2 PROCEDURE FOLLOWING ARREST.

If an arrest is made in this state by an officer of another state in accordance with the provisions of section 806.1, the officer shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful the magistrate shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state or admit the person to bail for such purpose. If the magistrate determines that the arrest was unlawful the magistrate shall discharge the person arrested.

(Ch 1245, 66 GA, ch 2, s 602)

806.3 CONSTRUCTION OF STATUTE.

Section 806.1 shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

(Ch 1245, 66 GA, ch 2, s 603)

806.4 OFFICERS FROM DISTRICT OF COLUMBIA.

For the purpose of this division the word "state" shall include the District of Columbia.

(Ch 1245, 66 GA, ch 2, s 604)

806.5 DEFINITIONS OF TERMS.

The term "fresh pursuit" as used in this division shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

(Ch 1245, 66 GA, ch 2, s 605)

306.6 CHAPTER TITLE.

This chapter may be cited as the "uniform act on fresh pursuit."

(Ch 1245, 66 GA, ch 2, s 606)

CHAPTER 807
PROCEEDINGS AGAINST CORPORATIONS

Referred to in rule 40, R Cr P

- | | | | |
|-------|---|-------|---|
| 807.1 | Summons upon a Complaint against a Corporation, by Whom Issued, and When Returnable | 807.4 | Examination of the Charge |
| 807.2 | Form of the Summons | 807.5 | Bringing an Indicted Corporation into Court |
| 807.3 | When and How Served | 807.6 | Collection of Fines |
| | | 807.7 | Attachment |

807.1 SUMMONS UPON A COMPLAINT AGAINST A CORPORATION, BY WHOM ISSUED, AND WHEN RETURNABLE.

Upon the filing of a complaint against a corporation, the magistrate shall issue a summons, signed by the magistrate, requiring the corporation to appear before the magistrate, at a specified time and place, to answer the charge, the time to be not less than twenty days after the issuing of the summons.

(Ch 1245, 66 GA, ch 2, s 701)

807.2 FORM OF THE SUMMONS.

The summons may be in substantially the following form:

County of _____ (as the case may be).

In the name of the people of the State of Iowa:

To the (naming the corporation).

You are hereby summoned to appear before me, at (naming the place) on (specifying the day and hour), to answer a charge made against you, upon the complaint of A.B., for (designating the offense, generally).

Dated at the city of _____, the _____ day of _____, _____.

G. H. Magistrate

(or as the case may be).

(Ch 1245, 66 GA, ch 2, s 702; 67 GA, ch 147, s 42)

807.3 WHEN AND HOW SERVED.

The summons for the appearance of a corporation shall be served in the manner provided for service of original notice upon a corporation in a civil action.

(Ch 1245, 66 GA, ch 2, s 703)

807.4 EXAMINATION OF THE CHARGE.

At the time appointed in the summons, the magistrate shall proceed to investigate the charge, in the same manner as in the case of a natural person brought before the magistrate, so far as those proceedings are applicable. If the corporation does not appear or plead at the time and place specified in the summons, the court shall make inquiry into the service of process, and being satisfied that same has been carried out as provided herein, the court may proceed with the matter without further process.

(Ch 1245, 66 GA, ch 2, s 704)

807.5 BRINGING AN INDICTED CORPORATION INTO COURT.

When an indictment or a trial information is filed against any corporation, such corporation shall be arraigned thereon. Prior to arraignment the court shall proceed as follows:

1. The clerk of the court wherein such indictment is found or the information filed, or the judge, must issue a summons signed by him or her with his or her name of office, requiring such corporation to appear and plead to the indictment, at a time and place to be specified in such summons, such time to be

not less than twenty days after the issue thereof. The summons may be substantially in the following form:

District Court, _____ County.
The People of the State of Iowa
vs.

The A. B. Company,

You are hereby summoned to appear in this court at (naming the place) on (stating the day and hour), and plead to an indictment filed against you by the grand jury of this county, on the _____ day of _____, charging you with the crime of (designating the offense, generally), and in case of your failure to so appear and answer, judgment will be pronounced against you.

Dated at the city of _____, the _____ day of _____, _____ C.D.,

Clerk of the District Court.
(or by order of the court)

2. The summons shall be served at least ten days before the appearance fixed therein, in the same manner as is provided for the service of an original notice upon a corporation in a civil action; and if the corporation does not appear or plead at the time and place specified in the summons, the court may proceed to trial and judgment without further process.

3. Nothing contained in this section shall be construed as preventing the appearance of a corporation by counsel to plead to an indictment, with or without the issuance or service of the summons provided herein. And when an indictment shall have been filed against a corporation it may voluntarily appear and plead to the same by counsel duly authorized to so appear for it.

*(Ch 1245, 66 GA, ch 2, s 705; 67 GA, ch 147, s 43)
Referred to in rule 7(2)b, R Cr P*

807.6 COLLECTION OF FINES.

When a corporation is convicted of an offense and the court imposes a fine as penalty, it may be collected in the same manner as a judgment in a civil action.

(Ch 1245, 66 GA, ch 2, s 706)

807.7 ATTACHMENT.

Upon the filing of a complaint or indictment, the court wherein same is filed shall have authority to issue a writ of attachment to secure the maximum fine allowable by law for the offense charged, and costs.

(Ch 1245, 66 GA, ch 2, s 707)

CHAPTER 808
SEARCH AND SEIZURE

Referred to in s 602.62, Supplement
Cross reference: rule 11, R Cr P

808.1	Definitions	808.8	Return
808.2	Authorization	808.9	Safe-keeping of Seized Property
808.3	Application for Search Warrant	808.10	Maliciously Suing out a Warrant--Officer Exceeding Authority
808.4	Issuance	808.11	Transmission of Papers to District Court Clerk
808.5	Execution	808.12	Detention and Search in Shoplifting
808.6	Forcible Execution		
808.7	Detention and Search of Persons on Premises		

808.1 DEFINITIONS.

For purposes of this chapter, unless the context otherwise requires:

1. "Search warrant" means an order in writing pursuant to the requirements of section 808.3, in the name of the state, signed by a magistrate, and directed to a peace officer commanding him or her to search a person, premises, or thing.
2. "Affidavit" means a written declaration or statement of fact made under oath, or legally sufficient affirmation, before any person authorized to administer oaths within or without the state.

(Ch 1245, 66 GA, ch 2, s 801; 67 GA, ch 147, s 44)
Prior law: ss 622.85, 751.1, Code 1977
Cross reference: Form 1, Appendix of forms, R Cr P

808.2 AUTHORIZATION.

A search warrant may be issued:

1. For property which has been obtained in violation of law.
2. For property, the possession of which is unlawful.
3. For property used or possessed with the intent to be used as the means of committing a public offense or concealed to prevent an offense from being discovered.
4. For any other property relevant and material as evidence in a criminal prosecution.

(Ch 1245, 66 GA, ch 2, s 802)
Prior law: s 751.3, Code 1977

808.3 APPLICATION FOR SEARCH WARRANT.

Any person may make application for the issuance of a search warrant by submitting before any magistrate a written application, supported by the person's oath or affirmation, and setting forth therein facts, information, and circumstances tending to establish sufficient grounds for granting the application, and probable cause for believing that such grounds exist. The application shall describe the person, place, or thing to be searched and the property to be seized with such specificity so as to enable an independent reasonable man with reasonable effort to ascertain and identify such person, place, or thing. If the magistrate thereafter issues the search warrant, the magistrate shall endorse on the application the name and address of all persons upon whose sworn testimony the magistrate relied to issue such warrant together with the abstract of each witness' testimony, or his or her affidavit. However, if the grounds for issuance are supplied by an informant, the magistrate shall identify only the peace officer to whom the information was given. The magistrate may in his or her discretion require that any witness upon whom the

applicant relies for information appear personally and be examined concerning such information.

(Ch 1245, 66 GA, ch 2, s 803; 67 GA, ch 147, s 45)

Prior law: s 751.4, Code 1977

Referred to in s 808.1, Supplement

808.4 ISSUANCE.

Upon a finding of probable cause for grounds to issue a search warrant, the magistrate shall issue a warrant, signed by the magistrate with his or her name of office, directed to any peace officer, commanding that peace officer forthwith to search the named person, place, or thing within the state for the property specified, and to bring any property seized before the magistrate.

(Ch 1245, 66 GA, ch 2, s 804; 67 GA, ch 147, s 46)

Prior law: s 751.5, Code 1977

Cross reference: form 1, Appendix of forms, R Cr P

808.5 EXECUTION.

A search warrant may be executed by any peace officer. No persons other than those authorized by this section shall execute search warrants except in aid of those so authorized and on such authorized person's request, the authorized person being present and acting. The warrant may be executed in the daytime or in the nighttime. The warrant, when executed, shall be forthwith returned to the issuing magistrate. Where the property to be seized has been, or is susceptible of being, removed from the officer's jurisdiction, the officer executing the warrant may pursue it and search for property designated in the warrant.

(Ch 1245, 66 GA, ch 2, s 805)

Prior law: ss 751.7, 751.8, Code 1977

308.6 FORCIBLE EXECUTION.

The officer may break into any structure or vehicle where reasonably necessary to execute the warrant if, after notice of this authority and purpose the officer's admittance has not been immediately authorized. The officer may use reasonable force to enter a structure or vehicle to execute a search warrant without notice of the officer's authority and purpose in the case of vacated or abandoned structures or vehicles.

The officer executing a search warrant may break restraints when necessary for the officer's own liberation or to effect the release of a person who has entered a place to aid the officer.

(Ch 1245, 66 GA, ch 2, s 806)

Prior law: ss 751.9, 751.10, Code 1977

808.7 DETENTION AND SEARCH OF PERSONS ON PREMISES.

In the execution of a search warrant the person executing the same may reasonably detain and search any person or thing in the place at the time for any of the following reasons:

1. To protect himself or herself from attack.
2. To prevent the disposal or concealment of any property subject to seizure described in the warrant.
3. To remove any item which is capable of causing bodily harm that the person may use to resist arrest or effect his or her* escape.

(Ch 1245, 66 GA, ch 2, s 807)

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

808.8 RETURN.

A search warrant shall be executed within ten days from its date; failure to execute within that period shall void the warrant. Property seized and its containers, if any, shall be safely kept by the officer, and incident thereto:

1. Upon such seizure the officer shall furnish an itemized receipt for such property to the person from whom taken or in whose possession it was found, if such person can be located, or a copy of the inventory may be left on the premises searched.

2. The officer must file, with his or her return, a complete inventory of the property taken, and state under oath that it is accurate to the best of the officer's knowledge. The magistrate must, if requested, deliver a copy of the inventory of seized property to the person from whose possession it was taken and to the applicant for the warrant.

(Ch 1245, 66 GA, ch 2, s 808)

Prior law: ss 751.12-751.15, Code 1977

Editorial note: The comma after the word "located" in subsection 1 was editorially added.

808.9 SAFE-KEEPING OF SEIZED PROPERTY.

Property of an evidentiary nature seized in the execution of a search warrant shall be safely kept, subject to the orders of any court having jurisdiction to try any offense involved therewith, so long as reasonably necessary to enable its production at trials. The disposition of such property shall be in accordance with chapter 809.

(Ch 1245, 66 GA, ch 2, s 809)

808.10 MALICIOUSLY SUING OUT A WARRANT--OFFICER EXCEEDING AUTHORITY.

Whoever maliciously and without just cause procures a search warrant to be issued and executed is guilty of a serious misdemeanor. Anyone who, in executing a search warrant, willfully exceeds his or her authority, or exercises it with unnecessary severity, is guilty of a serious misdemeanor.

(Ch 1245, 66 GA, ch 2, s 810)

Prior law: ss 751.38, 751.39, Code 1977

808.11 TRANSMISSION OF PAPERS TO DISTRICT COURT CLERK.

The magistrate who has issued a search warrant shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the county in which the property was seized.

(Ch 1245, 66 GA, ch 2, s 811)

808.12 DETENTION AND SEARCH IN SHOPLIFTING.

1. Persons concealing property as set forth in section 714.5, may be detained and searched by a peace officer, merchant, or merchant's employee, provided that the detention is for a reasonable length of time and that the search is conducted in a reasonable manner by a person of the same sex and according to subsection 2 of this section.

2. No search of the person under this section shall be conducted by any person other than someone acting under the direction of a peace officer except where permission of the one to be searched has first been obtained.

3. The detention or search under this section by a peace officer, merchant, or merchant's employee shall not render such peace officer, merchant, or merchant's employee liable, in a criminal or civil action, for false arrest or false imprisonment provided the peace officer, merchant, or merchant's employee had reasonable grounds to believe the

person detained or searched had concealed or was attempting to conceal property as set forth in section 714.5.

(Ch 1245, 66 GA, ch 2, s 812)

Prior law: ss 709.22-709.24, Code 1977

CHAPTER 809
DISPOSITION OF SEIZED PROPERTY

Referred to in ss 110.20, 204.505,
725.8, 808.9, Supplement

809.1	Seized Property	809.5	Return
809.2	Notice of Hearing	809.6	Other Disposition
809.3	Claimant	809.7	Appeal
809.4	Hearing		

809.1 SEIZED PROPERTY.

For the purposes of this chapter, "seized property" means all property or any part thereof seized in the execution of a search warrant, arrest warrant, or arrest without warrant; and includes the following:

1. Property which has been obtained in violation of law.
2. Property, the possession of which is unlawful.
3. Property used or possessed with the intent to be used as the means of committing a public offense or concealed to prevent the offense from being discovered.
4. Property subject to forfeiture except such property described in chapters 127 and 204.
5. Other property relevant and material as evidence in a criminal prosecution.

(Ch 1245, 66 GA, ch 2, s 901)
Prior law: s 751.3, Code 1977

809.2 NOTICE OF HEARING.

The clerk of court shall issue a notice of a hearing, containing a reasonable description of the property and the time, place, and cause of its seizure, within forty-eight hours of the time of its seizure. Such notice shall be reasonably calculated to apprise affected persons of the pendency of the hearing.

(Ch 1245, 66 GA, ch 2, s 902)
Prior law: s 751.16, Code 1977

809.3 CLAIMANT.

Any person claiming the right to possession of seized property may make application for its return in the office of the clerk of court for the county in which it was seized.

(Ch 1245, 66 GA, ch 2, s 903)
Prior law: s 751.21, Code 1977

809.4 HEARING.

All claims made for the return of the seized property shall be set for hearing and such hearing shall be held not less than five nor more than thirty days after the filing of the first claim.

(Ch 1245, 66 GA, ch 2, s 904)
Prior law: ss 751.16, 751.21, Code 1977

809.5 RETURN.

1. Property not required for evidence or use in further investigation may be returned by the officer to the person from whom it was seized without the requirement of a hearing, providing that that person's right of possession is not prohibited by law.

2. In the event that the finding of the right to possess is in favor of a claimant, other than the state, the magistrate shall order the return of the property, providing that:

- a. Possession of such property by the claimant is not prohibited by law; and

b. The property is not needed as evidence in any judicial proceedings; or, if needed, satisfactory arrangements have been made for its return for subsequent use as evidence. If such proceedings have not been completed, the magistrate shall make satisfactory arrangements for return of the property upon their completion.

(Ch 1245, 66 GA, ch 2, s 905)

Prior law: ss 751.23, 751.24, 751.27, 751.30, 751.36, Code 1977

809.6 OTHER DISPOSITION.

1. FORFEITURE. Unless otherwise specified by law, the magistrate shall order the immediate destruction of all forfeited property of an illegal nature or character. When the forfeited property is not of an illegal nature or character, the magistrate shall order all such property or the proceeds of its sale to be applied to the court fund of the county.

2. NO CLAIMANT. Where there is no claimant or where the right to possession cannot be determined, nonperishable property shall be held for a period of six months from the date of filing of the return, pending claim. Thereafter, the magistrate or other officer having the property in his or her custody shall, on payment of the necessary expenses incurred for its preservation, deliver it to the treasurer of the county, to be credited to the court fund.

(Ch 1245, 66 GA, ch 2, s 906)

Prior law: ss 751.25, 751.26, Code 1977

809.7 APPEAL.

When the judgment of rightful possession or of forfeiture is not made by a district judge, appeal to a district judge may be made in the manner of other appeals from judgments of judicial magistrates. Such appeal shall be filed with the magistrate within two days of the judgment. The appellant, other than the state, shall post a bond in such a reasonable sum as the magistrate may fix and approve, conditioned to pay all costs of the proceedings in case the appellant is unsuccessful on appeal.

(Ch 1245, 66 GA, ch 2, s 907)

Prior law: ss 751.40-751.42, Code 1977

CHAPTER 810
NONTTESTIMONIAL IDENTIFICATION

310.1 Definition

810.2 Nontestimonial Indenti-
fication Order at Request
of Defendant

810.1 DEFINITION.

As used in this chapter, the term "nontestimonial identification" includes, but is not limited to, identification by fingerprints, palm prints, footprints, measurements, hair strands, handwriting samples, voice samples, photographs, blood and saliva samples, ultraviolet or black-light examinations, paraffin tests, and lineups.

(Ch 1245, 66 GA, ch 2, s 1001)

810.2 NONTTESTIMONIAL IDENTIFICATION ORDER AT REQUEST OF DEFEN-
DANT.

A person arrested for or charged with an offense may request a district court judge to order a nontestimonial identification procedure. If it appears that the results of specific nontestimonial identification procedures will be of material aid in determining whether the defendant committed the offense, the judge shall order such identification procedures involving the defendant under such terms and conditions as the judge shall prescribe.

(Ch 1245, 66 GA, ch 2, s 1002)

CHAPTER 811
BAIL

Referred to in ss 602.62, 812.1, Supplement;
rules 43, 54(2)a, R Cr P

811.1	Bailable and Nonbailable Offenses	811.5	Bail on Appeal
811.2	Release of Defendants-- Conditions of Bail Bond	811.6	Forfeiture of Bail
811.3	Qualification and Examination of Surety	811.7	Recommitment After Bail
811.4	Undertaking of Bail as Liens on Real Estate	811.8	Surrender of Defendant
		811.9	Forfeiture of Appearance Bond

811.1 BAILABLE AND NONBAILABLE OFFENSES.

All defendants are bailable both before and after conviction, by sufficient surety, or subject to release upon condition or on their own recognizance, except that a defendant convicted of a class A felony shall not be admitted to bail while appealing such conviction or seeking post-conviction relief.

(Ch 1245, 66 GA, ch 2, s 1101)

Prior law: ss 763.1, 763.2, 789.19, Code 1977

Cross reference: Form 5, Appendix of Forms, R Cr P

Referred to in ss 811.2, 811.5, Supplement

811.2 RELEASE OF DEFENDANTS--CONDITIONS OF BAIL BOND.

1. CONDITIONS FOR RELEASE OF DEFENDANT. All bailable defendants shall be ordered released from custody pending judgment on their personal recognizance, or upon the execution of an unsecured appearance bond in an amount specified by the magistrate unless the magistrate determines in the exercise of his or her discretion, that such a release will not reasonably assure the appearance of the defendant as required. When such determination is made, the magistrate shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

a. Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant.

b. Place restrictions on the travel, association or place of abode of the defendant during the period of release.

c. Require the execution of an appearance bond in a specified amount and the deposit with the clerk of court in cash or other qualified security of a sum not to exceed ten percent of the amount of the bond, such deposit to be returned to the defendant upon the performance of the appearances as required in section 811.6.

d. Require the execution of a bail bond with sufficient surety, or the deposit of cash in lieu thereof, provided that, except as provided in section 811.1, bail initially given shall remain valid until final disposition of the offense. If the amount of bail is deemed insufficient by the court before whom the offense is pending, the court may order an increase thereof and the defendant must provide the additional undertaking, written or cash, to secure his or her release.

e. Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the defendant return to custody after specified hours.

2. DETERMINATION OF CONDITIONS. In determining which conditions of release will reasonably assure appearance, the

magistrate shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his or her residence in the community, the defendant's record of convictions, and the defendant's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

3. STATEMENT TO ALL DEFENDANTS. When a defendant appears before a magistrate pursuant to rule 2 or rule 3, rules of criminal procedure, the defendant shall be informed of the defendant's right to have said conditions of release reviewed. If the defendant indicates he or she desires such a review and is indigent and unable to retain legal counsel, the magistrate shall appoint an attorney to represent the defendant for the purpose of such review. Unless the conditions of release are amended and the defendant is thereupon released, the magistrate shall set forth in writing the reasons for requiring conditions imposed. A defendant who is ordered released by a magistrate other than a district court judge or district associate judge on a condition which required that the defendant return to custody after specified hours, shall, upon application, be entitled to review by the magistrate who imposed the condition in the same manner as a defendant who remains in full-time custody. In the event that the magistrate who imposed conditions of release is not available, any other magistrate in the judicial district may review such conditions.

4. STATEMENT OF CONDITIONS WHEN DEFENDANT IS RELEASED. A magistrate authorizing the release of a defendant under this section shall issue a written order containing a statement of the conditions imposed if any, shall inform the defendant of the penalties applicable to violation of the conditions of his or her release and shall advise the defendant that a warrant for the defendant's arrest will be issued immediately upon such violation.

5. AMENDMENT OF RELEASE CONDITIONS. A magistrate ordering the release of the defendant on any conditions specified in this section may at any time amend his or her order to impose additional or different conditions of release, provided that, if the imposition of different or additional conditions results in the detention of the defendant as a result of the defendant's inability to meet such conditions, the provisions of subsection 3 of this section shall apply.

6. APPEAL FROM CONDITIONS OF RELEASE.

a. A defendant who is detained, or whose release on a condition requiring the defendant to return to custody after specified hours is continued, after review of the defendant's application pursuant to subsection 3 or 5 of this section, by a magistrate, other than a district judge or district associate judge having original jurisdiction of the offense with which the defendant is charged, may make application to a district judge or district associate judge having jurisdiction to amend the order. Said motion shall be promptly set for hearing and a record made thereof.

b. In any case in which a court denied a motion under paragraph "a" of this subsection to amend an order imposing conditions of release, or a defendant is detained after conditions of release have been imposed or amended upon such a motion, an appeal may be taken from the district court. The appeal shall be determined summarily, without briefs, on the record made. However, the defendant may elect to file briefs and may be heard in oral argument, in which case the prosecution shall have a right to respond as in an ordinary appeal from a criminal conviction. The appellate court may, on its own motion, order the parties to submit briefs and set the

time in which such briefs shall be filed. Any order so appealed shall be affirmed if it is supported by the proceeding below. If the order is not so supported, the court may remand the case for a further hearing or may, with or without additional evidence, order the defendant released pursuant to subsection 1 of this section.

7. FAILURE TO APPEAR--PENALTY. Any person who, having been released pursuant to this section, willfully fails to appear before any court or magistrate as required shall, in addition to the forfeiture of any security given or pledged for the person's release, if he or she was released in connection with a charge which constitutes a felony, or while awaiting sentence or pending appeal after conviction of any public offense, be guilty of a class D felony. If the defendant was released before conviction or acquittal in connection with a charge which constitutes any public offense not a felony, the defendant shall be guilty of a serious misdemeanor. If the person was released for appearance as a material witness, the person shall be guilty of a simple misdemeanor. In addition, nothing herein shall limit the power of the court to punish for contempt.

(Ch 1245, 66 GA, ch 2, s 1102; 67 GA, ch 147, s 48)
Prior law: ss 761.21, 763.17-763.19, 763.21, Code 1977
Cross reference: Forms 6 and 7, Appendix of forms, R Cr P
Referred to in ss 321.486, 804.23, 811.5, 812.2(5) and
(7), Supplement

811.3 QUALIFICATION AND EXAMINATION OF SURETY.

1. Insurance companies doing business in this state under the provisions of section 515.48, subsection 2, may act as surety. Resident owners of property which is located within the state and which is worth the amount specified in the undertaking, may act as surety, and must in all cases justify by an affidavit taken before an officer authorized to administer oaths that such surety possesses such qualifications.

2. In taking bail each signer may justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to one sufficient bail.

3. The court in which the action is pending, or the clerk thereof, or magistrate may require the personal appearance of sureties offered, and may thereupon further examine them upon oath concerning their sufficiency, and may also receive other evidence for or against the sufficiency of the bail. When such examination is closed, the official conducting such examination must make an order, either allowing or disallowing the bail, and forthwith cause the same, with the affidavits or justification and undertaking of bail, to be filed with the clerk of the court to which the papers on the preliminary examination are required to be sent.

(Ch 1245, 66 GA, ch 2, s 1103; 67 GA, ch 147, s 49)
Prior law: ss 763.11-763.14, Code 1977

811.4 UNDERTAKING OF BAIL AS LIENS ON REAL ESTATE.

Undertakings of bail, immediately after such undertakings are filed with the clerk of the district court, shall be docketed as liens on real estate, entered upon the lien index as required for judgments in civil cases, and from the time of such entries, shall be liens upon real estate of the persons executing the same. Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated, in the same manner and with like effect as attested copies of civil

judgments, and shall be immediately docketed and indexed in the same manner.

(Ch 1245, 66 GA, ch 2, s 1104)

Prior law: Ch 764, Code 1977

811.5 BAIL ON APPEAL.

After conviction, upon appeal to the supreme court, the defendant must be admitted to bail, if it be from the judgment imposing a fine, upon the undertaking of bail that the defendant will, in all respects, abide the orders and the judgment of the supreme court upon appeal; if from a judgment of imprisonment, except as provided in section 811.1 upon the undertaking of bail that the defendant will surrender himself or herself in execution of the judgment and direction of the supreme court, and in all respects abide the orders and judgment of the supreme court upon the appeal. Such bail may be taken, either by the court where the judgment was rendered, or the district court of the county in which the defendant is imprisoned, or by the supreme court, or a judge or clerk of any of such courts. Provided, that in lieu of bail, bailable defendants as described herein may be released in accordance with the provisions of section 811.2.

(Ch 1245, 66 GA, ch 2, s 1105)

Prior law: ss 763.9, 763.10, Code 1977

811.6 FORFEITURE OF BAIL.

1. A defendant released pursuant to this division shall appear at arraignment, trial, judgment, or such other proceedings where the defendant's appearance is required. If the defendant fails to appear at the time and place when his or her personal appearance is lawfully required, or to surrender himself or herself in execution of the judgment, the court must direct an entry of such failure to be made of record, and the undertaking of the defendant's bail, or the money deposited, is thereupon forfeited. As a part of such entry, except as provided in rule 53, rules of criminal procedure, the court shall direct the sheriff of the county to give ten days' notice in writing to the defendant and his or her sureties to appear and show cause, if any, why judgment should not be entered for the amount of such bail. If such appearance is not made, judgment shall be entered by the court. If such appearance is made, the court shall set the case down for immediate hearing as an ordinary action.

2. Where a forfeiture and judgment have been entered as provided in this section, and the amount of the judgment has been paid to the clerk, the clerk shall hold the same as funds of his or her office for a period of sixty days from the date of judgment.

3. The court may, upon application, set aside such judgment if, within sixty days from the date thereof, the defendant shall voluntarily surrender himself or herself to the sheriff of the county, or his or her sureties shall, at their own expense, deliver the defendant to the custody of the sheriff. Such judgment shall not be set aside, however, unless as a condition precedent thereto, the defendant and the defendant's sureties shall have paid all costs and expenses incurred in connection therewith.

(Ch 1245, 66 GA, ch 2, s 1106; 67 GA, ch 147, s 50)

Prior law: Ch 766, Code 1977

Referred to in ss 811.2, 811.9, Supplement

811.7 RECOMMITMENT AFTER BAIL.

1. The magistrate may, by an order entered on the record, direct the defendant to be arrested and committed to jail until legally discharged, after the defendant has given bail or

deposited money in lieu thereof, or otherwise is released pursuant to this chapter, when it satisfactorily appears to the court that the defendant has failed to appear as required, or the defendant has violated a condition of release, or when, after the filing of an indictment or information, the court finds the bail taken or money deposited is insufficient.

2. Such order for recommitment must recite generally the facts upon which it is founded, and must direct that the defendant be arrested and committed to the custody of the sheriff of the county in which such order is entered. The defendant may be arrested pursuant to such order, upon a certified copy thereof, in any county of the state.

3. If the order recite, as the ground on which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirements of the order; if made for any other cause and the offense is bailable, the court must cause a direction to be inserted in the order that the defendant be admitted to bail, in a sum to be stated in the order.

(Ch 1245, 66 GA, ch 2, s 1107)

Prior law: Ch 767, Code 1977

Referred to in s 811.9, Supplement

811.8 SURRENDER OF DEFENDANT.

1. At any time before the forfeiture of the undertaking, the surety may surrender the defendant, or the defendant may surrender himself or herself, to the officer to whose custody the defendant was committed at the time of giving bail, and such officer shall detain the defendant as upon a commitment and must, upon such surrender and the receipt of a certified copy of the undertaking of bail, acknowledge the surrender by a certificate in writing.

2. Upon the filing of the undertaking and the certificate of the officer, or the certificate of the officer alone if money has been deposited instead of bail, the court or clerk shall immediately order return of the money deposited to the person who deposited the same, or order an exoneration of the surety.

3. For the purpose of surrendering the defendant, the surety, at any time before finally charged and at any place within the state, may arrest the defendant, or, by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

(Ch 1245, 66 GA, ch 2, s 1108; 67 GA, ch 147, s 51)

Prior law: Ch 768, Code 1977

Referred to in ss 811.9, 812.2(5), Supplement

811.9 FORFEITURE OF APPEARANCE BOND.

Sections 811.6 through 811.8 shall not apply in a case where a scheduled offense is charged upon a uniform citation and complaint and where the defendant has submitted an unsecured appearance bond or has submitted bail in the form of cash, check, credit card as provided in section 805.14, or guaranteed arrest bond certificate as defined in section 321.1. When a defendant fails to appear as required in such cases, the court shall enter a judgment of forfeiture of the bond or bail. The judgment shall be final upon entry and shall not be set aside.

(67 GA, ch 147, s 80)

CHAPTER 812
CONFINEMENT OF MENTALLY ILL
OR DANGEROUS PERSONS

812.1	When Detention Allowed	812.4	Cessation of Criminal Prosecution
812.2	Hearing		
812.3	Mental Incompetency of Accused	812.5	Effect of Restoration of Mental Capacity

812.1 WHEN DETENTION ALLOWED.

When a person is awaiting sentence after conviction of a felony or following sentence of confinement is pursuing an appeal in such case, and the person would be otherwise eligible for release under chapter 811, but it appears by clear and convincing evidence that if released the person is likely to pose a danger to another person or to the property of others, such person may be detained under the authority of this chapter.

(Ch 1245, 66 GA, ch 2, s 1201)

812.2 HEARING.

The following procedures shall apply to detention hearings held pursuant to this chapter:

1. The prosecuting attorney may initiate a detention hearing by ex parte written motion. Upon such motion, the district court may issue a warrant for the arrest of the person, if the person is not in custody.

2. The detention hearing shall be held immediately upon the person being brought before the district court for such hearing unless the person or the prosecuting attorney moves for a continuance. A continuance granted on motion of the person shall not exceed three calendar days. A continuance on motion of the prosecuting attorney shall be granted only upon good cause shown and shall not exceed three calendar days. The person may be detained pending the hearing.

3. The person shall be entitled to representation by counsel, including appointed counsel for indigent persons, and shall be entitled to the right of cross-examination and to present information, to testify, and to present witnesses in his or her own behalf.

4. Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the formal rules of evidence.

5. Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, subject only to the following exceptions: Such testimony shall be admissible in proceedings under sections 811.2, subsection 7 and 811.8, and in perjury proceedings.

6. Unless the defendant otherwise requests in writing, the district court shall conduct the hearing as a private hearing, and any order entered shall remain confidential as to the public generally until the conclusion of the trial.

7. Appeals from orders of detention may be taken in the manner provided under section 811.2, subsection 6.

8. If the trial court issues an order of detention, it shall be accompanied by a written finding of fact and the reasons for the detention order.

9. For the purposes of such proceedings, the trial court is not divested of jurisdiction by the filing of a notice of appeal.

(Ch 1245, 66 GA, ch 2, s 1202; 67 GA, ch 147, s 52)

812.3 MENTAL INCOMPETENCY OF ACCUSED.

If at any stage of a criminal proceeding it reasonably appears that the defendant is suffering from a mental disorder

which prevents him or her from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, further proceedings must be suspended and a hearing had upon that question.

(Ch 1245, 66 GA, ch 2, s 1203; 67 GA, ch 147, s 53)

Prior law: s 783.1, Code 1977

Referred to in s 812.4, Supplement

812.4 CESSATION OF CRIMINAL PROSECUTION.

If, upon hearing conducted by the court, the accused is found to be incapacitated in the manner described in section 812.3, no further proceedings shall be taken under the complaint or indictment until the accused's capacity is restored, and, if his or her release will endanger the public peace or safety, the court must order him or her committed to the custody of the department of social services.

(Ch 1245, 66 GA, ch 2, s 1204)

Prior law: s 783.3, Code 1977

Referred to in s 233.4, Supplement

812.5 EFFECT OF RESTORATION OF MENTAL CAPACITY.

If the accused is committed to the department of social services, after the expiration of a period not to exceed six months, the court shall upon hearing review the confinement and determine whether there is a substantial probability the prisoner will regain capacity within a reasonable time. If not, the state shall be directed to institute civil commitment proceedings. When it thereafter appears that the accused can effectively assist in his or her defense, that department shall give notice to the sheriff and county attorney of the proper county of such fact, and the sheriff, without delay, must receive and hold the accused in custody until he or she is brought to trial or judgment, as the case may be, or is legally discharged, the expense for conveying and returning the accused, or any other, to be paid in the first instance by the county from which the accused is sent, but such county may recover the same from another county or municipal body bound to provide for or maintain the accused elsewhere, and the sheriff shall be allowed for his or her services the same fees as are allowed for conveying convicts to the penitentiary.

(Ch 1245, 66 GA, ch 2, s 1205)

Prior law: ss 783.3, 783.4, Code 1977

CHAPTER 813
IOWA RULES OF CRIMINAL PROCEDURE

813.1	Title	813.3	Trial of Simple Misdemeanors
813.2	Provisions Relating to Hearing and Trial in Indictable Cases	813.4	Additions to and Amendment of Rules

813.1 TITLE.

These rules shall be known as the rules of criminal procedure. (R. Cr. P.).

(Ch 1245, 66 GA, ch 2, s 1301, rule 31, R Cr P; 67 GA, ch 153, s 108)

813.2 PROVISIONS RELATING TO HEARING AND TRIAL IN INDICTABLE CASES.

Rule 1. SCOPE OF RULES AND DEFINITIONS.

1. SCOPE. The rules in this section provide procedures applicable to indictable offenses.

2. DEFINITIONS.

a. "Committing magistrate" means judicial magistrates, district associate judges, and district judges.

b. "Judicial officer" means justices of the supreme court, justices of the court of appeals, and committing magistrates.

c. "Unnecessary delay" is any unexcused delay longer than twenty-four hours, and consists of a shorter period whenever a magistrate is accessible and available.

(Ch 1245, 66 GA, ch 2, s 1301, rule 1; 67 GA, ch 153, ss 2 & 3)

Prior law: ss 748.1, 748.3, Code 1977

Rule 2. PROCEEDINGS BEFORE THE MAGISTRATE.

1. INITIAL APPEARANCE OF DEFENDANT. An officer making an arrest with or without a warrant shall take the arrested person without unnecessary delay before a committing magistrate as provided by law. When a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith. If the defendant received a citation or was arrested without a warrant, the magistrate shall, prior to further proceedings in the case, make an initial, preliminary determination from the complaint, or from an affidavit or affidavits filed with the complaint or from an oral statement under oath or affirmation from the arresting officer or other person, whether there is probable cause to believe that an offense has been committed and that the defendant has committed it. The magistrate's decision in this regard shall be entered in the magistrate's record of the case.

2. STATEMENT BY THE MAGISTRATE. The magistrate shall inform a defendant who appears before the magistrate after arrest, complaint, summons, or citation of the complaint against the defendant, of the defendant's right to retain counsel, of the defendant's right to request the appointment of counsel if the defendant is unable by reason of indigency to obtain counsel, of the general circumstances under which the defendant may secure pretrial release, of the defendant's right to review of any conditions imposed on the defendant's release and shall provide the defendant with a copy of the complaint. The magistrate shall also inform the defendant that he or she is not required to make a statement and that any statement made by the defendant may be used against him or her. The magistrate shall allow the defendant reasonable time and opportunity to consult counsel.

3. COUNSEL. The magistrate shall have authority to appoint counsel to represent the defendant in the event the

defendant requests representation by counsel and is entitled to same. Counsel will be assigned to assist the defendant only upon a showing as required in section 336A.4. Counsel so appointed may make application in the district court for compensation for such services.

4. PRELIMINARY HEARING. The defendant shall not be called upon to plead and the magistrate shall proceed as follows:

a. PRELIMINARY HEARING. The magistrate shall inform the defendant that he or she is entitled to a preliminary hearing unless the defendant is indicted by a grand jury or a trial information is filed against the defendant or unless he or she waives the preliminary hearing in writing or on the record. If the defendant waives preliminary hearing, the magistrate shall order the defendant held to answer in further proceedings. If the defendant does not waive the preliminary hearing, the magistrate shall schedule a preliminary hearing and inform the defendant of the date of the preliminary hearing. Such hearing shall be held within a reasonable time but in any event not later than ten days following the initial appearance if the defendant is in custody and no later than twenty days if he or she is not in custody. Upon showing of good cause, the time limits specified in this paragraph may be extended by the magistrate.

b. PROBABLE CAUSE FINDING. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate shall order the defendant held to answer in further proceedings. The finding of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. The defendant may cross-examine witnesses against him or her and may introduce evidence in his or her own behalf.

c. CONSTITUTIONAL OBJECTIONS. Rules excluding evidence on the ground that it was acquired by unlawful means are not applicable. Motions to suppress must be made to the trial court as provided in rule 10, subsection 2 of the rules of criminal procedure.*

d. PRIVATE HEARING. The magistrate must also, upon request of the defendant, exclude from the hearing all persons except the magistrate, the magistrate's clerk, the peace officer who has custody of the defendant, a court reporter, the attorney or attorneys representing the state, a peace officer selected by the attorney representing the state, the defendant and the defendant's counsel.

e. DISCHARGE OF DEFENDANT. If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same offense.

f. TRANSMISSION OF MAGISTRATE'S RECORD ENTRIES. After concluding the proceedings the magistrate shall transmit forthwith to the clerk of the district court all papers and recordings in the proceeding.

g. PRELIMINARY HEARING TESTIMONY PRESERVED BY STENOGRAPHER OR TAPE RECORDER: PRODUCTION PRIOR TO TRIAL. Proceedings at the preliminary hearing shall be taken down by a court reporter or recording equipment and shall be made available on the following basis:

(1) On timely application to a magistrate, for good cause shown, and subject to the availability of facilities, the attorney for a defendant in a criminal case may be given the

opportunity to have the recorded tape of the hearing on preliminary examination replayed for his or her information in connection with any further hearing or in connection with his or her preparation for trial.

(2) On application of a defendant addressed to a district judge, showing that the record of preliminary hearing, in whole or in part, should be made available to the defendant's counsel, an order may issue that the clerk make available a copy of the record, or of a portion thereof, to defense counsel. Such order shall provide for prepayment of costs of such record by the defendant unless the defendant makes a sufficient affidavit that he or she is unable to pay or to give security therefor, in which case the expense shall be paid by the county. The prosecution may move also that a copy of the record, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the government need not prepay costs nor furnish security therefor.

(3) The copy of the record of such proceedings furnished pursuant to subparagraph 2 of this paragraph may consist of a tape of the recorded proceedings or a stenographic transcript of the proceedings.

If the record is ordered, the court shall specify in its order to the magistrate an appropriate method of making the record available. If, in any circumstance, a typewritten transcript is furnished counsel, a copy thereof shall be filed with the clerk of court.

(Ch 1245, 66 GA, ch 2, s 1301, rule 2; 67 GA, ch 153, ss 4, 5, 6, & 7)

Prior law: ss 761.1, 761.13, 761.14, 761.17, 761.18, 761.25, 775.4, 775.5, Code 1977

Referred to in ss 602.62, 811.2(3), Supplement; sub-section 3 referred to in rule 42(3), R Cr P

**Editorial note: The words "of the rules of criminal procedure" were added editorially.*

Rule 3. THE GRAND JURY.

1. DRAWING GRAND JURORS. At such times as prescribed by the chief judge of the district court in the public interest, the names of the twelve persons constituting the panel of the grand jury shall be placed by the clerk in a container, and after thoroughly mixing the same, in open court the clerk shall draw therefrom seven names, and the persons so drawn shall constitute the grand jury. Should any of the persons so drawn be excused by the court or fail to attend on the day designated for their appearance, the clerk shall draw additional names until the seven grand jurors are secured.

If the panel is insufficient to provide and maintain a grand jury of seven members, the panel shall be refilled from the jury box by the clerk of the court under direction of the court; additional grand jurors shall be selected until a grand jury of seven grand jurors is secured, and they shall be summoned in the manner as those originally drawn.

2. CHALLENGE TO GRAND JURY.

a. CHALLENGE TO ARRAY. A defendant held to answer for a public offense may, before the grand jury is sworn, challenge the panel or the grand jury, only for the reason that it was not composed or drawn as prescribed by law. If the challenge be sustained, the court shall thereupon proceed to take remedial action to compose a proper grand jury panel or grand jury.

b. CHALLENGE TO INDIVIDUAL JURORS. A challenge to an individual grand juror may be made before the grand jury is sworn as follows:

(1) By the state or the defendant, because the grand juror does not possess the qualifications required by law.

(2) By the state only because:

(a) The juror is related either by affinity or consanguinity nearer than in the fifth degree, or stands in the relation of agent, clerk, servant, or employee, to any person held to answer for a public offense, whose case may come before the grand jury.

(b) The juror is bail for anyone held to answer for a public offense, whose case may come before the grand jury.

(c) The juror is defendant in a prosecution similar to any prosecution to be examined by the grand jury.

(d) The juror is, or within one year preceding has been, engaged or interested in carrying on any business, calling, or employment the carrying on of which is a violation of law, and for which the juror may be indicted by the grand jury.

(3) By the defendant only because:

(a) The juror is a complainant upon a charge against the defendant.

(b) The juror has formed or expressed such an opinion as to the guilt or innocence of the defendant as would prevent the juror from rendering a true indictment upon the evidence submitted.

c. DECISION BY COURT. Challenges to the panel or to an individual grand juror shall be decided by the court.

d. MOTION TO DISMISS. A motion to dismiss the indictment may be based on challenges to the array or to an individual juror, if the grounds for challenge which are alleged in the motion of the defendant have not previously been determined pursuant to a challenge asserted by the defendant pursuant to paragraph "a" or paragraph "b" of this subsection.

3. DISCHARGING AND SUMMONING JURORS.

a. DISCHARGE. A grand jury, on the completion of its business, shall be discharged by the court. The grand jury shall serve until discharged by the court, and the regular term of service by a grand juror should not exceed one calendar year. However, when an investigation which has been undertaken by the grand jury is incomplete, the court may by order extend the eligibility of a grand juror beyond one year, to the completion of the investigation.

b. SUMMONING JURORS. Upon order of the court the clerk shall issue his or her* precept or precepts to the sheriff, commanding the sheriff to summon the grand juror or jurors. Upon a failure of a grand juror to obey such summons without sufficient cause, he or she* may be punished for contempt.

c. EXCUSING JURORS. If the court excuses a juror, the court may impanel another person in place of the juror excused. If the grand jury has been reduced to a less number than seven by reason of challenges to individual jurors being allowed, or from any other cause, the additional jurors required to fill the panel shall be summoned, first, from such of the twelve jurors originally summoned which were not drawn on the grand jury as first impaneled, and if they are exhausted the additional number required shall be drawn from the grand jury list. If a challenge to the array is allowed, a new grand jury shall be impaneled to inquire into the charge against the defendant in whose behalf the challenge to the array has been allowed, and they shall be summoned in the manner prescribed in this rule.

4. OATHS AND PROCEDURE.

a. FOREMAN. From the persons impaneled as grand jurors the court shall appoint a foreman, or when the foreman already appointed is discharged, excused, or from any cause becomes unable to act before the grand jury is finally discharged, an acting foreman may be appointed.

The foreman of the grand jury may administer the oath to all witnesses produced and examined before it.

b. CLERKS AND BAILIFFS. The court may appoint as clerk of the grand jury a competent person who is not a member thereof. In addition thereto the court may, if it deems it necessary, appoint assistant clerks of the grand jury. If no such appointments are made by the court, the grand jury shall appoint as its clerk one of its own number who is not its foreman. In like manner the court may appoint bailiffs for the grand jury to serve with the powers of a peace officer while so acting.

c. OATHS ADMINISTERED TO GRAND JURY, CLERK, AND BAILIFF. The following oath shall be administered to the grand jury: "Do each of you, as the grand jury, solemnly swear or affirm that you will diligently inquire and true presentment make of all public offenses against the people of this state, triable on indictment within this county, of which you have or can obtain legal evidence; you shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your presentments that you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding?"

Any clerk, assistant clerk, or bailiff appointed by the court must be given the following oath: "Do you solemnly swear that you will faithfully and impartially perform the duties of your office, that you will not reveal to anyone its proceedings or the testimony given before it and will abstain from expressing any opinion upon any question before it, to or in the presence or hearing of the grand jury or any member thereof?"

d. SECRECY OF PROCEEDINGS. Every member of the grand jury, and its clerks and bailiffs, shall keep secret the proceedings of that body and the testimony given before it, except as provided in rule 13 of the rules of criminal procedure.** No such person shall disclose the fact that an indictment has been found except when necessary for the issuance and execution of a warrant or summons, and such duty of nondisclosure shall continue until the indicted person has been arrested. The prosecuting attorney shall be allowed to appear before the grand jury on his or her own request for the purpose of giving information or for the purpose of examining witnesses, and the grand jury may at all reasonable times ask the advice of the prosecuting attorney or the court. However, neither the prosecuting attorney nor any other officer or person except the grand jury may be present when the grand jury is voting upon the finding of an indictment.

e. SECURING WITNESSES AND RECORDS. The clerk of the court must, when required by the foreman of the grand jury or prosecuting attorney, issue subpoenas for witnesses to appear before the grand jury. The grand jury is entitled to free access at all reasonable times to county institutions and places of confinement, and to the examination without charge of all public records within the county.

f. MINUTES. The clerk of the grand jury shall take and preserve minutes of the proceedings and of the evidence given before it, except the votes of its individual members on finding an indictment.

g. EVIDENCE FOR DEFENDANT. The grand jury is not bound to hear evidence for the defendant, but may do so, and must weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it may order the same produced.

h. REFUSAL OF WITNESS TO TESTIFY. When a witness under examination before the grand jury refuses to testify or to

answer a question, it shall proceed with the witness before a district judge, and the foreman shall then distinctly state before a district judge the question and the refusal of the witness, and if upon hearing the witness the court decides that the witness is bound to testify or answer the question propounded, the judge shall inquire of the witness if he or she persists in his or her refusal, and, if he or she does, shall proceed with the witness as in cases of similar refusal in open court.

i. EFFECT OF REFUSAL TO INDICT. If, upon investigation, the grand jury refuses to find an indictment against one charged with a public offense, it shall return all papers to the clerk, with an endorsement thereon, signed by the foreman, to the effect that the charge is ignored. Thereupon, the district judge must order the discharge of the defendant from custody if in jail, and the exoneration of bail if bail be given. Upon good cause shown, the district judge may direct that the charge again be submitted to the grand jury. Such ignoring of the charge does not prevent the cause from being submitted to another grand jury as the court may direct; but without such direction, it cannot again be submitted.

j. DUTY OF GRAND JURY. The grand jury shall inquire into all indictable offenses brought before it which may be tried within the county, and present them to the court by indictment. The grand jury shall meet at times specified by order of a district judge. In addition to those times, the grand jury shall meet at the request of the county attorney or upon the request of a majority of the grand jurors.

It is made the special duty of the grand jury to inquire into:

(1) The case of every person imprisoned in the detention facilities of the county on a criminal charge and not indicted.

(2) The condition and management of the public prisons, county institutions and places of detention within the county.

(3) The unlawful misconduct in office in the county of public officers and employees.

(Ch 1245, 66 GA, ch 2, s 1301, rule 3; 67 GA, ch 153, ss 8-11)

Prior law: Ch 770; ss 771.1-771.11, 771.15, 771.21-771.23, Code 1977

Referred to in ss 609.26, 811.2(3), 815.2, Supplement
**Editorial note: The words "or her" and "or she" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

***Editorial note: The words "of the rules of criminal procedure" were editorially added.*

Rule 4. INDICTMENT.

1. DEFINED. An indictment is an accusation in writing, found and presented by a grand jury legally impaneled and sworn to the court in which it is impaneled, charging that the person named therein has committed an indictable public offense, punishable on indictment.

2. USE OF INDICTMENT. Criminal offenses in which the punishment exceeds a fine of one hundred dollars or exceeds imprisonment for thirty days may be prosecuted to final judgment either on indictment or on information as provided in rule 5 of the rules of criminal procedure.*

3. EVIDENCE TO SUPPORT. An indictment should be found when all the evidence, taken together, is such as in the judgment of the grand jury, if unexplained, would warrant a conviction by the trial jury; otherwise it should not. An indictment can be found only upon evidence given by witnesses produced, sworn, and examined before the grand jury, or

furnished by legal documentary evidence, or upon the stenographic or taped record of evidence given by witnesses before a committing magistrate. If an indictment is found in whole or in part upon testimony taken before a committing magistrate, the clerk of the grand jury shall write out a brief minute of the substance of such evidence, and the same shall be returned to the court with the indictment.

4. VOTE NECESSARY. An indictment cannot be found without the concurrence of five grand jurors. Every indictment must be endorsed "a true bill" and the endorsement signed by the foreman of the grand jury.

5. PRESENTATION AND FILING. An indictment, when found by the grand jury and properly endorsed, shall be presented to the court with the minutes of evidence of the witnesses relied on. The presentation shall be made by the foreman of the grand jury in the presence of the members of the grand jury. The indictment, minutes of evidence, and all exhibits relating thereto shall be transmitted to the clerk of the court and filed by the clerk.

6. MINUTES.

a. A minute of evidence shall consist of a notice in writing stating the name, place of residence, and occupation of the witness upon whose testimony the indictment is found, and a full and fair statement of the witness' testimony before the grand jury.

b. COPY TO DEFENSE. Such minutes of evidence shall not be open for the inspection of any person except the judge of the court, the prosecuting attorney, or the defendant and his or her counsel. The clerk of the court must, on demand made, furnish the defendant or his or her counsel a copy thereof without charge.

c. MINUTES USED AGAIN. A grand jury may consider minutes of testimony previously heard by the same or another grand jury. In any case, a grand jury may take additional testimony.

7. CONTENTS OF INDICTMENT. An indictment is a plain, concise, and definite statement of the offense charged. The indictment shall be signed by the foreman of the grand jury. The names of all witnesses on whose evidence the indictment is found must be endorsed thereon. The indictment may be in the general indictment form set forth in the illustrative table of forms appended to the Iowa rules of criminal procedure. The indictment shall include the following:

a. The name of the accused, if known, and if not known, designation of the accused by any name by which the accused may be identified.

b. The name and if provided by law the degree of the offense, identifying by number the statutory provision or provisions alleged to have been violated.

c. The time and place of the offense as definitely as can be done.

d. Where the means by which the offense is committed are necessary to charge an offense, a brief statement of the acts or omissions by which the offense is alleged to have been committed.

No indictment is invalid or insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in a matter of form which does not prejudice a substantial right of the defendant.

8. AMENDMENT.

a. GENERALLY. The court may, on motion of the state, and before or during the trial, order the indictment amended so as to correct errors or omissions in matters of form or substance. Amendment may be allowed before or during trial when no substantial rights of the defendant are prejudiced by the

amendment, and if a wholly new and different offense is not charged.

b. AMENDMENT BEFORE TRIAL. If the application for an amendment be made before the commencement of the trial, the application and a copy of the proposed amendment shall be served upon the defendant, or upon the defendant's attorney of record, and an opportunity given the defendant to resist the same.

c. AMENDMENT DURING TRIAL. If the application be made during the trial, the application and the amendment may be dictated into the record in the presence of the defendant and the defendant's counsel, and such record shall constitute sufficient notice to the defendant.

d. CONTINUANCE. When an application for amendment is sustained, no continuance or delay in trial shall be granted because of such amendment unless it appears that defendant should have additional time to prepare because of such amendment.

e. AMENDMENT OF MINUTES. Minutes may be amended in the same manner and to the same extent that an indictment may be amended.

(Ch 1245, 66 GA, ch 2, s 1301, rule 4; 67 GA, ch 153, ss 12 & 13)

Prior law: ss 769.1, 771.16-771.18, 771.20; Ch 772; ss 773.1, 773.4, 773.5, 773.8-773.11, 773.43-773.45, 773.47, Code 1977

Subsection 7 referred to in form 10, Appendix of forms, R Cr P

Cross reference: Forms 9 & 10, Appendix of forms, R Cr P

**Editorial note: The words "of the rules of criminal procedure" were editorially added*

Rule 5. INFORMATION.

1. PROSECUTION ON INFORMATION. All indictable offenses may be prosecuted by a trial information. An information charging a person with an indictable offense may be filed with the clerk of the district court at any time, whether or not the grand jury is in session. The county attorney shall have the sole authority to file such a trial information unless that authority is specifically granted to other prosecuting attorneys by statute.

2. ENDORSEMENT. An information shall be endorsed "a true information" and shall be signed by the prosecuting attorney.

3. WITNESS NAMES AND MINUTES. The prosecuting attorney shall, at the time of filing such information, endorse or cause to be endorsed thereon the names, occupations, and last known addresses of the witnesses whose evidence the prosecuting attorney expects to introduce and use on the trial of the same, and shall also file with such information, of each witness whose name is endorsed upon the information, a statement sufficient to enable the defendant to prepare his or her* defense.

4. APPROVAL BY JUDGE. Prior to the filing of the information, a district judge, district associate judge or magistrate having jurisdiction of the offense must approve the information by a finding that the evidence contained in the information and the minutes of testimony, if unexplained, would warrant a conviction by the trial jury. If not approved, the charge may be presented to the grand jury for consideration. At any time after judicial approval of an information, and prior to the commencement of trial, the court, on its own motion, may order said information set aside and said case submitted to the grand jury.

5. INDICTMENT RULES APPLICABLE. The information shall be drawn and construed, in matters of substance, as indictments

are required to be drawn and construed. The term "indictment" embraces the trial information, and all provisions of law applying to prosecutions on indictments apply also to informations, except where otherwise provided for by statute or in these rules, or when the context requires otherwise.

6. INVESTIGATION BY PROSECUTING ATTORNEY. The clerk of the district court, on written application of the prosecuting attorney and the approval of the court, shall issue subpoenas including subpoenas duces tecum for such witnesses as the prosecuting attorney may require in investigating an offense, and in such subpoenas shall direct the appearance of said witnesses before the prosecuting attorney at a specified time and place. Such application and judicial order of approval shall be maintained by the clerk in a confidential file until a charge is filed, in which event disclosure shall be made, unless the court in an in camera hearing orders that it be kept confidential. The prosecuting attorney shall have the authority to administer oaths to said witnesses and shall have the services of the clerk of the grand jury in those counties in which such clerk is regularly employed. The rights and responsibilities of such witnesses and any penalties for violations thereof shall otherwise be the same as a witness subpoenaed to the grand jury.

(Ch 1245, 66 GA, ch 2, s 1301, rule 5; 67 GA, ch 153, ss 14, 15)

Prior law: Ch 769, Code 1977

Referred to in s 815.3, Supplement, rules 4(2), 13(1), R Cr P; subsection 4 referred to in rule 10(6)c(3), R Cr P

Cross reference: Form 8, Appendix of forms, R Cr P

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

Rule 6. PLEADING SPECIAL MATTERS IN INDICTMENTS AND INFORMATIONS--MULTIPLE OFFENSES OR DEFENDANTS--PLEADING PRIOR CONVICTIONS--PLEADING STATUTES.

1. MULTIPLE OFFENSES. When the conduct of a defendant may establish the commission of more than one public offense arising out of the same transaction or occurrence, the defendant may be prosecuted for each of such offenses. Each of such offenses may be alleged and prosecuted as separate counts in a single complaint, information or indictment, unless, for good cause shown, the trial court in its discretion determines otherwise. Where the public offense which is alleged carries with it certain lesser included offenses, the latter should not be charged, and it is sufficient to charge that the accused committed the major offense.

2. PROSECUTION AND JUDGMENT. Upon prosecution for a public offense, the defendant may be convicted of either the public offense charged or an included offense, but not both.

3. DUTY OF COURT TO INSTRUCT. In cases where the public offense charged may include some lesser offense it is the duty of the trial court to instruct the jury, not only as to the public offense charged but as to all lesser offenses of which the accused might be found guilty under the indictment and upon the evidence adduced, even though such instructions have not been requested.

4. CHARGING MULTIPLE DEFENDANTS.

a. MULTIPLE DEFENDANTS. Two or more defendants may be charged in the same indictment, information, or complaint if they are alleged to have participated in the same act or the same transaction or occurrence out of which the offense or offenses arose. Such defendants may be charged in one or more

counts together or separately, and all the defendants need not be charged in each count.

b. PROSECUTION AND JUDGMENT. When an indictment charges a defendant with a felony, and the same indictment charges two or more defendants, those defendants jointly charged may be tried jointly, if in the discretion of the court a joint trial will not result in prejudice to one or more of the parties; otherwise the defendants shall be tried separately. Where jointly tried, each defendant shall be judged separately on each count.

5. ALLEGATIONS OF PRIOR CONVICTIONS. If the offense charged is one for which the defendant, if convicted, will be subject by reason of the Code, to an increased penalty because of prior convictions, the allegation of such convictions, if any, shall be contained in the indictment. A supplemental indictment shall be prepared for the purpose of trial of the facts of the current offense only, and shall satisfy all pertinent requirements of the Code, except that it shall make no mention, directly or indirectly, of the allegation of the prior convictions, and shall be the only indictment read or otherwise presented to the jury prior to conviction of the current offense. The effect of this subdivision shall be to alter the procedure for trying, in one criminal proceeding, the offenses appropriate to its provisions, and not to alter in any manner the basic elements of an offense as provided by law.

6. PLEADING STATUTES. A pleading asserting any statute of another state, territory or jurisdiction of the United States, or a right derived therefrom, shall refer to such statute by plain designation and if such reference is made, the court shall judicially notice such statute.

(Ch 1245, 66 GA, ch 2, s 1301, rule 6; 67 GA, ch 153, s 16)

Prior law: ss 769.6, 773.3, 773.4, 773.29, 773.37, 773.38, 773.40; 780.1, 785.5, 785.6, Code 1977

Subsection 5 referred to in rule 36(4), R Cr P

Rule 7. PROCEEDINGS AFTER INDICTMENT OR INFORMATION.

1. ISSUANCE. Upon the request of the prosecuting attorney the court shall issue a warrant for each defendant named in the indictment or information. The clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court. The warrant or summons shall be delivered to a person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

2. FORM.

a. WARRANT. The warrant shall be signed by the judge or clerk; it shall describe the offense charged in the indictment; and it shall command that the defendant shall be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant. The warrant may be substantially in the form described in the table of forms to the Iowa rules of criminal procedure. The warrant may be served in any county in the state.

b. SUMMONS. The summons shall be in the form described in section 804.2, except that it shall be signed by the clerk. A summons to a corporation shall be in the form prescribed in section 807.5.

3. EXECUTION, SERVICE, AND RETURN.

a. EXECUTION OR SERVICE. The warrant shall be executed or the summons served as provided in chapter 804. Upon the return of an indictment or upon the filing of a trial information against a person confined in any penal institution, the court to which such indictment is returned may enter an order directing that such person be produced before it for trial. The sheriff shall execute such order by serving a copy thereof

on the warden having such accused person in custody and thereupon such person shall be delivered to such sheriff and conveyed to the place of trial.

b. RETURN. The officer executing a warrant, or the person to whom a summons was delivered for service shall make return thereof to the court.

(Ch 1245, 66 GA, ch 2, s 1301, rule 7; 67 GA, ch 153, ss 17 & 18)

Prior law: ss 774.1-774.5, Code 1977

Rule 8. ARRAIGNMENT AND PLEA.

1. CONDUCT OF ARRAIGNMENT. Arraignment shall be conducted in open court as soon as practicable. If the defendant appears for arraignment without counsel, the defendant must, before proceeding therewith, be informed by the court of the right thereto, and be asked if he or she desires counsel; and if he or she does, and is unable by reason of indigency to employ any, the court must appoint defense counsel, who shall have free access to the defendant at all reasonable hours. Arraignment shall consist of reading the indictment to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the indictment or information before he or she is called upon to plead.

The defendant must be informed that if the name by which he or she is indicted or informed against is not his or her true name, he or she must then declare what his or her true name is, or be proceeded against by the name in the indictment. If the defendant gives no other name or gives his or her true name, the defendant is thereafter precluded from objecting to the indictment or information upon the ground of being therein improperly named. If the defendant alleges that another name is his or her true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment shall be had against the defendant by that name, and the indictment amended accordingly.

2. PLEAS TO THE INDICTMENT OR INFORMATION.

a. IN GENERAL. A defendant may plead guilty or not guilty. If the defendant fails or refuses to plead at arraignment, or if the court refuses to accept a guilty plea, the court shall enter a plea of not guilty. At any time before judgment, the court may permit a guilty plea to be withdrawn and a not guilty plea substituted.

b. PLEAS OF GUILTY. The court may refuse to accept a plea of guilty, and shall not accept such plea without first addressing the defendant personally and determining that the plea is made voluntarily and intelligently and has a factual basis.

Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered.
(2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.

(3) That the defendant has the right to be tried by a jury, and at such trial has the right to assistance of counsel, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate himself or herself.

(4) That if the defendant pleads guilty there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial.

c. INQUIRY REGARDING PLEA AGREEMENT. The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the attorney for the state and the defendant or the defendant's attorney. The terms of any plea agreement shall be disclosed of record as provided in rule 9, subsection 2 of the rules of criminal procedure.

3. RECORD OF PROCEEDINGS. A verbatim record of the proceedings at which the defendant enters a plea shall be made.

(Ch 1245, 66 GA, ch 2, s 1301, rule 8; 67 GA, ch 153, ss 19-23)

Prior law: Ch 775, ss 777.11-777.15, Code 1977

Referred to in rules 10(1), 44, R Cr P; s 336B.2, Supplement

Rule 9. PLEA BARGAINING.

1. IN GENERAL. The prosecuting attorney and the attorney for the defendant may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will make a charging or sentencing concession.

2. ADVISING COURT OF AGREEMENT. If a plea agreement has been reached by the parties, the court shall require the disclosure of the agreement in open court at the time the plea is offered. Thereupon, if the agreement requires concurrence of the court, the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until receipt of a presentence report.

3. ACCEPTANCE OF PLEA AGREEMENT. When the court's concurrence is required, and the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement.

4. REJECTION OF PLEA AGREEMENT. If the court refuses to be bound by or rejects the plea agreement, the court shall inform the parties of this fact, afford the defendant the opportunity to then withdraw his or her plea, and advise the defendant that if he or she persists in his or her guilty plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

5. INADMISSIBILITY OF PLEA DISCUSSIONS. If a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or is withdrawn, or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible in any criminal or civil action or administrative proceeding.

*(Ch 1245, 66 GA, ch 2, s 1301, rule 9; 67 GA, ch 153, s 24)
Subsection 2 referred to in rule 8(2)c, R Cr P*

Rule 10. MOTIONS AND PLEADINGS.

1. PLEADINGS AND MOTIONS. Pleadings in criminal proceedings shall be the indictment and the information, and the pleas entered pursuant to rule 8 of the rules of criminal procedure. Demurrers, motions to quash, and motions to set aside are abolished, and defenses and objections raised before trial which heretofore could have been raised under them shall be raised by motion to dismiss, or a motion to grant appropriate relief as the case may be.

2. PRETRIAL MOTIONS. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. The following must be raised prior to trial:

a. Defenses and objections based on defects in the institution of the prosecution.

b. Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceeding).

c. Motions to suppress evidence on the ground that it was illegally obtained including, but not limited to, motions on any ground listed in rule 11 of the rules of criminal procedure.

d. Requests for discovery.

e. Requests for a severance of charges or defendants.

f. Motions for change of venue or change of judge.

g. Motion in limine.

3. EFFECT OF FAILURE TO RAISE DEFENSES OR OBJECTIONS. Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial under this rule shall constitute waiver thereof, but the court for good cause shown, may grant relief from such waiver.

4. TIME OF FILING. Motions hereunder, except a motion for a bill of particulars, shall be filed either within thirty days after arraignment or prior to the impaneling of the trial jury, whichever event occurs earlier, unless the period for filing is extended by the court for good cause shown.

5. BILL OF PARTICULARS. When an indictment or information charges an offense in accordance with this rule but fails to specify the particulars of the offense sufficiently to fairly enable the defendant to prepare his or her defense, the court may, on written motion of the defendant, require the prosecuting attorney to furnish the defendant with a bill of particulars containing such particulars as may be necessary for the preparation of the defense. A motion for a bill of particulars may be made any time prior to or within ten days after arraignment unless the time be extended by the court for good cause shown. A plea of not guilty at arraignment does not waive the right to move for a bill of particulars if such motion is timely filed within this rule. The prosecuting attorney may furnish a bill of particulars on the prosecuting attorney's own motion, or the court may order a bill of particulars without motion. Supplemental bills of particulars may be likewise ordered by the court or voluntarily furnished, or a new bill may be substituted for a bill already furnished. At the trial the state's evidence shall be confined to the particulars of the bill or bills.

6. DISMISSING INDICTMENT OR INFORMATION.

a. IN GENERAL. If it appears from the bill of particulars furnished pursuant to this rule that the particulars stated do not constitute the offense charged in the indictment or information, or that the defendant did not commit that offense or that a prosecution for that offense is barred by the statute of limitations, the court may and on motion of defendant shall dismiss the indictment or information unless the prosecuting attorney shall furnish another bill of particulars which so states the particulars as to cure the defect.

b. INDICTMENT. A motion to dismiss the indictment may be made on one or more of the following grounds:

(1) When the minutes of the evidence of witnesses examined before the grand jury are not returned therewith.

(2) When it has not been presented and marked "filed" as prescribed.

(3) When any person other than the grand jurors was present before the grand jury when the question was taken upon the finding of the indictment.

(4) When any person other than the grand jurors was present before the grand jury during the investigation of the charge, except as required or permitted by law.

(5) That the grand jury was not selected, drawn, summoned, impaneled, or sworn as prescribed by law.

c. INFORMATION. A motion to dismiss the information may be made on one or more of the following grounds:

(1) When the minutes of evidence have not been filed with the information.

(2) When the information has not been filed in the manner required by law.

(3) When the information has not been approved as required under rule 5, subsection 4 of the rules of criminal procedure.

d. TIME OF MOTION. Entry of a plea of not guilty at arraignment does not waive the right to move to dismiss the indictment or information if such motion is timely filed within this rule.

7. EFFECT OF DETERMINATION. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified period pending the filing of a new indictment or information if the same was dismissed by the court, or the amendment of any such pleading if the defect is subject to correction by amendment. The new information or indictment must be filed within twenty days of the dismissal of the original indictment or information. The ninety day period under rule 27, subsection 2, paragraph "b" for bringing a defendant to trial shall commence anew with the filing of the new indictment or information.

8. RULING ON MOTION. A pretrial motion shall be determined without unreasonable delay. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

9. MOTION FOR CHANGE OF VENUE OR CHANGE OF JUDGE.

a. FORM OF MOTION. A motion for change of venue or change of judge shall be verified on information and belief by the movant.

b. VENUE. If the court is satisfied from a motion for change of venue and evidence adduced in support thereof that such prejudice exists in the county in which the trial is to be had that there is a substantial likelihood a fair and impartial trial cannot be had there, the court shall transfer the proceeding to another county in which no such situation exists.

c. CHANGE OF JUDGE. If the court is satisfied from a motion for change of judge and evidence is adduced in support thereof that prejudice of the judge exists, the chief judge of the district shall name a new presiding judge. The trial need not be moved to a different county.

d. PROCEEDINGS ON TRANSFER. When a transfer of the case is ordered to another county the clerk shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that county. If the defendant is in custody, the court may order the defendant to be delivered to the sheriff of the county to which transfer of the case is allowed, and upon such delivery with a certified copy of the order therefor, the sheriff last mentioned must receive and detain the defendant. All expenses attendant upon the change of venue and trial, including the costs of keeping the defendant, which shall be allowed by the court trying the case, may be recovered by the county to which the case is transferred from the county in which the prosecution was commenced. The prosecuting attorney in the original county shall be responsible for the prosecution in such other county.

10. PLEADINGS OF DEFENDANT.

a. ALIBI.

(1) NOTICE. A defendant who intends to offer evidence of an alibi defense shall, within the time provided for the making of pretrial motions or at such later time as the court shall direct, file written notice of such intention. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. In the event that a defendant shall file such notice the prosecuting attorney shall file written notice of the names and addresses of the witnesses the state proposes to offer in rebuttal to discredit the defendant's alibi. Such notice shall be filed not less than ten days after filing of defendant's witness list, or within such other time as the court may direct.

(2) FAILURE TO COMPLY. If either party shall fail to abide by the time periods heretofore described, such party may not offer evidence on the issue of alibi without leave of court for good cause shown. In granting leave, the court may impose terms and conditions including a delay or continuance of trial. The right of a defendant to give evidence of alibi in his or her* own testimony is not limited by the provisions of this rule.

b. INSANITY AND DIMINISHED RESPONSIBILITY.

(1) DEFENSE OF INSANITY OR DIMINISHED RESPONSIBILITY. If a defendant intends to rely upon the defense of insanity or diminished responsibility at the time of the alleged crime, the defendant shall, within the time provided for the filing of pretrial motions file written notice of such intention. The court may for good cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(2) STATE'S RIGHT TO EXPERT EXAMINATION. Where a defendant has given notice of the use of the defense of insanity or diminished responsibility and intends to call an expert witness or witnesses on that issue at trial the defendant shall within the time provided for the filing of pretrial motions file written notice of the name of each such witness. Upon such notice or as otherwise appropriate the court may upon application order the examination of the defendant by a state-named expert or experts whose names shall be disclosed to the defendant prior to examination.

(Ch 1245, 66 GA, ch 2, s 1301, rule 10; 67 GA, ch 153, ss 25-36)

Prior law: ss 769.17, 769.18, 773.6, 773.7, 776.1, 776.7-776.9, 777.3, 777.18, ch 778, Code 1977

*Referred to in s 815.8, Supplement; rules 18(9), 46, R Cr P
Cross reference for subsection 2f: ss 803.2, 803.3, Supplement*

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

Rule 11. SUPPRESSION OF EVIDENCE OBTAINED BY AN UNLAWFUL SEARCH AND SEIZURE.

1. MOTION TO SUPPRESS EVIDENCE. A person aggrieved by an unlawful search and seizure may move to suppress for use as evidence anything so obtained on any of the following grounds:

a. The property was illegally seized without a warrant.

b. The warrant is insufficient on its face.

c. The property seized is not that described in the warrant.

d. There was not probable cause for believing the existence of the grounds on which the warrant was issued.

e. The warrant was illegally executed. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored to its owner or legal custodian unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial.

The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was unaware of the factual grounds for the motion; but the court in its discretion may entertain the motion at the trial or hearing, upon good cause supported by affidavit.

2. APPEAL OF INTERLOCUTORY ORDER. Any party aggrieved by an interlocutory order affecting the validity of a search warrant or the suppression of evidence, except in simple misdemeanors, may apply for a writ of certiorari to the supreme court or any justice thereof to review the order in advance of trial.

(Ch 1245, 66 GA, ch 2, s 1301, rule 11; 67 GA, ch 153, s 37)

Cross reference: Rule 306, IRCP; ch 808, Supplement Referred to in rule 10(2)c, R Cr P

Rule 12. DEPOSITIONS.

1. BY DEFENDANT. A defendant in a criminal case, may examine all witnesses listed by the state on the indictment or information or notice of additional witnesses, conditionally or on notice or commission, in the same manner and with like effect and with the same limitations as in civil actions except as otherwise provided by statute and these rules. Depositions before indictment or trial information is filed may only be had with leave of court.

When the state receives notice that a deposition will be taken of a witness listed on the indictment, information or notice of additional witnesses, the state may object that the witness is (a) a foundation witness or (b) has been adequately examined on preliminary hearing. The court shall immediately determine whether discovery of said witness or witnesses is necessary in the interest of justice and shall allow or disallow said deposition.

2. SPECIAL CIRCUMSTANCES. Whenever due to special circumstances of the case it is in the interest of justice that the testimony of a prospective witness not included in subsection 1 or 3 of this rule be taken and preserved for use at trial, the court may upon motion of a party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place.

For purposes of this subsection, special circumstances shall be deemed to exist, and the court shall order that depositions be taken, only upon the showing of necessity arising from either of* the following circumstances:

a. The information sought by way of deposition cannot adequately be disclosed by a bill of particulars or by voluntary statements.

b. Other just cause necessitating discovery by deposition.

3. BY STATE. At the taking of a deposition by a defendant under subsection 1 or 2 of this rule, the defendant shall list all witnesses expected to be called for the defense. There shall be a continuing duty throughout trial to disclose additional defense witnesses, and such witnesses shall be subject to being deposed by the state.

4. PERPETUATING TESTIMONY. A person apprehensive of a criminal prosecution may perpetuate testimony in his or her

favor in the same manner and with like effect, as may be done in apprehension of any civil action.

(Ch 1245, 66 GA, ch 2, s 1301, rule 12; 67 GA, ch 153, s 38)

Prior law: ss 781.10, 781.11, Code 1977

*Editorial note: The word "of" was editorially added.

Editorial note: The comma after the word "particulars" in subsection 2, paragraph "a" was editorially deleted.

Rule 13. DISCOVERY.

1. WITNESSES EXAMINED BY THE PROSECUTING ATTORNEY. When a witness subpoenaed by the prosecuting attorney pursuant to rule 5 of the rules of criminal procedure* is summoned by the prosecuting attorney after complaint, indictment or information, the defendant shall have a right to be present and have the opportunity to cross-examine any witnesses whose appearance before the county attorney is required by this rule.

2. DISCLOSURE OF EVIDENCE BY THE STATE UPON DEFENSE MOTION OR REQUEST.

a. DISCLOSURE REQUIRED UPON REQUEST.

(1) Upon pretrial motion of a defendant the court shall order the attorney for the state to permit the defendant to inspect and copy or photograph: Any relevant written or recorded statements made by the defendant or copies thereof, within the possession, custody or control of the state, unless same shall have been included with the minutes of evidence accompanying the indictment or information; the substance of any oral statement made by the defendant which the state intends to offer in evidence at the trial, including any voice recording of same; and the transcript or record of testimony of the defendant before a grand jury, whether or not the state intends to offer same in evidence upon trial.

(2) When two or more defendants are jointly charged, upon motion of any defendant the court shall order the attorney for the state to permit the defendant to inspect and copy or photograph any written or recorded statement of a codefendant which the state intends to offer in evidence at the trial, and the substance of any oral statement which the state intends to offer in evidence at the trial made by a codefendant whether before or after arrest in response to interrogation by any person known to the codefendant to be a state agent.

(3) Upon motion of the defendant, the court shall order the state to furnish to defendant such copy of the defendant's prior criminal record, if any, as is then available to the state.

b. DISCRETIONARY DISCOVERY.

(1) Upon motion of the defendant the court may order the attorney for the state to permit the defendant to inspect, and where appropriate, to subject to scientific tests, items seized by the state in connection with the alleged crime. The court may further allow the defendant to inspect and copy books, papers, documents, statements, photographs or tangible objects which are within the possession, custody or control of the state, and which are material to the preparation of his or her defense, or are intended for use by the state as evidence at the trial, or were obtained from or belong to the defendant.

(2) Upon motion of a defendant the court may order the attorney for the state to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the state.

3. DISCLOSURE OF EVIDENCE BY THE DEFENDANT.

a. DOCUMENTS AND TANGIBLE OBJECTS. If the court grants the relief sought by the defendant under subsection 2,

paragraph "b", subparagraph 1, of this rule, the court may, upon motion of the state, order the defendant to permit the state to inspect and copy books, papers, documents, statements other than those of the accused, photographs or tangible objects which are not privileged and are within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at trial.

b. REPORTS OF EXAMINATIONS AND TESTS. If the court grants relief sought by the defendant under subsection 2, paragraph "b", subparagraph 1, of this rule, the court may, upon motion of the state, order the defendant to permit the state to inspect and copy the results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant and which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when such results or reports relate to his or her testimony.

c. TIME OF MOTION. A motion for the relief provided under subsection 3 of this rule shall be made, if at all, within five days after any order granting similar relief to the defendant.

4. FAILURE TO EMPLOY EVIDENCE. When evidence intended for use and furnished under this rule is not actually employed at the trial, that fact shall not be commented upon at trial.

5. CONTINUING DUTY TO DISCLOSE. If, subsequent to compliance with an order issued pursuant to this rule, either party discovers additional evidence, or decides to use evidence which is additional to that originally intended for use, and such additional evidence is subject to discovery under this rule, the party shall promptly file written notice of the existence of the additional evidence to allow the other party to make an appropriate motion for additional discovery.

6. REGULATION OF DISCOVERY.

a. PROTECTIVE ORDERS. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. In addition to any other grounds for issuing an order pursuant to this paragraph, the court may limit or deny discovery or inspection, or limit the number of depositions to be taken if the court determines that any of the following exist:

(1) That granting the motion will unfairly prejudice the nonmoving party and will deny that party a fair trial.

(2) That the motion is intended only as a fishing expedition and that granting the motion will unduly delay the trial and will result in unjustified expense.

(3) That the granting of the motion will result in the disclosure of privileged information.

(4) That the granting of the motion will create a probability of fabrication on the part of the moving party.

Upon motion by a party the court may permit a party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such a showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

b. TIME, PLACE AND MANNER OF DISCOVERY AND INSPECTION. An order of the court granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

c. FAILURE TO COMPLY. If at any time during the course of the proceedings it is brought to the attention of the court

that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may upon timely application order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing any evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

d. **SECRECY OF GRAND JURY.** Except where specific provisions require otherwise, grand jury proceedings remain confidential. However, any member of the grand jury and the clerk thereof, and any officer of the court, may be required by the court or any legislative committee duly authorized to inquire into the conduct or acts of any state officer which might be the basis for impeachment proceedings, to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that given by the witness before the court or legislative committee, or to disclose the same upon a charge of perjury against the witness, or when in the opinion of the court or legislative committee such disclosure is necessary in the administration of justice.

No grand juror shall be questioned for anything he or she may say or any vote the juror may give in the grand jury relative to a matter legally pending before it, except for perjury of which the juror may have been guilty in making an accusation, or in giving testimony to his or her fellow jurors.

(Ch 1245, 66 GA, ch 2, s 1301, rule 13; 67 GA, ch 153, s 39-41)

Prior law: ss 769.19, 771.23-771.25, Code 1977

Referred to in rule 3(4)d, R Cr P

**Editorial note: The words "of the rules of criminal procedure" were editorially added.*

Rule 14. SUBPOENAS.

1. **FOR WITNESSES.** A magistrate in a criminal action before him or her, and the clerk of court in any criminal action pending therein, shall issue blank subpoenas for witnesses, signed by him or her, with the seal of the court if by the clerk, and deliver as many of them as requested to the defendant or the defendant's attorney or the attorney for the state.

2. **FOR PRODUCTION OF DOCUMENTS--DUCES TECUM.** A subpoena may contain a clause directing the witness to bring with him or her any book, writing, or other thing under the witness' control which he or she is bound by law to produce as evidence. The court on motion may dismiss or modify the subpoena if compliance would be unreasonable or oppressive.

3. **SERVICE.** A subpoena may be served in any part of the state. It may be served by any adult person. A peace officer making service in a criminal case must serve without delay in his or her county or city any subpoena delivered to him or her for service and make a written return stating the time, place, and manner of service. When service is made by other than a peace officer, proof thereof shall be by affidavit. Service is made by showing the original to the witness and delivering a copy to him or her.

4. **DEPOSITIONS.** An order to take a deposition authorizes the clerk of the court for the county in which the deposition is to be taken to issue subpoenas for the persons named or described therein.

5. **SANCTIONS FOR REFUSING TO APPEAR OR TESTIFY.** Disobedience to a subpoena, or refusal to be sworn or to answer as a witness, may be punished by the court or magistrate as a

contempt. The attendance of a witness who so fails to appear may be coerced by warrant.

(Ch 1245, 66 GA, ch 2, s 1301, rule 14; 67 GA, ch 153, s 42)

Prior law: ss 781.1, 781.5, 781.7, 781.8, Code 1977

Referred to in s 622A.3, Supplement

Cross reference: ss 622.65, 622.76, Code 1977

Rule 15. PRETRIAL CONFERENCE.

1. WHEN HELD. Where a plea of not guilty to an indictment or trial information is entered on behalf of the defendant, the court may order all parties to the action to appear before it for a conference to consider such matters as will promote a fair and expeditious trial.

2. DISCUSSIONS AND RECORD. The conference may explore such matters as amendment of pleadings, agreement to the introduction into evidence of photographs or other exhibits to which there is no objection, submission of requested jury instructions, and any other matters appropriate for discussion which may aid and expedite trial of the case.

3. STIPULATIONS AND ORDERS. The court shall make an order reciting any action taken at the conference which will control the subsequent course of the action relative to matters it includes, unless modified to prevent manifest injustice. A stipulation entered into at such conference shall bind the defendant at trial, on appeal, or in a post-conviction proceeding only if signed by both the defendant and the defendant's attorney and filed with the clerk.

(Ch 1245, 66 GA, ch 2, s 1301, rule 15; 67 GA, ch 153, s 43)

Cross reference: rules 136-138, IRCP

Rule 16. TRIAL BY JURY OR COURT.

1. TRIAL BY COURT ALLOWED. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in a reported proceeding in open court.

2. FINDINGS. In a case tried without a jury the court shall find the facts specially and on the record, separately stating its conclusions of law and directing an appropriate judgment.

(Ch 1245, 66 GA, ch 2, s 1301, rule 16; 67 GA, ch 153, s 44)

Prior law: ss 777.16, 780.23, Code 1977

Rule 17. JURIES.

1. RULES FOR DRAWING. The rules for drawing the jury shall be the same as those provided in civil procedure.

2. DEPLETION OF PANEL. If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the chapters upon selecting, drawing, and summoning juries.

3. CHALLENGES TO THE PANEL. All the provisions of law relating to challenges to the panel of trial jurors in civil procedure, the grounds therefor, the manner of exercising the same, and the effect thereof, shall apply to the panel of trial jurors in criminal cases.

4. CHALLENGES TO INDIVIDUAL JUROR. A challenge to an individual juror is an objection which may be taken orally, and is either for cause or peremptory.

5. CHALLENGES FOR CAUSE. A challenge for cause may be made by the state or defendant, and must distinctly specify the facts constituting the causes thereof. It may be made for any of the following causes:

a. A previous conviction of the juror of a felony.

b. A want of any of the qualifications prescribed by statute to render a person a competent juror.

c. Unsoundness of mind, or such defects in the faculties of the mind or the organs of the body as render the juror incapable of performing the duties of a juror.

d. Affinity or consanguinity, within the fourth degree, to the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or to the defendant, to be computed according to the rule of the civil law.

e. Standing in the relation of guardian and ward, attorney and client, employer and employee, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or in his or her employ on wages.

f. Being a party adverse to the defendant in a civil action, or having been the prosecutor against or accused by the defendant in a criminal prosecution.

g. Having served on the grand jury which found the indictment.

h. Having served on a trial jury which has tried another defendant for the offense charged in the indictment.

i. Having been on a jury formerly sworn to try the same indictment and whose verdict was set aside, or which was discharged without a verdict after the cause was submitted to it.

j. Having served as a juror, in a civil action brought against the defendant, for the act charged as an offense.

k. Having formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent the juror from rendering a true verdict upon the evidence submitted on the trial.

l. Because of the juror being bail for any defendant in the indictment.

m. Because the juror is defendant in a similar indictment, or complainant against the defendant or any other person indicted for a similar offense.

n. Because the juror is, or within a year preceding has been, engaged or interested in carrying on any business, calling, or employment, the carrying on of which is a violation of law, where the defendant is indicted for a like offense.

o. Because the juror has been a witness, either for or against the defendant, on the preliminary hearing or before the grand jury.

p. Having requested, directly or indirectly, that his or her name be returned as a juror for the regular biennial period.

6. EXAMINATION OF JURORS. Upon examination the jurors shall be sworn. If an individual juror is challenged, the juror may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry thereon, but the juror's answer shall not afterwards be testimony against him or her. Other witnesses may also be examined on either side. The rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge, and the court shall determine the law and the facts, and must allow or disallow the challenge.

7. ORDER OF CHALLENGES FOR CAUSE. The state shall first complete its challenge for cause, and the defendant afterwards, until sixteen jurors have been obtained against whom no cause of challenge has been found to exist.

8. ORDER OF CHALLENGES IN GENERAL. The challenges of either party need not be all taken at once, but separately, in the following order, including in each challenge all the causes

of challenge belonging to the same class: To the panel; to an individual juror for cause; to an individual juror peremptorily.

9. PEREMPTORY CHALLENGES. Peremptory challenges shall be exercised in the same manner as is provided in the trial of civil actions.

10. PEREMPTORY CHALLENGES--NUMBER. If the offense charged in the indictment or information is a class A felony, the state and defendant shall each have the right to peremptorily challenge eight jurors and shall strike two jurors.

If the offense charged be any other felony, the state and the defendant shall each have the right to peremptorily challenge four jurors and shall strike two jurors.

If the offense charged is a misdemeanor, the state and the defendant shall each have the right to peremptorily challenge two jurors and shall strike two jurors.

11. MULTIPLE CHARGES. If the indictment charges different offenses in different counts, the state and the defendant shall each have that number of peremptory challenges which they would have if the highest grade of offense charged in the indictment were the only charge.

12. MULTIPLE DEFENDANTS. In a case where two or more defendants are tried, each defendant shall have one-half the number of challenges allowed in subsection 11 of this rule. The state shall be limited to the challenges and strikes specified in subsection 11 of this rule. The defendants collectively shall be limited to two strikes.

13. CLERK TO PREPARE LIST--PROCEDURE. The clerk shall prepare a list of jurors called; and, after all challenges for cause are exhausted or waived, the parties, commencing with the state, shall alternately challenge peremptorily or waive by indicating any such challenge upon the list opposite the name of the juror challenged, or by indicating the number of waiver elsewhere on the list.

14. VACANCY FILLED. After each challenge, sustained for cause, or made peremptorily as indicated on the list, another juror shall be called and examined for challenge for cause before a further challenge is made; and any new juror thus called may be challenged for cause and shall be subject to peremptory challenge or to being struck from the list as other jurors.

15. READING OF NAMES. After all challenges have thus been exercised or waived and four jurors have been struck from the list the clerk shall read the names of the twelve jurors remaining who shall constitute the jury selected.

16. JURORS SWORN. When twelve jurors are accepted they shall be sworn to try the issues.

17. ALTERNATE JURORS. The court may impanel one or more alternate jurors whose qualifications, powers, functions, facilities, and privileges shall be the same as regular jurors. After the regular jury is selected, the clerk shall draw the names of three more persons if one alternate juror is desired, or four more persons if two alternate jurors are desired, and so on in like proportion, who are to serve under this rule, who shall be sworn and subject to examination and challenge for cause as provided in this rule. Each party must then strike off one such name, and the one or two or appropriate number remaining shall be sworn to try the case with the regular jury, and sit at the trial. Alternate jurors shall, in the order they were drawn, replace any juror who becomes unable to act,

or is disqualified, before the jury retires, and if not so needed shall then be discharged.

(Ch 1245, 66 GA, ch 2, s 1301, rule 17; 67 GA, ch 153, ss 45-49)

Prior law: Ch 779, Code 1977

Referred to in rule 48(2), (4); R Cr P

Cross reference for subsection 2: Ch 609, Code 1977

Cross reference for subsection 3: rule 187(d), IRCP; s 609.34, Code 1977

Rule 18. TRIAL.

1. ORDER OF TRIAL AND ARGUMENTS.

a. ORDER OF TRIAL. The jury having been impaneled and sworn, the trial must proceed in the following order:

(1) READING INDICTMENT AND PLEA. The clerk or prosecuting attorney must read the indictment or the supplemental indictment, as appropriate, and state the defendant's plea to the jury.

(2) STATEMENT OF STATE'S EVIDENCE. The prosecuting attorney may briefly state the evidence by which he or she expects to sustain the indictment.

(3) STATEMENT OF DEFENDANT'S EVIDENCE. The attorney for the defendant may then briefly state his or her defense, or the attorney for the defendant may waive the making of such statement; the attorney for the defendant may reserve the right to make such statement to a time immediately prior to presentation of defendant's evidence.

(4) OFFER OF STATE'S EVIDENCE. The state may then offer the evidence in support of the indictment.

(5) OFFER OF DEFENDANT'S EVIDENCE. The defendant or the defendant's counsel may then offer evidence in support of his or her defense.

(6) REBUTTING OR ADDITIONAL EVIDENCE. The parties may then, respectively, offer rebutting evidence only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original case.

b. ORDER OF ARGUMENT. When the evidence is concluded, unless the case is submitted to the jury on both sides without argument, the prosecuting attorney must commence, the defendant follow by one or two counsel, at the defendant's option, unless the court permits the defendant to be heard by a larger number, and the prosecuting attorney conclude, confining himself or herself** a response to the arguments of the defendant's counsel. Where two or more defendants are on trial for the same offense, they may be heard by one counsel each.

2. ADVANCE NOTICE OF EVIDENCE SUPPORTING INDICTMENTS OR INFORMATIONS. The prosecuting attorney, in offering trial evidence in support of an indictment, shall not be permitted to introduce any witness the minutes of whose testimony was not presented with the indictment to the court; in the case of informations, a witness may testify in support thereof if the witness' identity and a minute of the witness' evidence has been given pursuant to these rules. However, these provisions are subject to the following exception: Additional witnesses in support of the indictment or trial information may be presented by the prosecuting attorney if he or she has given the defendant's attorney of record, or the defendant if he or she has no attorney, a minute of such witness' testimony, at least ten days before the commencement of the trial.

3. FAILURE TO GIVE NOTICE. Whenever the prosecuting attorney desires to call witnesses to support the indictment, of which he or she shall not have given ten days' notice because of insufficient time therefor since the prosecutor learned said testimony could be obtained, the prosecutor may move the court for leave to introduce such testimony, giving

the same particulars as in the former case, and showing diligence, supported by affidavit or other evidence. Except where the testimony goes to merely formal matters, if the court sustains said motion, the defendant shall elect whether said cause shall be continued on his or her** motion, or the witness shall then testify. If said defendant shall not elect to have said cause continued, the prosecuting attorney may examine said witness in the same manner and with the same effect as though ten days' notice had been given defendant or the defendant's attorney as hereinbefore provided, except the prosecuting attorney, in the examination of witnesses, shall be strictly confined to the matters set out in his or her motion.

4. REPORTING OF TRIAL. All the provisions relating to mode and manner of the trial of civil actions, report thereof, translation of the shorthand reporter's notes, the making of such reports and translation of the record, and in all other respects, apply to the trial of criminal actions. Upon request of any party, final arguments shall be reported.

5. THE JURY UPON TRIAL.

a. VIEW.

(1) WHEN TAKEN. Upon motion made, when the court is of the opinion that it is proper, the jury may view the place where the offense is charged to have been committed, or where any other material fact occurred. The court may order the jury to be conducted in a body, in the custody of proper officers, to the place, which shall be shown them by a person appointed by the court for that purpose.

(2) ATTENDING OFFICERS. The officers must be sworn to suffer no person to speak to or communicate with the jury on any subject connected with the trial, or to do so themselves, except the person appointed by the court for that purpose, and that only to show the place to be viewed, and to return them into court without unreasonable delay at a specified time.

b. JUROR MAY NOT BE WITNESS. A member of the jury may not testify as a witness in the trial of the case in which he or she is sitting as a juror. If the juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

c. ALTERNATE JURORS; SEPARATION AND DELIBERATION OF JURORS. The court may impanel alternate jurors, which may replace jurors originally selected, in the manner provided in civil cases. The jurors shall be kept together unless the court permits the jurors to separate as in civil cases; and the officers having charge of the jury shall suffer no person to communicate with them except as provided for in civil cases.

d. ADMONITION TO JURORS. The jury, whether permitted to separate or kept together in charge of sworn officers, must be admonished by the court that it is their duty not to permit any person to speak to or communicate with them on any subject connected with the trial, and that any and all attempts to do so should be immediately reported by them to the court, and that they should not converse among themselves on any subject connected with the trial, or form or express an opinion thereon, until the cause is finally submitted to them, that they should not make an unauthorized visit to the scene of the alleged offense, and that they should refrain from conducting any unauthorized experiments or tests relating to the alleged offense. Said admonition must be given or referred to by the court at each adjournment during the progress of the trial previous to the final submission of the cause to the jury.

e. NOTES TAKEN BY JURORS DURING TRIAL; EXHIBITS USED DURING DELIBERATIONS. Notes may be taken by jurors during the testimony of witnesses. All jurors shall have an equal opportunity to take notes. The court shall instruct the jury to mutilate and destroy any notes taken during the trial at the

completion of the jury's deliberation. Upon retiring for deliberations the jury may take with it all papers and exhibits which have been received in evidence, and the court's instructions. Provided, however, the jury shall not take with it depositions, nor shall it take original public records and private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

f. INSTRUCTIONS. Upon the conclusion of the arguments, the court shall charge the jury in writing, without oral explanation or qualification, stating the law of the case. The rules relating to the instruction of juries in civil cases shall be applicable to the trial of criminal prosecutions. After hearing the charge, the jury shall retire for deliberation.

g. REPORT FOR INFORMATION. After the jury has retired for deliberation, if there be any disagreement as to any part of the testimony, or if it desires to be informed on any point of law arising in the cause, it must require the officer to conduct it into court, and, upon its being brought in, the information required may be given, in the discretion of the trial court. Where further information as to the testimony which was given at trial is taken by the jury, this shall be accomplished by the court reporter or other appropriate official reading from the reporter's notes. Where the court gives the jury additional instructions, this shall appear of record. Provided, that the procedures described in this section shall take place in the presence of defendant and counsel for the defense and prosecution, unless such presence is waived.

h. SEPARATION OF JURORS. On final submission, the jury shall retire for deliberation, and be kept together in charge of an officer until they agree on a verdict or are discharged by the court, unless the court permits the jurors to separate temporarily overnight, on weekends or holidays, or in emergencies. During their deliberations, the officer in charge must not suffer any communication to be made to them, nor make any himself or herself, except to ask them if they have agreed on a verdict, unless by order of court; nor communicate to any person the state of their deliberations, or the verdict agreed upon before it is rendered.

6. RETRIAL OF DEFENDANTS WHEN ORIGINAL JURY IS DISCHARGED, AND IN OTHER CASES.

a. ILLNESS OF JURORS AND OTHER CASES. The court may discharge a jury because of any accident or calamity requiring it, or by consent of all parties, or when on an amendment a continuance is ordered, or if they have deliberated until it satisfactorily appears that they cannot agree. The case shall be retried within ninety days unless good cause for further delay is shown.

b. LACK OF JURISDICTION; NO OFFENSE CHARGED. The court may also discharge the jury when it appears that it has no jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law.

c. CRIME COMMITTED IN ANOTHER STATE. If the jury be discharged because the court lacks jurisdiction of the offense charged in the indictment, the offense being committed out of the jurisdiction of this state, the defendant must be discharged, or ordered to be retained in custody a reasonable time until the prosecuting attorney shall have a reasonable opportunity to inform the chief executive of the state in which the offense was committed of the facts, and for said officer to require the delivery of the offender.

d. NO OFFENSE CHARGED--RESUBMISSION. If the jury be discharged because the facts set forth do not constitute an offense punishable by law, the court must order the defendant discharged and his or her bail, if any, exonerated, or, if the

defendant has deposited money instead of bail, that the money deposited be refunded, or that any conditions upon the defendant's release from custody be discharged. If in the court's opinion a new indictment can be framed upon which the defendant can be legally convicted, the court may direct that the case be submitted to the same or another grand jury.

7. THE TRIAL JUDGE.

a. COMPETENCY OF JUDGE AS WITNESS. The judge presiding at the trial shall not testify in that trial as a witness. If the judge is called to testify, no objection need be made in order to preserve the point.

b. DISABILITY OF TRIAL JUDGE.

(1) DURING TRIAL. If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying that he or she has familiarized himself or herself with the record of the trial, may proceed with and finish the trial.

(2) AFTER VERDICT OR FINDING OF GUILT. If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilty, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, he or she may in his or her discretion grant a new trial.

c. ADJOURNMENTS DECLARED BY TRIAL COURT. While the jury is absent, the court may adjourn from time to time for other business, but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury is discharged.

8. MOTION FOR JUDGMENT OF ACQUITTAL.

a. MOTION BEFORE SUBMISSION TO JURY. The court on motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the prosecuting attorney is not granted, the defendant may offer evidence without having waived his or her right to rely on such motion.

b. RESERVATION OF DECISION ON MOTION. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict or is discharged without having returned a verdict.

9. TRIAL OF QUESTIONS INVOLVING PRIOR CONVICTIONS. After conviction of the primary or current offense, but prior to pronouncement of sentence, if the indictment or information alleges one or more prior convictions which by the Code subjects the offender to an increased sentence, the offender shall have the opportunity in open court to affirm or deny that he or she is identical with the person previously convicted, or that he or she was not represented by counsel and did not waive counsel. If the offender denies he or she is the person previously convicted, sentence shall be postponed for such time as to permit a trial before a jury on the issue of the offender's identity with the person previously convicted. Other objections shall be heard and determined by the court, and these other objections shall be asserted prior to trial of the substantive offense in the manner presented in rule 10 of the rules of criminal procedure.* On the issue of identity,

the court may in its discretion reconvene the jury which heard the current offense or dismiss that jury and submit the issue to another jury to be later impaneled. If the offender is found by the jury to be the person previously convicted, or if the offender acknowledged that he or she is such person, the offender shall be sentenced as prescribed in the Code.

(Ch 1245, 66 GA, ch 2, s 1301, rule 18; 67 GA, ch 153, ss 50-57)

Prior law: ss 780.4-780.6, 780.9-780.11, 780.15-780.22, 780.24, 780.27, 780.28, 780.33, 780.37, ch 784, s 785.16, Code 1977

Cross reference: rule 200, IRCP

Referred to in rule 48(8), R Cr P

*Editorial note: The words "of the rules of criminal procedure" were editorially added.

**Editorial note: The words "or herself" and "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.

Rule 19. WITNESSES.

1. COMPETENCY OF WITNESSES; CROSS-EXAMINATION OF THE ACCUSED. The rules for determining the competency of witnesses in civil actions are, so far as they are in their nature applicable, extended also to criminal actions and proceedings, except as otherwise provided. A defendant in a criminal action or proceeding shall be a competent witness in his or her own behalf, but cannot be called by the state. If the defendant offers himself or herself as a witness, the defendant may be cross-examined as an ordinary witness, but the state shall be strictly confined therein to the matters testified to in the examination in chief.

2. COMPELLING ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE TO PROCEEDINGS IN IOWA. The presence and testimony of a witness located outside the state may be secured through the uniform act to secure witnesses from without the state set forth in chapter 819.

3. IMMUNITY.

a. Before any witness shall be compelled to answer or to produce evidence in any judicial proceeding after having asserted that such answer or evidence would tend to render him or her criminally liable, incriminate him or her or violate his or her right to remain silent, the witness must knowingly waive his or her* right or:

(1) A county attorney or the attorney general must file with a district judge a verified application setting forth that:

The testimony of the witness, or the production of documents or other evidence in the possession of such witness, or both, is necessary and material; and

The witness has refused to testify, or to produce documents or other evidence, or both, upon the ground that such testimony or evidence would tend to incriminate him or her; and

It is the considered judgment of the county attorney or attorney general that justice and the public interest require the testimony, documents or evidence in question.

(2) The application, transcripts and orders required by this subsection shall be filed as a separate case in the criminal docket entitled "In the matter of the testimony of (Name of witness)" and shall be indexed in the criminal index under the name of the witness. Any testimony given in support of the application for immunity shall be reported and a transcript of the testimony shall be filed with the application.

(3) Upon consideration of such application the judge shall enter an order granting the witness immunity to prosecution for any crime or public offense concerning which the witness was compelled to give competent and relevant testimony or to produce competent and relevant evidence.

(4) Testimony, documents or evidence which has been given by a witness granted immunity shall not be used against the witness in any trial or proceeding, or subject the witness to any penalty or forfeiture; provided, that such immunity shall not apply to any prosecution or proceeding for a perjury or a contempt of court committed in the course of or during the giving of such testimony.

b. A complete verbatim transcript of testimony given pursuant to an order of immunity shall be made and filed with the application and the order of court. The application, order granting immunity and all transcripts filed shall be sealed upon motion of the defendant, county attorney, or attorney general and shall be opened only by order of the court. This section shall not bar the use of the transcript as evidence in any proceeding except the transcript shall not be used in any proceeding against the witness except for perjury or contempt.

c. Whoever shall refuse to testify or to produce evidence after having been granted immunity as aforesaid shall be subject to punishment for contempt of court as in the case of any witness who refuses to testify, a claim to privilege against self-incrimination notwithstanding.

4. WITNESSES FOR INDIGENTS. Counsel for a defendant who is financially unable to obtain expert or other witnesses necessary to an adequate defense of the case may request compensation in a written application. Upon finding, after appropriate inquiry, that the services are necessary and that the defendant is financially unable to provide compensation, the court shall authorize counsel to obtain such witnesses on behalf of the defendant. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them pursuant to chapter 815.

(Ch 1245, 66 GA, ch 2, s 1301, rule 19; 67 GA, ch 153, ss 58-60)

Prior law: ss 781.2, 781.12-781.14, 782.9-782.11, Code 1977

Cross reference: s 804.11, ch 819, Supplement

Referred to in s 815.4, Supplement

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

Rule 20. EVIDENCE.

1. RULES. The rules of evidence prescribed in civil procedure shall apply to criminal proceedings as far as applicable and not inconsistent with the provisions of statutes and these rules.

2. QUESTIONS OF LAW AND FACT. Upon jury trial of a criminal case, questions of law are to be decided by the court, saving the right of the defendant and state to object; questions of fact are to be tried by jury.

3. CORROBORATION OF ACCOMPLICE OR PERSON SOLICITED. A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

4. CONFESSION OF DEFENDANT. The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the defendant committed the offense.

5. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS OF SEXUAL ABUSE. In prosecutions for the crime of sexual abuse, evidence of the prosecuting witness' previous sexual conduct shall not be admitted, nor reference made thereto in the presence of the jury, except as provided herein. Evidence of the prosecuting witness' previous sexual conduct shall be admissible upon appropriate order of the court if the defendant shall make application to the court not later than five days before trial.

The court shall conduct a hearing in camera as to the relevancy of such evidence of previous sexual conduct, and shall limit the questioning and control the admission and exclusion of evidence upon trial.

In no event shall such evidence of previous sexual conduct of the prosecuting witness committed more than one year prior to the date of the alleged crime be admissible upon the trial, except previous sexual conduct with the defendant. Nothing in this rule shall limit the right of either the state or the accused to impeach credibility by the showing of prior felony convictions which are otherwise admissible.

(Ch 1245, 66 GA, ch 2, s 1301, rule 20; 67 GA, ch 153, ss 61-63)

Prior law: ss 780.23, 782.1, 782.4, 782.5, 782.7, Code 1977

Rule 21. VERDICT.

1. FORM OF VERDICTS. In open court the jury must render a verdict of "guilty", which imports a conviction, or "not guilty" or "not guilty by reason of insanity" or "not guilty by reason of diminished responsibility" which imports acquittal, on the material allegations in the charge. The jury shall return a verdict determining the degree of guilt in cases submitted to determine the grade of the offense.

2. ANSWERS TO INTERROGATORIES. It must also return with the general verdict answers to special interrogatories submitted by the court upon its own motion, or at the request of the defendant in prosecutions where the defense is an affirmative one, or it is claimed any witness is an accomplice, or there has been a failure to corroborate where corroboration is required.

3. FINDING OFFENSE OF DIFFERENT DEGREE; INCLUDED OFFENSES. Upon trial of an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense when such attempt is prohibited by law. In all cases, the defendant may be found guilty of any offense the commission of which is necessarily included in that with which the defendant is charged.

4. SEVERAL DEFENDANTS. On an indictment or information against several defendants, if the jury cannot agree upon a verdict as to all, it may render a verdict as to those in regard to whom it does agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted.

5. RETURN OF JURY; READING AND ENTRY OF VERDICT; UNANIMOUS VERDICT. The jury, agreeing on a verdict unanimously, shall bring the verdict into court, where it shall be read to them, and inquiry made if it is their verdict. A party may then require a poll asking each juror if it is his or her verdict. If any juror express disagreement on such poll or inquiry, the jury shall be sent out for further deliberation; otherwise, the verdict is complete and the jury shall be discharged. When the verdict is given and is such as the court may receive, the clerk may enter it in full upon the record.

6. VERDICT INSUFFICIENT; RECONSIDERATION; INFORMAL VERDICT. If the jury renders a verdict which is in none of the forms specified in this rule, or a verdict of guilty in which it appears to the court that the jury was mistaken as to the law, the court may direct the jury to reconsider it, and it shall not be recorded until it is rendered in some form from which the intent of the jury can be clearly understood. If the jury persists in finding an informal verdict, from which, however, it can be understood that the intention is to find for the defendant upon the issue, it shall be entered in the terms in which it is found, and the court must give judgment of acquittal.

7. DEFENDANT DISCHARGED ON ACQUITTAL. If judgment of acquittal is given on a general verdict of not guilty, and the defendant is not detained for any other legal cause, the defendant must be discharged as soon as the judgment is given.

8. ACQUITTAL ON GROUND OF INSANITY OR DIMINISHED RESPONSIBILITY; COMMITMENT. If the defense is insanity or diminished responsibility of the defendant, the jury must be instructed, if it acquits the defendant on that ground, to state that fact in its verdict. Upon hearing, the court may thereupon, if the defendant is found to be dangerous to the public peace and safety, order the defendant committed to one of the mental health institutes or the Iowa security medical facility, or retained in custody, until he or she demonstrates good mental health and is considered no longer dangerous to the public peace and safety or to himself or herself.*

9. PROOF NECESSARY TO SUSTAIN VERDICT OF GUILTY.

a. REASONABLE DOUBT. Where there is a reasonable doubt of the defendant being proven to be guilty, the defendant is entitled to an acquittal.

b. REASONABLE DOUBT AS TO DEGREE. Where there is a reasonable doubt of the degree of the offense of which the defendant is proved to be guilty, the defendant shall only be convicted of the degree as to which there is no reasonable doubt.

(Ch 1245, 66 GA, ch 2, s 1301, rule 21; 67 GA, ch 153, ss 64, 65)

Prior law: Ch 785, Code 1977

*Editorial note: The words "or herself" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.

Rule 22. JUDGMENT.

1. ENTRY OF JUDGMENT OF ACQUITTAL OR CONVICTION. Upon a verdict of not guilty for the defendant, or special verdict upon which a judgment of acquittal must be given, the court must render judgment of acquittal immediately. Upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court must fix a date for pronouncing judgment, which must be within a reasonable time but not less than eight days after the plea is entered or the verdict is rendered, unless defendant consents to a shorter time.

2. FORFEITURE OF BAIL; WARRANT OF ARREST. If the defendant has been released on bail, or has deposited money instead thereof, and does not appear for judgment when the defendant's personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail or money deposited, may make an order directing the clerk, on the application of the county attorney at any time thereafter, to issue a warrant into one or more counties for the defendant's arrest, which may be substantially in the form illustrated in the Appendix of forms to these rules. The warrant may be served in any county in the

state. The officer must arrest the defendant and bring the defendant before the court, or commit the defendant to the officer mentioned in the warrant.

3. IMPOSITION OF SENTENCE.

a. INFORMING THE DEFENDANT. When the defendant appears for judgment, he or she must be informed by the court or the clerk under its direction, of the nature of the indictment, his or her plea, and the verdict, if any thereon, and be asked whether he or she has any legal cause to show why judgment should not be pronounced against him or her*.

b. WHAT MAY BE SHOWN FOR CAUSE. The defendant may show for cause against the judgment that he or she is insane, or any sufficient ground for a new trial, or in arrest of judgment.

c. INSANITY. If the court is of the opinion that there is reasonable ground for believing the defendant insane, the question of the defendant's insanity shall be determined as provided in the Code, and if the defendant is found to be insane, such proceedings shall be had as are herein directed.

d. JUDGMENT ENTERED. If no sufficient cause is shown why judgment should not be pronounced, and none appears to the court upon the record, judgment shall be rendered. Prior to such rendition, counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment. In every case the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced. The court shall state on the record its reason for selecting the particular sentence.

e. NOTIFICATION OF RIGHT TO APPEAL. After imposing sentence in a case, the court shall advise the defendant of his or her statutory right to appeal as provided in rule 15.1 of the rules of the supreme court.

f. CLERICAL MISTAKES. Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

(Ch 1245, 66 GA, ch 2, s 1301, rule 22; 67 GA, ch 153, ss 66-68)

Prior law: ss 789.1-789.8, 789.11, Code 1977

Cross reference: Form 4, Appendix of forms, R Cr P, Supreme Court Rule 15.1

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

Rule 23. MOTIONS AFTER TRIAL.

1. IN GENERAL. Permissible motions after trial include motions for new trial, motions in arrest of judgment, and motions to correct a sentence.

2. NEW TRIAL.

a. PROCEDURAL STEPS IN SEEKING OR ORDERING NEW TRIAL. The application for a new trial can be made only by the defendant and shall be made before judgment, but where based upon newly discovered evidence may be made after judgment as well. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In any case the court shall specify in the order the grounds therefor.

b. GROUNDS.

The court may grant a new trial for any or all of the following causes:

(1) When the trial has been held in the absence of the defendant, in cases where such presence is required by law,

except as provided in rule 25 of the rules of criminal procedure.

(2) When the jury has received any evidence, paper or document out of court not authorized by the court.

(3) When the jury have separated without leave of court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and just consideration of the case.

(4) When the verdict has been decided by lot, or by means other than a fair expression of opinion on the part of all jurors.

(5) When the court has misdirected the jury in a material matter of law, or has erred in the decision of any question of law during the course of the trial, or when the prosecuting attorney has been guilty of prejudicial misconduct during the trial thereof before a jury.

(6) When the verdict is contrary to law or evidence.

(7) When the court has refused properly to instruct the jury.

(8) When the defendant has discovered important and material evidence in his or her favor since the verdict, which the defendant could not with reasonable diligence have discovered and produced at the trial. A motion based upon this ground shall be made without unreasonable delay and, in any event, within two years after final judgment, but such motion may be considered thereafter upon a showing of good cause. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits or testimony of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits or testimony, the court may postpone the hearing of the motion for such length of time as, under all circumstances of the case, may be reasonable.

(9) When from any other cause the defendant has not received a fair and impartial trial.

c. TRIALS WITHOUT JURIES. On a motion for a new trial in an action tried without a jury, the court may where appropriate, in lieu of granting a new trial, vacate the judgment if entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and enter judgment accordingly.

d. EFFECT OF A NEW TRIAL. Upon a new trial, the former verdict cannot be used or referred to either in evidence or argument.

e. TIME OF DECISION. A motion for new trial shall be heard and determined by the court within thirty days from the date it is filed, except upon good cause entered in the record.

3. ARREST OF JUDGMENT.

a. MOTION IN ARREST OF JUDGMENT: DEFINITION AND GROUNDS. A motion in arrest of judgment is an application by the defendant that no judgment be rendered on a finding, plea, or verdict of guilty. Such motion shall be granted when upon the whole record no legal judgment can be pronounced.

b. TIME OF MAKING MOTION BY PARTY. The motion must be made before the judgment is pronounced, and shall be filed within six days after finding, plea, or verdict of guilty.

c. ON MOTION OF COURT. The court may also, upon its own observation of any of these grounds, arrest the judgment on its own motion.

d. EFFECT OF ORDER ARRESTING JUDGMENT. The effect of an order arresting judgment is to place the defendant in the same situation in which he or she was immediately before the indictment was found or the information filed.

e. PROCEEDINGS AFTER ORDER ARRESTING JUDGMENT. If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment or information can be framed, the court may order the defendant to be recommitted to the officer of the proper county, or admitted to bail or otherwise released anew, to answer the new indictment. In such case the order arresting judgment shall not be a bar to another prosecution. But if the evidence upon trial appears to the trial court insufficient to charge the defendant with any offense, the defendant must, if in custody, be released; or, if admitted to bail, his or her bail be exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant or to the person or persons found by the court to have deposited said money on behalf of said defendant.

f. TIME OF DECISION. A motion in arrest of judgment shall be heard and determined by the court within thirty days from the date it is filed, except upon good cause entered in the record.

4. GENERAL PRINCIPLES.

a. EXTENSIONS. The time for filing motions for new trial or in arrest of judgment may be extended to such further time as the court may fix.

b. DISPOSITION. If the defendant moves for a new trial, or in arrest of judgment, the court shall defer the judgment and proceed to hear and decide the motions.

c. APPEAL. Appeal from an order granting or denying a motion for new trial or in arrest of judgment may be taken by the state or the defendant. Where the court has denied the motion for new trial or in arrest of judgment, or both, appeal may be had only after judgment is pronounced.

d. CUSTODY PENDING APPELLATE DETERMINATION. Pending determination by the appellate court of such appeal, the trial court shall determine whether the defendant shall remain in custody, or whether, if in custody, the defendant should be released on bail or his or her own recognizance. Where the trial court has arrested judgment and an appeal is taken by the state, and it further appears to the trial court that there is no evidence sufficient to charge the defendant with an offense, the defendant shall not be held in custody.

e. REINSTATEMENT OF VERDICT. In the event the appellate court reverses the order of the trial court arresting judgment or granting a new trial, it shall order that the verdict be reinstated, unless the appellate court finds other reversible errors, in which event it may enter an appropriate different order.

5. CORRECTION OF SENTENCE.

a. TIME WHEN CORRECTION OF SENTENCE MAY BE MADE. The court may correct an illegal sentence at any time.

b. CREDIT FOR TIME SERVED. The defendant shall receive full credit for time spent in custody under the sentence prior to correction or reduction.

(Ch 1245, 66 GA, ch 2, s 1301, rule 23; 67 GA, ch 153, ss 69-73)

Prior law: Chs 787, 788, ss 789.9, 793.9-793.11, Code 1977 Referred to in rules 25(3)b, 55, R Cr P

Rule 24. EXECUTION AND STAY THEREOF.

1. MECHANICS OF EXECUTION.

a. COPY OF JUDGMENT. When a judgment of confinement, either in the penitentiary or county jail or other detention facility, is pronounced, an execution, consisting of a certified copy of the entry of judgment must be forthwith furnished to the officer whose duty it is to execute the same, who shall proceed and execute it accordingly, and no other

warrant or authority is necessary to justify or require its execution.

b. EXECUTION AND RETURN WITHIN COUNTY; CONFINEMENT. A judgment for confinement to be executed in the county where the trial is had shall be executed by the sheriff thereof, and return made upon the execution, which shall be delivered to and filed by the clerk of said court.

c. EXECUTIONS OUTSIDE COUNTY; CONFINEMENT.

(1) Under all other judgments for confinement, the sheriff shall deliver a certified copy of the execution with the body of the defendant to the keeper of the jail or penitentiary in which the defendant is to be confined in execution of the judgment, and take his or her receipt therefor on a duplicate copy thereof, which the sheriff must forthwith return to the clerk of the court in which the judgment was rendered, with the sheriff's return thereon, and a minute of said return shall be entered by the clerk as a part of the record of the proceedings in the cause in which the execution issued.

(2) When such defendant is discharged from custody, the jailer or warden of the place of confinement shall make return of such fact to the proper court, and an entry thereof shall be made by its clerk as is required in the first instance.

d. EXECUTION FOR FINE.

(1) Upon a judgment for a fine, an execution may be issued as upon a judgment in a civil case, and return thereof shall be made in like manner.

(2) Judgments for fines, in all criminal actions rendered, are liens upon the real estate of the defendant, and shall be entered upon the lien index in the same manner and with like effect as judgments in civil actions.

e. EXECUTION IN OTHER CASES. When the judgment is for the abatement or removal of a nuisance, or for anything other than confinement or payment of money by the defendant, an execution consisting of a certified copy of the entry of such judgment, delivered to the sheriff of the proper county, shall authorize and require the sheriff to execute such judgment, and he or she shall return the same, with the sheriff's doings under the same thereon endorsed, to the clerk of the court in which the judgment was rendered, within a time specified by the court but not exceeding seventy days after the date of the certificate of such certified copy.

f. DAYS IN JAIL BEFORE TRIAL CREDITED. The defendant shall receive full credit for time spent in custody on account of the offense for which he or she is convicted.

2. STAY OF EXECUTION.

a. CONFINEMENT. A sentence of confinement shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to chapter 814.

b. FINE AND OTHER CASES. The defendant may have a stay of execution for the same length of time and in the same manner as provided by law in civil actions, and with like effect, and the same proceedings may be had therein.

c. PROBATION. An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed the court shall fix the terms of the stay.

(Ch 1245, 66 GA, ch 2, s 1301, rule 24; 67 GA, ch 153, s 74)

Prior law: Chs 790, 791, s 793.10, Code 1977

Rule 25. PRESENCE OF DEFENDANT; REGULATION OF CONDUCT BY THE COURT.

1. FELONY OR MISDEMEANOR. In felony cases the defendant shall be present at the arraignment, at the time of the plea,

at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. In other cases the defendant may appear by counsel.

2. CONTINUED PRESENCE NOT REQUIRED. In all cases, the progress of the trial or any other proceeding shall not be prevented whenever a defendant, initially present, does one of the following:

a. Voluntarily absents himself or herself after the trial or other proceeding has commenced.

b. Engages in conduct which is such as to justify the defendant being excluded from the courtroom.

3. PRESENCE NOT REQUIRED. A defendant need not be present in the following situations:

a. A corporation may appear by counsel for all purposes.

b. The defendant's presence is not required at a reduction of sentence under rule 23.

4. REGULATION OF CONDUCT IN THE COURTROOM.

a. When a defendant engages in conduct seriously disruptive of judicial proceedings, one or more of the following steps may be employed to ensure decorum in the courtroom:

(1) Cite the defendant for contempt.

(2) Take the defendant out of the courtroom until he or she promises to conduct himself or herself properly.

(3) Bind and gag the defendant, thereby keeping the defendant present.

b. When a magistrate reasonably believes a person who is present in the courtroom has a weapon in his or her possession, the magistrate may direct that such person be searched, and any weapon be retained subject to order of the court.

c. The magistrate may cause to have removed from the courtroom any person whose exclusion is necessary to preserve the integrity or order of the proceedings.

(Ch 1245, 66 GA, ch 2, s 1301, rule 25; 67 GA, ch 153, ss 75, 76)

Prior law: ss 775.2, 775.4, 775.5, 777.19, 785.10, 789.3, Code 1977

Referred to in rule 23(2)(b)(1), R Cr P

Rule 26. RIGHT TO APPOINTED COUNSEL.

1. REPRESENTATION. Every defendant who is an indigent as defined in section 336A.4 shall be entitled to have counsel appointed to represent him or her at every stage of the proceedings from the defendant's initial appearance before the magistrate or the court through appeal, including probation and parole revocation hearings, unless the defendant waives such appointment.

2. COMPENSATION. When counsel is appointed to represent an indigent defendant, compensation shall be paid as directed in chapter 815.

(Ch 1245, 66 GA, ch 2, s 1301, rule 26; 67 GA, ch 153, s 77)

Prior law: ss 775.4-775.6, Code 1977

Referred to in s 908.2, Supplement

Rule 27. DISMISSAL OF PROSECUTIONS--RIGHT TO SPEEDY TRIAL.

1. DISMISSAL GENERALLY: EFFECT. The court, upon its own motion or the application of the county attorney, in the furtherance of justice, may order the dismissal of any pending criminal prosecution, the reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal is a bar to another prosecution for the same offense if it is a simple or serious misdemeanor; but it is not a bar

if the offense charged be a felony or an aggravated misdemeanor.

2. SPEEDY TRIAL. It is the public policy of the state of Iowa that criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties. Applications for dismissals under this subsection may be made by the county attorney or the defendant or by the court on its own motion.

a. When a person is arrested for the commission of a public offense and an indictment is not found against him or her* within forty-five days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives his or her* right thereto.

b. If a defendant indicted for a public offense has not waived his or her* right to a speedy trial he or she* must be brought to trial within ninety days after indictment is found or the court must order the indictment to be dismissed unless good cause to the contrary be shown.

c. All criminal cases must be brought to trial within one year after the defendant's initial arraignment unless an extension is granted by the court, upon a showing of good cause.

d. If the court direct the prosecution to be dismissed, the defendant, if in custody, must be discharged, or his or her* bail, if any, exonerated, and if money has been deposited instead of bail, it must be refunded to the defendant.

(Ch 1245, 66 GA, ch 2, s 1301, rule 27)

Prior law: Ch 795, Code 1977

Subsection 2, paragraph "b" is referred to in rule 10(7), R Cr P

**Editorial note: The words "or her" and "or she" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

Rule 28. MOTIONS AND OTHER PAPERS.

1. MOTIONS. An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

2. SERVICE OF MOTIONS AND PAPERS. Service and filing of written motions, notices and other similar papers shall be in the manner provided in civil actions.

(Ch 1245, 66 GA, ch 2, s 1301, rule 28)

Cross reference: rules 49-64, 82, IRCP

Rule 29. RULES OF COURT.

1. DISTRICT COURT PRACTICE RULES. The supreme court and district court shall have authority to adopt rules governing practice in the district court which are not inconsistent with these rules and applicable statutes.

2. PROCEDURES NOT SPECIFIED THEREIN. If no procedure is specifically prescribed by these rules or by statute, the court may proceed in any lawful manner not inconsistent with same.

(Ch 1245, 66 GA, ch 2, s 1301, rule 29; 67 GA, ch 153, s 78)

Rule 30. FORMS.

The forms contained in the appendix of forms are illustrative and not mandatory, and any particular instrument may be in more or less the form illustrated.

(Ch 1245, 66 GA, ch 2, s 1301, rule 30)

APPENDIX OF FORMS
(See Rule 30)

FORM 1
SEARCH WARRANT

State of Iowa
County of _____
Criminal Case No. _____

To any peace officer of the state:
Proof having been this day made before me as provided by law that (here, with reasonable certainty and in accordance with the information and other proof obtained by the magistrate, designate the property, its location, the person in possession thereof, and the unlawful use or purpose to which it has been, or is being employed or held) and being satisfied that the foregoing recital relative to said property is probably true, now, therefore, you are commanded to make immediate search of (here state whether the search is of the person of a named person or of said premises, or of another designated thing) and if said property or any part thereof be found, you are commanded to bring said property forthwith before me at my office.

Dated at _____ this _____ day of _____, _____.

(official title)

(Ch 1245, 66 GA, ch 2, Appendix of forms, form 1; 67 GA, ch 153, s 92)
Prior law: s 751.6, Code 1977

FORM 2
ARREST WARRANT ON A COMPLAINT

State of Iowa
County of _____
Criminal Case No. _____

To any peace officer of the state:
Complaint upon oath or affirmation having been this day filed with me, charging that the crime (naming it) has been committed and accusing A _____ B _____ thereof:

You are commanded forthwith to arrest the said A _____ B _____ and bring such person before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible magistrate in this county, without unnecessary delay.

Dated at _____ this _____ day of _____, _____.

C _____ D _____
(with official title)

(Ch 1245, 66 GA, ch 2, Appendix of forms, form 2; 67 GA, ch 153, s 93)
Prior law: s 754.4, Code 1977

FORM 3
ARREST WARRANT AFTER INDICTMENT OR INFORMATION

State of Iowa
County of _____
Criminal Case No. _____

To any peace officer in the state:

An indictment (information) having been filed in the district court of said county on the _____ day of _____, _____, (the day on which the indictment (information) is filed) charging A. B. with the crime of (here designate the offense by the number of the statutory provision and name of the offense if it have one, or by a brief general description of it, substantially as in the indictment).

You are hereby commanded to arrest the said A. B. and bring such person before said court to answer said indictment.

Signed this _____ day of _____, _____.

(Seal)

Clerk or Judge

By order of the judge of the court.

There may be added to the above, "Let the defendant be admitted to bail in the amount of _____ dollars (or subject to other conditions endorsed on the warrant)."

If the offense be a misdemeanor, the warrant may be in a similar form, adding to the body thereof a direction substantially to the following effect: "Or, if the said A. B. require it, that you take such person before a magistrate or the clerk of the district court in said county, or in the county in which you arrest such person, that such person may give bail to answer the said indictment", and the clerk may make an endorsement thereon to the following effect: "The defendant is to be admitted to bail in the sum of _____ dollars" (the amount fixed by the judge).

(Ch 1245, 66 GA, ch 2, Appendix of forms, form 3; 67 GA, ch 153, s 94)

Prior law: s 754.6, Code 1977

FORM 4
ARREST WARRANT WHEN DEFENDANT FAILS TO APPEAR FOR SENTENCING

State of Iowa
County of _____
Criminal Case No. _____

To any peace officer in the state:

A _____ B _____, having been duly convicted on the _____ day of _____, _____, in the district court of _____ County, of the crime of (here state the name of the offense and the statutory provision).

You are hereby commanded to arrest the said A _____ B _____ and bring such person before said court for judgment.

Signed this _____ day of _____, _____.

Clerk or Judge

(Ch 245, 66 GA, ch 2, Appendix of forms, form 4; 67 GA, ch 153, s 95)

FORM 5
BAIL BOND

State of Iowa
County of _____
Criminal Case No. _____

An indictment (or charge) having been found (or made) in the district court (or other appropriate court) of the county of _____ on the _____ day of _____, _____, charging A _____ B _____ with the crime of _____ (designating it as in the warrant, indictment, or complaint), and such person having been duly admitted to bail in the sum of _____ dollars:

We, A _____ B _____ and E _____ F _____, hereby undertake that the said A _____ B _____ shall appear at the _____ court of the county of _____, on the _____ day of _____, _____, and answer the said indictment (or charge), and submit to the orders and judgment of said court, and not depart without leave of same, or, if such person fail to perform either of these conditions, that such person will pay to the State of Iowa the sum of _____ (inserting the sum in which the defendant is admitted to bail).

A _____ B _____
E _____ F _____

Acknowledged before and accepted by me at _____, in the township of _____, in the county of _____ this _____ day of _____, _____.

G _____ H _____
(with official title)

(Ch 1245, 66 GA, ch 2, Appendix of forms, form 5; 67 GA, ch 153, s 96)
Prior law: ss 763.4, 763.8, Code 1977

FORM 6
ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL

State of Iowa
County of _____
Criminal Case No. _____

To the sheriff of the County of _____:

C _____ D _____, who is detained by you on commitment (or indictment or conviction, as the case may be) for the offense of (here designate it generally), having given sufficient bail to answer the same, you are commanded forthwith to discharge such person from custody.

Dated at _____, in the township (town or city) of _____, in the county of _____, this _____ day of _____, _____.

K _____ L _____
(with official title)

(Ch 1245, 66 GA, ch 2, Appendix of forms, form 6; 67 GA, ch 153, s 97)
Prior law: ss 757.4, 762.15, Code 1977

FORM 7

ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL: ANOTHER FORM
(For endorsement on warrant or order of commitment)

State of Iowa
County of _____
Criminal Case No. _____

To the officer (naming the officer and the officer's title, thus A _____ B _____, Sheriff of _____ County) having in custody C _____ D _____ (naming him or her*):

The defendant named in the within warrant of arrest (or order of commitment) now in your custody under the authority thereof for the offense therein designated, having given sufficient bail to answer the same by the undertaking herewith delivered to you, you are commanded forthwith to discharge such person from custody, and, without unnecessary delay, deliver this order, together with the said undertaking of bail, to _____ (name and address of the appropriate district court clerk, or the court or magistrate who issued the warrant).

Dated at _____ this _____ day of _____, _____.

E _____ F _____
(with official title)

(Ch 1245, 66 GA, ch 2, Appendix of forms, form 7; 67 GA, ch 153, s 98)

Prior law: see Form 6

*Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.

FORM 8

TRIAL INFORMATION

(also designated County Attorney's Information)
IN THE DISTRICT COURT OF _____ COUNTY

STATE OF IOWA
vs.
A _____ B _____ INFORMATION

Criminal Case No. _____

Comes now _____, as county attorney of _____ County, State of Iowa, and in the name and by the authority of the State of Iowa accuses A _____ B _____ of the crime of (here insert the name of the offense, number of the statutory provision and whether felony or misdemeanor), committed as follows:

The said A _____ B _____, on or about the _____ day of _____, _____ (inserting the year) in the county of _____, and State of Iowa, did (here insert the acts or omissions constituting the offense).

County Attorney

State of Iowa
County of _____ ss.

I, _____, being first duly sworn, do depose and say, that I have made full and careful investiga-

tion of the facts upon which the above charge is based, and that the allegations contained in the above and foregoing information are true, as I verily believe.

Subscribed and sworn to by _____ before me, the undersigned, this _____ day of _____, _____.

(Here insert title of official before whom verification is made.)

Upon the information shall be endorsed the following:
(a) A true information

County Attorney

(b) Names of witnesses:

(c) On this _____ day of _____, _____ being satisfied from the showing made herein that this cause should (or should not, as the case may be) be prosecuted by information, the same is approved (or disapproved and the charge is ordered submitted to the grand jury, as the case may be).

Judge of District Court

(d) This information duly filed in the district court, this _____ day of _____, _____.

(Clerk of the District Court of _____ County, State of Iowa)

By _____
Deputy Clerk

(e) Bail is hereby fixed on the within information in the sum of \$ _____.

(Here insert official title of judge or clerk, as case may be)

(Ch 1245, 66 GA, ch 2, Appendix of forms, form 8; 67 GA, ch 153, s 99)
Prior law: s 769.32, Code 1977

FORM 9
GENERAL INDICTMENT FORM
IN THE DISTRICT COURT OF IOWA IN AND FOR _____ COUNTY

STATE OF IOWA
vs.
A _____ B _____ INDICTMENT

Criminal Case No. _____

The grand jurors of the county of _____ accuse
A _____ B _____ of (here state the
offense and whether felony or misdemeanor) in violation of
(here state by number the statutory section violated) and
charge that the said A _____ B _____
on or about the _____ day of _____, _____, in the county
of _____ and State of Iowa, (here briefly insert any
particulars of the offense, such as the name of the victim in a
criminal homicide case).

A true bill.
/s/ _____
Foreman of grand jury

Names of witnesses:

*(Ch 1245, 66 GA, ch 2, Appendix of forms, form 9, 67 GA,
ch 153, s 100)
Prior law: s 773.2, Code 1977*

FORM 10
INDICTMENT
(short forms)

The following forms may be used in cases in which they may be applicable:

- Abandoning Child: A.B. wrongfully abandoned C.D., a child (or a disabled person) who was in the custody of said A.B.
- Arson: A.B. committed arson in the _____ degree upon (a dwelling) the property of C.D. (of a value exceeding \$500) (thus endangering E.F.).
- Assaults: A.B. assaulted C.D. while participating in (name felony) (thereby causing serious injury to C.D.); A.B. assaulted C.D. and thereby intentionally caused serious injury to C.D.; A.B. administered a harmful substance (name substance) to C.D.
- Attempts: A.B. attempted to (state substantive offense).
- Bigamy: A.B. committed bigamy by marrying C.D. while said A.B. had a living spouse, D.B.
- Bomb threat: A.B. communicated a bomb threat to C.D.
- Bribery: A.B. bribed C.D.; A.B. solicited (received) a bribe from C.D. (an elector) (an election official).
- Burglary: A.B. committed burglary in the _____ degree upon the property of C.D. (briefly set out circumstances if first degree is charged; e.g., while carrying a dangerous weapon).
- Carrying weapon: A.B. carried a concealed weapon; A.B. carried a (describe firearm) within the city limits of (name city); A.B. carried a handgun in a vehicle.
- Compounding felony: A.B., knowing that C.D. had committed a felony, compounded that felony.

Conspiracy: A.B. conspired with C.D. to commit (state substantive offense) (a class _____ felony; a _____ misdemeanor).

Criminal mischief: A.B. committed criminal mischief in the _____ degree upon the property of (name owner).

Criminal trespass: A.B. committed criminal trespass upon the property of (name owner) (thus injuring C.D.) (causing more than \$100 in damage).

Detention in brothel: A.B. detained C.D. in a brothel.

Disturbance: A.B. willfully disturbed (name body or agency).

Driving under suspension: A.B. operated a motor vehicle while his or her license was (under suspension) (revoked).

Escape: A.B. escaped from custody: A.B. permitted C.D. to escape from custody.

Extortion: A.B. committed extortion upon C.D.

False imprisonment: A.B. falsely imprisoned C.D.

False information: A.B., while attempting to purchase a handgun, falsely stated (set out false statement); A.B., on an application for a weapons permit, falsely stated (set out false statement).

False report of destructive substance: A.B. falsely reported a bomb to C.D.

False use of financial instrument: A.B. falsely used a financial instrument, to wit: (set out type of instrument).

Falsifying public documents: A.B. falsified public documents; A.B. wrongfully possessed a seal of (name agency).

Feticide: A.B. committed feticide by causing the death of the fetus of C.D.

Fraudulent practices: A.B. committed a fraudulent practice by (state briefly the fraudulent practice).

Furnishing controlled substance: A.B. furnished a controlled substance, to wit: (name controlled substance) to C.D., an inmate of (name institution); A.B. introduced a controlled substance, to wit: (name controlled substance) into (name institution).

Furnishing pornography to minor: A.B. furnished pornography to C.D., a minor.

Going armed with intent: A.B. went armed with intent.

Harassment of public officer: A.B. harassed C.D. (state title or position).

Impersonating public official: A.B. falsely impersonated a public official.

Improper voting: A.B. improperly voted (knowing himself or herself* not to be qualified) (having already voted once in that election).

Incest: A.B. committed incest with C.D.

Indecent exposure: A.B. indecently exposed himself or herself to C.D.

Insurrection: A.B., acting with C.D. and E.F., participated in an insurrection.

Kidnapping: A.B. committed kidnapping in the _____ degree by kidnapping C.D.

Lascivious acts with a child: A.B. committed lascivious acts with C.D., a child.

Malicious prosecution: A.B. maliciously caused (attempted to cause) the prosecution of C.D.

Murder: A.B. committed murder in the _____ degree, resulting in the death of C.D.

Nonsupport: A.B. wrongfully refused (or failed) to support C.D., whom A.B. was under a legal obligation to support.

Obstructing prosecution: A.B. obstructed the prosecution of C.D.

OMVUI: A.B. operated a motor vehicle while under the influence of drugs or intoxicants (having been convicted _____ times previously for the offense).

Operating vehicle without consent: A.B. operated C.D.'s vehicle without C.D.'s consent.

Perjury: A.B. committed perjury by testifying (set out substance of testimony).

Pimping: A.B. solicited C.D. as a patron for a prostitute; A.B. knowingly shared in the earnings of C.D., a prostitute; A.B. knowingly furnished a place to be used for prostitution.

Possession of burglary tools: A.B. possessed burglary tools.

Possession of explosive: A.B. possessed (name substance) with the intent to use it to commit a public offense.

Possession of offensive weapon: A.B. had unauthorized possession of an offensive weapon, to wit: (describe weapon).

Prostitution: A.B. committed prostitution by offering his or her services for sale (or selling his or her services) as a partner in a sex act; A.B. purchased (or offered to purchase) C.D.'s services as a partner in a sex act.

Public display of offensive matter: A.B. publicly displayed offensive matter, to wit: (describe offensive matter).

Reckless use of explosive: A.B. recklessly endangered the property or safety of C.D. by A.B.'s use of (name substance).

Riot: A.B., together with C.D. and E.F., participated in a riot.

Risking a catastrophe: A.B. caused (or risked) a catastrophe by: (state nature of activity).

Robbery: A.B. committed robbery in the _____ degree against C.D.

Sexual abuse: A.B. sexually abused C.D. in the _____ degree.

Solicitation: A.B. solicited C.D. to commit (state substantive offense solicited) (a felony) (an aggravated misdemeanor).

Suborning perjury: A.B. suborned C.D. to commit perjury.

Terrorism: A.B. committed terrorism.

Theft: A.B. committed theft in the _____ degree by taking property belonging to C.D. (set out circumstances such as value of property setting degree of theft).

Traps: A.B. set a trap (or spring gun).

A similar short form indictment may be used for offenses not appearing in this table, provided it complies with the requirements of rule 4, subsection 7, rules of criminal procedure.

(Ch 1245, 66 GA, ch 2, Appendix of forms, form 10;

67 GA, ch 153, s 101)

Prior law: s 773.35, Code 1977

Referred to in rule 4(7), R Cr P

**Editorial note: The words "or herself" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

813.3 TRIAL OF SIMPLE MISDEMEANORS.

Rule 32. SCOPE.

The rules set forth in this section shall apply to trials of simple misdemeanors and attendant proceedings and to appeals from conviction in such cases.

(Ch 1245, 66 GA, ch 2, s 1302, rule 32)

Referred to in s 602.62, Supplement

Editorial note: The comma after the word "misdemeanors" was editorially removed.

Rule 33. APPLICABILITY OF INDICTABLE OFFENSE RULES.

Procedures not provided for herein shall be governed by the provisions of these rules which are by their nature applicable relating to trial of indictable offenses, and by the statutes of the state of Iowa.

(Ch 1245, 66 GA, ch 2, s 1302, rule 33; 67 GA, ch 153, s 81)

Referred to in s 602.62, Supplement

Rule 34. TO WHOM TRIED.

Judicial magistrates and district associate judges may hear, try and determine simple misdemeanors. District judges may transfer any simple misdemeanors pending before them to the nearest judicial magistrate or district associate judge.

(Ch 1245, 66 GA, ch 2, s 1302, rule 34; 67 GA, ch 153, s 82)

Referred to in s 602.62, Supplement

Prior law: s 762.1, Code 1977

Rule 35. THE CHARGE.

Prosecutions for simple misdemeanors must be commenced by filing a subscribed and sworn to complaint with a magistrate or district court clerk or the clerk's deputy.

(Ch 1245, 66 GA, ch 2, s 1302, rule 35)

Prior law: s 762.2, Code 1977

Cross reference: Form A, Appendix of forms, R Cr P

Referred to in s 602.62, Supplement

Rule 36. CONTENTS OF THE COMPLAINT.

The complaint shall contain:

1. The name of the county and of the court where the complaint is filed.

2. The names of the parties, if the defendants be known, and if not, then such names as may be given them by the complainant.

3. A concise statement of the act or acts constituting the offense, including the time and place of its commission as near as may be, and identifying by number the provision of law alleged to be violated.

4. The provisions of rule 6, subsection 5 of the rules of criminal procedure shall be applicable to the prosecution before a magistrate of cases within the magistrate's jurisdiction.

(Ch 1245, 66 GA, ch 2, s 1302, rule 36; 67 GA, ch 153, s 83)

Prior law: s 762.3, Code 1977

Referred to in s 602.62, Supplement

Rule 37. FILING OF COMPLAINT.

The magistrate or district court clerk or the clerk's deputy must file the complaint and mark thereon the time of filing the same.

(Ch 1245, 66 GA, ch 2, s 1302, rule 37)

Prior law: s 762.5, Code 1977

Referred to in s 602.62, Supplement

Rule 38. WARRANT OF ARREST.

Immediately upon filing the complaint, the magistrate or district court clerk or the clerk's deputy may issue a warrant of arrest or may issue a citation instead of a warrant for arrest and deliver it to a peace officer.

(Ch 1245, 66 GA, ch 2, s 1302, rule 38)

Prior law: s 762.6, Code 1977

Cross reference: s 804.6, Supplement

Referred to in s 602.62, Supplement

Rule 39. ARREST.

The officer who receives the warrant shall arrest the defendant and bring the defendant before the magistrate without unnecessary delay or serve the citation in the manner provided in chapter 804.

(Ch 1245, 66 GA, ch 2, s 1302, rule 39; 67 GA, ch 153, s 84)

Prior law: s 762.7, Code 1977

Referred to in s 602.62, Supplement

Rule 40. PROSECUTION OF CORPORATIONS.

In prosecutions against corporations the corporation may be proceeded against by summons as set forth in chapter 807.

(Ch 1245, 66 GA, ch 2, s 1302, rule 40)

Referred to in s 602.62, Supplement

Rule 41. APPEARANCE OF DEFENDANT.

When the defendant first appears, the charge against the defendant must be distinctly read to him or her, and a copy given the defendant, and the defendant shall be asked whether he or she is charged under his or her right name. If the defendant objects that he or she is wrongly named in the complaint, the defendant must give his or her right name, and if the defendant refuses to do so, or does not object that he or she is wrongly named, the magistrate shall make an entry thereof in his or her docket, and the defendant is thereafter precluded from making any such objection.

(Ch 1245, 66 GA, ch 2, s 1302, rule 41)

Prior law: ss 762.9, 762.10, Code 1977

Referred to in s 602.62, Supplement

Rule 42. RIGHTS OF DEFENDANT.

The court shall inform the defendant:

1. Of the defendant's right to counsel.
2. Of the circumstances under which the defendant might secure pretrial release, and of the defendant's right to review any conditions imposed on his or her release.
3. That the defendant is not required to make a statement and that if he or she does, it may be used against him or her.

In cases where the defendant faces the possibility of imprisonment, the court shall appoint counsel for an indigent defendant in accordance with procedures established under rule 2, subsection 3 of the rules of criminal procedure. The magistrate shall allow the defendant reasonable time and opportunity to consult with counsel, in the event the defendant expresses a desire to do so.

(Ch 1245, 66 GA, ch 2, s 1302, rule 42; 67 GA, ch 153, s 85)

Referred to in s 602.62, Supplement

Rule 43. BAIL.

Admission to bail shall be as provided for in chapter 811.

(Ch 1245, 66 GA, ch 2, s 1302, rule 43)

Referred to in s 602.62, Supplement

Rule 44. PLEA.

The defendant shall be required to enter a plea to the complaint, and permissible pleas include those allowed when the defendant is indicted, as set forth in rule 8 of the rules of criminal procedure.*

(Ch 1245, 66 GA, ch 2, s 1302, rule 44)

Prior law: s 762.11, Code 1977

Referred to in s 602.62, Supplement

**Editorial note: The words "of the rules of criminal procedure" were editorially added.*

Rule 45. TRIAL DATE.

Upon a plea other than guilty the magistrate shall set a trial date which shall be at least fifteen days after the plea is entered. The magistrate shall notify the prosecuting attorney of the trial date and shall advise the defendant that the trial will be without a jury unless demand for jury trial is made at least ten days prior to the date set for trial. Failure to make a jury demand in the manner prescribed herein constitutes a waiver of jury. If demand is made, the action shall be tried by a jury of six members. Upon the request of the defendant, the magistrate may set the date of trial at a time less than fifteen days after a plea other than guilty is entered. The magistrate shall notify the defendant that a request for earlier trial date shall constitute a waiver of jury.

(Ch 1245, 66 GA, ch 2, s 1302, rule 45)

Prior law: s 762.12, Code 1977

Referred to in s 602.62, Supplement

Rule 46. CHANGE OF VENUE.

A change of place of trial may be applied for in the manner prescribed in rule 10 of the rules of criminal procedure* and the papers transmitted in similar manner as described therein to the judicial officer or clerk of the court to which change is allowed.

(Ch 1245, 66 GA, ch 2, s 1302, rule 46)

Prior law: s 762.13, Code 1977

Cross reference: ss 803.2, 803.3, Supplement

Referred to in s 602.62, Supplement

**Editorial note: The words "of the rules of criminal procedure" were editorially added.*

Rule 47. BAILIFF OBTAINED.

If trial by jury is demanded, the magistrate shall notify the sheriff who shall furnish a bailiff at that time and place to act as officer of the court.

(Ch 1245, 66 GA, ch 2, s 1302, rule 47)

Prior law: s 762.16, Code 1977

Rule 48. SELECTION OF JURY--TRIAL.

1. SELECTION OF PANEL. If a trial by jury is demanded, the magistrate shall notify the clerk of the district court of the time and place of trial. The clerk shall thereupon select by lot fourteen names from the district court jury panel. The clerk shall notify these jurors of the time and place for trial.

2. CHALLENGES. Except where inconsistent with this rule, rule 17 of the rules of criminal procedure* shall apply, but no challenge to the panel is allowed.

3. COMPLETION OF PANEL. If for any reason the panel as chosen by the clerk becomes insufficient to obtain a jury, the magistrate may direct the officer of the court to summon any bystander or others who may be competent, and against whom no sufficient cause of challenge appears, to act as jurors.

4. STRIKES. If, after all challenges and strikes as noted in rule 17 of the rules of criminal procedure* have been exercised, the remaining jurors number more than six, the parties shall continue to strike jurors in order, commencing with the defendant, until the panel is reduced to six jurors.

5. ALTERNATE JURORS. No alternate jurors shall be chosen.

6. JURY OF SIX. When six jurors appear and are accepted, they shall constitute the jury.

7. OATH OF JURORS. The magistrate must thereupon administer to them the following oath or affirmation: "You do swear (or, you do solemnly affirm, as the case may be) that you will

well and truly try the issue between the state of Iowa and the defendant, and a true verdict give according to the law and evidence."

8. TRIAL. The court shall conduct the trial in the manner of indictable cases in accordance with rule 18 of the rules of criminal procedure.*

9. RECORD. The proceedings upon trial shall not be reported unless a party provides a reporter at such party's expense. By agreement of the parties the magistrate may cause the proceedings upon trial to be reported electronically. If the proceedings are being electronically recorded both parties shall be notified in advance of that recording. If the defendant is indigent and requests that the proceedings upon trial be reported, the judicial magistrate shall cause them to be reported by a reporter, or electronically, at public expense. If the proceedings are not reported electronically, the judicial magistrate shall make minutes of the testimony of each witness and append the exhibits or copies thereof. If the proceedings have been reported electronically the recording shall be retained under the jurisdiction of the magistrate and upon request shall be transcribed only by a person designated by the court under the supervision of the magistrate. The transcription shall be provided anyone requesting it upon payment of actual cost of transcription or to an indigent defendant as herein above provided.

(Ch 1245, 66 GA, ch 2, s 1302, rule 48; 67 GA, ch 153, s 86)

Prior law: ss 762.17, 762.18, 762.20, 762.24, 762.25, Code 1977

**Editorial note: The words "of the rules of criminal procedure" were editorially added.*

Rule 49. JUDGMENT.

When the defendant is acquitted, he or she must be immediately discharged. When the defendant pleads guilty or is convicted, the magistrate may render judgment thereon as the case may require, being governed by the rules prescribed for the trial of indictable offenses, as far as the same are applicable.

(Ch 1245, 66 GA, ch 2, s 1302, rule 49)

Prior law: ss 762.31, 762.33, Code 1977

Rule 50. COSTS TAXED TO PROSECUTING WITNESS.

If the prosecuting witness fails without good cause to appear or give evidence on the trial, and defendant is discharged on account of such failure, the magistrate may, in his or her discretion, tax the costs of the proceeding against such prosecuting witness and render judgment therefor; and if defendant is acquitted, the magistrate shall, if satisfied that the prosecution is malicious or without probable cause, so tax the costs and render judgment therefor.

(Ch 1245, 66 GA, ch 2, s 1302, rule 50)

Prior law: s 762.34, Code 1977

Rule 51. SUPPRESSION OF EVIDENCE AND DISPOSITION OF SEIZED PROPERTY.

Motions to suppress evidence shall proceed in the manner provided for the trial of indictable offenses, and any property seized dealt with in the manner provided in indictable offenses.

(Ch 1245, 66 GA, ch 2, s 1302, rule 51)

Cross reference: Chs 808, 809, Supplement; rule 11, R Cr P

Rule 52. JOINT TRIALS.

Unless it shall result in prejudice to a party, the court may order two or more complaints to be tried together if the defendant is the same; or if there is more than one defendant, but all defendants so joined are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.

(Ch 1245, 66 GA, ch 2, s 1302, rule 52)

Rule 53. FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE.

In a specified simple misdemeanor other than one charged upon a uniform citation and complaint a court may accept a forfeiture of collateral security in lieu of appearance, as a proper disposition of a case. Each judicial district, by action of a majority of the district judges, may determine the misdemeanors subject to such disposition and promulgate by rule a list of same and disseminate to all magistrates in the district. A copy of such rule shall be transmitted to the clerk of the supreme court. Prior to termination of the case by forfeiture under this rule, the defendant must execute a written request for same. Unless vacated upon application within thirty days of the forfeiture, such forfeiture shall constitute a conviction in satisfaction.

In the event a simple misdemeanor is charged upon the uniform citation and complaint defined in section 805.6 and the defendant either has submitted unsecured appearance bond as provided in that section or has submitted bail as provided in section 805.9, the court may enter a conviction pursuant to his or her written appearance and may enter a judgment of forfeiture of the collateral in satisfaction of the judgment and sentence; provided that if the defendant submitted unsecured appearance bond or if bail remains uncollected, execution may issue upon the judgment of the court at any time after entry of the judgment.

(Ch 1245, 66 GA, ch 2, s 1302, rule 53, 67 GA, ch 153, s 54)

Cross reference: s 804.1, Supplement; form B, Appendix of forms, R Cr P

Referred to in s 811.6, Supplement

Rule 54. APPEALS.

1. NOTICE OF APPEAL. An appeal may be taken by the plaintiff only upon a finding of invalidity of an ordinance or statute. In all other cases, an appeal may only be taken by the defendant and only upon a judgment of conviction. Execution of the judgment shall be stayed upon the filing with the clerk of the district court an appeal bond with surety approved by the clerk, in the sum specified in the judgment. The defendant may take an appeal, by giving notice orally to the magistrate that he or she appeals, or by delivering to the magistrate not later than ten days thereafter, a written notice of the defendant's appeal, and in either case the magistrate must make an entry on its docket of the giving of such notice. Payment of fine or service of a sentence of imprisonment does not waive the right to appeal, nor render the appeal moot. When an appeal is taken, the magistrate shall forward to the appropriate district court clerk a copy of the docket entries in the magistrate's court, together with copies of the complaint, warrant, motions, pleadings, the magistrate's minutes of the witness' testimony and the exhibits or copies thereof and all other papers in the case. A district judge shall promptly hear the appeal upon the record thus filed without further evidence if the original action was tried by a district judge, district associate judge, or magistrate appointed under section 602.51 or 602.59 unless the district

court judge hearing the appeal either upon application of any party or on the district judge's own motion orders the appeal heard de novo on the grounds the record is inadequate. If the original action was tried by a magistrate appointed under section 602.50 or 602.58, the district judge shall promptly hear the appeal de novo. Within ten days after an appeal is taken, unless extended by order of a district judge or by stipulation of the parties, any party may file with the clerk, as a part of the record, a transcript of the official report, if any, and, in the event the report was made electronically, the tape or other medium on which the proceedings were preserved. If the original action was tried before a district judge acting as a judicial magistrate, the appeal shall be to a different district judge. The judge shall decide the appeal without regard to technicalities or defects. Judgment shall be rendered as though the case were being originally tried. The right to further appeal is governed by section 814.6.

2. BAIL.

a. ADMISSION TO BAIL. Admission to bail shall be as provided for in chapter 811. Execution of the judgment shall not be stayed unless the defendant is admitted to bail.

b. OFFICERS AUTHORIZED TO TAKE BAIL. Bail may be taken by the magistrate who rendered the judgment, or by any magistrate in the county of the district court of that county. The magistrate taking bail shall remit it to the clerk of the district court who shall give receipt therefor.

3. COUNSEL. In appropriate cases, the magistrate shall appoint counsel on appeal.

(Ch 1245, 66 GA, ch 2, s 1302, rule 54; 67 GA, ch 153, ss 87, 88)

Prior law: ss 762.43, 762.44, Code 1977

Cross reference: Forms C & D, Appendix of forms, R Cr P

Rule 55. NEW TRIAL.

The magistrate, on motion of a defendant, may grant a new trial pursuant to the grounds set forth in rule 23 of the rules of criminal procedure, except that a motion for a new trial based on newly discovered evidence must be made within six months after the final judgment. A motion for a new trial based on any other grounds shall be made within seven days after a finding of guilty or within such further time as the court may fix during the seven-day period.

(Ch 1245, 66 GA, ch 2, s 1301, rule 55; 67 GA, ch 153, s 89)

Rule 56. CORRECTION OR REDUCTION OF SENTENCE.

The magistrate may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The magistrate may reduce a sentence within ten days after the sentence is imposed or within ten days after the receipt by the magistrate of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within ten days after entry of any order or judgment of the appellate court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law.

(Ch 1245, 66 GA, ch 2, s 1302, rule 56; 67 GA, ch 153, s 90)

APPENDIX OF FORMS
(See Rule 30)

FORM A
COMPLAINT

State of Iowa Before (Judge, Magistrate) _____
County of _____
Criminal Case No. _____

State of Iowa
vs.
A _____ B _____, Defendant

The defendant is accused of the crime of (here name the offense and code or ordinance section), in that the defendant on the _____ day of _____, _____, at the _____ (here locate the city, or township where the offense occurred), in _____ county, did (state the acts or omissions constituting the offense).

(Ch 1245, 66 GA, ch 2, Appendix of forms, form A; 67 GA, ch 153, s 102)

FORM B
CONSENT TO FORFEITURE OF COLLATERAL
AS DISPOSITION OF MISDEMEANOR

State of Iowa
County of _____
Criminal Case No. _____

I, the undersigned, agree to have the amount of \$ _____ forfeited as a fine and my case terminated. I do this with the following understanding:

1. I have been charged with the offense of _____ (here name the offense and code or ordinance section).

2. I understand my rights, including my right to trial before the court on such charge, and voluntarily waive same, understanding that forfeiture of the afore-said amount terminates my right to a trial and constitutes a conviction of the offense charged.

(Signature of defendant)
(Ch 1245, 66 GA, ch 2, Appendix of forms, form B; 67 GA, ch 153, s 103)

FORM C
NOTICE OF APPEAL TO A DISTRICT COURT JUDGE
FROM A JUDGMENT OR ORDER

State of Iowa
County of _____
Criminal Case No. _____

State of Iowa
vs.
C _____ D _____, Defendant

Notice of Appeal

Notice is hereby given that C _____ D _____, defendant above named, hereby appeals to a district court judge for _____ County (from the final judgment) (from the order) entered in this action on the _____ day of _____, _____.

/s/ _____

(Address)

Attorney for C _____ D _____
(Ch 1245, 66 GA, ch 2, Appendix of forms, form C, 67 GA, ch 153, s 104)

FORM D
BAIL BOND ON APPEAL TO DISTRICT COURT

State of Iowa
County of _____
Criminal Case No. _____

A _____ B _____ having been convicted before C _____ D _____, a magistrate of said county, of the crime of (here designate it generally as in the information), by a judgment rendered on the _____ day of _____, A.D. _____, and having appealed from said judgment to a district court judge of said county:

We, A _____ B _____, and E _____ F _____, hereby undertake that the said A _____ B _____ will appear in the district court of said county on the _____ day of _____ (month), 19____ (year), (which date shall be not more than twenty days after perfection of the undertaking), and submit to the judgment of said court, and not depart without leave of the same, or that we (or I, as the case may be) will pay to the state of Iowa the sum of _____ dollars (the amount of bail fixed).

A _____ B _____

E _____ F _____

Accepted by me, at _____, in the township of _____, this _____ day of _____, A.D. _____.

C _____ D _____
Judicial Magistrate.

(Ch 1245, 66 GA, ch 2, Appendix of forms, form D; 67 GA, ch 153, s 105)

813.4 ADDITIONS TO AND AMENDMENT OF RULES.

The rules of criminal procedure may be amended, provisions deleted, and new rules added, in the manner prescribed for civil rules under chapter 684.

(Ch 1245, 66 GA, ch 2, s 1303)

CHAPTER 814
APPEALS FROM THE DISTRICT COURT

Referred to in rule 24(2)a, R Cr P

- | | | | |
|--------|--|--------|--|
| 814.1 | Definition of Appeal and Discretionary Review | 814.13 | Appeal or Application by the Defendant--Effect |
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814.1 DEFINITION OF APPEAL AND DISCRETIONARY REVIEW.

For the purposes of this chapter, unless the context otherwise requires:

1. "Appeal" is the right of both the defendant and the state to have specified actions of the district court considered by an appellate court.

2. "Discretionary review" is the process by which an appellate court may exercise its discretion, in like manner as under the rules pertaining to interlocutory appeals and certiorari in civil cases, to review specified matters not subject to appeal as a matter of right. The supreme court may adopt additional rules to control access to discretionary review.

(Ch 1245, 66 GA, ch 2, s 1401; 67 GA, ch 147, s 56)

Prior law: s 793.1, Code 1977

814.2 PARTIES--HOW DESIGNATED ON APPEAL.

The party seeking review shall be known as the appellant and the adverse party as the appellee, but the title of the action shall not be changed from that in the district court.

(Ch 1245, 66 GA, ch 2, s 1402; 67 GA, ch 147, s 57)

Prior law: s 793.12, Code 1977

814.3 APPEALS IN CASES INVOLVING MORE THAN ONE DEFENDANT.

When defendants are tried jointly, they may seek discretionary review or may appeal separately or may join. The

appellate court may, in the interest of justice, consolidate appeals or applications for discretionary review.

(Ch 1245, 66 GA, ch 2, s 1403; 67 GA, ch 147, s 58)

Prior law: s 793.3, Code 1977

814.4 PERFECTION OF AN APPEAL AND APPLICATION FOR DISCRETIONARY REVIEW.

An appeal is perfected by filing a written notice within sixty days after judgment or order with the clerk of the district court wherein the judgment or order was issued. Application for discretionary review is made by filing a written notice within ten days after judgment or order with the clerk of the district court wherein the judgment or order was issued.

(Ch 1245, 66 GA, ch 2, s 1404; 67 GA, ch 147, s 59)

Prior law: s 793.4, Code 1977

814.5 THE STATE AS APPELLANT OR APPLICANT.

1. Right of appeal is granted the state from:
 - a. An order dismissing an indictment, information, or any count thereof.
 - b. A judgment for the defendant on a motion to the indictment or the information.
 - c. An order arresting judgment or granting a new trial.
2. Discretionary review may be available in the following cases:
 - a. An order quashing an arrest or search warrant.
 - b. An order suppressing or admitting evidence.
 - c. An order granting or denying a change of venue.
 - d. A final judgment or order raising a question of law important to the judiciary and the profession.

(Ch 1245, 66 GA, ch 2, s 1405; 67 GA, ch 147, s 60)

814.6 THE DEFENDANT AS APPELLANT OR APPLICANT.

1. Right of appeal is granted the defendant from:
 - a. A final judgment of sentence, except in case of simple misdemeanor and ordinance violation convictions.
 - b. An order for the commitment of the defendant for insanity or drug addiction.
2. Discretionary review may be available in the following cases:
 - a. An order suppressing or admitting evidence.
 - b. An order granting or denying a change of venue.
 - c. An order denying probation.
 - d. Simple misdemeanor and ordinance violation convictions.
 - e. An order raising a question of law important to the judiciary and the profession.

(Ch 1245, 66 GA, ch 2, s 1406; 67 GA, ch 147, s 61)

Referred to in rule 54(1), R Cr P

814.7 DUTY OF CLERK WHEN APPEAL IS PERFECTED OR APPLICATION MADE.

When an appeal or an application for discretionary review is filed, the clerk of the court in which the judgment or order was rendered shall:

1. Immediately prepare and transmit to the adverse party and his or her attorney of record, and if the defendant is the moving party, to the attorney general and the clerk of the appellate court, a true copy of the notice of appeal or application, together with the date of filing.
2. Immediately prepare and transmit to the clerk of the appellate court and the attorney general a transcript of all record entries relevant to the appeal or application, together with copies of all papers in the case on file in the clerk's office, except those returned by the examining magistrate on

the preliminary examination, all duly certified under seal of his or her court.

(Ch 1245, 66 GA, ch 2, s 1407; 67 GA, ch 147, s 62)

Prior law: s 793.6, Code 1977

Referred to in ss 814.15, 814.16, Supplement

814.8 DUTIES OF PROSECUTING ATTORNEY.

1. When an appeal is taken or an application made by the state or the defendant the prosecuting attorney shall promptly prepare and deliver to the attorney general so much of the proceedings as are material to the proper disposition of the matter.

2. When a notice of appeal or application has been filed by an adverse party, the prosecuting attorney shall immediately furnish the attorney general with a copy of said notice.

(Ch 1245, 66 GA, ch 2, s 1408)

Prior law: s 793.7, Code 1977

814.9 INDIGENT'S RIGHT TO TRANSCRIPT ON APPEAL.

If a defendant in a criminal cause has perfected an appeal from a judgment against him or her and shall satisfy the judge of the district court that he or she is indigent, such judge may order the transcript made at the expense of the county where the defendant was tried. When an attorney of record is representing such indigent, said attorney shall make application to the district court for the transcript.

(Ch 1245, 66 GA, ch 2, s 1409; 67 GA, ch 147, s 63)

Prior law: s 793.8, Code 1977

814.10 INDIGENT'S APPLICATION FOR TRANSCRIPT IN OTHER CASES.

If a defendant in a criminal cause has been granted discretionary review from an action of the district court and the appellate court deems a transcript or portions thereof are necessary to proper review of the question or questions raised, the district court shall order the transcript made at the expense of the county where the defendant was tried, if the defendant is indigent.

(Ch 1245, 66 GA, ch 2, s 1410; 67 GA, ch 147, s 64)

814.11 INDIGENT'S RIGHT TO COUNSEL.

An indigent defendant is entitled to appointed counsel on the appeal of all indictable offenses. Such appointment is subject to rules of the supreme court.

(Ch 1245, 66 GA, ch 2, s 1411; 67 GA, ch 147, s 65)

Cross reference: Rule 15.1, Rules of the Supreme Court

814.12 APPEAL BY THE STATE--EFFECT.

An appeal taken by the state does not stay the operation of a judgment in favor of the defendant, nor does an application for discretionary review.

(Ch 1245, 66 GA, ch 2, s 1412)

Prior law: s 793.9, Code 1977

814.13 APPEAL OR APPLICATION BY THE DEFENDANT--EFFECT.

An appeal or application for discretionary review taken by the defendant does not stay the execution of the judgment unless the defendant is released on bail or otherwise as provided by law.

(Ch 1245, 66 GA, ch 2, s 1413)

Prior law: s 793.10, Code 1977

814.14 CERTIFICATE OF RELEASE.

When an appeal is taken by the defendant and the defendant is released, the clerk of the district court must give to the defendant or the defendant's attorney a certificate, under the

seal of the court, that an appeal has been taken and the defendant released. The sheriff or other officer having the defendant in custody must, upon receipt of this certificate, discharge the defendant from custody and return to the clerk of court who issued it the execution under which he or she* acted with his or her* return thereon.

(Ch 1245, 66 GA, ch 2, s 1414)

Prior law: s 793.11, Code 1977

**Editorial note: The words "or she" and "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

814.15 APPEALS AND APPLICATIONS--WHEN DOCKETED--WHEN DETERMINED.

When a proper appeal is perfected in a criminal case and the clerk's transcript of the record as required by section 814.7 is filed in the appellate court, the cause shall be docketed. Such causes shall take precedence over other business, and the appellate court shall hear and determine appeals in criminal actions at the earliest time it may be done considering the rights of parties and proper administration of justice. A similar rule shall apply to applications for discretionary review.

(Ch 1245, 66 GA, ch 2, s 1415; 67 GA, ch 147, s 66)

Prior law: s 793.12, Code 1977

814.16 FAILURE OF CLERK TO TRANSMIT PAPERS AS REQUIRED.

Failure of the clerk of the district court to transmit all the papers as required in section 814.7 shall not prejudice the rights of the parties.

(Ch 1245, 66 GA, ch 2, s 1416)

814.17 PERSONAL APPEARANCE OF THE DEFENDANT.

The personal appearance of the defendant in the appellate court on the trial of an appeal, or upon the hearing of a matter of discretionary review, is in no case necessary.

(Ch 1245, 66 GA, ch 2, s 1417; 67 GA, ch 147, s 67)

Prior law: s 793.13, Code 1977

814.18 CLOSING ARGUMENT.

The defendant is entitled to close the argument.

(Ch 1245, 66 GA, ch 2, s 1418)

Prior law: s 793.16, Code 1977

814.19 HEARING IN THE APPELLATE COURT--RULES OF PROCEDURE.

The record and case shall be presented to the appellate court as provided in the rules of appellate procedure; the provisions of law in civil procedure relating to the filing of decisions and opinions of the appellate court shall apply in such cases.

(Ch 1245, 66 GA, ch 2, s 1419; 67 GA, ch 147, s 68)

Prior law: s 793.17, Code 1977

814.20 DECISIONS ON APPEALS OR APPLICATIONS BY DEFENDANT.

An appeal or application taken by the defendant shall not be dismissed for an informality or defect in taking it if corrected as directed by the appellate court. The appellate court, after an examination of the entire record, may dispose of the case by affirmation, reversal or modification of the district court judgment. It may also dismiss the appeal or application if it determines that there has been no substantial miscarriage of justice, and no violation of the rights of the accused, and that the arguments do not present definite grounds

for a hearing. The appellate court may also order a new trial, or reduce the punishment, but cannot increase it.

(Ch 1245, 66 GA, ch 2, s 1420; 67 GA, ch 147, s 69)

Prior law: ss 793.14, 793.18, Code 1977

814.21 COSTS TO THE SUCCESSFUL DEFENDANT.

If on appeal or application by the defendant, the judgment of the trial court is reversed or modified in the defendant's favor, the defendant shall recover the cost of printing abstract and briefs (to a maximum of one dollar per page) to be paid by the county wherein the trial occurred.

(Ch 1245, 66 GA, ch 2, s 1421)

Prior law: s 793.19, Code 1977

814.22 REVERSAL--EFFECT.

If a judgment against the defendant is reversed, such reversal shall be deemed an order for a new trial, unless the appellate court shall direct a different disposition. In reversing the case, the appellate court may direct that the defendant be discharged and the defendant's bail exonerated, or if money is deposited instead, that it be returned to the defendant.

(Ch 1245, 66 GA, ch 2, s 1422; 67 GA, ch 147, s 70)

Prior law: s 793.21, Code 1977

814.23 AFFIRMANCE--EFFECT.

On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the appellate court shall direct.

(Ch 1245, 66 GA, ch 2, s 1423; 67 GA, ch 147, s 71)

Prior law: s 793.22, Code 1977

814.24 DECISION RECORDED AND TRANSMITTED.

The decision of the appellate court with any opinion filed or judgment rendered must be recorded by its clerk. After the expiration of the period allowed for a rehearing, or as ordered by the court or provided by its rules, a certified copy of the decision and opinion shall be transmitted to the clerk of the district court, filed and entered of record by the clerk.

(Ch 1245, 66 GA, ch 2, s 1424; 67 GA, ch 147, s 72)

Prior law: s 793.24, Code 1977

814.25 JURISDICTION OF APPELLATE COURT CEASES AFTER JUDGMENT.

The jurisdiction of the appellate court shall cease after the certified copy of the decision and opinion is transmitted to the clerk of the district court. All proceedings for executing the judgment shall be had in the district court or by its clerk.

(Ch 1245, 66 GA, ch 2, s 1425; 67 GA, ch 147, s 73)

Prior law: s 793.24, Code 1977

814.26 JUDGMENT ENFORCED.

Unless some proceeding in the district court is directed, copies of the judgment of the district court and of the decision on appeal or review, or a copy of the judgment and decision on appeal or review, certified by the clerk of the district court, shall be delivered to the sheriff or proper officer as an execution. He or she* shall be authorized to execute the judgment of the court or take any legal measures required to bring the action to a conclusion.

(Ch 1245, 66 GA, ch 2, s 1426; 67 GA, ch 147, s 74)

Prior law: s 793.25, Code 1977

**Editorial note: The words "or she" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

814.27 TIME OF CONFINEMENT DEDUCTED.

A defendant, confined during the pendency of an unsuccessful review or appeal, or convicted at a new trial ordered by the appellate court, shall have the period of his or her former confinement deducted from the period of confinement fixed on the last verdict of conviction by the district court.

(Ch 1245, 66 GA, ch 2, s 1427; 67 GA, ch 147, s 75)

Prior law: s 793.26, Code 1977

CHAPTER 815
COSTS OF PROCEEDINGS AND COMPENSATION OF GRAND JURY
CLERKS, ATTORNEYS, WITNESSES AND OTHERS

Referred to in rule 19(4), 26(2), R Cr P

815.1	Costs Payable by State in Special Cases	815.4	Special Witnesses for Indigents
815.2	Grand Jury Clerks and Other Officers	815.5	Expert Witnesses for State and Defense
815.3	Witnesses Called to County Attorney In- vestigations	815.6	Fees to Material Wit- nesses
		815.7	Fees to Attorneys
		815.8	Sheriff's Fees

815.1 COSTS PAYABLE BY STATE IN SPECIAL CASES.

All costs and fees, including any award of attorney fees to a court-appointed attorney, incurred in any parole revocation proceedings or in any criminal case brought against an inmate of any state institution for a crime committed while confined in such institution, or for a crime committed by such inmate while placed outside the walls or confines of the institution under the control and direction of a warden, supervisor, officer, or employee thereof, or for a crime committed by such inmate during an escape or other unauthorized departure from such institution or from the control of a warden, supervisor, officer, or employee thereof, wherever the said inmate may have been placed by authorized personnel thereof, shall be paid out of the state treasury from the general fund in case the prosecution fails, or where such costs and fees, including an award of attorney fees to a court-appointed attorney, cannot be made from the person liable to pay the same, the facts being certified by the clerk of the district court under his or her seal of office to the state comptroller, including a statement of the amount of fees or costs incurred, such statement to be approved by the presiding judge in writing appended thereto or endorsed thereon.

(Ch 1245, 66 GA, ch 2, s 1501)

Prior law: s 789.20, Code 1977

815.2 GRAND JURY CLERKS AND OTHER OFFICERS.

The clerk of the grand jury and any assistant clerks and bailiffs of the grand jury appointed by the court, shall receive such compensation as may be set by the court with the approval of the county board of supervisors for time actually and necessarily employed in the performance of the duties prescribed in rule 3, rules of criminal procedure.

(Ch 1245, 66 GA, ch 2, s 1502)

Prior law: ss 770.19, 770.21, Code 1977

815.3 WITNESSES CALLED TO COUNTY ATTORNEY INVESTIGATIONS.

Witnesses subpoenaed by the county attorney pursuant to rule 5, rules of criminal procedure, shall receive the same fees and mileage as are allowed witnesses in the district court, and shall be paid in the same manner in which witnesses before the grand jury are paid except that such fees and mileage shall be certified only by the county attorney.

(Ch 1245, 66 GA, ch 2, s 1503)

815.4 SPECIAL WITNESSES FOR INDIGENTS.

Witnesses secured for indigent defendants under rule 19, rules of criminal procedure, must file a claim for compensation supported by an affidavit specifying the time expended,

services rendered, and expenses incurred on behalf of the defendant.

(Ch 1245, 66 GA, ch 2, s 1504)

Referred to in s 815.5, Supplement

815.5 EXPERT WITNESSES FOR STATE AND DEFENSE.

Notwithstanding the provisions of section 622.72, reasonable compensation as determined by the court shall be awarded expert witnesses, expert witnesses for indigents referred to in section 815.4, or called by the state in criminal cases.

(Ch 1245, 66 GA, ch 2, s 1505)

Cross reference: rule 19(4), R Cr P

815.6 FEES TO MATERIAL WITNESSES.

Persons confined as material witnesses shall, for each day of confinement, receive such fees as are set by the district court.

(Ch 1245, 66 GA, ch 2, s 1506)

815.7 FEES TO ATTORNEYS.

An attorney appointed by the court to represent any person charged with a crime in this state shall be entitled to a reasonable compensation which shall be the ordinary and customary charges for like services in the community to be decided in each case by the district judge, including such sum or sums as the court may determine are necessary for investigation in the interests of justice and in the event of appeal the cost of obtaining the transcript of the trial and the printing of the trial record and necessary briefs in behalf of the defendant. Such attorney need not follow the case into another county or into the appellate court unless so directed by the court at the request of the defendant, where grounds for further litigation are not capricious or unreasonable, but if such attorney does so his or her fee shall be determined accordingly. Only one attorney fee shall be so awarded in any one case except that in class A felony cases, two may be authorized.

(Ch 1245, 66 GA, ch 2, s 1507; 67 GA, ch 147, s 76)

Prior law: s 775.5, Code 1977

Referred to in s 336A.7, Supplement

815.8 SHERIFF'S FEES.

For delivering prisoners under the change of venue provisions of rule 10, rules of criminal procedure, or transferring prisoners under section 804.24, sheriffs are entitled to the same fees as are allowed for the conveyance of convicts to the penitentiary.

(Ch 1245, 66 GA, ch 2, s 1508)

Prior law: s 778.16, Code 1977

CHAPTER 816
DOUBLE JEOPARDY

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| 816.1 | Conviction or Acquittal--When A Bar | 816.3 | A Prosecution is Not Barred |
| 816.2 | Prosecutions Barred | 816.4 | Trial of Former Jeopardy Issue |

816.1 CONVICTION OR ACQUITTAL--WHEN A BAR.

A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment on which the conviction or acquittal took place.

(Ch 1245, 66 GA, ch 2, s 1601)
Prior law: s 777.20, Code 1977

816.2 PROSECUTIONS BARRED.

When a defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the same offense charged in the former or for any lower degree of that offense, or for an offense necessarily included therein.

(Ch 1245, 66 GA, ch 2, s 1602)
Prior law: s 777.21, Code 1977

816.3 A PROSECUTION IS NOT BARRED.

1. By a former prosecution before a court which lacked jurisdiction over the defendant or the offense.

2. By a former prosecution procured by the defendant without the knowledge of a prosecuting officer authorized to commence a prosecution for the maximum offense which might have been charged on the facts known to the defendant, and with the purpose of avoiding the sentence which otherwise might be imposed.

3. If subsequent proceedings resulted in the invalidation, setting aside, reversal or vacating of the conviction, unless the defendant was adjudged not guilty; but in no case where a conviction for a lesser included crime has been invalidated, set aside, reversed or vacated shall the defendant be subsequently prosecuted for a higher degree of the crime for which he or she was originally convicted.

(Ch 1245, 66 GA, ch 2, s 1603)

816.4 TRIAL OF FORMER JEOPARDY ISSUE.

When the defendant's only plea to the indictment is a former conviction or acquittal, the order of trial prescribed in rule 18, rules of criminal procedure, shall be reversed, and the defendant shall first offer evidence in support of the defense.

(Ch 1245, 66 GA, ch 2, s 1604; 67 GA, ch 147, s 77)
Prior law: s 780.14, Code 1977

CHAPTER 817
SPECIAL POWERS OF POLICE, GOVERNOR,
AND ATTORNEY GENERAL

817.1 Photographs--Measure-
ments--Bertillon System

817.2 Power of Governor and
Attorney General

817.1 PHOTOGRAPHS--MEASUREMENTS--BERTILLON SYSTEM.

It shall be lawful for the sheriff of any county or the chief of police in any city in this state, to take or procure the taking of the photograph of any person held to answer on a charge of any felony, such person being in the custody of such officer, or to make and record any measurements of such prisoner, by the Bertillon or other system, and to exchange such photographs, or measurements, or copies of the same, with other sheriffs and police officers, or to distribute the same by mail for the purpose of securing evidence for the identification of such person held to answer, if the identity and past record of the said person are unknown to him or her; and the cost of such photographs and measurements, and of distributing the same, may be allowed by the court as a part of the costs in the case.

(Ch 1245, 66 GA, ch 2, s 1701)

Prior law: s 782.8, Code 1977

817.2 POWER OF GOVERNOR AND ATTORNEY GENERAL.

The governor and attorney general shall each have the power to call to their aid in the enforcement of the law any peace officer; and when such officers are so called upon it shall be their duty faithfully to render such assistance as may be required, in any part of the state, and such peace officers while so acting shall have the same powers throughout the state as possessed by the sheriff of the county in which such peace officer is acting.

(Ch 1245, 66 GA, ch 2, s 1702)

Prior law: s 748.6, Code 1977

CHAPTER 818
INTERSTATE EXTRADITION COMPACT

818.1	Agreement with Other States	818.14	Bail
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818.3	Definitions	818.16	Expenses and Costs
818.4	Demand for Return	818.17	Administrator's Duties
818.5	Contents of Demand	818.18	Administrator of Interstate Extradition
818.6	Arrest of Fugitive	818.19	Effective Date--Withdrawal
818.7	Procedure After Arrest	818.20	Uniform Criminal Extradition Act Unaffected
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818.9	Warrant for Conveyance	818.22	Enforcement
818.10	Surrender of Fugitive	818.23	Copies of Compact Transmitted
818.11	Prosecution Pending	818.24	Short Title
818.12	Extradition During Imprisonment		
818.13	Review--Habeas Corpus Hearing		

818.1 AGREEMENT WITH OTHER STATES.

The interstate extradition compact is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE EXTRADITION COMPACT

The contracting states solemnly agree that:

(Ch 1245, 66 GA, ch 2, s 1801)

818.2 FINDINGS.

The states which are parties to this agreement find that existing extradition procedures are cumbersome, costly and frequently result in unnecessary delay in the extradition of fugitives. They find further that the provisions of the United States Constitution and United States Code relating to extradition are meant to facilitate the return of fugitives; do not prescribe the exclusive means for return of fugitives; and do not prevent the states from establishing other procedures for this purpose.

(Ch 1245, 66 GA, ch 2, s 1802)

818.3 DEFINITIONS.

As used in this compact, unless the context clearly requires otherwise:

1. "State" means any state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

2. "Demanding state" means the state in which a crime has been committed and where a charge has been filed against a fugitive whose return for trial is sought.

3. "Asylum state" means the state in which a person for whom the warrant was issued has been found or arrested and from which the person's return to the demanding state is sought.

4. "Fugitive" means any person who is charged with a crime in the demanding state, or any person who has been convicted of a crime in the demanding state and has escaped from confinement or has broken the terms of his or her bail, probation or parole, and is no longer within the demanding state, whether the person's leaving the demanding state was voluntary or involuntary. For purposes of this division the term "fugitive" further includes a person in the asylum state charged with committing a crime in the demanding state by the doing of an intentional act outside the demanding state which resulted in such crime, as set forth in section 818.15.

5. "Local prosecuting authority" means the chief prosecuting attorney or his or her designee, of the governmental unit of the demanding state which has jurisdiction over the crime committed by the fugitive. When the return to the demanding state is required of a person who has been convicted of a crime in the demanding state and the fugitive has escaped from confinement or broken the terms of his or her bail, probation or parole, the term "local prosecuting authority" includes the chief prosecuting attorney of the county in which the offense was committed, the parole board, and in the case of escapes from the warden of the institution or the sheriff of the county from which the escape was made, and in such cases these officials may make demand for return of the fugitive in accordance with the provisions of this compact.

6. "Chief law enforcement officer" means county sheriff, chief of police or other chief law enforcement officer in the local governmental unit wherein the fugitive is located, and when the fugitive is confined in a penitentiary or reformatory, it includes the warden or chief administrative officer of that institution.

(Ch 1245, 66 GA, ch 2, s 1803)

818.4 DEMAND FOR RETURN.

The local prosecuting authority of the demanding state shall have the authority to issue a demand for the return of a fugitive. The demand shall be made to a chief law enforcement officer of the local governmental unit in the asylum state where the accused has been found.

(Ch 1245, 66 GA, ch 2, s 1804)

818.5 CONTENTS OF DEMAND.

Demand for the extradition of a fugitive under this chapter shall be in writing or by other official communication setting forth the crime with which the fugitive is charged, or that the fugitive has escaped confinement or broken the terms of his or her* bail, probation, or parole. Said demand shall allege that a crime was committed in the demanding state and that the person sought is a fugitive within the meaning of this compact.

(Ch 1245, 66 GA, ch 2, s 1805)

Referred to in ss 818.13, 818.15, Supplement

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

818.6 ARREST OF FUGITIVE.

A chief law enforcement officer of the local governmental unit in the asylum state who receives the demand is authorized to cause the arrest of the fugitive in accordance with the laws of the asylum state.

(Ch 1245, 66 GA, ch 2, s 1806)

818.7 PROCEDURE AFTER ARREST.

When an arrest has been made the fugitive shall be taken for an appearance before a judge of court of record who shall inform the fugitive of the demand made for his or her surrender and of the crime with which he or she is charged, or other reason for the demand as set forth in section 818.15. Said judge shall apprise the fugitive of the fugitive's legal rights and shall advise said fugitive of the fugitive's right to apply for a writ of habeas corpus.

(Ch 1245, 66 GA, ch 2, s 1807)

818.8 CONFINEMENT OF FUGITIVE.

If, at the fugitive's appearance, it appears that the person held is the person charged with having committed the crime

alleged or has escaped confinement or broken the terms of his or her bail, probation, or parole and, except in cases arising under section 818.15, that the fugitive has fled from justice, the judge or magistrate before whom the fugitive is taken must, by warrant reciting the accusation, commit the fugitive to jail. Such commitment shall occur unless the accused give bail as provided in section 818.14 or is otherwise legally discharged. When the accused is confined pursuant to this section, said confinement shall be for the time specified in the warrant, but not exceeding fifteen days, as will enable the arrest of the fugitive to be made under a warrant issued by the authorities of the state having jurisdiction of the crime. If a writ of habeas corpus is applied for, the time established in this section shall be extended until such writ is disposed of.

(Ch 1245, 66 GA, ch 2, s 1808)

818.9 WARRANT FOR CONVEYANCE.

The local prosecuting authority of the demanding state shall cause a warrant to be issued to an agent, commanding the agent to receive the fugitive when delivered to the agent and convey the fugitive to the proper officer of the local jurisdiction in the demanding state.

(Ch 1245, 66 GA, ch 2, s 1809)

818.10 SURRENDER OF FUGITIVE.

Said designated agent of the demanding state may at all times enter the asylum state for the purpose of making demand for the surrender of the fugitive. Upon demand and proof of authority, the fugitive shall be released and surrendered to the agent's custody subject to the provisions of sections 818.11 and 818.12 unless a petition for habeas corpus has been applied for and is pending before the court. All requirements to obtain extradition other than provided in this compact are hereby waived on the part of the state party hereto as to such fugitive.

(Ch 1245, 66 GA, ch 2, s 1810)

818.11 PROSECUTION PENDING.

If a criminal prosecution has been instituted against the fugitive under the laws of the asylum state and is still pending, the prosecuting authority of the asylum state in its discretion may either surrender the fugitive on demand or hold the fugitive until he or she has been tried and discharged or convicted and punished in the asylum state.

(Ch 1245, 66 GA, ch 2, s 1811)

Referred to in s 818.10, Supplement

818.12 EXTRADITION DURING IMPRISONMENT.

When it is desired to have returned to the demanding state a person sentenced in the asylum state with a crime, and such person is imprisoned, the governor of the asylum state may agree with the governor of the demanding state for the extradition of such person before the conclusion of his or her term or sentence upon condition that such person be returned to the asylum state as soon as the prosecution in the demanding state is terminated.

(Ch 1245, 66 GA, ch 2, s 1812)

Referred to in s 818.10, Supplement

818.13 REVIEW--HABEAS CORPUS HEARING.

The guilt or innocence of the fugitive as to the crime of which he or she is charged is not reviewable by any official of the asylum state or in any proceeding in the asylum state after the demand for extradition. When a habeas corpus hearing is held pursuant to section 818.5, the judge shall cause to be

presented to the fugitive a certified copy of the indictment found or information from the state having jurisdiction of the crime, or a copy of any warrant which was issued thereupon; or a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the local prosecuting authority of the demanding state that the fugitive has escaped from confinement or has broken the terms of his or her bail, probation or parole. Notice of such habeas corpus hearing including the time and place thereof shall be given to the local prosecuting authority of the demanding state.

(Ch 1245, 66 GA, ch 2, s 1813)

818.14 BAIL.

Unless the crime with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the demanding state, a judge or magistrate in the asylum state may admit the person arrested to bail by bond with sufficient sureties, and in such sum as the judge or magistrate deems proper, conditioned for the prisoner's appearance before the judge or magistrate at a time specified in such bond, and for the prisoner's surrender. In the event of a violation of the conditions of said bond, forfeiture thereof and recovery thereon may be had as in the case of appearance bonds given by accused persons in criminal proceedings in the asylum state.

(Ch 1245, 66 GA, ch 2, s 1814)

Referred to in s 818.8, Supplement

818.15 INTERSTATE CRIMES.

A chief law enforcement officer of the local governmental unit in the asylum state may surrender, on demand of the local prosecuting authority of the demanding state, any person in the asylum state charged in the demanding state in the manner provided in section 818.5 with committing an act in the asylum state, or in a third state, intentionally resulting in a crime in the demanding state. The provisions of this compact not otherwise inconsistent shall apply to such cases, even though the accused was not in the demanding state at the time of the commission of the crime, and has not fled therefrom.

(Ch 1245, 66 GA, ch 2, s 1815)

Referred to in ss 818.3, 818.8, Supplement

818.16 EXPENSES AND COSTS.

The expenses incurred in extradition shall be assessed to the governmental unit of the demanding state seeking the return of the fugitive, but this provision shall not be construed to alter or affect any internal arrangements between a party state and its subdivisions as to the payment of costs or responsibilities therefor. These expenses shall include fees paid to the officers of the asylum state and all necessary and actual traveling expenses incurred in returning the prisoner.

(Ch 1245, 66 GA, ch 2, s 1816)

818.17 ADMINISTRATOR'S DUTIES.

Each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact, and who shall provide, within and without the state, information necessary to the effective operation of this compact.

(Ch 1245, 66 GA, ch 2, s 1817)

Referred to in s 818.18, Supplement

818.18 ADMINISTRATOR OF INTERSTATE EXTRADITION.

The governor of this state shall appoint an administrator of interstate extradition to serve in such capacity for a period

and under terms determined by the governor. Said administrator shall fulfill the duties set forth in section 818.17 and such other necessary duties as may be required for the administration of this compact.

(Ch 1245, 66 GA, ch 2, s 1818)

818.19 EFFECTIVE DATE--WITHDRAWAL.

This compact shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this compact may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated at the time such withdrawal takes effect.

(Ch 1245, 66 GA, ch 2, s 1819)

818.20 UNIFORM CRIMINAL EXTRADITION ACT UNAFFECTED.

This compact provides an alternate procedure to the uniform criminal extradition act, which remains in full force and effect; a state seeking return of a fugitive may proceed under this compact, or under the uniform criminal extradition act. Where another state seeks return of a fugitive under this compact, the governor of this state may intervene at any time prior to surrender of the fugitive and require the proceedings to be stayed subject to investigation and appropriate orders relating to custody of the fugitive by the governor.

(Ch 1245, 66 GA, ch 2, s 1820)

818.21 CONSTRUCTION--VALIDITY--CONSTITUTIONALITY.

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party hereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(Ch 1245, 66 GA, ch 2, s 1821)

818.22 ENFORCEMENT.

All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the interstate extradition compact and to cooperate with one another and with other party states in enforcing the compact and effectuating its purpose.

(Ch 1245, 66 GA, ch 2, s 1822)

818.23 COPIES OF COMPACT TRANSMITTED.

Copies of this chapter shall, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the Council of State Governments.

(Ch 1245, 66 GA, ch 2, s 1823)

818.24 SHORT TITLE.

This compact may be cited as the interstate extradition compact.

(Ch 1245, 66 GA, ch 2, s 1824)

CHAPTER 819
UNIFORM ACT TO SECURE WITNESSES
FROM WITHOUT THE STATE

Prior law: Ch 781, Code 1977
Referred to in rule 19(2), R Cr P

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|-------|--|-------|--|
| 819.1 | Witnesses Required to Testify in Another State | 819.3 | Fees and Enforcement of Order |
| 819.2 | Witnesses from Another State Required to Testify in This State | 819.4 | Exemptions--Arrest--Service of Process |
| | | 819.5 | Definition of State |

819.1 WITNESSES REQUIRED TO TESTIFY IN ANOTHER STATE.

A person residing or physically present within this state may be required to attend as a witness in a criminal action pending or grand jury investigation commenced in another state if compliance with the following criteria is accomplished:

1. The laws of such other state require or command persons residing or physically present within that state to attend and testify in this state.

2. A judge of a court of record in the other state certifies under the seal of such court that there is a criminal action pending in such court or that a grand jury investigation has commenced; that a person residing or physically present within this state is a material witness in such action or grand jury investigation; and that the person's presence will be required for a number of days which shall be specified in such certification.

3. The certification described in subsection 2 of this section shall have been presented to any judge of the district court of the county in which the prospective witness is found.

4. The judge described in subsection 3 of this section shall make an order directing the witness to appear at a specific time and place for the hearing. If at the hearing the judge determines that the witness is material and necessary, either for the prosecution or defense in a criminal action, or for a grand jury investigation, and that it will not cause undue hardship to the witness to be compelled to attend and testify in such proceedings and that the provisions of subsections 2 and 3 of this section are complied with, the judge shall make an order, with a copy of the certificate attached, directing the witness to attend and testify in the court where the action is pending or the place where such grand jury has commenced at the time and place specified in the certificate.

(Ch 1245, 66 GA, ch 2, s 1901; 67 GA, ch 147, s 78)

819.2 WITNESSES FROM ANOTHER STATE REQUIRED TO TESTIFY IN THIS STATE.

If a person, in any state whose law makes provision for commanding persons within that state to attend and testify in criminal actions pending or grand jury investigations commenced in this state, is a material witness in a district court action pending or a grand jury investigation commenced in this state, a judge of such court shall, in order to obtain the presence of such witness, issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required.

(Ch 1245, 66 GA, ch 2, s 1902)

Referred to in s 819.3, Supplement

819.3 FEES AND ENFORCEMENT OF ORDER.

A witness named in an order described in section 819.2 shall be entitled to ten cents per mile for each mile traveled by the most direct route to and from the proceedings the witness is required to attend, and shall also be entitled to ten dollars per day for each day spent in such travel or in attending the proceedings as a witness. Such amounts shall, upon proper claim being made, be paid from the court expense fund of the county.

If such witness fails without good cause to attend and testify as directed by such order the witness shall forfeit his or her right to receive mileage and per diem, and shall be guilty of contempt of court for which he or she may be punished accordingly.

(Ch 1245, 66 GA, ch 2, s 1903)

819.4 EXEMPTIONS--ARREST--SERVICE OF PROCESS.

If a person comes into this state in obedience to an order directing the person to attend and testify in this state, the person shall not while in this state pursuant to such order be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this state under the order.

If a person passes through this state while going to another state in obedience to an order to attend and testify in that state or while returning therefrom, the person shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this state pursuant to the order to testify.

(Ch 1245, 66 GA, ch 2, s 1904)

819.5 DEFINITION OF STATE.

The word "state" shall include any state or territory of the United States and the District of Columbia.

(Ch 1245, 66 GA, ch 2, s 1905)

CHAPTER 820
UNIFORM CRIMINAL EXTRADITION ACT

Referred to in s 602.62

820.1	Definitions	820.16	Bail--Exceptions
820.2	Arrest of Fugitives	820.17	Discharge or recommitment
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820.7	Warrant for Arrest	820.22	Receiving Person Extradited
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820.10	Testing Legality of Arrest	820.25	Waiver by Person Arrested
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820.13	Arrest on Affidavit	820.28	Construction of Chapter
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820.15	Holding to Await Requisition		

820.1 DEFINITIONS.

Where appearing in this chapter, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state, and the term "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.1)

820.2 ARREST OF FUGITIVES.

Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

(C51, s 3283; R60, s 4522; C73, s 4175; C97, s 5172; C24, 27, 31, 35, 39, s 13502; C46, s 759.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.2)

820.3 DEMAND IN WRITING.

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 820.6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof,

together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

(R60, s 4521; C73, s 4174; C97, s 5171; C24, 27, 31, 35, 39, s 13501; C46, s 759.5; C50, 54, 58, 62, 66, 71, 73 75, 77, s 759.3)

Referred to in s 820.6, Supplement

820.4 INVESTIGATION BY ATTORNEY GENERAL.

When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.4)

820.5 PERSONS IMPRISONED IN ANOTHER STATE.

When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 820.23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.5)

820.6 CRIMINAL ACTS COMMITTED IN THIRD STATE.

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 820.3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.6)

Referred to in ss 820.3, 820.13, 820.15, Supplement

Editorial note: The spelling of the word "fled" was editorially corrected.

820.7 WARRANT FOR ARREST.

If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the

execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

(C51, s 3283; R60, s 4522; C73, s 4175; C97, s 5172; C24, 27, 31, 35, 39, s 13502; C46, s 759.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.7)

Referred to in s 820.25, Supplement

820.8 AUTHORITY OF WARRANT.

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter to the duly authorized agent of the demanding state.

(C51, ss 3283, 3289; R60, ss 4522, 4528; C73, ss 4175, 4181; C97, ss 5172, 5178; C24, 27, 31, 35, 39, ss 13502, 13508; C46, ss 759.6, 759.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.8)

Referred to in s 820.25, Supplement

820.9 AUTHORITY OF PEACE OFFICER.

Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.9)

820.10 TESTING LEGALITY OF ARREST.

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.10)

Referred to in s 820.25, Supplement

820.11 PENALTY FOR WILLFUL DISOBEDIENCE.

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience to the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one hundred dollars or be imprisoned not more than thirty days.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.11)

820.12 CONFINEMENT IN JAIL.

The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of

him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

(C24, 27, 31, 35, 39, s 13512; C46, s 759.16; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.12)

820.13 ARREST ON AFFIDAVIT.

Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases under section 820.6, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 820.6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(C51, s 3284; R60, s 4523; C73, s 4176; C97, s 5173; C24, 27, 31, 35, 39, s 13503; C46, s 759.7; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.13)

820.14 ARREST WITHOUT WARRANT.

The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.14)

820.15 HOLDING TO AWAIT REQUISITION.

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 820.6, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.15)

820.16 BAIL--EXCEPTIONS.

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

(C51, ss 3285, 3286; R60, ss 4524, 4525; C73, ss 4177, 4178; C97, ss 5174, 5175; C24, 27, 31, 35, 39, ss 13504, 13505; C46, ss 759.8, 759.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.16)

Referred to in s 820.17, Supplement

820.17 DISCHARGE OR RECOMMITMENT.

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in section 820.16, but within a period not to exceed sixty days after the date of such new bond.

(C51, s 3288; R60, s 4527; C73, s 4180; C97, s 5177; C24, 27, 31, 35, 39, s 13507; C46, s 759.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.17)

820.18 FORFEITURE OF BOND.

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

(C51, s 3287; R60, s 4526; C73, s 4179; C97, s 5176; C24, 27, 31, 35, 39, s 13506; C46, s 759.10, C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.18)

820.19 CRIMINAL PROSECUTION PENDING.

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.19)

820.20 GUILT OR INNOCENCE OF PERSON HELD.

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.20)

820.21 WARRANT RECALLED.

The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.21)

820.22 RECEIVING PERSON EXTRADITED.

Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

(C51, s 3282; R60, s 4518; C73, s 4171; C97, s 5169; C24, 27, 31, 35, 39, s 13497; C46, s 759.1; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.22)

820.23 APPLICATION FOR EXTRADITION.

When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such

further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by indorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of the governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.23)

Referred to in s 820.5, Supplement

820.24 EXPENSES--HOW PAID.

When the punishment of the crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the comptroller; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and all necessary and actual traveling expenses incurred in returning the prisoner.

(C51, s 3282; R60, s 4518; C73, ss 4171, 4184; C97, ss 5169, 5181; C24, 27, 31, 35, 39, ss 13498, 13499, 13511; C46, ss 759.2, 759.3, 759.15; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.24)

820.25 WAIVER BY PERSON ARRESTED.

Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 820.7 and 820.8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 820.10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.25)

820.26 STATE'S RIGHTS NOT DEEMED WAIVED.

Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any

proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.26)

820.27 TRIAL FOR OTHER CRIMES.

After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.27)

820.28 CONSTRUCTION OF CHAPTER.

The provisions of this chapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.28)

820.29 TITLE.

This chapter may be cited as the "Uniform Criminal Extradition Act."

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 759.29)

Constitutionality, 53 GA, ch 244, s 29

Omnibus repeal, 53 GA, ch 244, s 31

CHAPTER 821
AGREEMENT ON DETAINERS COMPACT

821.1 Agreement With Other States	821.5 Escape in Another State
821.2 Court Defined	821.6 Transfer of Custody
821.3 Cooperation	821.7 Detainer Administrator
821.4 Habitual Criminals	821.8 Copies of Law Transmitted

821.1 AGREEMENT WITH OTHER STATES.

The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such co-operative procedures.

ARTICLE II

As used in this agreement:

a. "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

b. "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

c. "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

Referred to in Articles II, V, and VI

a. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the

sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

b. The written notice and request for final disposition referred to in paragraph "a" hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

c. The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

d. Any request for final disposition made by a prisoner pursuant to paragraph "a" hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

e. Any request for final disposition made by a prisoner pursuant to paragraph "a" hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph "d" hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

f. Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph "a" hereof shall void the request.

ARTICLE IV

Referred to in Articles II, V and VI

a. The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V "a" hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted

the request: and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

b. Upon receipt of the officer's written request as provided in paragraph "a" hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

c. In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

d. Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph "a" hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

e. If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V "e" hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

Referred to in Article IV(a, e)

a. In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

b. The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

c. If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that

an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

d. The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

e. At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

f. During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

g. For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

h. From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

a. In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

b. No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state,

information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the Constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(C66, 71, 73, 75, 77, s 759A.1)

821.2 COURT DEFINED.

The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction in the matter involved.

(C66, 71, 73, 75, 77, s 759A.2)

821.3 CO-OPERATION.

All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

(C66, 71, 73, 75, 77, s 759A.3)

821.4 HABITUAL CRIMINALS.

Nothing in this chapter or in the agreement on detainers shall be construed to require the application of chapter 747 to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of this agreement.

(C66, 71, 73, 75, 77, s 759A.4)

821.5 ESCAPE IN ANOTHER STATE.

Escape from custody while in another state, pursuant to this agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainers and shall be punishable in the same manner as an escape from said institution.

(C66, 71, 73, 75, 77, s 759A.5)

821.6 TRANSFER OF CUSTODY.

It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in

this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

(C66, 71, 73, 75, 77, s 759A.6)

821.7 DETAINER ADMINISTRATOR.

Pursuant to the agreement on detainers, the governor is hereby authorized to designate an officer or alternate who shall be the central administrator of and information agent for the agreement on detainers and who, acting jointly with like officers of other party states, shall have power to formulate rules and regulations to carry out more effectively the terms of the agreement, and shall serve subject to the pleasure of the governor.

(C66, 71, 73, 75, 77, s 759A.7)

821.8 COPIES OF LAW TRANSMITTED.

Copies of this chapter shall, upon its approval, be transmitted to the governor of each state, the attorney general, and the administrator of general services of the United States, and the council of state governments.

(C66, 71, 73, 75, 77, s 759A.8)

CHAPTER 901
JUDGMENT AND SENTENCING PROCEDURES

901.1	Short Title	901.5	Pronouncing Judgment and Sentence
901.2	Presentence Investigation	901.6	Judgment Entered
901.3	Presentence Investigation Report	901.7	Commitment to Custody
901.4	Presentence Investigation Report Confidential		

901.1 SHORT TITLE.

Chapters 901 through 909 shall be known and may be cited as the "Iowa Corrections Code."

(Ch 1245, 66 GA, ch 3, s 101)

901.2 PRESENTENCE INVESTIGATION.

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of any public offense may be rendered, the court shall receive from the state, from the judicial district department of correctional services, and from the defendant any information which may be offered which is relevant to the question of sentencing. The court may consider information from other sources. The court shall order a presentence investigation when the offense is a class B, class C, or class D felony. The court may order a presentence investigation when the offense is an aggravated or serious misdemeanor.

The court may withhold execution of any judgment or sentence for such time as shall be reasonably necessary for an investigation with respect to deferment of judgment or suspension of sentence and probation. The investigation shall be made by the judicial district department of correctional services.

(Ch 1245, 66 GA, ch 3, s 102; 67 GA, ch 147, s 82;

67 GA, ch 154, s 13)

Prior law: s 789A.3, Code 1977

901.3 PRESENTENCE INVESTIGATION REPORT.

Whenever a presentence investigation is ordered by the court, the investigator shall promptly inquire into: the defendant's characteristics, family and financial circumstances, needs, and potentialities; the defendant's criminal record and social history; the circumstances of the offense; the time the defendant has been in detention; and the harm to the victim, the victim's immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish to the investigator on request the defendant's criminal record and other relevant information. With the approval of the court, a physical examination of the defendant may be ordered, or the defendant may be committed to a psychiatric facility for an evaluation of his or her personality and mental health. The results of any such examination shall be included in the report of the investigator.

(Ch 1245, 66 GA, ch 3, s 103)

Prior law: s 789A.4, Code 1977

901.4 PRESENTENCE INVESTIGATION REPORT CONFIDENTIAL.

The court may, in its discretion, make the presentence investigation report or parts of it available to the defendant, or the court may make the report or parts of it available while concealing the identity of the person who provided confidential information. The report of any medical examination or psychiatric evaluation shall be made available to the attorney

for the state and to the defendant upon request. Such reports shall be part of the record but shall be sealed and opened only on order of the court. In any case where the defendant is committed to the custody of the division of adult corrections, a copy of the presentence investigation report shall be sent to the director at the time of commitment.

(Ch 1245, 66 GA, ch 3, s 104)

Prior law: s 789A.5, Code 1977

901.5 PRONOUNCING JUDGMENT AND SENTENCE.

After receiving and examining all pertinent information, including the presentence investigation report, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

At the time fixed by the court for pronouncement of judgment and sentence, the court shall act accordingly:

1. If authorized by section 907.3, the court may defer judgment and sentence for an indefinite period in accordance with chapter 907.

2. If the defendant is not an habitual offender as defined by section 902.8, the court may pronounce judgment and impose a fine.

3. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both, and suspend the execution of the sentence or any part of it as provided in chapter 907.

4. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both.

(Ch 1245, 66 GA, ch 3, s 105; 67 GA, ch 147, s 83)

Referred to in s 907.3, Supplement

901.6 JUDGMENT ENTERED.

If judgment is not deferred, and no sufficient cause is shown why judgment should not be pronounced and none appears to the court upon the record, judgment shall be pronounced and entered. In every case in which judgment is entered, the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced and a statement of the days credited pursuant to section 246.38 shall be incorporated into the sentence.

(Ch 1245, 66 GA, ch 3, s 106)

Prior law: ss 789.11, 791.8, Code 1977

901.7 COMMITMENT TO CUSTODY.

In imposing a sentence of confinement for more than one year, the court shall commit the defendant to the custody of the director of the division of adult corrections. Upon entry of judgment and sentence, the clerk of the district court immediately shall notify the director of such commitment. The court shall make such order as is appropriate for the temporary custody of the defendant pending the defendant's transfer to the custody of the director.

(Ch 1245, 66 GA, ch 3, s 107)

Referred to in s 908.6, Supplement

CHAPTER 902
FELONIES

902.1	Class A Felony	902.7	Minimum Sentence--Use of a Firearm
902.2	Record of Class A Felon Reviewed	902.8	Minimum Sentence--Habitual Offender
902.3	Indeterminate Sentence	902.9	Maximum Sentence for Felons
902.4	Reconsideration of Felon's Sentence	902.10	Application for Involuntary Hospitalization
902.5	Place of Confinement		
902.6	Release		

902.1 CLASS A FELONY.

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a class A felony may be rendered, the court shall enter a judgment of conviction and shall commit the defendant into the custody of the director of the division of adult corrections for the rest of his or her* life. Nothing in the Iowa corrections code pertaining to deferred judgment, suspended sentence or probation shall apply to a class A felony, and no person convicted of a class A felony shall be released on parole unless the governor commutes the sentence to a term of years.

(Ch 1245, 66 GA, ch 3, s 201)

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

902.2 RECORD OF CLASS A FELON REVIEWED.

The board shall interview a class A felon within five years of his or her confinement and regularly thereafter. If, in the opinion of the board, the person should be considered for release on parole, the board shall recommend to the governor that the person's sentence be commuted to a term of years. If the person's sentence is so commuted, the person shall be eligible for parole as provided in chapter 906.

(Ch 1245, 66 GA, ch 3, s 202)

Prior law: . s 247.5, Code 1977

902.3 INDETERMINATE SENTENCE.

When a judgment of conviction of a felony other than a class A felony is entered against any person, the court, in imposing a sentence of confinement, shall commit the person into the custody of the director of the division of adult corrections for an indeterminate term, the maximum length of which shall not exceed the limits as fixed by section 902.9 nor shall the term be less than the minimum term imposed by law, if a minimum sentence is provided.

(Ch 1245, 66 GA, ch 3, s 203)

Prior law: s 789.13, Code 1977

Referred to in s 217.14, Supplement

902.4 RECONSIDERATION OF FELON'S SENTENCE.

For a period of ninety days from the date when a person convicted of a felony, other than a class A felony or a felony for which a minimum sentence of confinement is imposed, begins to serve a sentence of confinement, the court, on its own motion or on the recommendation of the commissioner of social services, may order the person to be returned to the court, at which time the court may review its previous action and reaffirm it or substitute for it any sentence permitted by law. The court's final order in any such proceeding shall be delivered to the defendant personally or by certified mail. Such action is discretionary with the court, and its decision to take such action or not to take such action is not subject

to appeal. The provisions of this section notwithstanding, for the purposes of appeal, a judgment of conviction of a* felony is a final judgment when pronounced.

(Ch 1245, 66 GA, ch 3, s 204)

*Editorial note: The word "a" was editorially added.

902.5 PLACE OF CONFINEMENT.

The director of the division of adult corrections shall determine the appropriate place of confinement of any person committed to the director's custody, in any institution administered by the director, and may transfer the person from one institution to another during the person's period of confinement.

(Ch 1245, 66 GA, ch 3, s 205)

Prior law: s 789.16, Code 1977

902.6 RELEASE.

A person who has been committed to the custody of the director of the division of adult corrections shall remain in such custody until his or her release by the order of the board of parole, in accordance with the law governing paroles, or until the maximum term of the person's confinement, as fixed by law, has been completed.

(Ch 1245, 66 GA, ch 3, s 206)

Prior law: s 247.5, Code 1977

902.7 MINIMUM SENTENCE--USE OF A FIREARM.

At the trial of a person charged with participating in a forcible felony, if the trier of fact finds beyond a reasonable doubt that the person is guilty of a forcible felony and that the person represented that he or she was in the immediate possession and control of a firearm, displayed a firearm in a threatening manner, or was armed with a firearm while participating in the forcible felony the convicted person shall serve a minimum of five years of the sentence imposed by law. A person sentenced pursuant to this section shall not be eligible for parole until he or she has served the minimum sentence of confinement imposed by this section.

(Ch 1245, 66 GA, ch 3, s 207)

Cross reference to definition of forcible felony: s 702.11, Supplement

902.8 MINIMUM SENTENCE--HABITUAL OFFENDER.

An habitual offender is any person convicted of a class C or a class D felony, who has twice before been convicted of any felony in a court of this or any other state, or of the United States. An offense is a felony if, by the law under which the person is convicted, it is so classified at the time of his or her conviction. A person sentenced as an habitual offender shall not be eligible for parole until he or she has served the minimum sentence of confinement of three years.

(Ch 1245, 66 GA, ch 3, s 208)

Prior law: ss 747.1, 747.5, Code 1977

Referred to in s 901.5, Supplement

902.9 MAXIMUM SENTENCE FOR FELONS.

The maximum sentence for any person convicted of a felony shall be that prescribed by statute or, if not prescribed by statute, if other than a class A felony shall be determined as follows:

1. A class B felon shall be confined for no more than twenty-five years.

2. An habitual offender shall be confined for no more than fifteen years.

3. A class C felon, not an habitual offender, shall be confined for no more than ten years, and in addition may be sentenced to a fine of not more than five thousand dollars.

4. A class D felon, not an habitual offender, shall be confined for no more than five years, and in addition may be sentenced to a fine of not more than one thousand dollars.

(Ch 1245, 66 GA, ch 3, s 209)

*Cross reference to habitual offender: s 902.8, Supplement
Referred to in s 902.3, Supplement*

902.10 APPLICATION FOR INVOLUNTARY HOSPITALIZATION.

For the purposes of chapter 229, the director of the division of corrections shall be considered an interested person and all applicable provisions of chapter 229, relating to involuntary hospitalization, shall apply to any persons who have been committed to the custody of the division of corrections as a result of a conviction of a public offense.

(Ch 1245, 66 GA, ch 3, s 210)

CHAPTER 903
MISDEMEANORS

- | | | | |
|-------|--|-------|--|
| 903.1 | Maximum Sentence for Misdemeanants | 903.4 | Providing Place of Confinement |
| 903.2 | Reconsideration of Misdemeanant's Sentence | 903.5 | Local Facilities Preferred for Misdemeanants |
| 903.3 | Work Release | 903.6 | Segregation of Prisoners |

903.1 MAXIMUM SENTENCE FOR MISDEMEANANTS.

When a person is convicted of a misdemeanor and a specific penalty is not provided for, the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, if such be the sentence, within the following limits:

1. For an aggravated misdemeanor, imprisonment not to exceed two years, or a fine not to exceed five thousand dollars, or both.

2. For a serious misdemeanor, imprisonment not to exceed one year, or a fine not to exceed one thousand dollars, or both.

3. For a simple misdemeanor, imprisonment not to exceed thirty days, or a fine not to exceed one hundred dollars.

(Ch 1245, 66 GA, ch 3, s 301)

Prior law: s 687.7, Code 1977

903.2 RECONSIDERATION OF MISDEMEANANT'S SENTENCE.

For a period of thirty days from the date when a person convicted of a misdemeanor begins to serve a sentence of confinement, the court may order the person to be returned to the court, at which time the court may review its previous action and reaffirm it or substitute for it any sentence permitted by law. The court's final order in any such proceeding shall be delivered to the defendant personally or by certified mail. Such action is discretionary with the court and its decision to take such action or not to take such action is not subject to appeal. The provisions of this section notwithstanding, for the purposes of appeal a judgment of conviction is a final judgment when pronounced.

(Ch 1245, 66 GA, ch 3, s 302)

903.3 WORK RELEASE.

The court may direct that a prisoner sentenced to confinement for ninety days or less, or a prisoner who has served all but ninety days or less of his or her sentence, be released from custody during specified hours, as provided by sections 356.26 through 356.35.

(Ch 1245, 66 GA, ch 3, s 303; 67 GA, ch 147, s 84)

Prior law: ch 247A, Code 1977

903.4 PROVIDING PLACE OF CONFINEMENT.

All persons sentenced to confinement for a period of one year or less shall be confined in a place to be furnished by the county where the conviction was had. All persons sentenced to confinement for a period of more than one year shall be committed to the custody of the director of the division of adult corrections to be confined in a place to be designated by the director and the cost of such confinement shall be borne by the state. The director may contract with local governmental units for the use of detention or correctional facilities maintained by such units for the confinement of such persons.

(Ch 1245, 66 GA, ch 3, s 304)

903.5 LOCAL FACILITIES PREFERRED FOR MISDEMEANANTS.

In designating places of confinement of misdemeanants, the department shall make optimum use of local facilities offering correctional programs, where such are available. Where a choice of facilities is offered, a choice of the facility nearest the prisoner's home shall be preferred, if such choice is compatible with the rehabilitation of the prisoner.

(Ch 1245, 66 GA, ch 3, s 305)

903.6 SEGREGATION OF PRISONERS.

In any detention facility, persons who are serving a sentence of confinement shall be segregated from persons who are being detained for any other purpose, whenever such is possible.

(Ch 1245, 66 GA, ch 3, s 306)

CHAPTER 904
BOARD OF PAROLE

904.1 Board of Parole	904.4 Expenses of Members and Others
904.2 Appointment to Board of Parole	904.5 Administration of Board of Parole
904.3 Transition	

904.1 BOARD OF PAROLE.

The board of parole shall consist of five electors of the state. Not more than three members shall belong to the same political party. At least two members shall be practicing attorneys-at-law at the time of appointment. Each member shall serve for five years from July first of the year of appointment, except appointees to fill vacancies who shall serve for the balance of the unexpired term. The chairperson of the board shall be elected by the members of the board to a term of one year and may serve more than one term. A majority of the members of the board shall constitute a quorum to transact business.

(Ch 1245, 66 GA, ch 3, s 401)

Prior law: s 247.1, Code 1977

Referred to in s 904.3, Supplement

904.2 APPOINTMENT TO BOARD OF PAROLE.

The governor shall, during each regular session of the general assembly and within sixty days after the convening thereof, appoint, with the approval of two-thirds of the members of the senate, a successor to that member of the board whose term will expire on July first following. Appointments may be made when the general assembly is not in session, to fill vacancies, but such appointments shall be subject to the approval of two-thirds of the members of the senate when next in session. Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term.

(Ch 1245, 66 GA, ch 3, s 402)

Prior law: s 247.2, Code 1977

904.3 TRANSITION.

Persons serving on the board of parole on June 30, 1978 shall continue as members of the board of parole until they have served the term for which they were appointed with the conditions and salary of the initial appointment, and shall be deemed to fill a membership position as provided by section 904.1. Initial appointment to fill the additional membership positions created by section 904.1 shall serve as follows:

1. One member shall serve until June 30, 1980.
2. The other member shall serve until June 30, 1982.

(Ch 1245, 66 GA, ch 3, s 403; 67 GA, ch 155, s 1)

904.4 EXPENSES OF MEMBERS AND OTHERS.

Each member of the board, the executive secretary, and all other employees shall, in addition to salary, be entitled to receive their necessary maintenance and traveling expenses while engaged in official business.

(Ch 1245, 66 GA, ch 3, s 404)

Prior law: s 247.2, Code 1977

904.5 ADMINISTRATION OF BOARD OF PAROLE.

The board of parole shall be responsible directly to the governor. The board of parole shall appoint an executive secretary and employ a clerical staff sufficient to carry on the necessary duties of the board. The board shall employ not

less than four persons who shall serve as liaison personnel between the board, inmates and staff at the state's penal and correctional facilities and who shall perform other duties designated by the board of parole. The board shall submit to the state comptroller an estimate of the funds needed for salaries, maintenance, and office supplies at the time and in the manner provided by section 8.23.

(Ch 1245, 66 GA, ch 3, s 405)

Prior law: s 247.3, Code 1977

Referred to in s 908.4, Supplement

CHAPTER 905
(Reserved for Future Use)

CHAPTER 906
PAROLES

Referred to in s 902.2, Supplement

906.1	Definition of Parole	906.8	Subpoena Powers
906.2	Parole Officers and Probation Officers	906.9	Clothing, Transportation, and Money
906.3	Authority of Parole Board	906.10	Parole Relief Fund
906.4	Standards for Release on Parole	906.11	Assignment to Parole Officer
906.5	Record Reviewed--Eligibility of Prior Forcible Felon for Parole--Rules	906.12	Parole Outside State Authorized
906.6	Cooperation of Correction Personnel	906.13	Reciprocal Agreements with Other States
906.7	Information from Other Sources--Written Statements	906.14	Detainers
		906.15	Discharge from Parole
		906.16	Parole Time Counted

906.1 DEFINITION OF PAROLE.

Parole is the release of a person who has been committed to the custody of the commissioner of social services by reason of the person's commission of a public offense prior to the expiration of the person's term, subject to supervision by the department of social services and on conditions imposed by the department.

(Ch 1245, 66 GA, ch 3, s 601)

906.2 PAROLE OFFICERS AND PROBATION OFFICERS.

Parole officers and probation officers, while performing their duties as such, are peace officers and have all the powers and authority of peace officers. Parole officers and probation officers shall investigate all persons referred to them for investigation by the chief parole officer or by any court to which they may be assigned or by the director of a judicial district department of correctional services. They shall furnish to each person released under their supervision a written statement of conditions. They shall keep informed of each person's conduct and condition and shall use all suitable methods to aid and encourage the person to bring about improvement in his or her conduct or condition. Parole officers and probation officers shall keep records of their work, shall make reports as required by the court, and shall perform other such duties as may be assigned to them by the chief parole officer or the court or the director of a judicial district department of correctional services. They shall coordinate their work with that of other social welfare agencies which offer services of a corrective nature operating in the area to which they are assigned.

(Ch 1245, 66 GA, ch 3, s 502; 67 GA, ch 154, s 15)

Prior law: ss 247.13, 247.22, 247.24, 274.25, Code 1977

Referred to in s 801.4(7)d, Supplement

906.3 AUTHORITY OF PAROLE BOARD.

The board of parole shall promulgate regulations regarding a system of paroles from correctional institutions, and shall direct, control, and supervise the administration of such system of paroles. The board shall determine which of those persons who have been committed to the custody of the director

of the division of adult corrections, by reason of their conviction of a public offense, shall be released on parole.

(Ch 1245, 66 GA, ch 3, s 602)

Prior law: ss 247.5, 247.6, Code 1977

906.4 STANDARDS FOR RELEASE ON PAROLE.

A parole shall be ordered only for the best interest of society, not as an award of clemency. The board shall release on parole any person whom it has the power to so release, when in its opinion there is reasonable probability that such person can be released without detriment to the community or to himself or herself. A person's release is not a detriment to the community or the person when he or she is able and willing to fulfill the obligations of a law-abiding citizen, as the board shall determine.

(Ch 1245, 66 GA, ch 3, s 603)

906.5 RECORD REVIEWED--ELIGIBILITY OF PRIOR FORCIBLE FELON FOR PAROLE--RULES.

Within one year after the commitment of any person other than a class A felon to the custody of the director of the division of adult corrections, a member of the board shall interview the person. Thereafter, at regular intervals, not to exceed one year, the board shall interview the person and consider his or her prospects for parole. At such time, the board shall consider all pertinent information regarding this person, including the circumstances of the person's offense, any presentence report which may be available, the previous social history and criminal record of such person, the person's conduct, employment and attitude in prison, and the reports of such physical and mental examinations as have been made.

If the person who is under consideration for parole is serving a sentence for conviction of a felony and has a criminal record of one or more prior convictions for a forcible felony or a crime of a similar gravity in this or any other state, parole shall be denied unless the defendant has served at least one-half of the maximum term of his or her sentence.*

Every person while on parole shall be under the supervision of the department of social services, which shall prescribe regulations for governing persons on parole. The board may adopt other rules not inconsistent with the above as it may deem proper or necessary for the performance of its functions.*

(Ch 1245, 66 GA, ch 3, s 604; 67 GA, ch 147, s 85)

Prior law: ss 247.6, 247.9, Code 1977

Cross reference to definition of forcible felony: s 702.11, Supplement

**Editorial note: These parts of section 906.5 were editorially divided into separate paragraphs.*

906.6 COOPERATION OF CORRECTION PERSONNEL.

It shall be the duty of all persons employed in any correctional institution to grant to the members of the board of parole, or its properly accredited representatives, access at all reasonable times to any person over whom the board has jurisdiction, to provide for the board or such representatives facilities for communicating with and observing such person, and to furnish to the board such reports as the board shall require concerning the conduct and character of any person in their custody and any other facts deemed by the board pertinent in determining whether the person shall be released on parole.

(Ch 1245, 66 GA, ch 3, s 605)

Prior law: s 247.13, Code 1977

906.7 INFORMATION FROM OTHER SOURCES--WRITTEN STATEMENTS.

The board shall not be required to hear oral statements or arguments either by attorneys or other persons. All persons presenting information or arguments to the board shall put their statements in writing, and shall submit therewith an affidavit stating whether any fee has been paid or is to be paid for their services in the case, and by whom such fee is paid or to be paid.

(Ch 1245, 66 GA, ch 3, s 606)

906.8 SUBPOENA POWERS.

The board shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas so issued may be served by any peace officer, in the same manner as similar processes in the district court. Any person who testifies falsely or fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before a court is subject. Any district court in this state, upon application of the board, may compel the attendance of witnesses, the production of such material, and the giving of testimony before the board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such district court.

(Ch 1245, 66 GA, ch 3, s 607)

906.9 CLOTHING, TRANSPORTATION, AND MONEY.

When an inmate is discharged, paroled, or placed on work release, the warden or superintendent shall furnish the inmate, at state expense, appropriate clothing and transportation to the place in this state indicated in the inmate's discharge, parole, or work release plan. When an inmate is discharged, paroled, or placed on work release, the warden or superintendent shall provide the inmate, at state expense, money in accordance with the following schedule:

1. Upon discharge or parole, one hundred dollars.
2. Upon being placed on work release, fifty dollars.
3. Upon going from an educational work release to parole or discharge, fifty dollars.

Those inmates receiving payment under subsections 2 or 3 of this section shall not be eligible for payment under subsection 1 of this section unless they are returned to the institution. The warden or superintendent shall maintain an account of all funds expended pursuant to this section.

(Ch 1245, 66 GA, ch 3, s 608; 67 GA, ch 147, s 86)

Prior law: ss 245.14, 246.44, Code 1977

906.10 PAROLE RELIEF FUND.

There is hereby established, from any unappropriated funds in the state treasury, a fund of twelve hundred fifty dollars which shall be known as the parole relief fund. The treasurer of the state shall continue to maintain said fund in said amount. Said fund may be used for the relief of paroled prisoners who are in distress because of illness, loss of employment, or conditions creating personal need. In no instance shall the total amount advanced* to a prisoner exceed one hundred dollars. The prisoner, at the time of receiving an advancement, shall execute and deliver to his or her parole officer his or her written obligation to repay the same during the period of the prisoner's parole. When so paid, the amount shall be deposited with the treasurer of the state and credited to the fund from which drawn. Such fund shall be drawn on

vouchers executed by the director of the bureau of adult corrections in favor of said needy person. Each voucher shall show that the advancement was ordered by the chief parole officer.

(Ch 1245, 66 GA, ch 3, s 503)

Prior law: ss 247.17-247.19, Code 1977

**Editorial note: The spelling of this word was editorially corrected.*

906.11 ASSIGNMENT TO PAROLE OFFICER.

A person released on parole shall be assigned to a parole officer by the chief parole officer. Both the person and his or her parole officer shall be furnished with the conditions of his or her parole and the regulations which the person will be required to observe, in writing. The parole officer shall explain these conditions and regulations to the person, and supervise, assist, and counsel the person during the term of his or her parole.

(Ch 1245, 66 GA, ch 3, s 609)

906.12 PAROLE OUTSIDE STATE AUTHORIZED.

The parole may be to a place outside the state when the board of parole shall determine it to be to the best interest of the state and the prisoner, under such rules and regulations as the board of parole may impose.

(Ch 1245, 66 GA, ch 3, s 610)

Prior law: s 247.5, Code 1977

906.13 RECIPROCAL AGREEMENTS WITH OTHER STATES.

The governor of the state of Iowa is hereby authorized and empowered to enter into compacts and agreements with other states, through their duly constituted authorities, in reference to reciprocal supervision of persons on parole or probation and for the reciprocal return of such persons to the contracting states for violation of the terms of their parole or probation.

(Ch 1245, 66 GA, ch 3, s 611)

Prior law: s 247.10, Code 1977

906.14 DETAINERS.

Prisoners against whom detainers have been filed, may, after serving a portion of their sentence, be released by parole to the institution or authorities filing the detainer.

Any detainer filed against a prisoner must within six months be supported by a grand jury indictment or county attorney's information. In the event such indictment is returned or information is filed, the prisoner shall have the right to demand immediate trial at the next term of court where the charge is filed. The prosecuting agency shall pay all costs of transportation, necessary expenses incurred by the prisoner and such guards and other safety measures as the warden shall deem necessary for the prisoner to appear at his or her trial.

In the event a detainer is not supported within six months by a county attorney's information or grand jury indictment, or in the event the prosecuting agency refuses or fails to give the prisoner immediate trial, or refuses or fails to furnish transportation and pay all other necessary and related costs incident to the prisoner appearing at his or her trial, the detainer shall be held to be invalid and the parole board shall disregard such detainer in considering a prisoner for parole.

(Ch 1245, 66 GA, ch 3, s 612)

Prior law: s 247.5, Code 1977

Cross reference to ch 821, Supplement

906.15 DISCHARGE FROM PAROLE.

Unless sooner discharged, a person released on parole shall be discharged when his or her term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement. Discharge from parole may be granted prior to such time, when an early discharge is appropriate. The board shall periodically review all paroles, and when it shall determine that any person on parole is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, it shall discharge the person from parole. In either event, discharge from parole shall terminate the person's sentence.

(Ch 1245, 66 GA, ch 3, s 613)

Prior law: s 247.5, Code 1977

906.16 PAROLE TIME COUNTED.

The time when a prisoner is on parole from the institution shall be held to apply upon the sentence against the parolee even if the parole is subsequently revoked, except that the time when the parolee is in violation of the terms of the parole agreement shall not apply upon the sentence.

The time when a prisoner is absent from the institution by reason of an escape shall not apply upon the sentence against the prisoner.

(Ch 1245, 66 GA, ch 3, s 614; 67 GA, ch 147, s 87)

Prior law: s 247.12, Code 1977

CHAPTER 907
DEFERRED JUDGMENT, DEFERRED SENTENCE, SUSPENDED
SENTENCE, AND PROBATION

Referred to in s 901.5, Supplement

907.1	Definition of Probation	907.7	Length of Probation
907.2	Probation Service	907.8	Supervision During Probationary Period
907.3	Deferred Judgment, Deferred Sentence, or Suspended Sentence	907.9	Discharge from Probation
907.4	Deferred Judgment Docket	907.10	Release on Probation After Completing Program
907.5	Standards for Release on Probation--Written Reasons	907.11	Maximum Period of Confinement
907.6	Conditions of Probation :	907.12	Restitution

907.1 DEFINITION OF PROBATION.

Probation is the procedure under which a defendant, against whom a judgment of conviction of a public offense may be entered, is released by the court subject to supervision by a resident of this state or by the judicial district department of correctional services.

(Ch 1245, 66 GA, ch 3, s 701; 67 GA, ch 154, s 16)

907.2 PROBATION SERVICE.

Pursuant to designation by the court, probation services shall be provided by the judicial district department of correctional services. Probation officers shall perform the duties assigned to them by law and by the director of the judicial district department of correctional services.

(Ch 1245, 66 GA, ch 3, s 501; 67 GA, ch 154, s 14)

Cross reference to probation officers: s 906.2, Supplement

907.3 DEFERRED JUDGMENT, DEFERRED SENTENCE, OR SUSPENDED SENTENCE.

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise either of the options contained in subsections 1 and 2 of this section. However, this section shall not apply to a forcible felony or a violation of section 204.401, subsection 1 or 2, to which section 204.409, subsection 2 is not applicable and which is not proved to be an accommodation offense under section 204.410.

1. With the consent of the defendant, the court may defer judgment and place the defendant on probation upon such conditions as it may require, or defer sentence and assign the defendant to the judicial district department of correctional services. Upon a showing that such person is not cooperating with the program or is not responding to it, the court may withdraw the person from the program and impose any sentence authorized by law. Before taking such action, the court shall give the person an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

However, this subsection shall not apply if any of the following is true:

a. The offense is a violation of section 709.8 and the child is twelve years of age or under.

b. The defendant previously has been convicted of a felony. "Felony" means a conviction in a court of this or any

other state or of the United States, of an offense classified as a felony by the law under which he or she was convicted at the time of the defendant's conviction.

c. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.

d. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.

2. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility for a specific number of days to be followed by a term of probation as specified in section 907.7. A person so committed who has probation revoked shall be given credit for such time served.

(Ch 1245, 66 GA, ch 3, s 702; 67 GA, ch 147, s 88; 67 GA, ch 154, s 17)

Prior law: s 789A.1, Code 1977

Cross reference to definition of forcible felony: s 702.11, Supplement

Referred to in ss 321.218, 901.5, 907.4, 907.9, 907.10, 907.12, Supplement

907.4 DEFERRED JUDGMENT DOCKET.

Any deferment of judgment under section 907.3 shall be reported promptly to the supreme court administrator who shall maintain a permanent record thereof including the name of the defendant, the district court docket number, the nature of the offense, and the date of the deferment. Before granting deferment in any case, the court shall request of the supreme court administrator a search of the deferred judgment docket and shall consider any prior record of a deferment of judgment against the defendant. The permanent record provided for in this section shall constitute a confidential record exempted from public access under section 68A.7 and shall be available only to justices of the supreme court, judges of the court of appeals, district judges, district associate judges, and judicial magistrates requesting information pursuant to this section.

(Ch 1245, 66 GA, ch 3, s 703; 67 GA, ch 147, s 89)

Prior law: s 789A.1(1), Code 1977

Referred to in s 907.9, Supplement

907.5 STANDARDS FOR RELEASE ON PROBATION--WRITTEN REASONS.

Before deferring judgment or suspending sentence, the court first shall determine which option, if available, will provide maximum opportunity for the rehabilitation of the defendant and protection of the community from further offenses by the defendant and others. In making this determination the court shall consider the age of the defendant; the defendant's prior record of convictions and prior record of deferments of judgment if any; the defendant's employment circumstances; the defendant's family circumstances; the nature of the offense committed; and such other factors as are appropriate. The court shall file a specific written statement of its reasons for and the facts supporting its decision to defer judgment or to suspend sentence, and its decision on the length of probation.

(Ch 1245, 66 GA, ch 3, s 704)

Prior law: s 789A.1(2), Code 1977

907.6 CONDITIONS OF PROBATION.

The court, in ordering probation, may impose any reasonable rules and conditions which will promote rehabilitation of the defendant and protection of the community, including adherence to regulations generally applicable to persons released on parole.

(Ch 1245, 66 GA, ch 3, s 705)

Referred to in s 907.12, Supplement

907.7 LENGTH OF PROBATION.

The length of the probation shall be for such term as the court may fix but not to exceed five years if the offense is a felony or not to exceed two years if the offense is a misdemeanor.

The length of the probation shall not be less than one year and shall not be less than two years if the offense is a felony. However, the court may subsequently reduce the length of the probation if the court determines that the purposes of probation have been fulfilled. The purposes of probation are to provide maximum opportunity for the rehabilitation of the defendant and to protect the community from further offenses by the defendant and others.

In determining the length of the probation, the court shall determine what period is most likely to provide maximum opportunity for the rehabilitation of the defendant, to allow enough time to determine whether or not rehabilitation has been successful, and to protect the community from further offenses by the defendant and others.

(Ch 1245, 66 GA, ch 3, s 706; 67 GA, ch 154, s 18)

Prior law: s 789A.2, Code 1977

Referred to in s 907.3, Supplement

907.8 SUPERVISION DURING PROBATIONARY PERIOD.

A person released on probation shall be assigned to a probation officer. Both the person and his or her probation officer shall be furnished with the conditions of the person's probation and the regulations which the person will be required to observe, in writing. The probation officer shall explain these conditions and regulations to the person and shall supervise, assist, and counsel the person during the term of his or her probation.

When probation is granted, the court shall order said person committed to the custody, care, and supervision:

1. Of any suitable resident of this state; or

2. Of the judicial district department of correctional services.

Jurisdiction of these persons shall remain with the sentencing court.

In each case wherein the court shall order said person committed to the custody, care, and supervision of the judicial district department of correctional services, the clerk of the district court shall at once furnish the director of the judicial district department of correctional services with certified copies of the indictment or information, the minutes of testimony attached thereto, the judgment entry if judgment is not deferred, and the original mittimus. The county attorney shall at once advise the director, by letter, that the defendant has been placed under the supervision of the judicial district department of correctional services and give him or her a detailed statement of the facts and circumstances surrounding the crime committed and the record and history of the defendant as may be known to the county attorney. If the defendant is confined in the county jail at the time of sentence, the court may order the defendant held until arrangements are made by the judicial district department of

correctional services for the defendant's employment and he or she has signed the necessary probation papers. If the defendant is not confined in the county jail at the time of sentence, the court may order the defendant to remain in the county wherein the defendant has been convicted and sentenced and report to the sheriff as to his or her whereabouts.

(Ch 1245, 66 GA, ch 3, s 707; 67 GA, ch 147, s 90; 67 GA, ch 154, s 19)

Prior law: s 789A.7, Code 1977

907.9 DISCHARGE FROM PROBATION.

At any time that the court determines that the purposes of probation have been fulfilled, the court may order the discharge of any person from probation. At the expiration of the period of probation, in cases where the court fixes the term of probation, the court shall order the discharge of such person from probation, and the court shall forward to the governor a recommendation for or against restoration of citizenship rights to such person. A person who has been discharged from probation shall no longer be held to answer for his or her offense. Upon discharge from probation, if judgment has been deferred under section 907.3, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the supreme court administrator as required by section 907.4 shall not be expunged. The court's record shall not be expunged in any other circumstances.

(Ch 1245, 66 GA, ch 3, s 708; 67 GA, ch 147, s 91)

Prior law: s 789A.6, Code 1977

907.10 RELEASE ON PROBATION AFTER COMPLETING PROGRAM.

When the court has determined that any person ordered to participate in a locally administered correctional program, pursuant to section 907.3, subsection 1, has successfully completed such program, the court shall order such person to be released on probation.

(Ch 1245, 66 GA, ch 3, s 710; 67 GA, ch 154, s 20)

907.11 MAXIMUM PERIOD OF CONFINEMENT.

In no case shall the total time served in confinement and in any locally administered correctional program exceed the maximum period of confinement authorized for the public offense of which the defendant stands convicted.

(Ch 1245, 66 GA, ch 3, s 711)

907.12 RESTITUTION.

1. As used in this section, unless the context otherwise requires:

a. "Victim" means any person who has suffered pecuniary damages as a result of the defendant's criminal activities. However, with respect to any part of a victim's pecuniary damages paid by an insurer, the insurer shall be regarded as the victim only if the insurer has no right of subrogation and the insured has no duty to pay the proceeds of restitution to the insurer.

b. "Pecuniary damages" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, "pecuniary damages" includes damages for wrongful death.

c. "Criminal activities" includes any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction may be rendered and any other crime committed after July 1, 1972 which is admitted

or not contested by the defendant, whether or not prosecuted. However, "criminal activities" does not include misdemeanors under chapter 321.

d. "Restitution" means full or partial payment of pecuniary damages to a victim.

2. It is the policy of this state that restitution be made by each violator of the criminal laws to the victims of his or her criminal activities to the extent that the violator is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy.

3. If the trial court exercises either of the sentencing options under section 907.3, the court shall require as a condition of probation that the defendant, in cooperation with the probation officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is presently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his or her* probation period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that he or she will not be able to make any restitution, the defendant shall so state and shall specify the reasons. If the defendant believes that no person suffered pecuniary damages as a result of the defendant's criminal activities, he or she shall so state.

4. The defendant's plan of restitution and the comments of the defendant's probation officer shall be submitted promptly to the court. The court shall promptly enter an order approving the plan or modifying it and providing for restitution payments to the extent that the defendant is or may become reasonably able to make restitution, taking into account the factors enumerated in subsection 5 of this section. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation. Restitution payments shall be made to the clerk unless otherwise directed by the court. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion. If the plan as approved or modified does not require full payment of pecuniary damages to all victims, or if the court determines that the defendant is not able and will not be able to make any restitution at any time during the defendant's probation period or that no person suffered pecuniary damages as a result of the defendant's criminal activities, the court shall file a specific written statement of its reasons for and the facts supporting its action or determination.

5. The probation officer when assisting the defendant in preparing the plan of restitution, and the court before approving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant, the defendant's age, the defendant's education, the defendant's employment circumstances, the defendant's potential for employment and vocational training, the defendant's family circumstances, the defendant's financial condition, the number of victims, the pecuniary damages of each victim, what plan of restitution will most effectively aid the rehabilitation of the defendant, and such other factors as shall be appropriate. The probation officer shall attempt to determine the name and address of each victim and the amount of his or her pecuniary damages.

6. The clerk shall mail to each known victim a copy of the court's order approving or modifying the plan of restitution,

including the court's statement, if any, under subsection 4 of this section.

7. At any time during the probation period the defendant may request and the court shall grant a hearing on any matter related to the plan of restitution.

8. Failure of the defendant to comply with subsection 3 of this section or to comply with the plan of restitution as approved or modified by the court shall constitute a violation of the conditions of probation. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation period specified in section 907.6.

9. This section and proceedings under this section shall not limit or impair the rights of victims to sue and recover damages from the defendant in a civil action. However, any restitution payment by the defendant to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event. The fact that restitution was required or made shall not be admissible as evidence in a civil action unless offered by such defendant.

(Ch 1245, 66 GA, ch 3, s 712)

Prior law: s 789A.8, Code 1977

**Editorial Note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

CHAPTER 908
VIOLATIONS OF PAROLE OR PROBATION

Referred to in s 907.3, Supplement

908.1	Arrest of Alleged Parole Violator	908.7	Action by Parole Board
908.2	Initial Appearance	908.8	Proceeding Without Arrest or Probable Cause
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908.6	Disposition by Liaison Officer		

908.1 ARREST OF ALLEGED PAROLE VIOLATOR.

A parole officer having probable cause to believe that any person released on parole has violated the conditions of his or her parole may arrest such person, or the parole officer may make a complaint before a magistrate, charging such violation, and if it appears from such complaint, or from affidavits filed with it, that there is probable cause to believe that such person has violated the terms of his or her parole, the magistrate shall issue a warrant for the arrest of such person.

(Ch 1245, 66 GA, ch 3, s 801)

908.2 INITIAL APPEARANCE.

An officer making an arrest of an alleged parole violator shall take the arrested person before a magistrate without unnecessary delay for an initial appearance. At that time the alleged parole violator shall be furnished with a written notice of the claimed violation, shall be advised of his or her right to appointed counsel under rule 26 of the rules of criminal procedure, and shall be given notice that a hearing will take place and that its purpose is to determine whether there is probable cause to believe that he or she has committed a parole violation.

The magistrate may order the alleged parole violator confined in the county jail or may order the alleged parole violator released on bail under such terms and conditions as the magistrate may require. Admittance to bail is discretionary with the magistrate and is not a matter of right.

(Ch 1245, 66 GA, ch 3, s 802)

Referred to in s 908.6, Supplement

908.3 PLACE OF PROBABLE CAUSE HEARING.

The probable cause hearing shall be held in the same county as the alleged parole violator had his or her initial appearance.

(Ch 1245, 66 GA, ch 3, s 803; 67 GA, ch 157, s 1)

908.4 PROBABLE CAUSE HEARING.

At the probable cause hearing, a liaison officer appointed pursuant to section 904.5 and who is an attorney shall determine whether there is probable cause to believe that the alleged parole violator has violated parole. The alleged parole violator shall be informed of the inculpatory evidence. The alleged parole violator shall be given an opportunity to be heard in person and to present witnesses and other evidence. The alleged parole violator shall have the right to confront and cross-examine adverse witnesses, except where the liaison

officer finds that a witness would be subjected to risk or harm if the witness' identity were disclosed.

(Ch 1245, 66 GA, ch 3, s 804; 67 GA, ch 157, s 2)

908.5 WAIVER OF PROBABLE CAUSE HEARING.

The alleged parole violator may waive the probable cause hearing, in which event the liaison officer shall proceed as upon a finding of probable cause. Before accepting a waiver of hearing, the liaison officer shall inform the alleged violator of the charge, of the alleged violator's right to a hearing to determine whether there is probable cause to believe that parole has been violated, and that if the hearing is waived, the alleged violator will be committed to the custody of the department of social services without further proceedings, to await the determination of the parole board. The liaison officer shall make a verbatim record of the proceedings in which the hearing is waived.

(Ch 1245, 66 GA, ch 3, s 805; 67 GA, ch 157, s 3; 67 GA, ch 147, s 92)

908.6 DISPOSITION BY LIAISON OFFICER.

If it appears from the evidence that there is no probable cause to believe that the arrested person has violated the conditions of parole, the liaison officer shall order the arrested person to be released from custody and continued on parole. If it appears that there is probable cause to believe that the arrested person has violated the conditions of parole, the liaison officer shall commit the arrested person to the custody of the department of social services, and the procedure prescribed in section 901.7 shall apply to such commitment; or the liaison officer may recommend that the arrested person be admitted to bail as provided in section 908.2. The liaison officer shall make a summary of the testimony and other evidence considered and a statement of the facts relied on as a basis for the finding of probable cause or no probable cause, and shall without delay forward them together with all documents relating to the matter to the executive secretary of the parole board. If the alleged parole violator has waived the probable cause hearing, the verbatim record of that proceeding shall be forwarded in lieu of the summary of evidence and statement of facts.

(Ch 1245, 66 GA, ch 3, s 806; 67 GA, ch 157, s 4; 67 GA, ch 147, s 93)

908.7 ACTION BY PAROLE BOARD.

Upon a finding of probable cause to believe that a parole violation has occurred, the board of parole shall proceed without unreasonable delay to hear the charge of parole violation. Upon receipt of the record prepared and forwarded by the liaison officer, the board shall fix a time and place for such hearing and shall notify in writing the alleged violator, the alleged violator's attorney of record, if any, and the department of social services of such hearing and the claimed violation of parole. The alleged violator shall be given an opportunity to be heard by the board under such rules as the board shall adopt. The inquiry shall be limited to the following two matters: 1. Did the alleged parole violation actually occur? 2. If the violation did occur, should the violator's parole be revoked? If the board determines that the parole should be revoked, it shall make an order revoking the parole. The board shall furnish the violator with a written statement of the facts relied upon to establish a violation and the reasons for revoking parole.

(Ch 1245, 66 GA, ch 3, s 807; 67 GA, ch 157, s 5)
Prior law: s 247.28, Code 1977

908.8 PROCEEDING WITHOUT ARREST OR PROBABLE CAUSE.

The board of parole may receive from a parole officer a charge or complaint of parole violation against any parolee and may proceed to a hearing on such charge in any case where the alleged violator has not been arrested or has been arrested and discharged by the liaison officer on a finding of no probable cause. The presence of the alleged violator at such hearing shall be secured by summons. A statement of the charge against the alleged violator shall accompany the summons, and the parole officer shall give the alleged violator such assistance as is needed to get to the place of the hearing. Travel expenses, if any, shall be paid by the board. If the alleged violator fails without good cause to appear as commanded by the summons, such failure shall be considered a violation of the parole, and the board may proceed to revoke parole. If the parole is revoked, the board shall issue a warrant for the person's arrest and return to the custody of the department of social services. Upon his or her return to custody, the board shall, upon request, give the person an opportunity to present any matters in defense or mitigation of the conduct.

(Ch 1245, 66 GA, ch 3, s 808; 67 GA, ch 157, s 6; 67 GA, ch 147, s 94)

908.9 DISPOSITION OF VIOLATOR.

If the parole of any parole violator is revoked, the violator shall remain in the custody of the department of social services under the terms of the parolee's original commitment. If the parole of any parole violator is not revoked, the board shall order his or her release subject to the terms of his or her parole with any modifications that the board shall determine proper.

(Ch 1245, 66 GA, ch 3, s 809)

908.10 CONVICTION OF OTHER OFFENSE AS VIOLATION.

When the alleged violation consists of a conviction of a public offense in this or any other state, such conviction shall be proved by a certified copy of the judgment of conviction, together with evidence that the alleged violator is the person against whom the judgment was rendered. Neither the liaison officer, court, nor board of parole shall re-try the facts underlying such conviction.

(Ch 1245, 66 GA, ch 3, s 811; 67 GA, ch 157, s 8)

908.11 VIOLATION OF PROBATION.

A probation officer or the judicial district department of correctional services having probable cause to believe that any person released on probation has violated the conditions of probation shall proceed by arrest or summons as in the case of a parole violation. The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense. Where the probation officer proceeds by arrest, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing where it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced thereby. If the violation is established, the court may continue the probation with or without an alteration of the conditions of probation, or may revoke the probation and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence

was deferred, may impose any sentence which might originally have been imposed.

(Ch 1245, 66 GA, ch 3, s 810; 67 GA, ch 157, s 7; 67 GA, ch 154, s 21)

Prior law: ss 247.26, 247.27, Code 1977

Cross reference to deferred sentence: s 907.3(1), Supplement

CHAPTER 909
FINES

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|-------|--|-------|--|
| 909.1 | Fine Without Imprisonment | 909.4 | Treble Damage Liability for Corporations, Partnerships, and Associations |
| 909.2 | Fine in Addition to Imprisonment | 909.5 | Nonpayment of Fines--Contempt |
| 909.3 | Payment in Installments or on a Fixed Date | 909.6 | Fine as Judgment |

909.1 FINE WITHOUT IMPRISONMENT.

Upon a verdict or plea of guilty of any public offense for which a fine is authorized, the court may impose a fine instead of any other sentence where it appears that the fine will be adequate to deter the defendant and to discourage others from similar criminal activity.

(Ch 1245, 66 GA, ch 3, s 901)

909.2 FINE IN ADDITION TO IMPRISONMENT.

The court may impose a fine in addition to confinement, where such is authorized.

(Ch 1245, 66 GA, ch 3, s 902)

909.3 PAYMENT IN INSTALLMENTS OR ON A FIXED DATE.

The court may, in its discretion, order a fine to be paid in installments, or may fix a date in the future for the payment of the fine, whenever it appears that the defendant cannot make immediate payment, or should not be made to do so.

(Ch 1245, 66 GA, ch 3, s 903)

Prior law: ss 762.32, 789.17, Code 1977

909.4 TREBLE DAMAGE LIABILITY FOR CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS.

Whenever a corporation, partnership or other association, not subject to imprisonment is found guilty of any public offense, the court may impose a fine within the limits authorized by law. In addition to such fine, if the offense be a felony or aggravated misdemeanor, the corporation, partnership or association shall be liable as follows:

1. Any person who has suffered loss because of the public offense may recover from the corporation, partnership or association in an action at law damages equal to three times the amount of such loss.

2. If the corporation, partnership or association has received pecuniary benefit from the commission of the offense, the attorney general may recover from such corporation, partnership or association in an action at law for the use of the state damages equal to three times the amount of such benefit, provided, that any amount which is recovered under subsection 1 of this section shall be subtracted from the damages recovered by the state.

(Ch 1245, 66 GA, ch 3, s 904)

Cross reference to liability of corporations, partnerships and voluntary associations: s 703.5, Supplement

909.5 NONPAYMENT OF FINES--CONTEMPT.

Any person who is able to pay a fine, or an installment of a fine, and who refuses to do so, or who fails to make a good faith effort to pay his or her fine, or any installment thereof, shall be held in contempt of court.

(Ch 1245, 66 GA, ch 3, s 905)

Prior law: ss 762.32, 789.17, Code 1977

909.6 FINE AS JUDGMENT.

Whenever a court has imposed a fine on any defendant, the judgment in such case shall state the amount of the fine, and shall have the force and effect of a judgment against the defendant for the amount of the fine. The law relating to judgment liens, executions, and other process available to creditors for the collection of debts shall be applicable to such judgments; provided, that no law exempting the personal property of the defendant from any lien or legal process shall be applicable to such judgments.

(Ch 1245, 66 GA, ch 3, s 906)

Prior law: ss 790.1, 791.6, Code 1977

COORDINATING AMENDMENTS TO SECTIONS
CRIMINAL CODE SUPPLEMENT, 1977

7.10 EMERGENCY HIGHWAY PEACE OFFICERS.

Whenever the governor is satisfied that a state of emergency exists, or is likely to exist, on the public streets or highways of this state, because of violations of chapter 321, the governor shall designate any employee or employees of this state as peace officers pursuant to section 801.4, subsection 7, paragraph i, until such time as the governor is satisfied the state of emergency is ended.

*(C66, 71, 73, 75, 77, s 7.10; Ch 1245, 66 GA, ch 4, s 1)
Referred to in s 7.12, Code 1977*

8.40 FINE--REMOVAL--IMPEACHMENT.

A refusal to perform any of the requirements of this chapter, and the refusal to perform any rule or requirement or request of the governor or the state comptroller made pursuant to or under authority of this chapter, by any board member, commissioner, director, manager, building committee, or other officer or person connected with any institution, or other state department or establishment as herein defined, shall subject the offender to a penalty of two hundred fifty dollars, to be recovered in an action instituted in the district court of Polk county by the attorney general for the use of the state. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the governor upon thirty days' notice in writing to such offender; and, if such offender be an officer elected by vote of the people, such offense shall be sufficient cause to subject the offender to impeachment.

*(S13, s 163-a; C24, 27, 31, s 330; C35, s 84-e30; C39, s 84.33; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 8.40; Ch 1245, 66 GA, ch 4, s 2)
Constitutionality, 45 GA, ch 4, s 31
Omnibus repeal, 45 GA, ch 4, s 33*

11.14 REPORTS--PUBLIC INSPECTION.

A report of such examination shall be made in triplicate signed and verified by the officers making the examination; one copy to be filed with the auditor of state, one copy with the officer under investigation, and one copy to the county auditor who shall transmit same to the board of supervisors if a county office is under investigation, or with the president of the school board if a school is under investigation, or with the mayor and the council if a city office is under examination. All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with the state auditor shall constitute a simple misdemeanor.

In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the county, municipality or school district which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, such notice shall be sent to the official newspapers of the county.

*(S13, ss 100-d, 1056-all; C24, 27, 31, 35, 39, s 120; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 11.14; Ch 1245, 66 GA, ch 4, s 3)
Referred to in s 123.58, Code 1977*

11.19 AUDITOR'S POWERS AND DUTIES.

Where an examination is made under contract with, or employment of, certified or registered public accountants, the auditor shall, in all matters pertaining to an authorized examination, have all of the powers and be vested with all the authority of state auditors employed by the auditor of state, and the cost and expense of the examination shall be paid by the city, school district, or township procuring the examination. An itemized sworn statement of the per diem and expense of the auditor shall be filed with the clerk of the city, township, or school district, before payment thereof. Upon completion of such examination, a signed copy thereof shall be filed by the accountant employed with the auditor of state.

All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with the state auditor, shall constitute a simple misdemeanor.

In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the city, school district or township which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, the notice shall be sent to the official newspapers of the county.

Failure to file such report with the auditor of state shall bar such accountant from making any city, or school audits thereafter under the provisions of section 11.18.

*(C39, s 124.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 11.19; Ch 1245, 66 GA, Ch 4, s 4)
Referred to in ss 11.6, 230A.16, Code 1977*

18.5 PROHIBITED INTERESTS.

The director shall not have any pecuniary interests, directly or indirectly, in any contract for supplies furnished to the state, or in any business enterprise involving any expenditure by the state. A violation of the provisions of this section shall be a serious misdemeanor, and on conviction thereof the director shall be removed from office in addition to any other penalty.

*(C97, s 153; C24, 27, 31, 35, 39, s 275; C46, 50, 54, 58, 62, 66, 71, s 18.4; C73, s 19B.5; C75, 77, s 18.5; 67 GA, ch 147, s 112)
Similar provisions: ss 68B.3, 86.7, 252.29, 262.10, 314.2, 347.15, 362.5, 403.16, 403A.22, 553.23, Code 1977*

18.10 CAPITOL BUILDINGS AND GROUNDS--RULES.

The director shall establish, publish, and enforce rules regulating and restricting the use by the public of the capitol buildings and grounds. The rules when established shall be posted in conspicuous places about the buildings and grounds. Any person violating any rule, except a parking regulation, shall be guilty of a simple misdemeanor.

(C27, 31, 35, s 275-b1; C39, s 275.1; C46, 50, 54, 58, 62, 66, 71, s 18.5; C73, s 19B.10; C75, 77, s 18.10; Ch 1245, 66 GA, ch 4, s 5)

18.97 CODE--SESSION LAWS.

The superintendent of printing shall make free distribution of the Code, rules of civil procedure, rules of appellate procedure, supreme court rules, the Acts of each general assembly, and, upon request, the Iowa administrative code as follows:

1. To state law library for exchange purposes	100	copies
2. To law library of state University of Iowa for exchange purposes	75	copies
3. To state historical department	5	copies
4. To state historical society	5	copies
5. To each judge of the supreme court, the court of appeals and the district court, two copies; and to each district associate judge and each judicial magistrate	1	copy
6. To each judge of the federal courts in Iowa	1	copy
7. To the clerk of the supreme court of Iowa	1	copy
8. To the clerk of each federal court in Iowa	1	copy
9. To each state institution under the control of either the state board of regents or the state department of social services	1	copy
10. To each elective state officer	2	copies
11. To the separate departments of principal state offices and each major subdivision thereof	1	copy
12. To each member of the present and subsequent general assemblies	1	copy
13. To chief clerk of the house	1	copy
14. To secretary of the senate	1	copy
15. To the following offices such number of copies as will enable them to perform the duties of their respective offices. a. Code editor. b. Attorney general. c. Legislative service bureau. d. Legislative fiscal bureau. e. Court administrator.		
16. To the clerk of the district court and each separate office of the clerk, the county attorney, the county auditor, the county recorder, county and city assessor, the county treasurer, the sheriff and each separate office of a sheriff, the public defender's office, and the administrator of each area education agency in the state and also for use in each courtroom of the district court	1	copy
17. To library of Congress and the library of the United States supreme court	1	copy each
18. To library of the Iowa State University of science and technology and the libraries at the state University of Iowa and University of Northern Iowa	1	copy each
19. To library of the United States department of justice	1	copy
20. To library of the judge advocate general, United States department of defense	1	copy
21. To library of the United States department of agriculture	1	copy
22. To library of the United States department of labor	1	copy
23. To legal staff, office of public debt, United States treasury department	1	copy
24. To library of the United States department of state	1	copy

- 25. To law library of the United States department of the interior 1 copy
- 26. To library of the United States department of internal revenue 1 copy
- 27. To each member of the Iowa congressional delegation 1 copy
- 28. To each board of supervisors for each county 1 copy
- 29. To each juvenile referee 1 copy
(C73, s39; C97, p.4, s 42; S13, p.1, s 42; C24, 27, 31, 35, s 235; C39, s 238.1; C46, 50, 54, 58, 62, 66, 71, 73, s 16.24; C75, 77, s 18.97; 67 GA, ch 40, s 2)
Referred to in ss 18.3, 18.28, 18.30, 18.50, Code 1977
Distribution to libraries, s 17.33, Code 1977
Distribution of election laws, 66 GA, ch 1060, s 2
Amendment by 65 GA, ch 1090, s 28, effective May 1, 1975, 66 GA, ch 72, s 1

19A.20 PENALTY.

Any person who willfully violates any provision of this chapter or any rules adopted in accordance with this chapter, where no other penalty is prescribed, shall be guilty of a simple misdemeanor.

(C71, 73, 75, 77, s 19A.20; Ch 1245, 66 GA, ch 4, s 6)
Referred to in ss 19A.24, 19A.26, Code 1977
Constitutionality, 62 GA, ch 95, s 21

25A.15 ATTORNEY'S FEES AND EXPENSES.

The court rendering a judgment for the claimant under this chapter, or the state appeal board, with the advice and approval of the attorney general, making an award under section 25A.3, or the attorney general making an award under section 25A.9, as the case may be, shall, as a part of the judgment or award, determine and allow reasonable attorney's fees and expenses, to be paid out of but not in addition to the amount of judgment or award recovered, to the attorneys representing the claimant. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be guilty of a serious misdemeanor.

(C66, 71, 73, 75, 77, s 25A.15; Ch 1245, 66 GA, ch 4, s 7)

28A.8 PENALTY.

Any person knowingly violating or attempting to violate any provision of this chapter shall be guilty of a simple misdemeanor.

(C71, 73, 75, 77, s 28A.8; Ch 1245, 66 GA, ch 4, s 8)

30.3 PENALTIES.

Where no other penalty is provided, any person who shall violate any of the provisions of this chapter, shall be guilty of a simple misdemeanor.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 30.3; Ch 1245, 66 GA, ch 4, s 9)

35A.9 FALSE STATEMENTS--PENALTY.

Whoever knowingly makes a false statement, oral or written, relating to a material fact in supporting a claim under the provisions of this chapter, shall be guilty of a simple misdemeanor, and shall forfeit all benefits he or she might have been entitled to under this chapter.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 35A.9; Ch 1245, 66 GA, ch 4, s 10)

35B.9 FALSE STATEMENTS--PENALTY.

Whoever knowingly makes a false statement, oral or written, relating to a material fact in supporting a claim under the provisions of this chapter, shall be guilty of a simple misdemeanor, and shall forfeit all benefits he or she might have been entitled to under this chapter.

(C58, 62, 66, 71, 73, 75, 77, s 35B.9; Ch 1245, 66 GA, ch 4, s 11)

43.120 BRIBERY--ILLEGAL VOTING.

Whoever commits any of the following acts shall be guilty of a serious misdemeanor, to wit:

1. Offering or giving a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at a primary election.

2. Receiving and accepting such bribe by an elector entitled to vote at any primary election.

3. Making false answers to any of the provisions of this chapter relative to his qualifications and party affiliations.

4. Willfully voting or offering to vote at a primary election by a person who has not met the qualifications to vote.

5. Willfully voting or offering to vote at a primary election by one who knows himself not to be a qualified elector of the precinct where he votes or offers to vote.

6. Violating any provision of this chapter, or any provision of law made applicable to this chapter.

7. Knowingly procuring, aiding, or abetting any violation specified in this section.

(S13, s 1087-a33; C24, 27, 31, 35, 39, s 647; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 43.120; Ch 1245, 66 GA, ch 4, s 12)

Applicable section, s 43.5, Code 1977

48.5 REGISTRATION RECORDS.

1. The county commissioner of registration shall maintain the registration records of all qualified electors in the county in accordance with rules promulgated by the registration commission. Registration records shall not be removed from that office or other designated locations except upon court order, and shall be open to inspection by the public at reasonable times.

2. Any person may request of the registrar and shall receive, upon payment of the cost of preparation, a list of qualified electors and other data on registration and participation in elections, in accordance with the following requirements and limitations:

a. Each list shall be produced in the order and form specified by the requester, so long as that order and form are within the capacity of the record maintenance system used by the registrar.

b. Each list shall reflect all additions, changes and deletions made prior to the fifth day before the list was prepared.

c. The registrar shall not be required to provide lists or data during the fifteen days prior to the date of the primary election, the general election, the regular city election held pursuant to section 376.1, or the annual school election in any order or form other than that utilized to conduct the election, if the preparation of a list in any other order or form requested would impede the preparation of the election registers for that election.

d. The county chairperson of each political party, as defined in section 48.4 and the chairperson of each state political party central committee may each request and shall

receive without charge three lists or reports during the two-year period prior to each general election, in the order and form requested. The lists or data requested by the county chairpersons shall pertain only to qualified electors of that county. The lists or reports requested under this paragraph shall be delivered on or before the date specified by the requester, if the requester gives at least thirty days advance notice of that date and the timing of the request and the order and form specified do not conflict with the restrictions of paragraph "c" of this subsection.

e. A periodic updating of the registration lists showing all additions, changes and deletions since the previous updating shall be provided at least once each fourteen days except during the two weeks prior to the close of registration before any election, when it shall be provided daily if requested. Each requester under this paragraph shall receive the updating data at the same time, which shall be determined by the registrar, but in an order and form specified by the requester. Each requester, except those who obtained the initial list of qualified electors under paragraph "d" of this subsection, shall pay the cost of duplicating the updating data before receiving a copy thereof.

3. Neither the duplicate registration records open to public inspection nor any list obtained under subsection 2 of this section shall be used for any purpose of any kind or nature, other than to request a registrant's vote at a primary or general election, or any other bona fide political purpose. The commissioner shall keep a list of the name, address, telephone number, and social security number of each person who copies or obtains copies of the registration lists. Any person that uses such lists in violation of this section shall, upon conviction, be guilty of a serious misdemeanor.

4. Beginning not later than January 1, 1977, every voter registration record shall be maintained in computer readable form according to the specifications of the registrar.

(C27, 31, 35, s 718-b5; C39, s 718.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 48.5; Ch 1245, 66 GA, ch 4, s 13)

Referred to in ss 47.7, 47.8, Code 1977

48.16 PENALTIES.

Any officer or employee, or any person who has contracted with a commissioner to perform services in the implementation of this chapter, who shall willfully fail to perform or enforce any of the provisions of this chapter, or who shall unlawfully or fraudulently remove any registration card or record from its proper compartment in the registration records, or who shall willfully destroy any record provided by this chapter, or any person who shall willfully or fraudulently register more than once, or register under any but his or her true name, or votes or attempts to vote by impersonating another who is registered, or who willfully or fraudulently registers in any election precinct where the person is not a resident at the time of registering, or who adds a name or names to a page or pages, or who violates any of the provisions of this chapter, shall be guilty of an aggravated misdemeanor. For the purposes of this section, the alteration or destruction of any machine readable compilation of voter registration records which has not been replaced by a more recent revision of the same record shall constitute destruction of a record provided by this chapter.

(C27, 31, 35, s 718-b16; C39, s 718.16; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 48.16; Ch 1245, 66 GA, ch 4, s 14)

48.27 MOBILE DEPUTY REGISTRARS--QUALIFICATIONS--DUTIES.

1. Mobile deputy registrars shall be appointed by the county commissioner of registration not more than one hundred eighty days prior to any general election or not more than one hundred twenty days prior to any primary, or partisan city election, or any election held pursuant to section 69.14, in accordance with the following guidelines:

a. Mobile deputy registrars shall be selected from lists of nominees submitted to the county commissioner of registration by the county chairman of the two political parties receiving the highest number of votes in that county in the last preceding general election.

b. Each political party shall submit a list of nominees and may request not more than one person for each one thousand one hundred residents or major fraction thereof in the county to be appointed as mobile deputy registrars.

c. The county commissioner of registration shall make the requested number of appointments from the lists submitted by the county chairmen not more than thirty days from the date the lists of nominees were submitted. If persons listed by the county chairman cannot serve or are disqualified, the county chairman may add additional names to his list. The additional persons shall be appointed within five days if the next election is to be held within ninety-five days.

d. The appointment of mobile deputy registrars from one political party shall not be contingent upon the other political party submitting a list of nominees.

e. The fact that any political party does not submit a list including the full number of names which may be appointed shall not preclude the appointment of the full number of persons to which any other political party is entitled.

f. The term of office of mobile deputy registrars appointed under the provisions of this subsection shall expire at five o'clock p.m. on the day registration closes prior to the general election or at the time the mobile deputy registrar returns his supplies to the county commissioner of registration, whichever occurs first.

g. When an election has been called pursuant to section 69.14, mobile deputy registrars shall be appointed within three days after submission of a list of nominees by the county chairman of either of the two political parties whose candidates for president of the United States or for governor, as the case may be, received the largest and next largest number of votes in the county at the last general election.

2. There is established in each county a permanent board of mobile deputy registrars who shall be selected from lists of nominees submitted to the county commissioner of registration by the county chairman of the two political parties polling the highest number of votes in the county in the last preceding general election. The chairmen of the two political parties shall submit a list of nominees to serve as registrars on the permanent mobile deputy registrar board not later than January 15 of each year. The county commissioner of registration shall, not later than January 31 of each year, appoint one person from each political party for each ten thousand residents or major fraction thereof in the county to serve as mobile deputy registrars on the permanent mobile deputy registrar board. The county commissioner of registration shall appoint at least two mobile deputy registrars to serve on the board in each county from each political party. If a county chairman of a political party does not submit a list of nominees for the permanent mobile deputy registrar board, the county commissioner of registration shall appoint persons known to be members of that political party to serve as permanent mobile deputy registrars. The term of office of permanent

mobile deputy registrars shall commence on the date of appointment and shall continue until December 31 of that year.

3. Mobile deputy registrars shall meet the following qualifications:

a. Mobile deputy registrars shall reside in the county of the county commissioner of registration making the appointment.

b. Mobile deputy registrars shall be persons of known good character who are at least eighteen years of age and who are familiar with the registration laws of the state. Mobile deputy registrars shall be persons who have clear handwriting and who exhibit to the commissioner the capability for making records in a neat and accurate manner. The commissioner may require a handwriting sample to insure that this requirement is fulfilled.

c. Mobile deputy registrars shall take a training course prescribed by the commissioner and upon completion thereof shall take an oath of office administered by the commissioner.

d. No candidate for an office to be filled by the voters at any election shall serve as a mobile deputy registrar.

4. Mobile deputy registrars shall perform their duties according to the following guidelines:

a. They shall secure registration of eligible voters anywhere in the jurisdiction of the county commissioner of registration. It shall be unlawful for any mobile deputy registrar to refuse to register any eligible voter and any unreasonable refusal shall be a simple misdemeanor.

b. Mobile deputy registrars shall register electors on registration forms provided by the county commissioner of registration. These forms shall be as prescribed by section 48.6 except that they shall be numbered and accounted for by the mobile deputy registrar to the county commissioner of registration, and that there shall be provided on each form a space for the mobile deputy registrar's signature. The mobile deputy registrar shall sign the form and identify himself or herself in the presence of the voter with appropriate identity papers or badge provided by the county commissioner of registration. The mobile deputy registrar shall give the voter a receipt signed by the mobile deputy registrar stating that such person is duly registered.

c. Mobile deputy registrars shall serve without compensation from any source.

d. Mobile deputy registrars shall return all completed registration records at least weekly to the county commissioner of registration except that completed registration records shall be turned in at least every two working days during the last ten days of registration. All completed and unused material must be turned in no later than six o'clock on the day registration closes for the election. Failure to comply with this provision shall be a simple misdemeanor.

e. Mobile deputy registrars shall not influence the elector in designating party affiliation during the registration process.

5. Each mobile deputy registrar shall be responsible to the county commissioner of registration for properly registering electors in accordance with the requirements and the restrictions of this chapter. The commissioner may terminate the appointment of a mobile deputy registrar who is not properly registering electors, and shall immediately terminate the appointment upon the written request of the county chairperson of the party from whose list of nominees the mobile deputy registrar was selected. When an appointment is terminated the county commissioner of registration shall promptly notify the county chairperson of the political party which nominated the mobile deputy registrar whose appointment has been terminated, and shall appoint another person within

five days from a list of substitute nominees provided by that county chairperson. A mobile deputy registrar whose appointment is terminated shall immediately return all his or her supplies to the county commissioner of registration. If a mobile deputy registrar's appointment is terminated within thirty days of an election, other than by request of the county chairperson of the party from whose list of nominees the mobile deputy registrar was appointed, a replacement shall be appointed within twenty-four hours from a list of substitute nominees provided by the appropriate county chairperson.

(C66, 71, 73, 75, 77, s 48.27; Ch 1245, 66 GA, ch 4, s 15)

49.108 PENALTY.

Any violation of the provisions of section 49.107 shall constitute a simple misdemeanor.

(C97, s 1134; C24, 27, 31, 35, 39, s 825; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 49.108; Ch 1245, 66 GA, ch 4, s 16)

49.110 INTIMIDATION OF EMPLOYEES BY EMPLOYER.

Any employer who shall refuse to an employee the privilege conferred by section 49.109, or shall subject such employee to a penalty or reduction of wages because of the exercise of such privilege, or shall in any manner attempt to influence or control such employee as to how the employee shall vote, by offering any reward, or threatening discharge from employment, or otherwise intimidating or attempting to intimidate such employee from exercising the employee's right to vote, shall be guilty of a simple misdemeanor.

(C97, s 1123; C24, 27, 31, 35, 39, s 827; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 49.110; Ch 1245, 66GA, ch 4, s 17)

49.112 PENALTY.

Any person violating section 49.111 shall be guilty of a simple misdemeanor.

(C97, s 1135; C24, 27, 31, 35, 39 s 829; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 49.112; Ch 1245, 66 GA, ch 4, s 18)

49.119 PENALTY.

Any person violating or attempting to violate any provisions or requirements of this chapter, or failing or refusing to comply with any order or command of an election officer, made in pursuance of the provisions of this chapter, shall, unless otherwise provided, be guilty of a simple misdemeanor.

(C97, s 1133; C24, 27, 31, 35, 39, s 836; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 49.119; Ch 1245, 66 GA, ch 4, s 19)

49.122 PENALTY.

Any person violating any of the provisions of sections 49.120 and 49.121 shall be deemed guilty of a simple misdemeanor.

(S13, s 1134-c; C24, 27, 31, 35, 39, s 839; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 49.122; Ch 1245, 66 GA, ch 4, s 20)

51.16 VIOLATIONS.

Any judge or clerk violating the provisions of this chapter shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 902; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 51.16; Ch 1245, 66 GA, ch 4, s 21)
39 GA, ch 60, s 8, editorially divided
Referred to in s 51.17, Code 1977

53.34 FALSE AFFIDAVIT.

Any person who shall willfully swear falsely to any of such affidavits shall be guilty of a fraudulent practice.

(SS15, s 1137-n; C24, 27, 31, 35, 39, s 960; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 53.34; Ch 1245, 66 GA, ch 4, s 22)

Referred to in s 53.49, Code 1977

53.35 REFUSAL TO RETURN BALLOT.

Any person who, having procured an official ballot or ballots, shall willfully neglect or refuse to cast or return the same in the manner provided, or who shall willfully violate any provision of this chapter, shall, unless otherwise provided, be guilty of a simple misdemeanor. Any person who applies for a ballot and willfully neglects or refuses to return the same shall be deemed to have committed an offense in the county to which such ballot was returnable.

(SS15, s 1137-n; C24, 27, 31, 35, 39, s 961; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 53.35; Ch 1245, 66 GA, ch 4, s 23)

Referred to in s 53.49, Code 1977

53.36 OFFENSES BY OFFICERS.

If any commissioner or any election officer shall refuse or neglect to perform any of the duties prescribed by this chapter, or shall violate any of the provisions thereof, he or she shall, where no other penalty is provided, be guilty of a simple misdemeanor.

(SS15, s 1137-n; C24, 27, 31, 35, 39, s 962; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 53.36; Ch 1245, 66 GA, ch 4, s 24)

Referred to in s 53.49, Code 1977

56.16 PENALTY.

Any person who willfully violates any provisions of this chapter shall upon conviction, be guilty of a serious misdemeanor.

(S13, s 1137-a6; C24, 27, 31, 35, 39, s 980; C46, 50, 54, 58, 62, 66, 71, 73, s 56.9; C75, 77, s 56.16; Ch 1245, 66 GA, ch 4, s 25)

56.29 INSURANCE, SAVINGS AND LOAN AND BANKING CORPORATIONS RESTRICTIONS.

1. Except as provided in subsection 3 of this section, it shall be unlawful for any insurance company, savings and loan association, bank, and corporation organized pursuant to the laws of this state or any other state, territory, or foreign country, whether for profit or not, or any officer, agent, representative thereof acting for such insurance company, savings and loan association, bank, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly, to any committee, or for the purpose of influencing the vote of any elector, except that such resources may be so expended in connection with a utility franchise election held pursuant to section 364.2, subsection 4, however all such expenditures shall be subject to the disclosure requirements of this chapter.

2. Except as provided in subsection 3 of this section, it shall be unlawful for any member of any committee, or employee or representative thereof, or candidate for any office or the representative of such candidate, to solicit, request, or knowingly receive from any insurance company, savings and loan association, bank, and corporation organized pursuant to the laws of this state or any other state, territory, or foreign country, whether for profit or not, or any officer, agent, or

representative thereof, any money, property, or thing of value belonging to such insurance company, savings and loan association, bank, or corporation for campaign expenses, or for the purpose of influencing the vote of any elector. Nothing in this section shall be construed to restrain or abridge the freedom of the press or prohibit the consideration and discussion therein of candidacies, nominations, public officers, or public questions.

3. It shall be lawful for any insurance company, savings and loan association, bank, and corporation organized pursuant to the laws of this state or any other state or territory, whether or not for profit, and for the officers, agents and representatives thereof, to use the money, property, labor, or any other thing of value of any such entity for the purposes of soliciting its stockholders, administrative officers and members for contributions to a committee sponsored by that entity and of financing the administration of a committee sponsored by that entity. The entity's employees to whom the foregoing authority does not extend may voluntarily contribute to such a committee but shall not be solicited for contributions. All contributions made under authority of this subsection shall be subject to the disclosure requirements of this chapter. A committee member, committee employee, committee representative, candidate or representative referred to in subsection 2 lawfully may solicit, request, and receive money, property and other things of value from a committee sponsored by an insurance company, savings and loan association, bank, or corporation as permitted by this subsection.

4. The restrictions imposed by this section relative to making, soliciting or receiving contributions shall not apply to a nonprofit corporation or organization which uses those contributions to encourage registration of voters and participation in the political process, or to publicize public issues, or both, but does not use any part of those contributions to endorse or oppose any candidate for public office or support or oppose ballot issues.

5. Any person convicted of a violation of any of the provisions of this section shall be guilty of a serious misdemeanor.

(S13, ss 1641-h,-i,-k; C24, 27, 31, 35, 39, ss 8405-8407; C46, 50, 54, 58, ss 491.69-491.71; C62, 66, 71, 73, 75, ss 491.69-491.71, 496A.145; C77, s 56.29; 67 GA, ch 147, s 113)

64.25 FAILURE TO GIVE BOND.

Action by any officer in an official capacity without giving bond when such bond is required shall constitute grounds for removal from office.

(C73, s 684; C97, s 1197; C24, 27, 31, 35, 39, s 1079; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 64.25; Ch 1245, 66 GA, ch 4, s 26)

67.6 EFFECT OF ORDER--PENALTY.

It shall be unlawful for such officer, after the making of such order of suspension, to exercise or attempt to exercise any of the functions of his or her office until such suspension shall be revoked; and any attempt by the suspended officer to exercise such office shall constitute a serious misdemeanor.

(R60, s 49; C73, s 761; C97, s 1261; C24, 27, 31, 35, 39, s 1124; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 67.6; Ch 1245, 66 GA, ch 4, s 27)

68A.6 PENALTY.

It shall be unlawful for any person to deny or refuse any citizen of Iowa any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter where no other penalty is provided shall be guilty of a simple misdemeanor.

(C71, 73, 75, 77, s 68A.6; Ch 1245, 66 GA, ch 4, s 28)

68B.8 ADDITIONAL PENALTY.

In addition to any penalty contained in any other provision of law, a person who knowingly and intentionally violates the provisions of sections 68B.3 through 68B.6 and this section shall be guilty of a serious misdemeanor and may be suspended from his or her position.

(C71, 73, 75, 77, s 68B.8; 67 GA, ch 147, s 114)

69.2 WHAT CONSTITUTES VACANCY.

Every civil office shall be vacant upon the happening of either of the following events:

1. A failure to elect at the proper election, or to appoint within the time fixed by law, unless the incumbent holds over.

2. A failure of the incumbent or holdover officer to qualify within the time prescribed by law.

3. The incumbent ceasing to be a resident of the state, district, county, township, city, or ward by or for which he was elected or appointed, or in which the duties of his office are to be exercised. This subsection shall not apply to appointed city officers.

4. The resignation or death of the incumbent, or of the officer-elect before qualifying.

5. The removal of the incumbent from, or forfeiture of, his office, or the decision of a competent tribunal declaring his office vacant.

6. The conviction of the incumbent of an aggravated misdemeanor, or of any public offense involving the violation of the incumbent's oath of office.

(C51, ss 334, 429; R60, ss 564, 662, 1132; C73, ss 504, 686, 781; C97, s 1266; C24, 27, 31, 35, 39, s 1146; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 69.2; Ch 1245, 66 GA, ch 4, s 29)

Referred to in s 340A.4, Code 1977

Duty of holdover officer to requalify, s 63.7, Code 1977

Vacancy on board of supervisors, s 331.12, Code 1977

Vacancy on school board, s 277.29, Code 1977

73.5 VIOLATIONS.

Any officer or person who is connected with, or is a member or agent or representative of any commission, board, committee, officer or other governing body of this state, or of any county, township, school district, city, or contractor, who fails to give preference to Iowa labor as required in sections 73.3 and 73.4, shall be guilty of a simple misdemeanor. Each separate case of failure to give preference to Iowa labor shall constitute a separate offense.

(C31, 35, s 1171-d3; C39, s 1171.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 73.5; Ch 1245, 66 GA, ch 4, s 30)

75.7 PENALTY.

Any public officer who fails to perform any duty required by this chapter or who does any act prohibited by this chapter,

where no other penalty is provided, shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 1177; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 75.7; Ch 1245, 66 GA, ch 4, s 31)

77.11 IMPROPERLY ACTING AS NOTARY.

If any notary public exercises the duties of his or her office after the expiration of his or her commission, or when otherwise disqualified, or appends his or her official signature to documents when the parties have not appeared before him or her, he or she shall be guilty of a simple misdemeanor, and shall be removed from office by the secretary of state.

(R60, s 210; C73, s 3975; C97, s 4912; C24, 27, 31, 35, 39, s 1206; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 77.11; Ch 1245, 66 GA, ch 4, s 32)

77.15 NEGLECT TO DEPOSIT RECORDS.

If any notary, on his or her resignation or removal, neglects for three months so to deposit them, he or she shall be guilty of a simple misdemeanor and be liable in an action to any person injured by such neglect.

(C51, s 85; R60, s 202; C73, s 264; C97, s 379; C24, 27, 31, 35, 39, s 1210; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 77.15; Ch 1245, 66 GA, ch 4, s 33)

77.16 NEGLECT OF EXECUTOR TO DEPOSIT RECORDS.

If an executor or administrator of a deceased notary willfully neglects, for three months after his or her acceptance of that appointment, to deposit in the secretary of state's office the records and papers of a deceased notary which came into his or her hands, he or she* shall be held guilty of a simple misdemeanor.

(C51, s 85; R60, s 202; C73, s 264; C97, s 379; C24, 27, 31, 35, 39, s 1211; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 77.16; Ch 1245, 66 GA, ch 4, s 34)

**Editorial note: The words "or she" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

80.6 IMPERSONATING OFFICER--UNIFORM.

Any person who impersonates a member of the Iowa safety patrol or other officer or employee of the department, or wears a uniform likely to be confused with the official uniform of any such officer, with intent to deceive anyone, shall be guilty of a simple misdemeanor.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 80.6; Ch 1245, 66 GA, ch 4, s 35)

80A.12 PENALTIES.

Any person, firm or corporation who violates any of the provisions of this chapter where no other penalty is provided shall be guilty of a simple misdemeanor. Anyone who makes any false statement or representation in any application or statement filed with the commissioner of public safety, as required by this chapter, or any person who falsely states or represents that he or she has been or is a private detective or advertises himself or herself as such shall be guilty of a fraudulent practice. Any person, firm, or corporation who engages in the private detective business or profession as defined in this chapter, without being possessed of a current, valid license therefor, as provided by this chapter, shall be guilty of a serious misdemeanor.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 80A.12; Ch 1245, 66 GA, ch 4, s 36)

81.13 PENALTIES.

Any person violating any provision of this chapter shall be guilty of a simple misdemeanor, except as herein otherwise provided.

(C39, s 1225.42; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 81.13; Ch 1245, 66 GA, ch 4, s 37)

81A.9 PENALTY.

Any merchant, whether an individual person, a firm, corporation, partnership or association violating any of the provisions of this chapter shall be guilty of a simple misdemeanor. Each sale made in violation of the provisions hereof shall be and constitute a separate offense.

(C58, 62, 66, 71, 73, 75, 77, s 81A.9; Ch 1245, 66 GA, ch 4, s 38)
Constitutionality, 55 GA, ch 77, s 10

CHAPTER 82
DOOR-TO-DOOR SALES

Referred to in s 537.3501

82.1	Definitions	82.4	Duties of Seller
82.2	Contract	82.5	Effect on Indebtedness
82.3	Cancellation	82.6	Penalty

82.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Door-to-door sale" means a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. Door-to-door sale does not include a transaction:

a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.

b. In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, title 15 United States Code section 1635, or rules issued pursuant to this chapter.

c. In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days.

d. Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.

e. In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale

of those additional goods or services would not fall within this exclusion.

f. Pertaining to the sale or rental of real property, to the sale of insurance and prepaid health service plans, or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission.

2. "Consumer goods or services" means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

3. "Seller" means any person engaged in the door-to-door sale of consumer goods or services.

4. "Place of business" means the main or permanent branch office or local address of a seller.

5. "Purchase price" means the total price paid or to be paid for the consumer goods or services, including all interest and service charges.

6. "Business day" means any calendar day except Saturday, Sunday, or public holiday, including holidays observed on Mondays.

(C75, 77, s 713B.1)

82.2 CONTRACT.

Every seller shall furnish the buyer with a fully completed receipt or copy of any contract pertaining to a door-to-door sale at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(C75, 77, s 713B.2)

82.3 CANCELLATION.

Every seller shall furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

.....
(enter date of transaction)
(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller

regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to, at
(Name of seller)

..... not later than mid-
(Address of seller's place of business)
night of

(Date)

I hereby cancel this transaction.

.....

(Date)

.....

(Buyer's signature)

(C75, 77, s 713B.3)

82.4 DUTIES OF SELLER.

A seller shall:

1. Furnish two copies of the notice of cancellation to the buyer, and complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

2. Not include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically his right to cancel the sale in accordance with the provisions of this chapter.

3. Inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

4. Not misrepresent in any manner the buyer's right to cancel.

5. Honor any valid notice of cancellation by a buyer and within ten business days after the receipt of notice shall refund all payments made under the contract or sale, return any goods or property traded in, in substantially as good condition as when received by the seller, and cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

6. Not negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the seventh business day following the day the contract was signed or the goods or services were purchased.

7. Within ten business days of receipt of the buyer's notice of cancellation notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

(C75, 77, s 713B.4)

82.5 EFFECT ON INDEBTEDNESS.

Rescission of any contract pursuant to this chapter or the failure to provide a copy of the contract to the buyer as required by this chapter shall void any contract, note, instrument, or other evidence of indebtedness executed or entered into in connection with the contract and shall constitute a complete defense in any action based on the contract, note,

instrument or other evidence of indebtedness brought by the seller, his successors or assigns unless a successor or assignee of the seller after the seventh business day following the day the contract was signed has detrimentally relied upon a representation of the buyer that the contract has not been rescinded. This section shall not affect the rights of holders in due course of checks made by the buyer.

(C75, 77, s 713B.5)

82.6 PENALTY.

Any seller who violates the provisions of this chapter shall be guilty of a simple misdemeanor.

(C75, 77, s 713B.6; Ch 1245, 66 GA, ch 4, s 505)

83A.13 REGISTERING SITE OF MINE.

1. Within fifteen days prior to beginning mining or removal of overburden at any surface mining site not previously registered, an operator engaging in mining in this state shall register the site with the department. Application for registration shall be made upon a form provided by the department. The registration fee shall be established by the department in an amount equal to the cost of administering the registration provisions of this chapter, as estimated by the department. The application shall include a description of the tract or tracts of land where the site is located and the estimated number of acres at the site to be affected by the mine. The description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient certainty to determine the location and to distinguish the land to be registered from other lands. The application shall include a statement explaining the authority of the applicant's legal right to operate a mine on the land.

2. The application shall be accompanied by a mine and rehabilitation plan which shall include the following:

- a. The character and thickness of the ores, or mineral solids, and overburden to be disturbed.
- b. The method of redistribution of the overburden.
- c. The final configuration of affected land.
- d. Samples of overburden.
- e. Data upon which the mine plan is based.

3. On the basis of information and data required to be submitted pursuant to this section the department may designate the site for which application for registration is made unsuitable for surface coal mining if:

- a. The department determines that land rehabilitation required under this chapter is not physically or biologically feasible; or
- b. The operation results in significant damage to important historic, cultural, scientific and esthetic values and natural systems; or
- c. The operation results in a substantial loss of or reduction in long-range productivity of water supply or of food or fiber products; or
- d. The operation substantially endangers life and property, including areas subject to frequent flooding and areas of unstable geology.

Land on which surface coal mining is authorized by the department pursuant to this chapter on or before July 1, 1975 or where substantial legal and financial commitments for the operation are in existence prior to September 1, 1973 shall not be designated unsuitable.

4. A person who falsifies information required to be submitted under this section shall be guilty of a simple misdemeanor.

*(C71, 73, 75, 77, s 83A.13; 67 GA, ch 147, s 115)
Referred to in ss 83A.15, 83A.16, 83A.21, Code
1977; s 83A.29, Supplement*

83A.29 PENALTY FOR FAILURE TO REGISTER.

Any operator who fails to make timely application for registration of each site where mining is being conducted is guilty of a simple misdemeanor. Each day mining activities are conducted at a site for which no application for registration has been made as required under section 83A.13 shall constitute a separate violation.

(C71, 73, 75, 77, s 83A.29; Ch 1245, 66 GA, ch 4, s 39)

84.16 PENALTIES.

1. Any person who violates any provision of this chapter, or any rule or order of the council where no other penalty is provided shall be guilty of a simple misdemeanor.

2. If any person, for the purpose of evading this chapter, or any rule or order of the council, shall make or cause to be made any false entry or statement in a report required by this chapter or by any such rule or order, or shall make or cause to be made any false entry in any record, account, or memorandum required by this chapter, or by any such rule or order, or shall omit, or cause to be omitted, from any such record, account, or memorandum, full, true, and correct entries as required by this chapter, or by any such rule or order, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account, or memorandum, such person shall be guilty of a fraudulent practice.

3. Any person knowingly aiding or abetting any other person in the violation of any provision of this chapter, or any rule or order of the council shall be subject to the same penalty as that prescribed by this chapter for the violation by such other person.

*(C66, 71, 73, 75, 77, s 84.16; Ch 1245, 66 GA, ch 4,
ss 40, 41)*

85.41 REFUSAL TO FURNISH STATEMENT.

On failure of the employer to furnish such statement of earnings for thirty days after receiving written request therefor from an injured employee, the employee's agent, attorney, dependent, or legal representative, such employer shall be guilty of a simple misdemeanor.

*(C24, 27, 31, 35, 39, s 1401; C46, 50, 54, 58, 62, 66,
71, 73, 75, 77, s 85.41; Ch 1245, 66 GA, ch 4, s 42)*

85.54 CONTRACTS TO AVOID COMPENSATION.

Any contract of employment, relief benefit, or insurance, or other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this chapter, shall be null and void; and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a simple misdemeanor.

*(S13, s 2477-m17; C24, 27, 31, 35, 39, s 1414; C46, 50,
54, 58, 62, 66, 71, 73, 75, 77, s 85.54; Ch 1245, 66 GA,
ch 4, s 43)*

86.4 POLITICAL ACTIVITY AND CONTRIBUTIONS.

It shall be unlawful for the commissioner, or any appointee of the commissioner while in office, to espouse the election or appointment of any candidate to any political office, and any

person violating the provisions of this section shall be guilty of a simple misdemeanor.

(S13, ss 2477-m23, -m37; C24, 27, 31, 35, 39, s 1427; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 86.4; Ch 1245, 66 GA, ch 4, s 44)

86.5 POLITICAL PROMISES.

Any person who is a candidate for appointment as commissioner who makes any promise to another, express or implied, in consideration of any assistance or influence given or recommendation made that the candidate will, if appointed as a commissioner, appoint such person or one whom he or she may recommend to any office within the power of the commissioner to appoint, shall be guilty of a simple misdemeanor.

(S13, s 2477-m38; C24, 27, 31, 35, 39, s 1428; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 86.5; Ch 1245, 66 GA, ch 4, s 45)

87.2 NOTICE OF FAILURE TO INSURE.

Any employer who fails to insure his liability as required herein shall keep posted a sign of sufficient size and so placed as to be easily seen by his employees in the immediate vicinity where working, which sign shall read as follows:

"NOTICE TO EMPLOYEES

You are hereby notified that the undersigned employer has failed to insure his liability to pay compensation as required by law, and that because of such failure he is liable to his employees in damages for personal injuries sustained by his employees in the same manner and to the same extent as though he had legally exercised his right to reject the provisions relating to compensation.

(Signed)

Any employer coming under the provisions of this and chapters 85 and 86 who fails to comply with this section or to post and keep the above notice in the manner and form herein required, shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 1468; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 87.2; Ch 1245, 66 GA, ch 4, s 48)

87.14 MINES--INSURANCE REQUIRED.

It shall be unlawful for any person, firm, association, corporation or partnership to engage in the business of operating a mine under any system of removing coal for sale, or any work in connection therewith, or incident thereto, without first obtaining insurance covering compensation payments or obtaining relief therefrom as provided in chapters 85, 86, and 87, as herein amended. Any violation of this section shall be deemed a simple misdemeanor. Each day such offense is committed shall be regarded as a separate, wrongful act and may be prosecuted in one proceeding, but in separate counts, at the election of the prosecuting attorney.

(C35, s 1477-g3; C39, s 1477.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 87.14; Ch 1245, 66 GA, ch 4, s 49)

88.14 PENALTIES.

1. WILLFUL VIOLATIONS. Any employer who willfully or repeatedly violates the requirements of section 88.4, any standard, rule, or order promulgated pursuant to section 88.5, or regulations prescribed pursuant to this chapter, may be assessed a civil penalty of not more than ten thousand dollars for each violation.

2. SERIOUS VIOLATIONS. Any employer who has received a citation for a serious violation of the requirements of section 88.4, of any standard, rule, or order promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this

chapter, shall be assessed a civil penalty of up to one thousand dollars for each such violation.

3. NONSERIOUS VIOLATIONS. Any employer who has received a citation for a violation of the requirements of section 88.4, of any standard, rule or order promulgated pursuant to section 88.5 or of rules prescribed pursuant to this chapter and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to one thousand dollars for each such violation.

4. FAILURE TO CORRECT. Any employer who fails to correct a violation for which a citation has been issued under section 88.7, subsection 1, within the period permitted for its correction (which period shall not begin to run until the date of the final order of the commission in the case of any review proceeding under section 88.8 initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than one thousand dollars for each day during which such failure or violation continues.

5. WILLFUL VIOLATIONS CAUSING DEATH. Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than twenty thousand dollars or by imprisonment of not more than one year, or by both such fine and imprisonment.

6. ADVANCE NOTICE OF INSPECTIONS. Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the commissioner or his designees, shall, upon conviction, be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment.

7. FILING FALSE DOCUMENTS. Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment of not more than six months, or by both such fine and imprisonment.

8. DISCLOSURE OF CONFIDENTIAL INFORMATION. Whoever violates the provisions of section 88.12 shall be guilty of a serious misdemeanor and shall be removed from office or employment.

9. VIOLATION OF POSTING REQUIREMENTS. Any employer who violates any of the posting, reporting or record keeping requirements as prescribed under the provisions of this chapter, shall be assessed a civil penalty of up to one thousand dollars for each violation.

10. ASSESSMENT OF PENALTIES. The commission shall have the authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

11. DEFINITION OF SERIOUS VIOLATION. For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use,

in such place of employment unless the employer did not, and could not with the exercise of reasonable dilligence, know of the presence of the violation.

12. COLLECTION OF PENALTIES. Civil penalties owed under this chapter shall be paid to the commissioner for deposit with the treasurer of state and shall accrue to the state and may be recovered in a civil action in the name of the state brought in the district court of the county where the violation is alleged to have occurred or where the employer has its principal office.

*(C73, s 4064; C97, ss 4999, 5025, 5026; S13, ss 2477-1a, 4999-a1, -a2; SS15, s 4999-a5; C24, 27, 31, 35, 39, s 1494; C46, 50, 54, 58, 62, s 88.13; C66, 71, ss 88.13, 88A.15, 88A.17; C73, 75, 77, s 88.14; Ch 1245, 66 GA, ch 4, s 50)
Referred to in ss 88.8, 88.9, Code 1977*

88A.10 PENALTIES.

1. Any person who operates an amusement device or ride, concession booth or related electrical equipment at a carnival or fair without having obtained a permit from the commissioner or who violates any order or rule issued by the commissioner under this chapter is guilty of a misdemeanor and, upon conviction, shall be subject to imprisonment in the county jail for not more than one year, or be subject to a fine not to exceed ten thousand dollars, or be subject to both such imprisonment and fine.

2. Any person who interferes with, impedes, or obstructs in any manner the commissioner or any authorized representative of the bureau in the performance of his or her duties under this chapter is guilty of a simple misdemeanor. Any person who bribes or attempts to bribe the commissioner or his or her designee shall be subject to section 722.1.

(C73, 75, 77, s 88A.10; Ch 1245, 66 GA, ch 4, s 51)

89.9 PENALTY.

Any person or persons, corporations and directors, managers and superintendents, and officers thereof, violating any of the provisions of this chapter, shall be guilty of a simple misdemeanor.

*(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 89.9;
Ch 1245, 66 GA, ch 4, s 52)*

91.16 VIOLATIONS--PENALTIES.

Persons violating any of the provisions of this chapter shall be punished as in this section provided, respectively:

1. Any owner, superintendent, manager, or person in charge of any factory, mill, workshop, store, mine, hotel, restaurant, cafe, railway, business house, public or private work, who shall refuse to allow the commissioner of labor or any inspector or employee of the bureau of labor to enter the same, or who shall hinder or deter him or her in collecting information which it is his or her duty to collect shall be guilty of a simple misdemeanor.

2. Any officer or employee of the bureau of labor, or any person making unlawful use of names or information obtained by virtue of his or her office, shall be guilty of a serious misdemeanor.

3. Any owner, operator, or manager of a factory, mill, workshop, mine, store, railway, business house, public or private work, who shall neglect or refuse for thirty days after receipt of notice from the commissioner to furnish any reports or returns he or she may require to enable him or her to

discharge his or her duties shall be guilty of a simple misdemeanor.

(C97, ss 2471, 2472, 2474, 2475; S13, ss 2471, 2472, 2474; C24, 27, 31, 35, 39, s 1525; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 91.16; Ch 1245, 66 GA, ch 4, s 53)

92.20 PENALTY.

The parent, guardian, or person in charge of any migratory worker or of any child who shall engage in any street occupation in violation of any of the provisions of this chapter shall be guilty of a simple misdemeanor.

Any person who furnishes or sells to any minor child any article of any description when the person knows or should have known that said minor intends to sell in violation of the provisions of this chapter, shall be guilty of a simple misdemeanor.

Any other violation of this chapter for which a penalty is not specifically provided, shall be guilty of a simple misdemeanor. Every day during which any violation of this chapter continues shall constitute a separate and distinct offense, and the employment of any person in violation of this chapter shall, with respect to each person so employed, constitute a separate and distinct offense.

(S13, s 2477-e; SS15, s 2477-a1; C24, 27, 31, 35, 39, s1540; C46, 50, 54, 58, 62, 66, s 92.15; C71, 73, 75, 77, s 92.20; Ch 1245, 66 GA, ch 4, s 54)

94.7 UNLAWFUL PRACTICES--CIVIL LIABILITY.

Any person, firm, or corporation who sends an application for employment to an employer who has not applied to such person, firm, or corporation for help or labor shall be guilty of a simple misdemeanor. Any person, firm, or corporation engaged in the business of operating an employment agency or bureau, who fraudulently promises or deceives either through a false notice or advertisement or other means, any applicant for help or employment with regard to the service to be rendered by such person, firm, corporation, agency, or bureau shall be guilty of a simple misdemeanor.

(C27, 31, 35, s 1546-a2; C39, s1546.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 94.7; Ch 1245, 66 GA, ch 4, s 55)

94.12 VIOLATIONS.

Any person, firm, or corporation violating any of the provisions of this chapter, or who shall refuse access to records, books, or other papers relative to the conduct of such agency or bureau, to any person having authority to examine same, shall be guilty of a simple misdemeanor unless otherwise provided.

(S13, s 2477-1; C24, 27, 31, 35, 39, s 1551; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 94.12; Ch 1245, 66 GA, ch 4, s 56)

Referred to in s 94.7, Supplement

95.6 VIOLATIONS.

Any person in any manner undertaking to do any of the things described in section 95.1, without first securing a license as herein provided, shall be guilty of a serious misdemeanor.

(C31, 35, s 1551-c6; C39, s 1551.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 95.6; Ch 1245, 66 GA, ch 4, s 57)

96.11 POWERS, RULES AND PERSONNEL.

1. DUTIES AND POWERS OF DIRECTOR. It shall be the duty of the director to administer this chapter; and the director shall have power and authority to adopt, amend, or rescind pursuant

to chapter 17A such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the director deems necessary or suitable to that end. Not later than the fifteenth day of December of each year, the director shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the director deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the director believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, the director shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. GENERAL AND SPECIAL RULES. Each employer shall post and maintain printed statements of all rules of the department in places readily accessible to individuals in the employer's service, and shall make available to each such individual at the time the individual becomes unemployed a printed statement of such rules relating to the filing of claims for benefits. Such printed statements shall be supplied by the department to each employer without cost to him.

Referred to in s 96.19 (7, g (3)), Code 1977

3. PUBLICATION. The director shall cause to be printed for distribution to the public the text of this chapter, the department's general rules, its annual reports to the governor, and any other material the director deems relevant and suitable and shall furnish the same to any person upon application therefor.

4. PERSONNEL. The director shall provide for the employment of such personnel as are necessary to carry out the functions of the department. Personnel shall be employed under the provisions of chapter 19A. The director, a deputy director, a confidential secretary, the members of the appeal board, and a secretary for each member if deemed necessary, shall be exempt from the merit system under the provisions of section 19A.3.

The director may bond any employee handling moneys or signing checks.

5. ADVISORY COUNCIL.

a. There is established a job service advisory council composed of nine members appointed by the governor and approved by two-thirds of the members of the senate. Three members shall be appointed to represent employees; three members shall be appointed to represent employers; and three members shall be appointed to represent the general public. Not more than five members of the advisory council shall be members of the same political party. The term of office shall be six years beginning on the first day of July following their appointment, except that for the initial board three members representing all three categories shall be appointed for two-year terms; three members representing all three categories shall be appointed for four-year terms; and three members representing all three categories shall be appointed for six-year terms. Members shall serve without compensation, but shall be reimbursed for actual and necessary expenses, including travel, incurred for official meetings of the advisory council from funds appropriated to the department.

Vacancies shall be filled for the unexpired term in the same manner as the original appointment.

b. The advisory council shall meet with the director at least quarterly to discuss problems relating to the administration of this chapter and may meet more often upon the call of the director.

The advisory council annually shall elect a chairperson.

6. EMPLOYMENT STABILIZATION. The director with the advice and aid of the advisory council, and through the appropriate divisions of the department, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, re-training and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

7. RECORDS AND REPORTS. Each employing unit shall keep true and accurate work records, containing such information as the department may prescribe. Such records shall be open to inspection and be subject to being copied by the department or its authorized representatives at any reasonable time and as often as may be necessary. The director may require from any employing unit any sworn or unsworn reports, with respect to persons employed by the department, which the director deems necessary for the effective administration of this chapter. Information thus obtained shall not be published or be open to public inspection, other than to public employees in the performance of their public duties or to an agent of the department designated as such in writing for the purpose of accomplishing certain functions of the department, in any manner revealing the employing unit's identity, but any claimant at a hearing before a hearing officer or the appeal board shall be supplied with information from such records to the extent necessary for the proper presentation of the claim. Any employee of the department or member of the appeal board who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than ninety days, or both.

Referred to in s 96.7(4), Code 1977

8. OATHS AND WITNESSES. In the discharge of the duties imposed by this chapter, the chairman of the appeal board and any duly authorized representative of the department shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

9. SUBPOENAS. In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission, or appeal tribunal, or any member or duly authorized representative thereof, shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, or an appeal tribunal, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof.

10. PROTECTION AGAINST SELF-INCRIMINATION. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department, or the appeal board, or in obedience to a subpoena in any cause or proceeding provided for in this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty for

forfeiture; but no individual shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

11. STATE-FEDERAL COOPERATION. In the administration of this chapter, the department shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relates to unemployment compensation, the federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions of section 96.29 which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department shall take such action as may be necessary to insure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal Act.

The department shall make such reports, in such form and containing such information as the United States department of labor may from time to time require, and shall comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States department of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in administration of this chapter.

The department may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies thereof as the railroad retirement board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board or any other agency requiring such services and reports from the department shall pay the department such compensation therefor as the department determines to be fair and reasonable.

12. DESTRUCTION OF RECORDS. The Iowa department of job service may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the department and are deemed by the director and the state records commission to be no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of, if approved by the state records commission, two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the director in consultation with the state records commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund, subject to rules promulgated by the department.

13. PURGING UNCOLLECTIBLE OVERPAYMENTS. Notwithstanding any other provision of this chapter, the department shall review all outstanding overpayments of benefit payments annually. The department may determine as uncollectible and purge from its records any remaining unpaid balances of outstanding overpayments which are ten years or older from the date of the overpayment decision.

(C39, s 1551.17; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 96.11; Ch 1245, 66 GA, ch 4, s 58) Referred to in ss 96.7(4), 96.19(7, g, (3)), Code 1977

96.15 WAIVER--FEES--ASSIGNMENTS.

1. WAIVER OF RIGHTS VOID. Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from the employer, or require or accept any waiver of any right hereunder by any individual in his or her employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be guilty of a serious misdemeanor.

2. LIMITATION OF FEES. No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the commission, or an appeal tribunal or a court may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the commission. Any person who violates any provisions of this subsection shall, for each such offense, be guilty of a serious misdemeanor.

3. NO ASSIGNMENT OF BENEFITS--EXEMPTIONS. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts. Any waiver of any exemption provided for in this subsection shall be void.

(C39, s 1551.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 96.15; Ch 1245, 66 GA, ch 4, s 59)

96.16 OFFENSES.

1. PENALTIES. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for himself or herself* or for any other person, shall be guilty of a fraudulent practice. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

2. FALSE STATEMENT. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or

to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a fraudulent practice; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal, shall constitute a separate offense.

3. UNLAWFUL ACTS. Any person who shall willfully violate any provisions of this chapter or any rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be guilty of a simple misdemeanor, and each day such violation continues shall be deemed to be a separate offense.

4. MISREPRESENTATION. Any person who, by reason of any error, or by reason of the nondisclosure or misrepresentation by him or her or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his or her case, or while he or she was disqualified from receiving benefits, shall, in the discretion of the department, either be liable to have such sum deducted from any future benefits payable to him or her under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by him or her, and such sum shall be collectible in the manner provided in section 96.14, subsection 3, for the collection of past-due contributions.

(C39, s 1551.22; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 96.16; Ch 1245, 66 GA, ch 4, s 60)

**Editorial note: The words "or herself" were editorially added to de-sex the subsection consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

97A.13 PROTECTION AGAINST FRAUD.

Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the system in any attempt to defraud the system as a result of such act, shall be guilty of a fraudulent practice. Should any change or error in records result in any member or beneficiary receiving from the system more or less than the person would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled, shall be paid.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, S 97A.13; Ch 1245, 66 GA, ch 4, s 61)

*Constitutionality, 53 GA, ch 70, s 14
Omnibus repeal, 53 GA, ch 70, s 15*

97B.38 FEES FOR SERVICES.

The department may, by rule, prescribe the maximum fees which may be charged for services performed in connection with any claim before the department under this chapter, and any agreement in violation of such rules shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this chapter by word,

circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the department, shall be deemed guilty of a fraudulent practice.

(C46, 50, s 97.42; C54, 58, 62, 66, 71, 73, 75, 77, s 97B.38; Ch 1245, 66 GA, ch 4, s 62)

97B.40 FRAUD.

Whoever, for the purpose of causing an increase in any payment authorized to be made under this chapter, or for the purpose of causing any payment to be made where no payment is authorized under this chapter, shall willfully make or cause to be made any false statement or representation as to the amount of any wages paid or received for the period during which earned or unpaid, knowing it to be false or whoever makes or causes to be made any false statement of a material fact knowing it to be false in any application for any payment under this chapter, or whoever willfully makes or causes to be made any false statement, representation, affidavit, or document in connection with such an application knowing them to be false, shall be guilty of a fraudulent practice.

(C46, 50, s 97.44; C54, 58, 62, 66, 71, 73, 75, 77, s 97B.40; Ch 1245, 66 GA, ch 4, s 63)

98.3 VIOLATION.

Any person who shall violate any of the provisions of section 98.2 shall for the first offense be guilty of a simple misdemeanor. For a second or any subsequent violation such person shall be guilty of a serious misdemeanor.

(C97, ss 5005, 5006; C24, 27, 31, 35, 39, s 1554; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 98.3; Ch 1245, 66 GA, ch 4, s 64)

98.37 CERTAIN OFFENSES AND PENALTIES PROVIDED.

Whoever shall violate any provision of this chapter shall be guilty of a simple misdemeanor unless otherwise provided.

(C39, s 1556.32; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 98.37; Ch 1245, 66 GA, ch 4, s 65)

98.38 COUNTERFEITING AND PREVIOUSLY USED STAMPS.

Any person who shall print, engrave, make, issue, sell, or circulate, or shall possess or have in his or her possession with intent to use, sell, circulate, or pass, any counterfeit stamp or previously used stamp, or who shall use, or consent to the use of, any counterfeit stamp or previously used stamp in connection with the sale, or offering for sale, of any cigarettes, or who shall place, or cause to be placed, on any individual package of cigarettes, any counterfeit stamp or previously used stamp, shall be guilty of an aggravated misdemeanor.

(C24, 27, 31, 35, s 1573; C39, s 1556.33; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 98.38; Ch 1245, 66 GA, ch 4, s 66)

98.45 LICENSEES--DUTIES.

1. Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least one year after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or his duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine whether or not all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making such examination, the license of the distributor at such premises shall be subject to revocation by the director.

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. He shall preserve legible copies of all such invoices for one year from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each such invoice for one year from the date of purchase. Invoices shall be available for inspection by the director or his authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for one year from the date of delivery of the tobacco products.

5. The transportation of tobacco products into this state by means other than common carrier must be reported to the director within thirty days with the following exceptions:

a. The transportation of not more than fifty cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein;

b. Transportation by a person with a place of business outside the state, who is licensed as a distributor under section 98.44, or tobacco products sold by such person to a retailer in this state.

Such report shall be made on forms provided by the director.

Common carriers transporting tobacco products into this state shall file with the director reports of all such shipments other than those which are delivered to the public warehouses of first destination in this state which are licensed under the provisions of chapter 554. Such reports shall be filed on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month; the date, point of origin, point of delivery, name of

consignee, description and quantity of tobacco products delivered, and such information as the director may otherwise require.

Any person who fails or refuses to transmit to the director the required reports or whoever refuses to permit the examination of the records by the director shall be guilty of a simple misdemeanor.

(C71, 73, 75, 77, s 98.45; Ch 1245, 66 GA, ch 4, s 67)

98.50 VIOLATIONS--PENALTIES.

1. Any person who in any manner knowingly attempts to evade the tax imposed by this division or who knowingly aids or abets in the evasion or attempted evasion of the tax or who knowingly violates the provisions of section 98.44, subsection 1, of this division, shall be guilty of a serious misdemeanor.

2. Any person who otherwise violates any provisions of this division shall be guilty of a simple misdemeanor.

(C71, 73, 75, 77, s 98.50; Ch 1245, 66 GA, ch 4, s 68)

99.1 HOUSES OF PROSTITUTION OR OTHER NUISANCES.

Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of prostitution or gambling, except as authorized under the laws of this state, is guilty of a nuisance, and the building, erection, or place, or the ground itself, in or upon which such prostitution or gambling is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining such nuisance, are also declared a nuisance and shall be enjoined and abated as hereinafter provided.

The provisions of this section shall not apply to games of skill, games of chance, or raffles conducted pursuant to chapter 99B or to devices lawful under section 99B.10 or to games lawful under section 726.12.*

*(SS15, s 4944-h1; C24, 27, 31, 35, 39, s 1587;
C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 99.1;
Ch 1245, 66 GA, ch 4, s 69)*

**Repealed by 66 GA, ch 99, s 25*

99B.2 LICENSING--RECORDS REQUIRED.

1. The department shall be the agency responsible for issuing any license required by this chapter. A license shall not be issued, except upon submission to the department of an application on forms furnished by the department, and upon submission of the required license fee. Except as otherwise provided in this chapter, a license shall be valid for a period of one year from the date of issue. The license fee or any part thereof shall not be refundable, but shall be returned to the applicant in the event an application is not approved.

2. A licensee other than one issued a license pursuant to section 99B.6 or section 99B.9 shall maintain proper books of account and records showing in addition to any other information required by the department, gross receipts and the amount of the gross receipts taxes collected or accrued with respect to gambling activities, all expenses, charges, fees and other deductions, and the cash amounts, or the cost to the licensee of goods or other noncash valuables, distributed to participants in the licensed activity. If the licensee is a qualified organization, the amounts dedicated and the date and name and address of each person to whom distributed also shall be kept in the books and records. The books of account and records shall be made available to the department or a law enforcement agency for inspection at reasonable times, with or without notice. A failure to permit inspection is a misdemeanor.

3. Each licensee required by subsection 2 to maintain records shall submit quarterly reports to the department on forms furnished by the department. The reports shall contain a compilation of the information required to be recorded by subsection 2, and shall include all of the transactions occurring during the three-month period for which the report is submitted. Failure to submit the quarterly reports shall constitute grounds for revocation of the license. Willful failure to submit quarterly reports is a serious misdemeanor.

(C75, 77, s 99B.2; 67 GA, ch 147, s 116)

Referred to in s 99B.16, Supplement

99B.6 GAMES WHERE LIQUOR OR BEER IS SOLD.

1. Gambling is unlawful on premises for which a class "A", class "B", class "C" or class "D" liquor control license, or class "B" beer permit has been issued pursuant to chapter 123 unless all of the following are complied with:

a. The holder of the liquor control license or beer permit has submitted an application for a license and an application fee of twenty-five dollars, and has been issued a license, and prominently displays the license on the premises.

b. The holder of the liquor control license or beer permit or any agent or employee of the license or permit holder does not participate in, sponsor, conduct or promote, or act as cashier or banker for any gambling activities, except as a participant while playing on the same basis as every other participant.

c. Gambling other than social games is not engaged in on the premises covered by the license or permit.

d. Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

e. The game must be conducted in a fair and honest manner.

f. No person receives or has any fixed or contingent right to receive, directly or indirectly, any amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

g. No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

h. No participant wins or loses more than a total of fifty dollars or more consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

i. No participant is participating as an agent of another person.

j. A representative of the department of revenue or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

k. No person under the age of eighteen years may participate in the gambling except pursuant to sections 99B.3, 99B.4, 99B.5 and 99B.7. Any licensee knowingly allowing a person under the age of eighteen to participate in the gambling prohibited by this paragraph or any person knowingly participating in such gambling with a person under the age of eighteen, shall be guilty of a simple misdemeanor.

2. The holder of a license issued pursuant to this section shall be strictly accountable for maintaining compliance with subsection 1. Proof of any acts constituting a violation shall be grounds for revocation of the license issued pursuant to this section if the holder of the license permitted the violation to occur when the licensee knew or had reasonable cause to know of the acts constituting the violation. The holder of a license issued pursuant to this section which has its license revoked shall not be issued another license within six months of the date of revocation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits or engages in acts or omissions which constitute a violation of subsection 1 commits a serious misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions.

(C77, s 99B.6; 67 GA, ch 147, s 116)

*Referred to in ss 99B.8, 99B.12, Code 1977;
ss 99B.2, 99B.9, Supplement*

99B.9 GAMBLING IN PUBLIC PLACES.

1. Except as otherwise permitted by sections 99B.3, 99B.5, 99B.6, 99B.7, 99B.8, or 99B.11, it is unlawful to permit gambling on any premises owned, leased, rented, or otherwise occupied by a person other than a government, governmental agency or subdivision, unless all of the following are complied with:

a. The person occupying the premises as an owner or tenant has submitted an application for a license and an application fee of twenty-five dollars, and has been issued a license for those premises, and prominently displays the license on the premises.

b. The holder of the license or any agent or employee of the license holder does not participate in, sponsor, conduct, or promote, or act as cashier or banker for any gambling activities.

c. Gambling other than social games is not engaged in on the premises covered by the license or permit.

d. Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

e. The game must be conducted in a fair and honest manner.

f. No person receives or has any fixed or contingent right to receive, directly or indirectly any amount wagered or bet or any portion of amounts wagered or bet, except an amount which

the person wins as a participant while playing on the same basis as every other participant.

g. No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

h. No participant wins or loses more than a total of fifty dollars or other consideration equivalent thereto in all games and activities at any one time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph, a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

i. No participant is participating as an agent of another person.

j. A representative of the department of revenue or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

2. The holder of a license issued pursuant to this section shall be strictly accountable for maintaining compliance with subsection 1, and proof of any violation shall constitute grounds for revocation of the license issued pursuant to this section, whether or not the holder of the license had knowledge of the facts constituting the violation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits acts or omissions which constitute a violation of subsection 1 commits a serious misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions.

5. This section shall not apply to premises or portions of premises constituting the living quarters of the actual residence of an individual if that individual is a participant in the activities permitted by this section.

(C77, s 99B.9; 67 GA, ch 147, s 116)

Referred to in s 99B.12, Code 1977; S 99B.2, Supplement

99B.11 BONA FIDE CONTESTS.

1. It is lawful for a person to conduct any of the contests specified in subsection 2, and to offer and pay awards to persons winning in those contests whether or not entry fees, participation fees, or other charges are assessed against or collected from the participants, but only if all of the following are complied with:

a. The contest is not held at an amusement concession.

b. No gambling device is used in conjunction with, or incident to the contest.

c. The contest is not conducted in whole or in part on or in any property subject to chapter 297, relating to schoolhouses and schoolhouse sites, unless the contest and the person conducting the contest has the express written approval of the governing body of that school district.

d. The contest is conducted in a fair and honest manner. A contest shall not be designed or adapted to permit the operator of the contest to prevent a participant from winning or to predetermine who the winner will be, and the object of the contest must be attainable and possible to perform under the rules stated.

2. A contest is not lawful unless it is one of the following contests:

a. Athletic or sporting contests, leagues or tournaments, rodeos, horse shows, golf, bowling, trap or skeet shoots, fly casting, tractor pulling, rifle, pistol, musket, muzzleloader, archery and horseshoe contests, leagues or tournaments.

b. Horse races, harness racing, ski, airplane, snowmobile, raft, boat, bicycle and motor vehicle races.

c. Contests or exhibitions of cooking, horticulture, livestock, poultry, fish or other animals, artwork, hobbywork or craftwork, except those prohibited by section 725.11.

d. Cribbage, bridge, chess, checkers, dominoes, pinochle and similar contests, leagues or tournaments. The provisions of this paragraph are retroactive to August 15, 1975.

(C75, ss 99B.11, 726.13, C77, s 99B.11; 67 GA, ch 147, s 96)

Referred to in ss 99B.12, 99B.17, Code 1977; s 99B.9, Supplement

99B.15 APPLICABILITY OF CHAPTER.

It is the intent and purpose of this chapter to authorize gambling in this state only to the extent specifically permitted by a section of this chapter. Except as otherwise provided in this chapter, the knowing failure of any person to comply with the limitations imposed by this chapter constitutes unlawful gambling, a serious misdemeanor.

(C77, s 99B.15; 67 GA, ch 147, s 116)

99B.16 FAILURE TO MAINTAIN OR SUBMIT RECORDS.

A licensee who willfully fails to maintain the records when required by section 99B.2, or who willfully fails to submit records when required by that section commits a serious misdemeanor.

(C77, s 99B.16; 67 GA, ch 147, s 116)

CHAPTER 99C
PROFESSIONAL BOXING AND WRESTLING

99C.1	Definition	99C.6	Required Conditions
99C.2	State Commissioner	99C.7	Written Report Filed
99C.3	Secretary	99C.8	Bond Required
99C.4	License	99C.9	Failure to Report--
99C.5	Application for License		Penalty

99C.1 DEFINITION.

As used in this chapter, "boxing or wrestling match" means a boxing, wrestling, or sparring contest or exhibition open to the public for which the principals or contestants are paid for their participation.

(C71, 73, 75, 77, s 727A.1)

99C.2 STATE COMMISSIONER.

There is hereby created a state commissioner of athletics to be appointed by the governor. The commissioner shall serve at the pleasure of the governor, and shall serve until his successor is appointed and qualified. The commissioner shall receive such compensation and expenses as may be approved by the governor.

(C71, 73, 75, 77, s 727A.2)

99C.3 SECRETARY.

The commissioner shall appoint a secretary, who shall keep a full and true record of all proceedings, and who shall perform such other duties as the commissioner may prescribe. Under the direction of the commissioner the secretary shall issue subpoenas for the attendance of witnesses before the commissioner and may administer oaths in all matters pertaining to the duties of the commissioner. The traveling and other necessary expenses, including the salary of the secretary, shall be determined by the commissioner.

(C71, 73, 75, 77, s 727A.3)

99C.4 LICENSE.

No boxing or wrestling match shall be held within this state except as provided in this chapter. The commissioner may issue, suspend or revoke a license to conduct boxing and wrestling matches except that a person shall not be issued a license unless he has been a resident of this state for at least three years immediately preceding the date of application, and no group, club or association shall be issued a license unless it has at least ten members and all members shall have been residents of this state for at least one year immediately preceding the date of application, and no corporation shall be issued a license unless it has at least ten members or stockholders and all such members or stockholders shall have been residents of the state for at least one year immediately preceding the date of application. However, a license may be issued to residents of another state without complying with the residence requirements of this section if the other state extends the same privilege to residents of this state. Nothing in this chapter shall be construed to prohibit amateur boxing or wrestling exhibitions. Every license shall be subject to such rules as the commissioner may prescribe.

(C71, 73, 75, 77, s 727A.4)

99C.5 APPLICATION FOR LICENSE.

Every application for a license to conduct a boxing or wrestling match shall be in writing and shall be verified. It shall contain a recital of such facts as will show the applicant entitled to receive a license, and in addition such other facts as the commissioner may by rules require.

(C71, 73, 75, 77, s 727A.5)

99C.6 REQUIRED CONDITIONS.

A boxing match shall be not more than fifteen rounds in length; and the contestants shall wear gloves weighing at least six ounces during such contests. No person may take part in a boxing match unless they have first passed a rigorous physical examination to determine their fitness to engage in any such match. Said examination shall be conducted by a regular practicing physician designated by the commissioner.

(C71, 73, 75, 77, s 727A.6)

99C.7 WRITTEN REPORT FILED.

Every person conducting a boxing or wrestling match in this state shall, within twenty-four hours after such match, furnish to the commissioner a written report, duly verified, showing the number of tickets sold for such boxing or wrestling match, and the amount of gross proceeds thereof, and such other matters as the commissioner may prescribe; and shall also within the said time pay to the treasurer of state a tax of five percent of its total gross receipts, after deducting any federal admission tax, from the sale of tickets of admission to such boxing or wrestling match.

(C71, 73, 75, 77, s 727A.7)

99C.8 BOND REQUIRED.

Before any license shall be granted to any person to conduct any boxing or wrestling match, such applicant therefor shall execute and file with the treasurer of state a bond in the sum of five thousand dollars, payable to the state of Iowa, to be approved as to form by the attorney general, and as to sufficiency of the sureties thereon, by the commissioner, which bond shall be conditioned upon the payment of the tax and penalties imposed by this chapter. Upon the filing and approval of such bond, the commissioner may issue to such applicant a license as herein provided.

(C71, 73, 75, 77, s 727A.8)

Referred to in s 99C.9, Supplement

99C.9 FAILURE TO REPORT--PENALTY.

If any person fails to make a report of any match within the time prescribed by this chapter, or whenever such report is unsatisfactory to the commissioner, the commissioner may examine or cause to be examined the books and records of such person, and subpoena and examine under oath witnesses, for the purpose of determining the total amount of the gross receipts for any match and the amount of tax due pursuant to the provisions of this chapter. The commissioner may, as the result of such examination, fix and determine the tax, and may also assess the licensee the reasonable cost of conducting the examination. If any person defaults in the payment of any tax due or the costs incurred in making such examination, such person shall forfeit to the state of Iowa the sum of five thousand dollars, which may be recovered by the attorney general from the sureties of the bond required by section 99C.8.

(C71, 73, 75, 77, s 727A.9)

100.4 REFUSAL OF OFFICER TO INVESTIGATE.

Any chief of a fire department, mayor, or township clerk who fails or refuses to make the investigation and report required of him or her, shall be guilty of a simple misdemeanor.

(S13, s 2468-e; C24, 27, 31, 35, 39, s 1626; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 100.4; Ch 1245, 66 GA, ch 4, s 70)

100.8 REFUSAL TO TESTIFY OR PRODUCE BOOKS.

Any witness who refuses to be sworn, except as otherwise provided by law, or who disobeys any lawful order of said fire marshal, or his or her designated subordinates, or who fails to produce any books, papers, or documents touching any matter under examination, shall be guilty of a simple misdemeanor.

(S13, s 2468-h; C24, 27, 31, 35, 39, s 1630; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 100.8; Ch 1245, 66 GA, ch 4, s 71)

100.35 RULES OF MARSHAL.

The fire marshal shall adopt, amend, promulgate and enforce rules and standards relating to fire protection, fire safety and the elimination of fire hazards in churches, schools, hotels, theaters, amphitheaters, hospitals, health care facilities as defined in section 135C.1, boarding homes or housing, rest homes, dormitories, college buildings, lodge halls, club rooms, public meeting places, places of amusement, and all other buildings or structures in which persons congregate from time to time, whether publicly or privately owned. Any person, firm or corporation violating any of such rules and regulations of the fire marshal shall be deemed guilty of a simple misdemeanor. Each day of the continuing

violation of such rules after conviction shall be considered a separate offense. Appeals may be taken from such convictions as in other criminal cases.

(C58, 62, 66, 71, 73, 75, 77, s 100.35; Ch 1245, 66 GA, ch 4, s 72)

Referred to in s 100.36, Code 1977

100.39 FIRE EXTINGUISHERS IN HIGH-RISE BUILDINGS.

All buildings that are approved for construction, after August 15, 1975, that exceed four stories in height, or sixty-five feet above grade, shall require the installation of an approved automatic fire extinguishing system designed and installed in conformity with rules promulgated by the state fire marshal pursuant to this chapter.

The requirements of this section shall not apply to the following:

1. Any noncombustible elevator storage structure or any noncombustible plant building with noncombustible contents.

2. Any combustible elevator storage structure that is equipped with an approved drypipe, nonautomatic sprinkler and automatic alarm system.

3. Buildings in existence or under construction on August 15, 1975. However, if subsequent to that date any building is enlarged or altered beyond the height limitations applicable to new buildings, such building in its entirety shall be subject to all the provisions of this section.

Plans and installation of systems shall be approved by the state fire marshal, a designee of the state fire marshal, or local authorities having jurisdiction. Except where local fire protection regulations are more stringent, the provisions of this section shall be applicable to all buildings, whether privately or publicly owned. The definition of terms shall be in conformity, insofar as possible, with definitions found in the state building code.

Any person violating the provisions of this Act is guilty of a simple misdemeanor.

(C77, s 100.39; Ch 1245, 66 GA, ch 4, s 511)

State building code, s 103A.7, Code 1977

101.7 PENALTY.

Any person, firm or corporation violating any of the rules promulgated under this chapter shall be deemed guilty of a simple misdemeanor. Each day of the continuing violation of such rules after conviction shall be considered a separate offense. Appeals may be taken from such convictions as in other criminal cases.

(C35, ss 1655-g3, -g4; C39, ss 1655.3, 1655.4; C46, 50, 54, ss 101.2, 101.4; C58, 62, 66, 71, 73, 75, 77, s 101.7; Ch 1245, 66 GA, ch 4, s 73)

101A.1 DEFINITIONS.

As used in this chapter:

1. "Explosive" or "explosives" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the United States department of transportation. The term "explosives" includes all material which is classified as class A, class B, and class C explosives by the United States department of transportation, and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs, cordeau detonative fuse, instantaneous fuse, igniter cord, igniters, smokeless pro-

pellant, cartridges for propellant-actuated power devices and cartridges for industrial guns, but shall not include "fireworks" as defined in section 727.2 nor ammunition or small arms primers manufactured for use in shotguns, rifles, and pistols. Commercial explosives are those explosives which are intended to be used in commercial or industrial operations.

2. "Blasting agent" means any material or mixture consisting of a fuel and oxidizer, intended for blasting but not otherwise classified as an explosive, in which none of the finished products as mixed and packaged for use or shipment can be detonated by means of a number eight test blasting cap when unconfined.

3. "Commercial license" or "license" means a license issued by the commissioner of public safety pursuant to this chapter.

4. "Licensee" means a person holding a commercial license issued by the commissioner of public safety pursuant to this chapter.

5. "User's permit" or "permit" means a permit issued by a county sheriff or chief of police of a city of ten thousand or more population, pursuant to this chapter.

6. "Permittee" means a person holding a user's permit issued pursuant to this chapter.

7. "Import" and "importation" means transfer into the state of Iowa.

8. "Explosive materials" means explosives or blasting agents.

9. "Magazine" means any building or structure, other than an explosives manufacturing building, approved by the commissioner of public safety or his designated agent for the storage of explosive materials.

10. "Person" means any individual, corporation, partnership, or association.

(C73, 75, 77, s 101A.1; Ch 1245, 66 GA, ch 4, s 74)

101A.14 CRIMINAL PENALTIES.

1. Any person who violates the provisions of section 101A.2, subsection 3, or section 101A.3, subsection 4, commits a public offense and, upon conviction, shall be guilty of a class C felony.

2. Any person who violates the provisions of sections 101A.6, 101A.8 or 101A.9 or any of the rules adopted by the commissioner of public safety pursuant to the provisions of this chapter, commits a simple misdemeanor.

(C73, 75, 77, s 101A.14; Ch 1245, 66 GA, ch 4, s 75)

103.17 VIOLATIONS.

Any person who shall violate any of the provisions of law relating to fire escapes, or means of escape from fire, or any owner, agent, or trustee having the full care and control of any building and who has been served with notice as provided herein and who shall, within sixty days of the service of the notice, or within the time as extended by the state fire marshal, fail and neglect to comply with the requirements of law, or of the state fire marshal, or who shall fail, refuse, or neglect to perform any order or requirement fixed by law, or by the state fire marshal, shall be guilty of a simple misdemeanor. Each additional week of neglect to comply with such notice, order, or requirement shall constitute a separate offense.

*(SS15, s 4999-a11; C24, 27, 31, 35, 39, s 1677;
C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 103.17;
Ch 1245, 66 GA, ch 4, s 77)*

103A.21 PENALTY.

1. Any person served with an order pursuant to the provisions of section 103A.19, subsection 3, who fails to comply with the order within thirty days after service or within the time fixed by the local building department for compliance, whichever is longer, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or any other person taking part or assisting in the construction or use of any building or structure who shall knowingly violate any of the applicable provisions of the state building code or any lawful order of a local building department made thereunder, shall be guilty of a simple misdemeanor.

2. Violation of this chapter shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person.

Violations of this section shall be simple misdemeanors.

3. As an alternative to filing criminal charges as provided in this section, the commissioner may file a petition in the district court and obtain injunctive relief for any violation of this chapter.

(C73, 75, 77, s 103A.21; Ch 1245, 66 GA, ch 4, s 78; 67 GA, ch 147, s 97)

104.17 PENALTIES.

1. Any owner who violates any of the provisions of this chapter shall be guilty of a simple misdemeanor, unless otherwise specifically provided in this chapter.

2. Any person who bribes or attempts to bribe an inspector shall be subject to criminal proceedings under section 722.1.

(C75, 77, s 104.17; Ch 1245, 66 GA, ch 4, s 79)

106.7 COLLISIONS, ACCIDENTS AND CASUALTIES.

1. The operator of a vessel involved in a collision, accident or other casualty shall, so far as possible without serious danger to his own vessel, crew or passengers, render to other persons affected by the collision, accident or casualty, such assistance as may be practicable and necessary to save them from or minimize any danger caused by the collision, accident or other casualty. He shall also give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

2. Whenever any vessel is involved in a collision, accident or casualty, except one which results only in property damage not exceeding one hundred dollars, a report thereof shall be filed with the commission. The report shall be filed by the operator of the vessel and shall contain such information as the commission may, by rule, require. Said report shall be submitted without delay in death or disappearance cases and within five days in all other cases.

3. Every law enforcement officer who, in the regular course of duty, investigates an occurrence which is required to be reported by this section, shall, after completing such investigation, forward a report of such occurrence to the commission.

4. All reports shall be in writing, and the written report shall be without prejudice to the individual so reporting and shall be for the confidential use of the commission. Provided however, upon the request of any person involved in an occurrence covered under the provisions of this section, or the attorney for such person, the commission shall disclose the identity of the person involved in the occurrence and his address. A written report filed with the commission shall not be

admissible in or used in evidence in any civil action arising out of the facts on which the report is based.

5. Failure of the operator of any vessel involved in a collision, reportable accident, or other casualty, to offer assistance and aid to other persons affected by such collision, accident, or casualty, as set forth in this chapter, shall constitute a serious misdemeanor.

(C39, ss 1703.21, 1703.23; C46, 50, 54, 58, ss 106.21, 106.23; C62, 66, 71, 73, 75, 77, s 106.7; Ch 1245, 66 GA, ch 4, s 80)

106.13 PENALTY.

Any person violating any of the provisions of this chapter, for which another penalty is not otherwise specifically provided, shall be guilty of a simple misdemeanor.

Chapter 232 shall have no application in the prosecution of offenses committed in violation of this chapter or rules and regulations which are adopted under the authority of this chapter which constitute simple misdemeanors.

(C97, ss 2313, 2315; S13, ss 2313, 2315; C24, 27, 31, s 1695; C35, ss 1703-e5, 1703-e6; C39, ss 1703.05, 1703.06; C46, 50, 54, 58, ss 106.5, 106.6; C62, 66, 71, 73, 75, 77, s 106.13; Ch 1245, 66 GA, ch 4, s 81)

106.25 PENALTY.

If any owner, agent or master of any vessel, plying the waters of this state, shall hire or offer for hire, such vessel for the carrying of a person or persons thereon, without first obtaining annually, a permit as in this chapter required, and before operating such vessel in such service; or if the owner, agent or master, having obtained such permit, receives for carriage or permits carriage on such vessel a greater number of persons than authorized therein, or if any person acts as pilot or engineer on any vessel, for which inspection and registration are required, without first obtaining a permit therefor; or if such pilot or engineer continues to follow such avocation after the same has been revoked or expired, he or she shall be guilty of a serious misdemeanor. The provisions of this section shall not apply to vessels registered or numbered by authority of the United States.

(C97, s 2513; S13, ss 2513, 2514-d; C24, 27, 31, ss 1695, 1700; C35, ss 1703-e6, 1703-e10; C39, ss 1703.06, 1703.22, 1703.27; C46, 50, 54, 58, ss 106.6, 106.22, 106.27; C62, 66, 71, 73, 75, 77, s 106.25; Ch 1245, 66 GA, ch 4, s 82)

109.9 SPAWNING GROUNDS.

To effect sound wildlife management and maintain biological balance as provided in section 109.39, the commission may set aside certain portions of any state waters for spawning grounds where the same are suitable for this purpose for such length of time as it may deem advisable by the posting of notices in conspicuous places around such area, and it shall be unlawful for any person to fish or to in any manner interfere with the spawning of fish in this area. Any person violating any of the provisions of this section shall be guilty of a simple misdemeanor.

(C31, 35, s 1709-c1; C39, s 1709.5; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 109.9; Ch 1245, 66 GA, ch 4, s 83)

109.32 VIOLATION.

Whoever shall take, catch, kill, injure, destroy, have in possession, buy, sell, ship, or transport any frogs, fish, mussels, birds, their nests, eggs, or plumage, fowls, game, or

animals in violation of the provisions of this chapter or of administrative rules of the commission or whoever shall use any device, equipment, seine, trap, net, tackle, firearm, drug, poison, explosive, or other substance or means, the use of which is prohibited by this chapter, or use the same at a time, place or in a manner or for a purpose prohibited, or do any other act in violation of the provisions of this chapter or of administrative rules of the commission for which no other punishment is provided, shall be guilty of a simple misdemeanor.

Each fish, fowl, bird, bird's nest, egg, or plumage, and animal unlawfully caught, taken, killed, injured, destroyed, possessed, bought, sold, or shipped shall be a separate offense.

(R60, ss 4381-4383; C73, ss 4048, 4053, 4063; C97, ss 2543, 2544, 2551, 2552, 2556, 2558, 2561; S13, ss 2547-e, 2551-b, 2561, 2563-a8, -i, -o, -s, -v; SS15, ss 2540-a, 2544, 2551, 2552, 2556, C24, 27, 31, 35, 39, s 1789; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 109.32; Ch 1245, 66 GA, ch 4, s 84) Referred to in ss 109.6, 109.22, 109.59, Code 1977; ss 109.9, 109.61, 109.87, Supplement

109.33 VIOLATIONS RELATING TO DAMS.

Whoever shall erect any dam or other obstruction prohibited by this chapter or at a place or in a manner prohibited shall be guilty of a simple misdemeanor, or shall injure or destroy any dam lawfully erected, shall be guilty of an aggravated misdemeanor.

(C97, ss 2548, 2550; SS15, s 2548; C24, 27, 31, 35, 39, s 1790; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 109.33; Ch 1245, 66 GA, ch 4, s 85)

109.34 VIOLATIONS BY COMMON CARRIER.

Any common carrier which shall violate any of the provisions of this chapter relating to receiving, having in possession, shipping or delivering any fish, fowls, birds, birds' nests, eggs, or plumage, game or animals, in violation of the provisions of this chapter or contrary to the regulations and restrictions therein provided, and any agent, employee, or servant of such corporation violating such provisions, shall be guilty of a simple misdemeanor.

(C73, s 4049; C97, s 2557; C24, 27, 31, 35, 39, s 1791; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 109.34; Ch 1245, 66 GA, ch 4, s 86)

109.61 LICENSE TO POSSESS.

A licensed game breeder may hold in possession at any time any game bird, game animal or fur-bearing animal raised by him or obtained from without the state or from a licensed game breeder within the state. Such licensee may buy, sell, or otherwise dispose of such game birds, game animals, fur-bearing animals, or any part thereof. Possession and use of such game birds, game animals or fur-bearing animals obtained from a licensed game breeder shall be deemed lawful, provided that no game birds or game animals so obtained may be sold for food, except under the following conditions: Upon filing with the state conservation commission a facsimile of a stamp of similar type to that used by the United States department of agriculture in grading meat, licensed game breeders may sell dressed game birds or game animals to markets for resale providing each game bird or game animal has affixed in a conspicuous and legible manner the imprint of such stamp. Such stamps shall bear the name and license number of the game breeder in letters of at least twelve-point type size.

Markets selling such stamped game shall maintain the stamp on each game bird or game animal until finally sold or disposed of. All markets selling such stamped game birds or game animals shall keep a record showing the total number of game birds or game animals sold together with the name and address of the game breeder from whom purchased and the number of game birds and game animals in each such purchase. Markets retailing such stamped game, together with their records, shall be subject to inspection by any authorized representative of the state conservation commission at any reasonable hour.

Violation of the provisions of this section shall constitute a simple misdemeanor.

(C39, s 1794.023; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 109.61; Ch 1245, 66 GA, ch 4, s 87)

109.87 OPEN SEASONS.

Except as otherwise provided, no person shall take, capture, kill, or have in possession any fur-bearing animal or any part thereof at any time except during the open season as set by the commission under authority of section 109.39 except where such killing, trapping, or ensnaring may be for the protection of public or private property. Provided, it shall be lawful for any person to have in his possession, sell, transport, or otherwise dispose of during such open season as herein provided, and for ten days thereafter, the carcass of, hide or skin of any animal named in section 109.40.

Taking or attempting to take beaver on private lands or waters without permission of the owner or tenant shall constitute a simple misdemeanor.

(C97, s 2553; SS15, s 2553; C24, s 1766; C27, 31, ss 1766, 1766-a1; C39, s 1794.049; C46, ss 109.87, 109.93; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 109.87; Ch 1245, 66 GA, ch 4, s 88)

109.93 HUNTING BY ARTIFICIAL LIGHT.

It shall be unlawful to throw or cast the rays of a spotlight, headlight or other artificial light on any highway, or in any field, woodland or forest for the purpose of spotting, locating or taking or attempting to take or hunt any animal, except raccoons or other fur-bearing animals when treed with the aid of dogs, while having in possession or control, either singly or as one of a group of persons, any firearm, bow or other implement whereby game could be killed.

Any person violating this section shall be guilty of a simple misdemeanor.

(C62, 66, 71, 73, 75, 77, s 109.93; Ch 1245, 66 GA, ch 4, s 89)

109.120 HUNTING FROM AIRCRAFT OR SNOWMOBILES PROHIBITED.

It shall be unlawful for any person to intentionally kill or wound, attempt to kill or wound, or pursue any animal, fowl or fish from or with an aircraft in flight or from or with any self-propelled vehicles designed for travel on snow or ice which utilize sled type runners, or skis, or an endless belt tread or any combination thereof and which are commonly known as snowmobiles. Any person who violates the provisions of this section shall be guilty of a simple misdemeanor.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 109.120; Ch 1245, 66 GA, ch 4, s 90)

109A.10 PENALTIES.

Whoever violates any of the provisions of this chapter shall be guilty of a simple misdemeanor.

(C77, s 109A.10; 67 GA, Ch 147, s 117)

110.13 UNLAWFUL OBTAINING OR USE--EFFECT.

A nonresident shall not obtain a resident license by falsely claiming residency in the state. The use of a license by a person other than the person to whom the license is issued is unlawful and shall nullify the license. Violation of this section is a simple misdemeanor.

(S13, s 2563-a9; C24, 27, 31, s 1729; C35, s 1794-e11; C39, s 1794.094; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 110.13; Ch 1245, 66 GA, ch 4, s 91; 67 GA, ch 66, s 9)

110.20 DISPOSITION OF SEIZED PROPERTY.

Disposition of seized property shall be made in accordance with chapter 809.

(Ch 1245, 66 GA, ch 4, s 92)
Prior law: ss 110.20, 110.21, Code 1977

110.26 PENALTIES.

Whoever shall violate any of the provisions of this chapter shall be guilty of a simple misdemeanor.

(C46, 50, 54, 58, 62, 66, s 110.25; C71, 73, 75, 77, s 110.26; Ch 1245, 66 GA, ch 4, s 93)

110A.9 VIOLATIONS--PENALTY.

Any licensee or any other person, who willfully and intentionally transfers or permits the transfer of the tags issued to the operator of one licensed game breeding and shooting preserve area to the operator of another licensed game breeding and shooting preserve area, or to any other person, or who affixes such tags to game birds not taken from a licensed game breeding and shooting preserve area or to game birds taken from any area other than the area for which such tags were issued, is guilty of a simple misdemeanor.

(C58, 62, 66, 71, 73, 75, 77, s 110A.9; Ch 1245, 66 GA, ch 4, s 94)

110B.6 PENALTY.

Any person violating any of the provisions of this chapter shall be guilty of a simple misdemeanor.

(C77, s 110B.6; Ch 1245, 66 GA, ch 4, s 512; 67 GA, ch 147, s 118)

111.4 CONSTRUCTION PERMIT--REGULATIONS--COMMERCIAL CONCESSIONS.

No person, association or corporation shall build or erect any pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind upon or over any state-owned land or water under the jurisdiction of the commission, without first obtaining from such commission a written permit, provided, however, that this provision shall not apply to dams constructed and operated under the authority of chapter 469. No such permit, in matters relating to or in any manner affecting flood control, shall be issued without approval of the Iowa natural resources council. No person shall maintain or erect any structure beyond the line of private ownership along or upon the shores of state-owned waters in such a manner as to obstruct the passage of pedestrians along the shore between the ordinary high-water mark and the water's edge, except by permission of the commission.

It shall be the duty of the commission to adopt and enforce rules and regulations governing and regulating the building or erection of any such pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind, and said commission may prohibit, restrict or order the removal thereof, when in the judgment of said commission it will be for the best interest of the public.

Any person, firm, association, or corporation violating any of the provisions of this section or any rule or regulation adopted by the commission under the authority of this section shall be guilty of a simple misdemeanor.

No person, association or corporation shall operate any commercial concession on any state-owned lands or waters without first obtaining from the conservation commission a permit therefor. The commission may issue and revoke such permits for the protection of the public health, safety, morals or welfare.

(C27, 31, 35, s 1799-b2; C39, ss 1703.19, 1799.1; C46, 50, 54, 58, ss 106.19, 111.4; C62, 66, 71, 73, 75, 77, s 111.4; Ch 1245, 66 GA, ch 4, s 95)

111.57 PENALTIES.

Any person violating any of the provisions of the foregoing sections numbered 111.35 to 111.56, inclusive, shall be guilty of a simple misdemeanor.

(C39, s 1828.23; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 111.57; Ch 1245, 66 GA, ch 4, s 96)
Referred to in s 111A.10, Code 1977

111A.5 RULES AND REGULATIONS--OFFICERS.

The county conservation board may make, alter, amend or repeal rules and regulations for the protection, regulation and control of all museums, parks, preserves, parkways, playgrounds, recreation centers, and other property under its control. No rules and regulations adopted shall be contrary to, or inconsistent with, the laws of the state of Iowa. Such rules and regulations shall not take effect until ten days after their adoption by said board and after their publication once a week for two weeks in at least one paper circulating in the county and after a copy thereof has been posted near each gate or principal entrance to the public ground to which they apply. After such publication and posting, any person violating any provision of such rules and regulations which are then in effect shall be guilty of a simple misdemeanor. The board may designate the executive officer and such employees as the executive officer may designate as police officers who shall have all the powers conferred by law on police officers, peace officers, or sheriffs in the enforcement of the laws of the state of Iowa and the apprehension of violators thereof.

(C58, 62, 66, 71, 73, 75, 77, s 111A.5; Ch 1245, 66 GA, ch 4, s 97)
Referred to in s 111A.10, Code 1977

114.25 VIOLATIONS.

Any person who presents or attempts to file as his or her own the certificate of registration of another, or who shall give false or forged evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration, or who shall falsely impersonate another practitioner of like or different name, or who shall use or attempt to use a revoked certificate of registration, shall be deemed guilty of a fraudulent practice.

(C24, 27, 31, 35, s 1875; C39, s 1875.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 114.25; Ch 1245, 66 GA, ch 4, s 98)

114.32 DISCLOSURE OF CONFIDENTIAL INFORMATION.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

*(C75, 77, s 114.32; Ch 1245, 66 GA, ch 4, s 99)
Referred to in s 114.17, Code 1977*

115.9 VIOLATIONS PUNISHED.

Any person who violates the provisions of this chapter shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 1885; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 115.9; Ch 1245, 66 GA, Ch 4, s 100)

115.20 DISCLOSURE OF CONFIDENTIAL INFORMATION.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

(C75, 77, s 115.20; Ch 1245, 66 GA, ch 4, s 101)

116.16 DISCLOSURE OF CONFIDENTIAL INFORMATION.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

(C75, 77, s 116.16; Ch 1245, 66 GA, ch 4, s 102)

116.29 PENALTY.

Any person who violates any provisions of section 116.25 shall be guilty of a serious misdemeanor.

Whenever the board has reason to believe that any person is liable to punishment under this section, it may certify the facts to the attorney general of this state, or to the county attorney of the county where the person maintains a business office, who may, in his discretion, cause appropriate charges to be filed.

(SS15, ss 2620-i,-j; C24, 27, ss 1904, 1905; C31, 35, s 1905-c20; C39, s 1905.18; C46, 50, 54, 58, 62, 66, 71, 73, s 116.18; C75, 77, s 116.29; Ch 1245, 66 GA, ch 4, s 103)

Referred to in s 116.30, Code 1977

117.43 PENALTIES.

Any person found guilty of violating a provision of sections 117.1 to 117.42, inclusive, in a first offense shall be guilty of a simple misdemeanor.

(C31, 35, s 1905-c59; C39, s 1905.56; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 117.43; Ch 1245, 66 GA ch 4, s 104)

117.45 DUAL CONTRACTS FOR SALE OF REAL PROPERTY PROHIBITED.

It shall be unlawful for any person to knowingly make, issue, deliver, or receive dual contracts for the purpose of sale of real property. Dual contracts, either written or oral, shall mean two contracts concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price and is used as an inducement for mortgage investors to make a loan commitment on such real property in reliance upon the stated inflated value.

Any person who shall violate the provisions of this section shall be guilty of a fraudulent practice.

*(C71, 73, 75, 77, s 117.45; Ch 1245, 66 GA, ch 4, s 105)
See s 117.43*

117.52 DISCLOSURE OF CONFIDENTIAL INFORMATION.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

(C75, 77, s 117.52; Ch 1245, 66 GA, ch 4, s 106)

117A.5 PENALTIES.

1. Any person, firm, partnership, corporation, company, or association representing in any manner that the state, the commission or any officer thereof has recommended or acquiesced in the recommendation of the purchase of any subdivided land offered for sale or lease, in advertising or offering such subdivided land for sale or lease, shall be guilty of a serious misdemeanor.

2. Any person, officer, director, agent, or employee of a person, company, firm, partnership, association, or corporation offering to sell or lease, or selling or leasing, subdivided land prior to the filing of the offering statement and the application required by this chapter shall be guilty of a serious misdemeanor.

3. Except as provided in subsection 2, every person, officer, director, agent, or employee of a person, company, firm, partnership, corporation, or association who authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any device, scheme, or artifice for obtaining money or property by means of any false pretense, representation, or promise concerning any subdivided land offered for sale or lease, and every person, officer, director, agent, or employee of a company, firm, partnership, corporation, or association who make or attempts to make fictitious or pretended purchases or sales of subdivided lands in this state, or in any other respect willfully violates or

fails to comply with any of the provisions of this chapter, or omits or neglects to obey, observe, or comply with any order, permit, decision, demand, or requirement of the commission under the provisions of this chapter, is guilty of a serious misdemeanor.

(C75, 77, s 117A.5; Ch 1245, 66 GA, ch 4, s 107)

118.19 VIOLATIONS--PUNISHMENT.

Any person who practices or offers to practice architecture or who uses the word architect or any word or any letters or figures indicating or tending to imply that the person using the same is an architect, without first having complied with the provisions of this chapter, shall be deemed guilty of a serious misdemeanor.

(C27, 31, 35, s 1905-b14; C39, s 1905.71; C46, 50, 54, 58, 62, s 118.14; C66, 71, 73, 75, 77, s 118.19; Ch 1245, 66 GA, ch 4, s 108)

118.27 DISCLOSURE OF CONFIDENTIAL INFORMATION.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

(C75, 77, s 118.27; Ch 1245, 66 GA, ch 4, s 109)

118A.18 UNLAWFUL PRACTICE.

Any person who uses the words landscape architect or any word or any letters or figures indicating or tending to imply that the person using the same is a landscape architect, without having a valid certificate of registration as a landscape architect issued pursuant to this chapter, is guilty of a simple misdemeanor.

(C75, 77, s 118A.18; Ch 1245, 66 GA, ch 4, s 110)
Referred to in ss 118A.5, 118A.19, Code 1977

119.1 FRAUDULENT MARKING.

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made, in whole or in part, of gold or any alloy of gold, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, any mark indicating or designed to indicate that the gold or alloy in such article is of a greater degree of fineness than the actual fineness or quality thereof, unless the actual fineness thereof, in the case of flatware or watchcases, be not less by more than three one-thousandths parts, and in case of all other articles be not less by more than one-half carat than the fineness indicated by the marks stamped, branded, engraved, or imprinted upon any part of such article, or upon any tag, card, or label attached thereto, or upon any container in which such article is enclosed according

to the standards and subject to the qualifications hereinafter set forth, is guilty of a fraudulent practice.

(S13, s 5077-b; C24, 27, 31, 35, 39, s 1906; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 119.1; Ch 1245, 66 GA, ch 4, s 111)

Referred to in s 119.2, Code 1977

119.3 "STERLING SILVER."

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, the words "sterling silver" or "sterling" or any colorable imitation thereof, unless nine hundred twenty-five one-thousandths of the component parts of the metal purporting to be silver of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a fraudulent practice, but in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standard.

(S13, s 5077-b1; C24, 27, 31, 35, 39, s 1908; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 119.3; Ch 1245, 66 GA, ch 4, s 112)

Referred to in s 119.6, Code 1977

119.4 "COIN SILVER."

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is enclosed, the words "coin" or "coin silver", or any colorable imitation thereof, unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a fraudulent practice; but in case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards.

(S13, s 5077-b1; C24, 27, 31, 35, 39, s 1909; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 119.4; Ch 1245, 66 GA, ch 4, s 113)

Referred to in s 119.6, Code 1977

119.5 OTHER ARTICLES OF SILVER.

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, any mark or word, other than the word "sterling" or the word "coin", indicating, or designed to indicate that the silver or alloy of silver in said article is of a greater degree of fineness than the actual fineness or quality, unless the actual fineness of the silver or alloy of silver of which said article is composed be not less by more than four one-thousandths parts than the actual fineness indicated by the said mark or word, other than the word "sterling" or "coin", stamped, branded, engraved, or imprinted

upon any part of said article, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, subject to the qualifications hereinafter set forth, is guilty of a fraudulent practice.

(S13, s 5077-b1; C24, 27, 31, 35, 39, s 1910; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 119.5; Ch 1245, 66 GA, ch 4, s 114)
Referred to in s 119.6, Code 1977

119.7 GOLD-PLATED OR GOLD-FILLED ARTICLES.

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon, or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of gold or of any alloy of gold and which article is known in the market as "rolled gold-plate", "gold-plate", "gold-filled", or "gold-electroplate", or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, any word or mark usually employed to indicate the fineness of gold, unless said word be accompanied by other words plainly indicating that such article or part thereof is made of rolled gold-plate, or gold-plate, or gold-electroplate, or is gold-filled, as the case may be, is guilty of a fraudulent practice.

(S13, s 5077-b2; C24, 27, 31, 35, 39, s 1912; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 119.7; Ch 1245, 66 GA, ch 4, s 115)

119.8 SILVER-PLATED ARTICLES.

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon, or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of silver or of any alloy of silver, and which article is known in the market as "silver-plate" or "silver-electroplate", or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is encased or enclosed, the word "sterling" or the word "coin" either alone or in conjunction with any other words or marks, is guilty of a fraudulent practice.

(S13, s 5077-b3; C24, 27, 31, 35, 39, s 1913; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 119.8; Ch 1245, 66 GA, ch 4, s 116)

119.9 VIOLATION.

Every person guilty of a violation of the provisions of this chapter, and every officer, manager, director, or agent of any such person directly participating in such violation or consenting thereto, shall be guilty of a simple misdemeanor; but nothing in this chapter shall apply to articles manufactured prior to June 13, 1907.

(S13, s 5077-b4; C24, 27, 31, 35, 39, s 1914; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 119.9; Ch 1245, 66 GA, ch 4, s 117)

120.13 PENALTY.

Anyone not having a certificate of registration who shall hold himself or herself* out as a watchmaker or as one qualified to do watchmaking or anyone who shall violate any of the provisions of this chapter shall be guilty of a serious misdemeanor.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 120.13;
Ch 1245, 66 GA, ch 4, s 118)

**Editorial note: The words "or herself" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

120.17 DISCLOSURE OF CONFIDENTIAL INFORMATION.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

(C75, 77, s 120.17; Ch 1245, 66 GA, ch 4, s 119)

122.6 VIOLATIONS.

Any person who shall violate the provisions of this chapter or who shall solicit funds without a permit, or if under a permit thereafter divert the same to purposes other than for which said donations were contributed, shall be deemed guilty of a simple misdemeanor.

(S13, s 5077-d; C24, s 1921; C27, 31, 35, s 1921-b6;
C39, s 1915.6; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,
s 122.6; Ch 1245, 66 GA, ch 4, s 120)

123.48 EVIDENCE OF LEGAL AGE DEMANDED.

1. Upon attempt to purchase alcoholic liquor in any state liquor store by any person who appears to the vendor to be under legal age, such vendor shall demand and the prospective purchaser upon such demand shall display satisfactory evidence that he is of legal age.

2. Any person under legal age who presents to any vendor falsified evidence of age as provided in subsection 1 of this section shall be guilty of a simple misdemeanor.

(C66, 71, s 123.45; C73, 75, 77, s 123.48; Ch 1245, 66 GA, ch 4, s 121)

123.50 PENALTIES.

1. Any person who violates any of the provisions of section 123.49 shall be guilty of a simple misdemeanor.

2. The conviction of any liquor control licensee or beer permittee for a violation of any of the provisions of section 123.49 shall, subject to subsection 3 of this section, be grounds for the suspension or revocation of the license or permit by the department or the local authority. However, if any liquor control licensee is convicted of any violation of subsection 2, paragraphs "a", "d" or "e", of such section, or any beer permittee is convicted of a violation of paragraph "a", the liquor control license or beer permit shall be revoked and shall immediately be surrendered by the holder, and the

bond of the license or permit holder shall be forfeited to the department.

3. If any licensee, beer permittee, or employee of such licensee or permittee shall be convicted of a violation of section 123.49, subsection 2, paragraph "h", or a retail beer permittee shall be convicted of a violation of paragraph "i" of such subsection, the director or local authority shall, in addition to the other penalties fixed for such violations by this section, assess a penalty as follows:

a. Upon a first conviction, the violator's liquor control license or beer permit shall be suspended for a period of fourteen days.

b. Upon a second conviction within a period of two years, the violator's liquor control license or beer permit shall be suspended for a period of thirty days.

c. Upon a third conviction within a period of five years, the violator's liquor control license or beer permit shall be suspended for a period of sixty days.

d. Upon a fourth conviction within a period of five years, the violator's liquor control license or beer permit shall be revoked.

(C35, ss 1921-f46, 1921-f127; C39, ss 1921.046, 1921.132; C46, 50, 54, 58, 62, 66, 71, ss 123.46, 124.37; C73, 75, 77, s 123.50; Ch 1245, 66 GA, ch 4, s 122)

Referred to in ss 123.39, 123.141, Code 1977

123.51 ADVERTISEMENTS FOR ALCOHOLIC LIQUOR OR BEER.

1. Except as permitted by federal statute and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state.

2. No person shall publish, exhibit, or display or permit to be displayed any other advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations adopted by the department and then only in strict accordance with such regulations. This subsection shall not apply, however:

a. To the department.

b. To the correspondence, or telegrams, or generally communications of the department, or its agents, servants, and employees.

c. To the receipt or transmission of a telegram or telegraphic copy in the ordinary course of the business of agents, servants, or employees of any telegraph company.

3. No signs or other matter advertising any brand of beer shall be erected or placed upon the outside of any premises occupied by a licensee or permittee authorized to sell beer at retail. This subsection shall not prohibit the use of signs or other matter inside a fence or similar enclosure which wholly or partially surrounds the licensed premises.

4. Violations of this section shall be a simple misdemeanor.

(C35, s 1921-f47; C39, s 1921.047; C46, 50, 54, 58, 62, 66, 71, s 123.47; C73, 75, 77, s 123.51; Ch 1245, 66 GA, ch 4, s 123)

Signs removed by July 1, 1974

123.87 PROMPT SERVICE.

It shall be a simple misdemeanor for any peace officer to delay service of original notices, writs of injunction, writs

of abatement, or warrants for contempt in any equity case filed for injunction or abatement by the state.

(C24, 27, 31, s 2049; C35, ss 1921-f88, 2049; C39, ss 1921.088, 2049; C46, 50, 54, 58, 62, 66, 71, ss 123.88, 128.36; C73, 75, 77, s 123.87; Ch 1245, 66 GA, ch 4, s 124)

123.99 FALSE STATEMENTS.

If any person, for the purpose of procuring the shipment, transportation, or conveyance of any intoxicating liquors within this state, shall make to any person, company, corporation, or common carrier, or to any agent thereof, any false statements as to the character or contents of any box, barrel, or other vessel or package containing such liquors; or shall refuse to give correct and truthful information as to the contents of any such box, barrel, or other vessel or package so sought to be transported or conveyed; or shall falsely mark, brand, or label such box, barrel, or other vessel or package in order to conceal the fact that the same contains intoxicating liquors; or shall by any device or concealment procure or attempt to procure the conveyance or transportation of such liquors as herein prohibited, the person shall be guilty of a simple misdemeanor.

(C97, s 2420; C24, 27, 31, 35, 39, s 1934; C46, 50, 54, 58, 62, 66, 71, s 125.14; C73, 75, 77, s 123.99; Ch 1245, 66 GA, ch 4, s 125)

123.102 INSPECTION OF SHIPPING RECORDS.

The record book required by section 123.101 shall, during business hours, be open to inspection by any peace or law enforcing officer. It shall be a simple misdemeanor to refuse such inspection.

(SS15, ss 2421-c,-d; C24, 27, 31, 35, 39, s 1941; C46, 50, 54, 58, 62, 66, 71, s 125.21; C73, 75, 77, s 123.102; Ch 1245, 66 GA, ch 4, s 126)

123.104 UNLAWFUL DELIVERY.

It shall be a simple misdemeanor for any corporation, common carrier, person, or any agent or employee thereof:

1. To deliver any intoxicating liquors to any person other than to the consignee.
2. To deliver any intoxicating liquors without having the same receipted for as provided in section 123.103.
3. To deliver any intoxicating liquors where there is reasonable ground to believe that such liquor is intended for unlawful use.

(SS15, s 2421-c1; C24, 27, 31, 35, 39, s 1943; C46, 50, 54, 58, 62, 66, 71, s 125.23; C73, 75, 77, s 123.104; Ch 1245, 66 GA, ch 4, s 127)

125.16 VOLUNTARY TREATMENT OF SUBSTANCE ABUSERS.

1. A substance abuser may apply for voluntary treatment or rehabilitation services directly to a facility or to a licensed physician and surgeon or osteopathic physician and surgeon. If the proposed patient is a minor or an incompetent person, a parent, a legal guardian or other legal representative may make the application. The licensed physician and surgeon or osteopathic physician and surgeon or any employee or person acting under his or her direction or supervision, or the facility shall not report or disclose the name of the person or the fact that treatment was requested or has been undertaken to any law enforcement officer or law enforcement agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. If the person seeking such

treatment or rehabilitation is a minor who has personally made application for treatment, the fact that the minor sought treatment or rehabilitation or is receiving treatment or rehabilitation services shall not be reported or disclosed to the parents or legal guardian of such minor without the minor's consent, and the minor may give legal consent to receive such treatment and rehabilitation.

2. Subject to rules adopted by the commission, the administrator in charge of a facility may determine who shall be admitted for treatment or rehabilitation. If a person is refused admission, the administrator, subject to rules adopted by the commission, shall refer the person to another facility for treatment if possible and appropriate.

3. A substance abuser seeking treatment or rehabilitation and who is either addicted or dependent on a chemical substance shall first be examined and evaluated by a licensed physician and surgeon or osteopathic physician and surgeon who shall prescribe a proper course of treatment and medication, if needed. The licensed physician and surgeon or osteopathic physician and surgeon may further prescribe a course of treatment or rehabilitation and authorize another licensed physician and surgeon or osteopathic physician and surgeon or facility to provide the prescribed treatment or rehabilitation services. Treatment or rehabilitation services may be provided to a person individually or in a group. Any facility providing or engaging in such treatment or rehabilitation shall not report or disclose to a law enforcement officer or law enforcement agency the name of any person receiving or engaged in such treatment or rehabilitation; nor shall any person receiving or participating in such treatment or rehabilitation report or disclose the name of any other person engaged in or receiving such treatment or rehabilitation or that such program is in existence, to a law enforcement officer or law enforcement agency. Such information shall not be admitted in evidence in any court, grand jury, or administrative proceeding. However, any person engaged in or receiving such treatment or rehabilitation may authorize the disclosure of his or her name and individual participation.

4. If a patient receiving inpatient care leaves a facility, the patient shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the facility that the patient is a substance abuser who requires help, the director may arrange for assistance in obtaining supportive services and residential facilities.

5. If a patient leaves a facility, with or against the advice of the administrator in charge of the facility, the director may make reasonable provisions for the patient's transportation to another facility or to the patient's home. If the patient has no home the patient shall be assisted in obtaining shelter. If the patient is a minor or an incompetent person the request for discharge from an inpatient facility shall be made by a parent, legal guardian or other legal representative or by the minor or incompetent if the patient was the original applicant.

6. Any person who reports or discloses the name of a person receiving treatment or rehabilitation services to a law enforcement officer or law enforcement agency or any person receiving treatment or rehabilitation services who discloses the name of any other person receiving treatment or rehabilitation services without the written consent of the person in violation of the provisions of this section shall upon conviction be guilty of a simple misdemeanor.

(C75, 77, s 125.16; 67 GA, ch 74, s 26)

Referred to in ss 125.3, 125.7, 125.12, Code 1977;

s 321.283(3), Supplement

127.7 LIQUOR SUBJECT TO FORFEITURE.

The court, upon conviction, shall enter a judgment of forfeiture of the liquor and vessels seized and shall file with the clerk of the district court a certified transcript of such order.

(C24, 27, 31, 35, 39, s 2006; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 127.7; Ch 1245, 66 GA, ch 4, s 128)

127.8 DISPOSITION OF FORFEITED LIQUORS.

When a judgment has been entered decreeing a forfeiture of any intoxicating liquors, the magistrate shall direct the disposition of such liquors and the vessels containing the same:

1. By ordering that forfeited intoxicating liquors, which have a valid unbroken federal liquor tax stamp properly affixed to the vessel and which the magistrate has no reason to believe is adulterated or contaminated, be delivered to the Iowa beer and liquor control department.

2. By ordering the destruction of forfeited intoxicating liquors which do not have a valid federal liquor tax stamp properly affixed to the vessel or which the magistrate has reason to believe is contaminated or adulterated.

3. By ordering any portion thereof consisting of alcohol, brandies, wine, or whiskey, to be delivered, for medicinal or scientific purposes, to any state or reputable hospital in the county, or in adjoining counties, or to the board of control of state institutions, or to any reputable educational institution in the state for scientific purposes.

(Ch 1245, 66 GA, ch 4, s 129)
Prior law: s 127.8, Code 1977

127.9 CONVEYANCE SUBJECT TO FORFEITURE.

Any conveyance which is used to transport a quantity of unlawful liquor which is large enough to give rise to a presumption that the liquors are being transported for the purpose of sale and the transportation of such liquors is not incidental to the transportation of persons or other property is subject to forfeiture to the state.

(Ch 1245, 66 GA, ch 4, s 130)
Prior law: s 127.9, Code 1977

127.11 PROCEDURE.

Upon the filing of an information the procedure for forfeiting the conveyance shall be as follows:

1. Notice of the time and place of the forfeiture hearing shall be personally served upon all owners and lien holders of record of the seized conveyance at least thirty days prior to the date set for hearing. The notice shall contain a reasonable description of the conveyance and the time and place of its seizure.

2. Any person having a claim to the conveyance may file a claim with the clerk of court alleging his or her claim to the vehicle and the grounds relied upon in claiming that his or her property interest in the conveyance may not be forfeited.

3. The hearing shall be held before the district court in the county in which the conveyance was seized.

4. If a judgment of forfeiture is entered, the judgment shall state the value of the conveyance and the amount forfeited and direct the sheriff to sell the conveyance as chattel under execution, and a certified copy of the judgment shall constitute an execution.

(Ch 1245, 66 GA, ch 4, s 131)
Prior law: s 127.11, Code 1977

127.12 BASIS OF FORFEITURE.

An order of forfeiture may only be entered upon a finding by the court that all of the following are true:

1. The quantity of liquor transported is large enough to give rise to a presumption that the liquor was being transported for the purpose of sale.
2. The transportation of the liquor was not incidental to the transportation of persons or other property.
3. One of the owners or lien holders knew or consented to the transportation of the liquor.

(Ch 1245, 66 GA, ch 4, s 132)
Prior law: s 127.12, Code 1977

127.13 EFFECT OF FORFEITURE ON OWNERS AND LIEN HOLDERS.

An order of forfeiture shall only be effective against the property interest of an owner or lien holder who knew or consented to the transportation of the liquor. The property interest of an owner or lien holder who did not consent or know of the transportation of the liquor shall not be affected by the order.

(Ch 1245, 66 GA, ch 4, s 133)
Prior law: s 127.13, Code 1977

127.20 SALE OF CONVEYANCE.

Prior to placing the conveyance for sale to the general public the sheriff shall permit any owner or lien holder having a property interest of fifty percent or more in the conveyance the opportunity to purchase the property interest forfeited. If such owner or lien holder does not exercise his or her option under this section or if no such owner or lien holder exists the conveyance shall be sold at public auction with the proceeds first being applied to the owners and lien holders who have not had their property interest forfeited and then applied to the expenses of keeping the conveyance and court costs.

(Ch 1245, 66 GA, ch 4, s 134)
Prior law: s 127.20, Code 1977

135.20 WATER WELL PIPE.

Any pipe sold or offered for sale in this state for use in the construction, reconstruction, or modification of a water well shall be clearly marked to indicate whether the pipe is new or used. If the manufacturer or any person who sells or offers for sale any pipe for use in the construction, reconstruction, or modification of a water well classifies such pipe by grade or quality, a written statement describing the grade or quality classification system shall be filed with the commissioner of public health by the manufacturer or other person and the grade or quality of each pipe shall also be clearly marked on it.

Any person who sells or offers to sell any pipe for use in the construction, reconstruction, or modification of a water well which is not clearly marked as provided in this section or who willfully alters any markings on such pipe in violation of this section, shall be guilty of a simple misdemeanor. Each violation shall constitute a separate offense.

(C75, 77, s 135.20; Ch 1245, 66 GA, ch 4, s 135)

135.36 INTERFERENCE WITH HEALTH OFFICER.

Any person resisting or interfering with the department, its employees, or authorized agents, in the discharge of any duty imposed by law shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 2215; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 135.36; Ch 1245, 66 GA, ch 4, s 136)

135.38 PENALTY.

Any person who knowingly violates any provision of this chapter, or of the rules of the department, or any lawful order, written or oral, of the department or of its officers, or authorized agents, shall be guilty of a simple misdemeanor.

(C73, s 419; C97, s 2573; S13, s 2575-a6; C24, 27, 31, 35, 39, s 2217; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 135.38; Ch 1245, 66 GA, ch 4, s 137)

135.41 PUBLICATION.

The state department of health, the Iowa medical society or any of its allied medical societies or the Iowa society of osteopathic physicians and surgeons or any in-hospital staff committee shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances. A violation of this section shall constitute a simple misdemeanor.

(C66, 71, 73, 75, 77, s 135.41; Ch 1245, 66 GA, ch 4, s 138)

135B.15 PENALTIES.

Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a serious misdemeanor, and each day of continuing violation after conviction shall be considered a separate offense.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 135B.15; Ch 1245, 66 GA, ch 4, s 139)

135C.21 PENALTIES.

1. Any person establishing, conducting, managing, or operating any health care facility without a license shall be guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. Any such person establishing, conducting, managing or operating any health care facility without a license may be by any court of competent jurisdiction temporarily or permanently restrained therefrom in any action brought by the state.

2. Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department or of any of the agencies referred to in section 135C.17 in the lawful enforcement of this chapter or of the rules adopted pursuant to it is guilty of a simple misdemeanor. As used in this subsection, lawful enforcement includes but is not limited to:

a. Contacting or interviewing any resident of a health care facility in private at any reasonable hour and without advance notice.

b. Examining any relevant books or records of a health care facility.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to it.

(C50, 54, s 135C.7; C58, 62, 66, 71, 73, 75, 77, s 135C.21; Ch 1245, 66 GA, ch 4, s 140; 67 GA, ch 147, s 98) Constitutionality, 57 GA, ch 93, s 22 Prior licenses, see 57 GA, ch 93, s 23

135D.18 PENALTY.

Any person violating any provision of this chapter shall be guilty of a simple misdemeanor.

(C54, 58, 62, 66, 71, 73, 75, 77, s 135D.18; Ch 1245, 66 GA, ch 4, s 141)

Referred to in s 135D.24, Code 1977

135E.13 SERIOUS MISDEMEANOR.

It shall be a serious misdemeanor for any person to act or serve in the capacity of a nursing home administrator unless the person is the holder of a license as a nursing home administrator issued in accordance with the provisions of this division.

(C71, 73, 75, s 147.130; C77, s 135E.13; Ch 1245, 66 GA, ch 4, s 159)

135E.17 DISCLOSURE OF CONFIDENTIAL INFORMATION.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains or seeks to obtain such information, is guilty of a simple misdemeanor.

(C75, s 147.134; C77, s 135E.17; Ch 1245, 66 GA, ch 4, s 160)

Cross reference to s 147.21, Code 1977

137.21 PENALTIES.

Any person who violates any provision of this chapter or the rules of a local board or any lawful order of said board, its officers, or authorized agents shall be guilty of a simple misdemeanor. Each additional day of neglect or failure to comply with such provision, rule or lawful order after notice of violation by the local board shall constitute a separate offense.

(C73, s 419; C97, s 2573; S13, s 2575-a6; C24, 27, 31, 35, 39, s 2246; C46, 50, 54, 58, 62, 66, s 137.19; C71, 73, 75, 77, s 137.21; Ch 1245, 66 GA, ch 4, s 142)

138.19 PENALTIES.

Any person failing to comply with any provision of this chapter, or with any rule or order issued pursuant to the provisions of this chapter, or interfering with, impeding, or obstructing in any manner, the commissioner, department, or any of its employees in the performance of official duties pursuant to this chapter, shall be guilty of a simple misdemeanor. If any person further fails to comply with any provisions of this chapter, or with any rule or order issued pursuant to the provisions of this chapter, the commissioner shall enforce such provision, rule, or order by filing an action for injunction against such person in the district court in the county wherein such violation or violations occur.

(C71, 73, 75, 77, s 138.19; Ch 1245, 66 GA, ch 4, s 143)

139.32 PENALTY.

Any person who knowingly violates any provision of this chapter, or of the rules of the state department or the local board, or any lawful order, written or oral, of said department

or board, or of their officers or authorized agents, shall be guilty of a simple misdemeanor.

(C73, s 419; C97, s 2573; S13, s 2575-a6; C24, 27, 31, 35, 39, s 2279; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 139.32; Ch 1245, 66 GA, ch 4, s 144)

140.15 PENALTY.

Any person violating any of the provisions of this chapter shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, ss 2316, 2316.1; C46, 50, 54, 58, 62, 66, ss 140.40, 140.41; C71, 73, 75, 77, s 140.15; Ch 1245, 66 GA, ch 4, s 145)

141.6 PENALTY.

A person who violates the confidentiality provision of this chapter shall be guilty of a simple misdemeanor.

(C75, 77, s 141.6; Ch 1245, 66 GA, ch 4, s 146)

142.5 DISPOSITION AFTER DISSECTION.

The remains of every body received for scientific purposes under this chapter shall be decently buried or cremated after it has been used for said purposes, and failure to do so shall be a simple misdemeanor.

(C73, s 4019; C97, s 4947; C24, 27, 31, 35, 39, s 2355; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 142.5; Ch 1245, 66 GA, ch 4, s 147)
Referred to in s 156.2(3), Code 1977

142.8 PURPOSE FOR WHICH BODY USED.

The dead bodies delivered under this chapter shall be used only within the limits of this state for the purpose of scientific, medical, and surgical study, and no person shall remove the same beyond the limits of this state or in any manner traffic therein. Any person who shall violate this section shall be guilty of a serious misdemeanor.

This section shall not apply to bodies given under authority of the Uniform Anatomical Gift Act.*

(C73, s 4020; C97, s 4950; C24, 27, 31, 35, 39, s 2358; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 142.8; Ch 1245, 66 GA, ch 4, s 148)
*Chapter 142A

142.9 FAILURE TO DELIVER DEAD BODY.

Any person having the custody of the dead body of any human being which is required to be delivered for scientific purposes by this chapter, who shall fail to notify the state department of the existence of such body, or fail to deliver the same in accordance with the instruction of the department, shall be guilty of a simple misdemeanor.

(S13, s 4946-e; C24, 27, 31, 35, 39, s 2359; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 142.9; Ch 1245, 66 GA, ch 4, s 149)

142.10 USE WITHOUT PROPER RECORD.

Any physician or member of the instructional staff of any college or school who uses, or permits others under his or her charge to use the dead body of a human being for the purpose of medical or surgical study without the record required in section 142.6 having been made, or who shall refuse to allow any peace officer or relative of the deceased to inspect said record or body, shall be guilty of a serious misdemeanor.

(C97, s 4949; C24, 27, 31, 35, 39, s 2360; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 142.10; Ch 1245, 66 GA, ch 4, s 150)

142.11 PENALTIES.

Any person who shall receive or deliver any dead body of a human being knowing that any of the provisions of this chapter have been violated, shall be guilty of an aggravated misdemeanor.

(S13, s 4946-e; C24, 27, 31, 35, 39, s 2361; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 142.11; Ch 1245, 66 GA, ch 4, s 151)

144.52 UNLAWFUL ACTS--PUNISHMENT.

Any person committing any of the following acts is guilty of a serious misdemeanor:

1. Willfully and knowingly makes any false statement in a report, record, or certificate required to be filed under this chapter, or in an application for an amendment thereof, or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof.

2. Without lawful authority and with the intent to deceive, makes, alters, amends, or mutilates any report, record, or certificate required to be filed under this chapter or a certified copy of such report, record, or certificate.

3. Willfully and knowingly uses or attempts to use or furnish to another for use for any purpose of deception, any certificate, record, report, or certified copy thereof so made, altered, amended, or mutilated.

4. Willfully, with the intent to deceive, uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person.

5. Willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by a person other than the person whose birth the record relates.

6. Disinterring a body in violation of section 144.34.
(C24, 27, 31, 35, 39, ss 2349, 2350, 2436; C46, 50, 54, 58, 62, 66, ss 141.33, 141.34, 144.53, 144.54; C71, 73, 75, 77, s 144.52; Ch 1245, 66 GA, ch 4, s 152)

144.53 SIMPLE MISDEMEANORS.

Any person committing any of the following acts is guilty of a simple misdemeanor:

1. Knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided in this chapter.

2. Refuses to provide information required by this chapter.

3. Willfully violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon him by this chapter.

(C24, 27, 31, 35, 39, ss 2350, 2436; C46, 50, 54, 58, 62, 66, ss 141.34, 144.53; C71, 73, 75, 77, s 144.53; Ch 1245, 66 GA, ch 4, s 153)

147.74 FALSE REPRESENTATION.

Any person who falsely holds himself or herself* out by the use of any professional title or abbreviation, either in writing, cards, signs, circulars, or advertisements, to be a practitioner of a system of the healing arts other than the one under which the person holds a license or who fails to use the following designations shall be guilty of a simple misdemeanor.

A physician or surgeon may precede his name with the title "Doctor," and shall add after his name the letters, "M. D."

An osteopath or osteopathic physician and surgeon may use the prefix "Doctor," but shall add after his name the letters, "D. O." or "O. S." as the case may be, or the words, "Osteopath" or "Osteopathic Physician and Surgeon".

A chiropractor may use the prefix "Doctor", but shall add after his name the letters, "D. C." or the word, "Chiropractor".

A dentist may use the prefix "Doctor", but shall add after his name the letters "D. D. S." or the word "Dentist" or "Dental Surgeon".

A podiatrist may use the prefix "Dr." but shall add after his name the word "Podiatrist".

Any graduate of a school accredited on the board of optometric examiners may use the prefix "Doctor", but shall add after his name the letters "Opt." or "Optometrist".

A physical therapist shall be entitled to use the words "licensed physical therapist" after his name or to signify the same by the use of the letters "L. P. T." after his name.

A psychologist who possesses a doctoral degree and who represents himself as a certified practicing psychologist may use the prefix "doctor" but shall add after his name the word "psychologist".

No other practitioner licensed to practice his profession under any of the provisions of this title shall be entitled to use the prefix "Dr." or "Doctor".

(C31, 35, s 2510-d1; C39, s 2510.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 147.74; Ch 1245, 66 GA, ch 4, s 154)

**Editorial note: The words "or herself" were editorially added to de-sex the paragraph consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

147.84 FORGERIES.

Any person who shall file or attempt to file with the state department of health any false or forged diploma, or certificate or affidavit of identification or qualification, shall be guilty of a fraudulent practice.

(C97, ss 2580, 2595; S13, s 2583-D; C24, 27, 31, 35, 39, s 2520; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 147.84; Ch 1245, 66 GA, ch 4, s 155)

147.85 FRAUD.

Any person who shall present to the department a diploma or certificate of which the person is not the rightful owner, for the purpose of procuring a license, or who shall falsely personate anyone to whom a license has been issued by said department shall be guilty of a serious misdemeanor.

(C97, ss 2580, 2581, 2595; S13, ss 2575-a45, 2581, 2583-c, -d; C24, 27, 31, 35, 39, s 2521; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 147.85; Ch 1245, 66 GA, ch 4, s 156)

147.86 PENALTIES.

Any person violating any provision of this or the following chapters of this title, except insofar as said provisions apply or relate to or affect the practice of pharmacy shall be guilty of a serious misdemeanor.

(C97, ss 2580, 2581, 2588, 2590, 2591, 2595; S13, ss 2575-a35, -a45, 2581, 2583-d, -r, 2589-d, 2600-o4; SS15, s 2588; C24, 27, 31, 35, 39, s 2522; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 147.86; Ch 1245, 66 GA, ch 4, s 157)

Referred to in s 147.85, Supplement

147.113 VIOLATIONS.

Any person failing to make the report required herein shall be guilty of a simple misdemeanor.

(C31, 35, s 2537-d3; C39, s 2537.9; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 147.113; Ch 1245, 66 GA, ch 4, s 158)

154A.6 DISCLOSURE OF CONFIDENTIAL INFORMATION.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

(C75, 77, s 154A.6; Ch 1245, 66 GA, ch 4, s 161)

154A.27 PENALTIES.

A violation of any provisions of this chapter is a simple misdemeanor.

(C75, 77, s 154A.27; Ch 1245, 66 GA, ch 4, s 162)

155.26 POSSESSION OF PRESCRIPTION DRUGS.

Any person found in possession of a drug or medicine limited by law to dispensation by a prescription, unless such drug or medicine was so lawfully dispensed, shall be deemed guilty of a serious misdemeanor. This section shall not apply to a licensed pharmacy, licensed wholesaler, physician, veterinarian, dentist, podiatrist or nurse acting under the direction of a physician or the board of pharmacy examiners, its officers, agents, inspectors, and representatives, nor to a common carrier or messenger when transporting such drug or medicine in the same unbroken package in which the drug or medicine was delivered to him or her for transportation.

(C58, 62, 66, 71, 73, 75, 77, s 155.26; Ch 1245, 66 GA, ch 4, s 163)

155.27 PENALTY.

Any person violating any of the provisions of this chapter or any chapter pertaining to or affecting the practice of pharmacy for which a specific penalty is not otherwise provided, shall be deemed guilty of a simple misdemeanor.

(C58, 62, 66, 71, 73, 75, 77, s 155.27; Ch 1245, 66 GA, ch 4, s 164)

155.30 PENALTIES.

Any person who sells or offers for sale, gives away, or administers to another person any prescription drug shall be deemed guilty of violating the provisions of this section or who violates any provisions of section 155.29 is guilty of a public offense.

If the prescription drug is a controlled substance as defined in section 204.101, subsection 6, the person shall be punished pursuant to section 204.401, subsection 1, and section 204.411. If the prescription drug is not a controlled substance, the person shall upon conviction of a first offense be guilty of a serious misdemeanor. For a second offense, or if in case of a first conviction of violation of any provision of section 155.29 or of violation of any provision of this

section, the offender shall previously have been convicted of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs, the offender shall be guilty of an aggravated misdemeanor. For a third or subsequent offense in violation of this section or in violation of section 155.29, or if the offender shall previously have been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs, the offender shall be guilty of a class "D" felony.

Any person violating any provision of this chapter by selling, giving away, or administering any prescription drug to a minor shall be guilty of a class "C" felony.

Nothing in this section shall be construed to prevent a licensed practitioner of medicine, dentistry, podiatry, nursing, veterinary medicine, or pharmacy from such acts necessary in the ethical and legal performance of his profession.

(C66, 71, 73, 75, 77, s 155.30; Ch 1245, 66 GA, ch 4, s 165)

156.12 FUNERAL DIRECTORS AND EMBALMERS--SOLICITATION OF BUSINESS--PENALTY.

Every funeral director or embalmer, or any person acting for him or her, who pays or causes to be paid, directly or indirectly, any money or other thing of value as a commission or gratuity for the securing of business for such funeral director or embalmer, and every person who accepts or offers to accept any money or other thing of value as a commission or gratuity from a funeral director or embalmer in order to secure business for him or her shall be deemed guilty of a simple misdemeanor; provided that nothing herein contained shall be construed as prohibiting any person, firm, co-operative burial association or corporation, subject to the provisions of this chapter, from using legitimate and honest advertising.

(C54, 58, 62, 66, 71, 73, 75, 77, s 156.12; Ch 1245, 66 GA, ch 4, s 166)

159.17 INTERFERENCE WITH DEPARTMENT.

Any person resisting or interfering with the department, its employees or authorized agents, in the discharge of any duty imposed by law shall be guilty of a simple misdemeanor.

(C97, s 2526; S13, ss 2528-c,-f3, 4999-a25,-a39, 5077-a23; SS15, s 3009-r; C24, 27, 31, 35, 39, s 2602; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 159.17; Ch 1245, 66 GA, ch 4, s 167)

162.13 PENALTIES.

Operation of a pound, animal shelter, pet shop, boarding kennel, commercial kennel, hobby kennel or public auction, as defined in section 162.2, or dealing in dogs or cats, or both, either as a dealer or a commercial breeder, without a currently valid license or a certificate of registration shall constitute a simple misdemeanor and each day of such operation shall constitute a separate offense.

Failure of any person licensed or registered to adequately house, feed or water dogs or cats, or both, in his or her possession or custody or failure of any operator of a licensed pet shop to adequately house, feed, or water any vertebrate animal shall constitute a simple misdemeanor. Such animals shall be subject to seizure and impoundment and may be sold or destroyed by euthanasia at the discretion of the secretary and such failure shall also constitute grounds for revocation of license after public hearing. The commission of an act

declared to be an unlawful practice under section 713.24, by any person licensed under this chapter shall constitute grounds for revocation of license.

It shall be unlawful for a dealer, as defined in section 162.2, subsection 11, to knowingly ship a diseased animal. A dealer violating the provisions of this paragraph shall be subject to a fine not exceeding one hundred dollars. Each diseased animal shipped in violation of this paragraph shall constitute a separate offense.

(C75, 77, s 162.13; Ch 1245, 66 GA, ch 4, s 168)

162.15 VIOLATION BY ANIMAL WARDEN.

Violation of any provision of this chapter which relates to the seizing, impoundment, and custody of an animal by an animal warden shall constitute a simple misdemeanor and each animal handled in violation shall constitute a separate offense.

(C75, 77, s 162.15; Ch 1245, 66 GA, ch 4, s 169)

163.18 FALSE REPRESENTATION.

Any person who knowingly makes any false representation as to the purpose for which a shipment of animals is being or will be made, with intent to avoid or prevent an inspection of such animals for the purpose of determining whether the animals are free from disease, shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 2660; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 163.18; Ch 1245, 66 GA, ch 4, s 170)

163.21 PENALTIES.

Any person who shall violate any provision of this chapter or any rule adopted thereunder by the department shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 2663; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 163.21; Ch 1245, 66 GA, ch 4, s 171)

163.23 FALSE CERTIFICATES OF HEALTH--PENALTY.

Any veterinarian issuing a certificate of health for an animal knowing that the animal described therein was not the animal from which the tests were made as a basis for the certificate or who otherwise falsifies any such certificate shall be guilty of a fraudulent practice.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 163.23; Ch 1245, 66 GA, ch 4, s 172)

163.24 USING FALSE CERTIFICATE.

Any person, firm, or corporation importing, exporting, or transporting within this state or selling or offering for sale any animal for which a certificate of health has been issued and who uses such certificate in connection with any of said transactions knowing that the animal described in said certificate was not the animal from which the tests were made as a basis for the certificate or who knowingly uses any altered or otherwise false certificate in connection with any of said transactions shall be guilty of a fraudulent practice.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 163.24; Ch 1245, 66 GA, ch 4, s 173)

163.25 ALTERING CERTIFICATE.

Any person, firm, or corporation removing or altering on any animal, tested or being tested for disease, any tag or mark of identification authorized by the department or inserted by any qualified veterinarian or altering any certificate of vaccination by one authorized to vaccinate animals shall be guilty of a fraudulent practice.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 163.25; Ch 1245, 66 GA, ch 4, s 174)

163.29 PENALTY.

Any person, firm, partnership, or corporation violating the provisions of this division shall be guilty of a simple misdemeanor. Each day the provisions of section 163.27, or any rule made pursuant thereto, is violated shall be a separate offense.

(C54, 58, 62, 66, 71, 73, 75, 77, s 163.29; Ch 1245, 66 GA, ch 4, s 175)

163A.10 PENALTY.

Any person who shall violate any provision of this chapter or any rule adopted thereunder by the department of agriculture shall be guilty of a serious misdemeanor.

(C62, 66, 71, 73, 75, 77, s 163A.10; Ch 1245, 66 GA, ch 4, s 176)

164.31 PENALTIES.

Any person found guilty of violating the provisions of this chapter shall be deemed guilty of a simple misdemeanor.

(C66, s 164.30; C71, 73, 75, 77, s 164.31; Ch 1245, 66 GA, ch 4, s 177)
Referred to in s 164.30, Code 1977

165.27 PENALTY.

Any owner of dairy or breeding cattle in the state who prevents, hinders, obstructs, or refuses to allow a veterinarian authorized by the department of agriculture to conduct such tests for tuberculosis on the owner's cattle, shall be deemed guilty of a simple misdemeanor.

(S13, s 2538-s; C24, 27, 31, 35, 39, s 2700; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 165.27; Ch 1245, 66 GA, ch 4, s 178)
Referred to in s 165.29, Code 1977

165.33 PENALTY.

Any person found guilty of violating the provisions of section 165.32 shall be deemed guilty of a simple misdemeanor.

(C31, 35, s 2704-c1; C39, s 2704.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 165.33; Ch 1245, 66 GA, ch 4, s 179)

166.38 COMPENSATION.

No licensed veterinarian shall receive, directly or indirectly, any compensation of any kind for the handling, sale, or use of any biological products, other than the veterinarian's charges for administering the same, unless the veterinarian makes known in writing the amount of such compensation, if requested to do so by the person using biological products. Any veterinarian violating this section shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 2742; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 166.38; Ch 1245, 66 GA, ch 4, s 180)
Cross reference to revocation of license: s 169.36,
Code 1977

166A.14 PENALTY.

Any person, firm or partnership or corporation violating the provisions of this chapter shall be guilty of a simple misdemeanor.

(C66, 71, 73, 75, 77, s 166A.14; Ch 1245, 66 GA, ch 4, s 181)

167.19 PENALTY.

The violation of any of the provisions of this chapter or any rule adopted thereunder by the department shall be guilty of a simple misdemeanor.

(C97, s 5019; C24, 27, 31, 35, 39, s 2762; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 167.19; Ch 1245, 66 GA, ch 4, s 182)

168.8 PUNISHMENT.

Any person, partnership, corporation, company, firm, society, or association who violates any provision of this chapter shall be guilty of a simple misdemeanor.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 168.8; Ch 1245, 66 GA, ch 4, s 183)

169.43 FORGERIES.

Any person who shall file or attempt to file with the department of agriculture any false or forged diploma, or certificate or affidavit of identification or qualification, shall be guilty of a fraudulent practice.

(C24, 27, 31, 35, 39, s 2803; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 169.43; Ch 1245, 66 GA, ch 4, s 184)

169.45 PENALTY.

Any person who violates any provision of this chapter shall be guilty of a simple misdemeanor.

(S13, s 2538-1; C24, 27, 31, 35, 39, s 2805; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 169.45; Ch 1245, 66 GA, ch 4, s 185)
Referred to in s 169.44, Code 1977

169.56 DISCLOSURE OF CONFIDENTIAL INFORMATION.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

(C75, 77, s 169.56; Ch 1245, 66 GA, ch 4, s 186)

170.38 FIRE PROTECTION REGULATIONS.

The state fire marshal shall adopt, amend, promulgate, and enforce such rules and standards relating to fire protection and fire safety in hotels, restaurants and food establishments, but such rules shall be promulgated only after public hearing. Any person, firm or corporation violating any of said rules of said fire marshal shall be deemed guilty of a simple misdemeanor, and each day of a continuing violation after conviction shall be considered a separate offense.

All rules and standards adopted for nursing homes and custodial homes shall be subject to regulations of chapter 135C.

(S13, ss 2514-j, -k, -l; SS15, ss 2514-i, -n, -o; C24, 27, 31, 35, 39, ss 2843-2850; C46, 50, 54, 58, ss 170.38-170.45; C62, 66, 71, 73, 75, 77, s 170.38; Ch 1245, 66 GA, ch 4, s 187)

170.49 PENALTY.

Any person who shall violate any provision of this chapter shall be guilty of a simple misdemeanor.

(C97, s 2527; S13, ss 2514-w, 2527-m,-n; C24, 27, 31, 35, 39, s 2854; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 170.49; Ch 1245, 66 GA, ch 4, s 188)

171.16 PENALTIES.

Any person violating any of the provisions of this chapter shall be guilty of a simple misdemeanor.

(S13, s 2528-d11; C24, 27, 31, 35, 39, s 2872; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 171.16; Ch 1245, 66 GA, ch 4, s 189)

172.11 PENALTIES.

Any person who shall violate any provision of this chapter shall be guilty of a simple misdemeanor.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 172.11; Ch 1245, 66 GA, ch 4, s 190)

172A.10 INJUNCTIONS--CRIMINAL PENALTIES.

If any person who is required by this chapter to be licensed fails to obtain the required license, or if any person who is required by this chapter to maintain proof of financial responsibility, or if any licensee fails to discontinue engaging in licensed activities when that person's license has been suspended, such failure shall be deemed a nuisance and the secretary may bring an action on behalf of the state to enjoin such nuisance. Such actions may be heard on not less than five days notice to the person whose activities are sought to be enjoined. The failure to obtain a license when required, or the failure to maintain proof of financial responsibility shall constitute a violation of this chapter.

Any person convicted of violating any provision of this chapter shall be guilty of a serious misdemeanor.

(C73, 75, s 172A.9; C77, s 172A.10; 67 GA, ch 147, s 119)

172B.6 OFFENSES AND PENALTIES.

1. A person who is convicted of violating section 172B.2 shall be guilty of a simple misdemeanor.

2. A person who makes or utters a transportation certificate with knowledge that some or all of the information contained in the certificate is false, or a person who alters, forges, or counterfeits a transportation certificate, or the receipt prescribed in section 172B.4, commits a class C felony.

(C77, s 172B.6; Ch 1245, 66 GA, ch 4, s 513; 67 GA, ch 147, s 119)

Referred to in s 172B.2, Code 1977

174.7 REFUSAL TO REMOVE OBSTRUCTIONS.

Any person owning, occupying, or using any such obstruction who shall refuse or fail to remove the same when ordered to do so by the management shall be guilty of a simple misdemeanor.

(C73, s 1116; C97, s 1664; C24, 27, 31, 35, 39, s 2900; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 174.7; Ch 1245, 66 GA, ch 4, s 191)

174.21 VIOLATIONS--PENALTY.

Any person convicted of a violation of section 174.20 shall be guilty of a fraudulent practice.

(C97, s 1666; C24, 27, 31, 35, 39, s 2913; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 174.21; Ch 1245, 66 GA, ch 4, s 192)

176.14 DIVIDENDS--DIVERSION OF FUNDS.

No dividend shall ever be declared by the association and any diversion of the funds or property of such organization to any other purpose than that for which such organization was incorporated shall constitute theft.

(S13, ss 1683-h,-o; C24, 27, 31, 35, 39, s 2936; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 176.4; Ch 1245, 66 GA, ch 4, s 193)

177A.16 VIOLATIONS.

Any person, copartnership, association or corporation, or any combination of individuals, violating any provision of a quarantine promulgated under the authority of this chapter, or of any rules issued supplemental thereto, shall be guilty of a simple misdemeanor.

(S13, s 2575-a50; C24, s 4059; C27, 31, 35, s 4062-b16; C39, s 4062.16; C46, 50, 54, 58, 62, 66, 71, 73, s 267.16; C75, 77, s 177A.16; Ch 1245, 66 GA, ch 4, s 194)
Referred to in s 177A.19(4), Supplement

177A.18 VIOLATIONS.

Any person who shall violate any provision or requirement of this chapter, or of the rules made or of any notice given pursuant thereto, or who shall forge, counterfeit, deface, destroy, or wrongfully use, any certificate provided for in this chapter, or in the rules and regulations made pursuant thereto, shall be deemed guilty of a simple misdemeanor.

(S13, s 2575-a50; C24, s 4059; C27, 31, 35, s 4062-b18; C39, s 4062.18; C46, 50, 54, 58, 62, 66, 71, 73, s 267.18; C75, 77, s 177A.18; Ch 1245, 66 GA, ch 4, s 195)
Referred to in s 177A.19(4), Supplement

177A.19 HARMFUL BARBERRY.

1. No person, firm, or corporation shall receive, ship, accept for shipment, transport, sell, offer for sale, give away, deliver, plant, or permit to exist on his or its premises any plant of the harmful barberry, or any plant of a species that shall be designated by the state entomologist in published regulations to be a host or carrier of a dangerous plant disease or insect pest.

2. The state entomologist and his inspectors, and his authorized agents, are hereby empowered to eradicate any such plant found growing in the state. If the owner shall refuse or neglect to eradicate such plants within ten days after receiving a written notice, the expense of such eradication shall be assessed, collected, and enforced against the premises upon which such expense was incurred as taxes are assessed, collected and enforced.

3. The term "harmful barberry" shall be interpreted to consist of any species of Berberis or Mahonia susceptible to infection by Puccinia graminis, commonly called black stem rust of grain, but not including Japanese barberry (*B. thunbergii*), which does not propagate the rust.

4. The procedures provided in section 177A.17 and all other applicable provisions of sections 177A.5 to 177A.18 shall govern and apply to the enforcement of this section.

(C24, s 4053; C27, 31, 35, s 4062-b19; C39, s 4062.19; C46, 50, 54, 58, 62, 66, 71, 73, s 267.19; C75, 77, s 177A.19; Ch 1245, 66 GA, ch 4, s 196)

179.11 PENALTIES.

Except as otherwise provided, any person who shall violate or aid in the violation of any of the provisions of this chapter shall be deemed guilty of a simple misdemeanor. All prosecutions for alleged violations of the provisions of this chapter shall be by the county attorney of the county in which

such alleged violation occurred and shall be instituted and conducted under the direction and authority of the attorney general of the state.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 179.11; Ch 1245, 66 GA, ch 4, s 197)

181.20 SIMPLE MISDEMEANORS.

Any person who shall violate or assist in the violation of any of the provisions of this chapter shall be deemed guilty of a simple misdemeanor.

(C71, 73, s 181.19; C75, 77, s 181.20; Ch 1245, 66 GA, ch 4, s 198)

184A.15 SIMPLE MISDEMEANOR.

It is a simple misdemeanor for any person to willfully violate any provision of this chapter, or for any person to willfully render or furnish a false or fraudulent report, statement, or record required by the council or secretary.

(C73, 75, 77, s 184A.15; Ch 1245, 66 GA, ch 4, s 199)

185.31 PENALTY.

It is a simple misdemeanor for any person to willfully violate any provision of this chapter or for any person to willfully render or furnish a false or fraudulent report, statement, or record required by the secretary.

(C73, 75, 77, s 185.31; Ch 1245, 66 GA, ch 4, s 200)

185C.31 PENALTY.

It is a simple misdemeanor for any person to willfully violate any provision of this chapter or for any person to willfully render or furnish a false or fraudulent report, statement, or record required by the secretary.

(C77, s 185C.31; 67 GA, ch 147, s 120)

187.7 UNLAWFUL USE OF BRAND.

It shall be unlawful to use any brand for branding any horses, cattle, sheep, mules, or asses unless the brand has been recorded as provided by this chapter. Hot brands and cryo-brands, consisting of Arabic numerals only, may be used in conjunction with recorded brands for within the herd identification and as such shall not be recorded; and when so used shall not be evidence of ownership. Anyone convicted of violating this section shall be guilty of a simple misdemeanor.

(C66, 71, 73, 75, 77, s 187.7; Ch 1245, 66 GA, ch 4, s 201)

187.14 TAMPERING WITH BRAND.

Any person who shall brand, attempt to brand, or cause to be branded the animals of another, or who shall efface, deface, or obliterate or attempt to efface, deface, or obliterate any brand upon any animal or animals of another, or who shall brand, attempt to brand, or cause to be branded the recorded brand of another on any animal shall be guilty of a fraudulent practice.

(C66, 71, 73, 75, 77, s 187.14; Ch 1245, 66 GA, ch 4, s 202)

188.40 PENALTY AGAINST FINDER.

If any person shall sell, trade, or take out of the state any stray before the legal title shall have vested in the person, he or she shall forfeit to the owner double its value, and shall also be guilty of a simple misdemeanor.

(C73, s 1477; C97, s 2331; C24, 27, 31, 35, 39, s 3018; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 188.40; Ch 1245, 66 GA, ch 4, s 203)

188.46 PENALTY.

Any officer who fails to perform the duties enjoined upon the officer in this chapter in relation to estrays, shall be guilty of a simple misdemeanor.

(C73, s 1478; C97, s 2332; C24, 27, 31, 35, 39, s 3024; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 188.46; Ch 1245, 66 GA, ch 4, s 204)

189.21 PENALTY.

Unless otherwise provided, any person violating any provision of this title, or any rule made by the department and promulgated under the authority of said department, shall be guilty of a simple misdemeanor.

(C73, ss 2068, 3901; C97, ss 2508, 2527, 2592, 2594, 3029, 5070; S13, ss 2508, 2510-2a, -h, -j, -u, -v5, 2515-g, 2522, 2528-c, -f3, 2596-b, 4989-b, 4999-a25, -a39, 5070 -a, 5077-a23; SS15, ss 2505, 2506, 3009-j, -r; C24, 27, 31, 35, 39, s 3047; C46, 50, 54, 58, 62, 66, s 189.19; C71, 73, 75, 77, s 189.21; Ch 1245, 66 GA, ch 4, s 205)

189A.17 PENALTIES.

1. Any person who violates any provisions of this chapter for which no other criminal penalty is provided shall be guilty of a simple misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated, except as defined in section 189A.2, subsection 15, paragraph "h" such person shall be guilty of a fraudulent practice.

2. Nothing in this chapter shall be construed as requiring the secretary to report, for the institution of legal proceedings, minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

3. The secretary shall also have power:

a. To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons.

b. To require persons engaged in intrastate commerce to file with the secretary in such form as the secretary may prescribe, annual or special reports or answers in writing to specific questions, furnishing to the secretary such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons of the person filing such reports or answers. Such reports and answers shall be made under oath, or otherwise as the secretary may prescribe, and shall be filed with the secretary within such reasonable period as the secretary may prescribe, unless additional time be granted in any case by the secretary.

4. a. For the purpose of this chapter the secretary may, at all reasonable times, examine and copy any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The secretary may sign subpoenas and administer oaths and affirmations, examine witnesses, and receive evidence.

b. Such attendance of witnesses, and the production of such documentary evidence may be required at any designated place of hearing. In case of disobedience to a subpoena the secretary may invoke the aid of the district court having jurisdiction over the matter in requiring the attendance and testimony of witnesses and the production of documentary evidence.

c. The district court may, in case of failure or refusal to obey a subpoena issued herein to any person, enter an order requiring such person to appear before the secretary or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey such order of the court may be punished by such court as contempt.

d. Upon the application of the attorney general of this state at the request of the secretary, the court shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any order of the secretary pursuant thereto.

e. The secretary may order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the secretary as herein provided.

f. Witnesses summoned before the secretary shall be paid the same fees and mileage that are paid witnesses in the district court, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such district court.

g. No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the secretary or in obedience to the subpoena of the secretary, whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

5. a. Any person who neglects or refuses to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if it is in his power to do so, in obedience to the subpoena or lawful requirement of the secretary shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

b. Any person who willfully makes, or causes to be made, any false entry or statement of fact in any report required to be made under this chapter, or who willfully makes, or causes to be made, any false entry in any account, record, or memorandum kept by any person subject to this chapter, or who willfully neglects or fails to make or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions pertaining to the business of such person, or who willfully removes himself from the jurisdiction of this state, or willfully mutilates, alters, or by any other means falsifies any documentary evidence of any

person subject to this chapter or who willfully refuses to submit to the secretary or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this chapter in his possession or within his control, shall be deemed guilty of an offense and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or to imprisonment in the county jail or the penitentiary for a term of not more than three years, or to both such fine and imprisonment.

c. If any person required by this chapter to file any annual or special report shall fail so to do within the time fixed by the secretary for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to this state the sum of one hundred dollars for each and every day of the continuance of such failure which forfeiture shall be payable into the treasury of this state, and shall be recoverable in a civil suit in the name of the state brought in the district court of the county where the person has his principal office or in the district court of any county in which he does business. It shall be the duty of the various county attorneys of this state to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the court expense fund of the county.

d. Any officer or employee of this state who makes public any information obtained by the secretary, without his authority, unless directed by a court, or uses any such information to his advantage, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

The requirements of this chapter shall apply to persons, establishments, animals, and articles regulated under the federal Meat Inspection Act or the federal Poultry Products Inspection Act to the extent provided for in said federal Acts to the extent provided in this chapter and in regulations the secretary may prescribe to promulgate this chapter.

(C66, 71, 73, 75, 77, s 189A.17; Ch 1245, 66 GA, ch 4, s 206)

189A.20 WHEN INSPECTION NOT PROVIDED.

Inspection shall not be provided under this chapter at any establishment for the slaughter of livestock or poultry or the preparation of any livestock products or poultry products which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the secretary to deter their use for human food.

(C71, 73, 75, 77, s 189A.20; Ch 1245, 66 GA, ch 4, s 207)

191.3 SALE OF IMITATION PRODUCTS--NOTICE TO PUBLIC--PENALTIES.

Every person owning or in charge of any place where food or drink is sold who uses or serves therein imitation cheese, as in this title defined, shall display at all times opposite each table or place of service a placard for such imitation, with the words "Imitation served here", without other matter, printed in black roman letters not less than three inches in height and two inches in width, on a white card twelve by twenty-two inches in dimensions.

No person shall possess in a form ready for serving colored oleo, oleomargarine or margarine at a public eating place unless a notice that oleo, oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items. No person shall serve colored oleo, oleomargarine or margarine at a public eating place, whether or not any charge is made therefor, unless each separate serving bears or is accompanied by labeling identifying it as oleo, oleomargarine or margarine, or each separate serving thereof is triangular in shape.

Any person violating any provision of this section shall be guilty of a simple misdemeanor and the suspension for one year of all licenses issued by the state of Iowa for the public eating place in which said violation occurred.

(C97, s 2517; C24, 27, 31, 35, 39, s 3069; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 191.3; Ch 1245, 66 GA, ch 4, s 208)

191.5 ADVERTISING OLEOMARGARINE--RESTRICTIONS.

No person, by himself, or agent, shall, by any means whatever, directly or indirectly, advertise or represent by statement, printing, writing, circular, poster, design, device, grade designation, advertisement, symbol, sound, or any combination thereof, that oleo, oleomargarine or margarine, or any brand of oleo, oleomargarine or margarine, is a dairy product for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase for consumption of oleo, oleomargarine or margarine, or any brand thereof. Whoever shall violate this provision shall be deemed guilty of a simple misdemeanor.

(C54, 58, 62, 66, 71, 73, 75, 77, s 191.5; Ch 1245, 66 GA, ch 4, s 209)

191A.12 PENALTY.

Any person who violates any provision of this chapter shall, upon conviction, be guilty of a simple misdemeanor.

(C73, 75, 77, S 191A.12; Ch 1245, 66 GA, ch 4, s 210)

192.66 BULK TANKS ON FARMS FOR MILK.

Any producer using a bulk tank for cooling and storage of milk to be used for manufacturing purposes shall have an enclosed milk room which shall conform to the standards provided by this section. The floor shall be constructed of concrete or other impervious material, maintained in good repair, and graded to provide proper drainage. The walls and ceilings of the room shall be sealed and constructed of smooth easily cleaned material. All windows shall be screened and doors shall be self-closing. It shall be well ventilated and must meet the following requirements:

1. The bulk tank shall not be located over a drain or under a ventilator.

2. The hose port shall be located in an exterior wall and fitted with a tight self-closing door.

3. A two-hundred-twenty-volt lock type electrical connection with ground and weatherproof type receptacle and switchbox shall be provided near the hose port.

4. Each milk room shall have an adequate supply of water readily accessible with facilities for heating the water, to insure the cleaning and sanitizing of the bulk tank, utensils and equipment and the keeping of the milk room clean.

5. No lights shall be placed directly over the bulk tank.
6. The bulk tank shall be properly located in the milk room for easy access to all areas for cleaning and servicing.
7. The enforcement of this section shall be administered by the Iowa department of agriculture.
8. Any person violating any provisions of this section shall be guilty of a simple misdemeanor.
(C66, s 192.43; C71, 73, 75, 77, s 192.66; Ch 1245, 66 GA, ch 4, s 211)

192A.19 REPORTS AND ANSWERS TO DEPARTMENT.

Whenever the department has reason to believe that any distributor or retailer or processor may be in possession of information relevant to an investigation by it of suspected violations of the provisions of this chapter, the secretary may require such person to file with the secretary in such form as the secretary may prescribe special reports or answers in writing to specific questions furnishing such information. Such reports and answers shall be made under oath or otherwise as the secretary may prescribe and shall be filed with the secretary within such reasonable period as the secretary may prescribe. Any person who fails without lawful cause to file such reports or answers in writing within the period prescribed or shall willfully make or cause to be made any false statements in any such report or answer in writing shall be guilty of a simple misdemeanor.
(C66, 71, 73, 75, 77, s 192A.19; Ch 1245, 66 GA, ch 4, s 212)
Referred to in s 192A.21, Code 1977

194.20 PENALTY.

Any person who, by himself or herself or by his or her agent or employee, willfully violates any requirement of this chapter shall be guilty of a simple misdemeanor.
(C62, 66, 71, 73, 75, 77, s 194.20; Ch 1245, 66 GA, ch 4, s 213)

195.27 PENALTIES.

Any person who, by himself or herself or by his or her agent or employee, willfully violates any requirement of this chapter shall be guilty of a simple misdemeanor.
(C35, s 3100-g27; C39, s 3100.46; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 195.27; Ch 1245, 66 GA, ch 4, s 214)
Constitutionality, 46 GA, ch 29, s 28

196A.23 PENALTY.

Any person who willfully violates any provision of this chapter, willfully gives a false report, statement, or record required by the council, or willfully fails to furnish or render any report, statement or record required by the secretary shall be guilty of a simple misdemeanor.
(C75, 77, s 196A.23; Ch 1245, 66 GA, ch 4, s 216)

197.6 VIOLATIONS.

Any person who shall violate the provisions of this chapter shall, for each offense, be deemed guilty of a simple misdemeanor.
(C27, 31, 35, s 3112-b7; C39, s 3112.7; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 197.6; Ch 1245, 66 GA, ch 4, s 217)

198.13 PENALTIES.

1. Any person convicted of violating any of the provisions of this chapter or who shall impede, hinder or otherwise prevent, or attempt to prevent, said secretary or the secretary's authorized agent in performance of his or her duty

in connection with the provisions of this chapter, shall be guilty of a simple misdemeanor.

2. Nothing in this chapter shall be construed as requiring the secretary or his representative to:

- a. Report for prosecution.
- b. Institute seizure proceedings.
- c. Issue a withdrawal from distribution order, as a result of minor violations of the chapter, or when he believes the public interest will best be served by suitable notice of warning in writing.

3. It shall be the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the secretary reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the secretary.

4. The secretary may apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

5. Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within forty-five days thereafter bring action in the district court for judicial review of such actions. The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs or prohibitory or mandatory injunctions.

6. Any person who uses to his own advantage, or reveals to other than the secretary, or officers of the department or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this chapter, concerning any method, records, formulations or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall on conviction thereof be fined not less than one hundred dollars or imprisoned for not less than six months, or both, provided that this prohibition shall not be deemed as prohibiting the secretary, or his duly authorized agent, from exchanging information of a regulatory nature with appointed officials of the United States government, or of other states, who are similarly prohibited by law from revealing this information.

(C66, 71, 73, 75, 77, s 198.13; Ch 1245, 66 GA, ch 4, s 218)

Referred to in s 198.8, Code 1977

199.13 PENALTY.

Every violation of the provisions of this chapter shall be deemed a simple misdemeanor. The department of agriculture through its duly authorized agent or agents, may institute proceedings in a court of competent jurisdiction to enforce the provisions of this chapter.

(C35, s 3137-e2; C39, s 3137.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 199.13; Ch 1245, 66 GA, ch 4, s 219)

200.18 VIOLATIONS.

1. If it shall appear from the examination of any commercial fertilizer or soil conditioner or any anhydrous ammonia installation, equipment, or operation that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the secretary shall cause notice of the violations to be given to the registrant, distributor,

or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the secretary. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the secretary may certify the facts to the proper prosecuting attorney.

2. Any person violating any provision of this chapter or the rules and regulations issued thereunder shall be guilty of a simple misdemeanor.

3. Nothing in this chapter shall be construed as requiring the secretary or his representative to report for prosecution or for the institution of seizure proceedings minor violations of the chapter when he believes that the public interest will be best served by a suitable notice of warning in writing.

4. It shall be the duty of each county attorney to whom any violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

5. The secretary is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law, said injunction to be issued without bond.

(C46, 50, 54, ss 200.11, 200.14; C58, 62, s 200.19; C66, 71, 73, 75, 77, s 200.18; Ch 1245, 66 GA, ch 4, s 220)

201.11 PENALTIES.

Whoever sells, offers for sale, or exposes for sale or distribution any bulk agricultural lime, limestone, or aglime without complying with the provisions of this chapter, or permits any certification to accompany or be printed or stamped on any bill of lading, scale ticket, ticket, or delivery receipt or other instrument of sale, shipping or delivery, stating that the agricultural lime, limestone, or aglime contains a different number of pounds of ECCE than certified as provided in this chapter, or who shall adulterate any agricultural lime, limestone, or aglime with foreign mineral matter or other foreign substances, or who shall adulterate the same with any substance injurious to the growth of plants, or make any false report, shall be deemed guilty of a simple misdemeanor. The secretary of agriculture may revoke the license of any person so convicted.

In all litigation arising from the purchase, sale or disposal of any agricultural lime, limestone, or aglime, in which the composition of the same may be involved, a certified copy of the official analysis shall be accepted as prima-facie evidence of the composition of such agricultural lime, limestone, or aglime. The possession of agricultural lime, limestone, or aglime, in any building, room, railroad equipment, store, storeroom, warehouse, truck, or other place within this state, except by a person who has the same for his private use, without complying with the provisions of this chapter relative to agricultural lime, shall be prima-facie evidence of keeping the same for the purpose of selling or disposal.

It shall be the duty of the secretary of agriculture or his deputized representative to bring prosecution for all violations under the provisions of this chapter. Action may be commenced by the attorney general when requested to do so by the secretary. A person authorized by law to prosecute a case under the provisions of this chapter shall not be required to

advance or secure costs therein. If the defendant is acquitted or discharged from custody, or if he is convicted and committed in default of the payment of fine and costs, such costs shall be certified under oath by the court to the county auditor who shall, when verified, issue a warrant on the county treasurer payable to the person or persons entitled thereto. The secretary of agriculture shall rest his prosecution under this chapter on samples collected as provided in section 201.6.

(C27, 31, 35, s 3142-b8; C39, s 3142.08; C46, 50, 54, 58, 62, 66, s 201.6; C71, 73, 75, 77, s 201.11; Ch 1245, 66 GA, ch 4, s 221)

201.14 SIMPLE MISDEMEANOR.

Any person who shall obstruct the secretary of agriculture or the secretary's agents or representatives when in the discharge of any duty or duties prescribed by this chapter shall be deemed to be guilty of a simple misdemeanor.

(C46, 50, 54, 58, 62, 66, s 201.13; C71, 73, 75, 77, s 201.14; Ch 1245, 66 GA, ch 4, s 222)

203A.5 PENALTIES.

1. Any person who violates any of the provisions of this chapter shall be guilty of a serious misdemeanor, but if the violation is committed after a conviction of such person under this section has become final, such person shall be guilty of an aggravated misdemeanor.

2. No person shall be subject to the penalties of subsection 1 of this section, for having violated provisions of this chapter if he establishes a guaranty or undertaking signed by, and containing the name and address of the person residing in the state of Iowa from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

3. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of any advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the board to furnish the board the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state of Iowa, who cause him to disseminate such advertisement.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 203A.5; Ch 1245, 66 GA, ch 4, s 223)

Editorial note: The comma after the words "serious misdemeanor" was editorially added.

204.401 PROHIBITED ACTS--MANUFACTURERS--POSSESSORS--COUNTERFEIT SUBSTANCES--PENALTIES.

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

a. A substance classified in schedule I or II which is a narcotic drug, is guilty of a class "C" felony.*

b. Any other controlled substance classified in schedules I, II, or III, is guilty of a class "D" felony.*

c. A substance classified in schedule IV, is guilty of a serious misdemeanor.

d. A substance classified in schedule V, is guilty of a simple misdemeanor.

2. Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class "C" felony.

b. Any other counterfeit substance classified in schedules I, II, or III, is guilty of a class "D" felony.

c. A counterfeit substance classified in schedule IV, is guilty of a serious misdemeanor.

d. A counterfeit substance classified in schedule V, is guilty of a simple misdemeanor.

3. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor. If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. All or any part of a sentence imposed pursuant to this section may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

(C51, s 2728; R60, s 4374; C73, s 4038; C97, ss 2593, 5003; S13, ss 2593, 2596-a; C24, 27, 31, 35, ss 3152, 3168, 3169; C39, ss 3169.02, 3169.21; C46, 50, 54, 58, 62, ss 204.2, 204.22; C66, s 204.2, 204.20; C71, ss 204.2, 204.20, 204A.3, 204A.10; C73, 75, 77, s 204.401; Ch 1245, 66 GA, ch 4, ss 224, 226; 67 GA, ch 147, s 121)

Referred to in ss 204.409, 204.411, Code 1977; ss 155.30, 204.406, 204.410, 907.3, Supplement

*Referred to in s 204.413, Supplement

204.402 PROHIBITED ACTS--DISTRIBUTORS--REGISTRANTS--PROPRIETORS --PENALTIES.

1. It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 204.308;

b. Who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

c. To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter;

d. To refuse an entry into any premises during reasonable business hours for any inspection authorized by this chapter; or

e. Knowingly to keep or permit the keeping or to maintain any premises, store, shop, warehouse, dwelling, temporary, or permanent building, vehicle, boat, aircraft, or other temporary or permanent structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is

used for keeping, possessing or selling them in violation of this chapter.

2. Any person who violates subsection 1 of this section, or who acts with, enters into a common scheme or design with, or conspires with one or more other persons to violate subsection 1 of this section, is guilty of a public offense and upon conviction:

a. Of a violation of paragraphs "a", "b", "d", or "e" shall be an aggravated misdemeanor.

b. Of a violation of paragraph "c" shall be a serious misdemeanor.

(C73, 75, 77, s 204.402; Ch 1245, 66 GA, ch 4, s 227)

204.403 PROHIBITED ACTS--CONTROLLED SUBSTANCES, DISTRIBUTION, USE, POSSESSION--RECORDS AND INFORMATION--PENALTIES.

1. It is unlawful for any person knowingly or intentionally:

a. To distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by section 204.307;

b. To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

d. To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

e. To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

2. Any person who violates this section, or who acts with, enters into a common scheme or design with, or conspires with one or more other persons to violate this section, is guilty of a serious misdemeanor.

(C39, s 3169.17; C46, 50, 54, 58, 62, s 204.18; C66, s 204.17; C71, ss 204.17, 204A.3; C73, 75, 77, s 204.403; Ch 1245, 66 GA, ch 4, s 228)

204.406 DISTRIBUTION TO PERSONS UNDER AGE EIGHTEEN.

Any person who is eighteen years of age or over who violates section 204.401, subsection 1, by distributing a substance listed in schedule I or II, which is a narcotic drug, to a person under eighteen years of age, shall be guilty of a class "B" felony, however the minimum time to be served before parole may be granted shall be five years. Any person who is eighteen years of age or over who violates section 204.401, subsection 1, by distributing any other controlled substance listed in schedules I, II, or III, to a person under eighteen years of age who is at least three years his or her junior shall be guilty of a class "C" felony. Any person who is eighteen years of age or over who violates section 204.401, subsection 1 by distributing any controlled substance listed in schedules IV and V to a person under eighteen years of age who is at least

three years his or her* junior shall be guilty of an aggravated misdemeanor.

(C97, s 5003; C24, 27, 31, 35, ss 3168, 3169; C39, s 3169.21; C46, 50, 54, 58, 62, s 204.22; C66, s 204.20; C71, ss 204.20, 204A.11; C73, 75, 77, s 204.406; Ch 1245, 66 GA, ch 4, s 229)

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

204.407 GATHERINGS WHERE CONTROLLED SUBSTANCES UNLAWFULLY USED--PENALTIES.

It is unlawful for any person to sponsor, promote, or aid, or assist in the sponsoring or promoting of a meeting, gathering, or assemblage with the knowledge or intent that a controlled substance be there distributed, used or possessed, in violation of this chapter.

Court appointed attorney fees incurred in the defense of any person charged with a felony under this section shall be taxed as part of the costs against the defendants who are found guilty. If the defendant does not discharge such costs within ninety days, the county paying such costs may seek indemnification therefor from the Iowa general assembly. A county may also seek indemnification from the general assembly of court appointed attorney fees incurred in the defense of any person charged with a felony under this section who was found not guilty.

Any person who violates this section and where the controlled substance is any one other than marijuana is guilty of a class "D" felony.

Any person who violates this section, and where the controlled substance is marijuana only, is guilty of a serious misdemeanor.

The district court shall grant an injunction barring a meeting, gathering, or assemblage if upon hearing the court finds that the sponsors or promoters of the meeting, gathering, or assemblage have not taken reasonable means to prevent the unlawful distribution, use or possession of a controlled substance. Further injunctive relief may be granted against all persons furnishing goods or services to such meeting, gathering, or assemblage.

The district court may, upon application and a showing of one or more of the grounds provided in section 639.3, grant to the state or governmental subdivision thereof a writ of attachment, ex parte, without bond, in an amount necessary to secure the payment of any fine that may be imposed and the payment of costs. The reasonable expense to the state and governmental subdivisions thereof to provide the necessary law enforcement resulting from a meeting, gathering or assemblage held in violation of this section may be taxed as costs in the criminal action.

Court costs and court-appointed attorney fees incurred in the prosecution of any person charged with violation of this chapter shall be taxed against the defendants who are found guilty of violating this section. If no defendant is found guilty of violating this section, or if the court costs and court-appointed attorney fees are not satisfied by the defendants, the court costs and court-appointed attorney fees shall be paid by the state of Iowa.

(C73, 75, 77, s 204.407; Ch 1245, 66 GA, ch 4, s 230)

204.410 ACCOMMODATION OFFENSE.

In a prosecution for unlawful delivery or possession with intent to deliver a controlled substance, if the prosecution proves that the defendant violated the provisions of section

204.401, subsection 1, but fails to prove that the defendant delivered or possessed with intent to deliver the controlled substance for the purpose of making a profit, the defendant shall be guilty of an accommodation offense and shall be sentenced as if convicted of a violation of section 204.401, subsection 3. An accommodation offense may be proved as an included offense under a charge of delivering or possessing with the intent to deliver a controlled substance in violation of section 204.401, subsection 1.

(C73, 75, 77, s 204.410; Ch 1245, 66 GA, ch 4, s 231; 67 GA, ch 147, s 99)

Referred to in ss 204.409, Code 1977; s 907.3, Supplement

204.413 MANDATORY MINIMUM SENTENCE.

A person sentenced pursuant to section 204.401, subsection 1, paragraph a or b, shall not be eligible for parole until he or she has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law.

This section shall not apply if:

1. The offense is found to be an accommodation pursuant to section 204.410; or
2. The controlled substance is marijuana.

(Ch 1245, 66 GA, ch 4, s 225)

204.505 FORFEITURES.

1. The following are subject to forfeiture:

- a. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this chapter;

- b. All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

- c. All property which is used, or intended for use, as a container for property described in paragraphs "a" or "b";

- d. All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

- e. All controlled substances in the possession of a practitioner which are material to a record-keeping violation.

2. Property subject to forfeiture under this chapter may be seized by the board or department when:

- a. The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

- b. The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

- c. The department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

- d. The department has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

3. In the event of seizure pursuant to subsection 2, proceedings under subsection 4 shall be instituted promptly.

4. The disposition of property, other than conveyances subject to forfeiture, which has been taken or detained under this chapter shall be made in accordance with chapter 809.

However, controlled substances taken, detained, or forfeited shall be disposed of as provided by section 204.506. Such property shall not be subject to replevin.

5. Controlled substances classified in schedule I that are possessed, transferred, sold, or offered for sale in violation

of this chapter are contraband and when seized shall be summarily forfeited to the state. Controlled substances listed in schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

6. Species of plants from which controlled substances classified in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

7. The failure, upon demand by the board or department, or its duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture of the plants.

8. Chapter 127 shall be applicable to conveyances used to transport or hold any controlled substance listed in schedules I, II, III, or IV of this chapter.

(C73, 75, 77, s 204.505; Ch 1245, 66 GA, ch 4, s 232)

205.10 FALSE REPRESENTATIONS.

Any person who obtains any poison enumerated in section 205.5 under a false name or statement shall be guilty of a fraudulent practice.

(C51, s 2728; R60, s 4374; C73, s 4038; C97, s 2593; S13, s 2593; C24, 27, 31, 35, 39, s 3178; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 205.10; Ch 1245, 66 GA, ch 4, s 233)

206.22 PENALTIES.

1. Any person violating section 206.11, subsection 1, paragraph "a", shall be guilty of a simple misdemeanor.

2. Any person violating any provision of this chapter other than section 206.11, subsection 1, paragraph "a", shall be guilty of a serious misdemeanor; provided, that any offense committed more than five years after a previous conviction shall be considered a first offense; and provided, further, that in any case where a registrant was issued a warning by the secretary pursuant to the provisions of this chapter, such registrant shall upon conviction of a violation of any provision of this chapter other than section 206.11, subsection 1, paragraph "a", be guilty of a serious misdemeanor; and the registration of the article with reference to which the violation occurred shall terminate automatically. An article, the registration of which has been terminated, may not again be registered unless the article, its labeling, and other material required to be submitted appear to the secretary to comply with all the requirements of this chapter.

3. Notwithstanding any other provisions of the section, in case any person, with intent to defraud, uses or reveals information relative to formulae of products acquired under authority of section 206.12, he and she* shall be guilty of a serious misdemeanor.

(C66, 71, 73, s 206.9; C75, 77, s 206.22; Ch 1245, 66 GA, ch 4, s 234)

Referred to in s 206.11, Code 1977

**Editorial note: The words "or she" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

208A.11 PENALTY.

If any person, partnership, corporation, or association shall violate the provisions of this chapter, such person, partnership, corporation or association shall be deemed guilty

of a simple misdemeanor and, upon conviction thereof, the department may after due hearing cancel registration.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 208A.11; Ch 1245, 66 GA, ch 4, s 235)

210.21 VIOLATIONS.

It shall be unlawful for any person to manufacture, procure, or keep for the purpose of sale, offer or expose for sale, or sell bread in the form of loaves which are not of one of the weights specified in section 210.19 or violate the rules of the secretary of agriculture pertaining thereto. Any person who, by himself or herself or by his or her servant, or agent, or as the servant or agent of another, shall violate any of the provisions of sections 210.19 to 210.25, shall be guilty of a simple misdemeanor.

(C27, 31, 35, s 3244-b3; C39, s 3244.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 210.21; Ch 1245, 66 GA, ch 4, s 236)

Referred to in ss 210.22-.24, Code 1977

214.8 PENALTY.

Any weighmaster violating any of the provisions of sections 214.6 and 214.7, shall be guilty of a simple misdemeanor, and be liable to the person injured for all damages sustained.

(C73, s 2068; C97, s 3029; C24, 27, 31, 35, 39, s 3265; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 214.8; Ch 1245, 66 GA, ch 4, s 238)

214A.11 VIOLATIONS.

Any person violating the provisions of this chapter shall be guilty of a simple misdemeanor.

(C31, 35, s 5093-d11; C39, s 5095.11; C46, 50, 54, 58, 62, 66, 71, s 323.11; C73, 75, 77, s 214A.11; Ch 1245, 66 GA, ch 4, s 239)

215.20 LIQUID PETROLEUM GAS METERS--FEE.

The secretary of agriculture shall annually inspect and test all liquid meters used for the measurement and retail sale of liquefied petroleum gas and he shall condemn all meters which are found to be inaccurate. A reasonable tolerance within a maximum of two percent, plus or minus, shall be allowed. It is unlawful to use a meter for retail measurement and sale which has been condemned. All condemned meters shall be conspicuously marked "inaccurate", and the mark shall not be removed or defaced except upon authorization of the secretary of agriculture or his authorized representative. The secretary of agriculture shall charge an annual fee of ten dollars for each meter tested but the testing fee provided for by this section shall not be charged more than once in a calendar year to each meter tested. When liquefied petroleum gas is sold or delivered to a consumer as a liquid and by liquid measurement, the volume of liquid sold and delivered shall be corrected to a temperature of 60 degrees F. through use of an approved volume correction factor table, or through use of an approved meter with sealed automatic compensation mechanism. All sale tickets shall show the delivered gallons, the temperature at the time of delivery and the corrected gallonage, or shall state that temperature correction was automatically made.

Any person violating any provision of this section is guilty of a simple misdemeanor.

(C66, 71, 73, 75, 77, s 215.20; Ch 1245, 66 GA, ch 4, s 240)

215A.10 PENALTY.

Every person who uses or causes to be used a moisture-measuring device in commerce with knowledge that such device

has not been inspected and approved by the department in accordance with the provisions of this chapter shall be guilty of a simple misdemeanor.

(C71, 73, 75, 77, s 215A.10; Ch 1245, 66 GA, ch 4, s 241)

217.14 ADDITIONAL POWERS AND DUTIES.

The director of the division of corrections may have the following powers, duties and responsibilities:

1. Administer and control the operation of the men's reformatory, women's reformatory and state penitentiary and the Iowa security medical facility.

2. Supervision and control over all state agents whose duties relate primarily to the division of corrections.

3. Establishment and maintenance of acceptable standards of treatment, training, education and rehabilitation in the various state penal and corrective institutions.

4. Examination of all state institutions which are penal, reformatory or corrective to determine their efficiency for adequate care, custody and training of their inmates and report his findings and conclusions to the commissioner of the department of social services. He shall inquire into and determine the qualifications of wardens, matrons, superintendents, officers, attendants, guards and other employees responsible for the care, custody, training, discipline and rehabilitation of inmates and make recommendations to the commissioner regarding same.

5. Preparation of a budget and such other reports as required by law or as directed by the commissioner.

6. Supervise all persons placed on parole by the parole board and develop and administer such additional programs of rehabilitation for persons on parole as will insure their adjustment to society.

7. Establish and operate a system of rehabilitation camps within the state. The department of social services may designate appropriate facilities of the department as a part of this camp system. Persons committed to institutions under the department may be transferred to the facilities of the camp system and upon transfer shall be subject to the same laws as pertain to the transferring institution.

The commissioner of social services may establish for any inmate sentenced pursuant to section 902.3 a furlough program under which inmates sentenced to and confined in an institution under the jurisdiction of the department of social services may be temporarily released. Furloughs for a period not to exceed fourteen days may be granted when an immediate member of the inmate's family is seriously ill or has died, when an inmate is to be interviewed by a prospective employer, or when an inmate is authorized to participate in a training program not available within the institution. Furloughs for a period not to exceed fourteen days may also be granted in order to allow the inmate to participate in programs or activities that serve rehabilitative objectives. The commissioner of social services shall promulgate rules to carry out the provisions of this paragraph.

(C50, 54, 58, 62, 66, s 218.78; C71, 73, 75, 77, s 217.14; Ch 1245, 66 GA, ch 4, s 242; 67 GA, ch 147, s 100)

218.91 BOYS TRANSFERRED FROM TRAINING SCHOOL TO REFORMATORY.

The director of the division of child and family services with the consent and approval of the director of the division of corrections of the department of social services may order the transfer of inmates of the training school for boys to the men's reformatory for custodial care whenever it is determined that such action will be conducive to the welfare of the other inmates of the school. Such transfer shall be effected by

application in writing to the district court, or any judge thereof, of the county in which the said training school is situated. Upon the granting of the order of transfer, the transfer shall take place. The county attorney of the said county shall appear in support of such application. The cost of the transfer shall be paid from the funds of the training school for boys. Subsequent to a transfer made under this section, the person transferred shall be subject to all the provisions of law and regulations of the institution to which he is transferred, and for the purposes of section 719.4 such person shall be regarded as having been committed to the institution.

(C62, 66, 71, 73, 75, 77, s 218.91; Ch 1245, 66 GA, ch 4, s 243)

222.47 PENALTY FOR FALSE PETITION OF COMMITMENT.

Any person who shall maliciously seek to have any person adjudged mentally retarded, knowing that such person is not mentally retarded, shall be guilty of a fraudulent practice.

(C24, 27, 31, 35, 39, s 3448; C46, 50, 54, 58, 62, s 222.38; C66, 71, 73, 75, 77, s 222.47; Ch 1245, 66 GA, ch 4, s 244)

223.4 SOURCES OF PATIENTS.

Patients admitted to the facility may originate from the following sources:

1. Residents of any institution under the jurisdiction of the department of social services.

2. Commitments by the courts as mentally incompetent to stand trial under section 812.4.

3. Referrals by the courts for psychosocial diagnosis and recommendations as part of the pretrial or presentence procedure or determination of mental competency to stand trial.

4. Mentally ill prisoners from county and city jails for diagnosis, evaluation, or treatment.

Patients from other sources may be admitted providing such admission is not inconsistent with the law and is within the capacity of the facilities and staff to accommodate same.

(C71, 73, 75, 77, s 223.4; Ch 1245, 66 GA, ch 4, s 245)

229.38 CRUELTY OR OFFICIAL MISCONDUCT.

If any person having the care of a mentally ill person who has voluntarily entered a hospital or other facility for treatment or care, or who is responsible for psychiatric examination care, treatment and maintenance of any person involuntarily hospitalized under sections 229.6 to 229.15, whether in a hospital or elsewhere, with or without proper authority, shall treat such patient with unnecessary severity, harshness, or cruelty, or in any way abuse the patient or if any person unlawfully detains or deprives of liberty any mentally ill or allegedly mentally ill person, or if any officer required by the provisions of this chapter and chapters 226 and 227, to perform any act shall willfully refuse or neglect to perform the same, the offending person shall, unless otherwise provided, be guilty of a serious misdemeanor.

(C73, ss 1415, 1416, 1440, 1445; C97, s 2307; C24, 27, 31, 35, 39, s 3578; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 229.38; Ch 1245, 66 GA, ch 4, s 247)

235A.9 SANCTIONS FOR FAILURE TO REPORT.

1. Any person, official, agency or institution, required by this chapter to report a suspected case of child abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor.

2. Any person, official, agency or institution, required by section 235A.3 to report a suspected case of child abuse who knowingly fails to do so is civilly liable for the damages proximately caused by such failure.

(C75, 77, s 235A.9; Ch 1245, 66 GA, ch 4, s 248)

235A.21 CRIMINAL PENALTIES.

1. Any person who willfully requests, obtains, or seeks to obtain child abuse information under false pretenses, or who willfully communicates or seeks to communicate child abuse information to any agency or person except in accordance with sections 235A.15 and 235A.17, or any person connected with any research authorized pursuant to section 235A.15 who willfully falsifies child abuse information or any records relating thereto, is guilty of a serious misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate child abuse information except in accordance with sections 235A.15 and 235A.17 shall be guilty of a simple misdemeanor.

2. Any reasonable grounds for belief that a person has violated any provision of this chapter shall be grounds for the immediate withdrawal of any authorized access such person might otherwise have to child abuse information.

(C75, 77, s 235A.21; Ch 1245, 66 GA, ch 4, s 249)

*Referred to in ss 235A.12, 235A.13, 235A.19, 235A.24,
Code 1977*

237A.19 PENALTY.

A person who establishes, conducts, manages, or operates a center without a license shall be guilty of a serious misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, shall be considered a separate offense.

*(C77, s 237A.19; Ch 1245, 66 GA, ch 4, s 514; 67 GA,
ch 147, s 122)*

Referred to in s 237A.1, Code 1977

238.45 PENALTY.

Every person who violates any of the provisions of this chapter or who intentionally shall make any false statements or reports to the state director with reference to the matters contained herein, shall be guilty of a fraudulent practice.

*(C27, 31, 35, s 3661-a100; C39, s 3661.114; C46, 50, 54,
58, 62, 66, s 238.43; C71, 73, 75, 77, s 238.45; Ch 1245,
66 GA, ch 4, s 251)*

239.14 FRAUDULENT ACTS.

Whoever obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement or representation, or by impersonation, or any fraudulent device, any assistance under this chapter to which the recipient is not entitled, shall be guilty of a fraudulent practice.

*(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 239.14; Ch
1245, 66 GA, ch 4, s 252)*

245.11 EFFECT OF TRANSFER.

After a transfer to either institution is made, under section 245.10, the person transferred shall be subject to all the provisions of law and regulations of the institution to which she is transferred, and for the purposes of section 719.4, a person transferred from the training school for girls to the women's reformatory shall be regarded as having been committed thereto.

*(SS15, s 2713-n10; C24, 27, 31, 35, 39, s 3733; C46, 50, 54,
58, 62, 66, 71, 73, 75, 77, s 245.11; Ch 1245, 66 GA, ch 4,
s 254)*

245.21 FEDERAL PRISONERS.

Convicts sentenced for any term by any court of the United States may be received by the superintendent into the women's reformatory and there kept in pursuance of their sentences. Convicts at the women's reformatory may also be transferred to the federal bureau of prisons.

(Ch 1245, 66 GA, ch 4, s 253)

Editorial note: This section is very similar to s 245.20, Code 1977

249.11 FRAUD.

Any person who obtains assistance under this chapter by misrepresentation or by failure with fraudulent intent to bring forth all of the facts required of an applicant for assistance under this chapter, or any person who shall knowingly make false statements concerning an applicant's eligibility for assistance under this chapter, is guilty of a fraudulent practice.

(C35, ss 5296-f31, -f32; C39, ss 3684.19, 3828.049, 3828.050; C46, 50, 54, 58, ss 241.19, 249.46, 249.47; C62, 66, 71, 73, ss 241.19, 241A.12, 249.46, 249.47; C75, 77, s 249.11; Ch 1245, 66 GA, ch 4, s 256; 67 GA, ch 149, s 5)

249A.7 PENALTY.

A person who obtains assistance or payments for medical assistance under this chapter by misrepresentation or failure, with fraudulent intent, to bring forth all the facts required of an applicant for aid under the provisions of this chapter and a person who knowingly makes false statements concerning the applicant's eligibility for aid under this chapter shall be guilty of a fraudulent practice.

(C62, 66, s 249A.15; C71, 73, 75, 77, s 249A.7; 67 GA, ch 149, s 6)

250.10 DISBURSEMENTS--INSPECTION OF RECORDS.

On the first Monday in each month, all claims certified shall be reviewed by the board of supervisors and the county auditor shall issue his warrants in payment of same drawn upon the veteran affairs fund. All applications, investigation reports and case records shall be privileged communications and held confidential, subject to use and inspection only by persons authorized by law in connection with their official duties relating to financial audits and the administration of the provisions of this chapter. Provided, however, that the county commission of veteran affairs shall prepare and file in the office of the county auditor on or before the thirtieth day of each January, April, July and October a report showing the names and addresses of all recipients receiving assistance under this chapter, together with the amount paid to each during the preceding quarter. Each report so filed shall be securely fixed in a record book to be used only for such reports made under this chapter.

The record book shall be and the same is hereby declared to be a public record, open to public inspection at all times during the regular office hours of the county auditor. Each person who desires to examine said records, other than in pursuance of official duties as hereinbefore provided, shall sign a written request to examine the same, which shall contain an agreement on the part of the signer that he will not utilize any information gained therefrom for commercial or political purposes.

It shall be unlawful for any person, body, association, firm, corporation or any other agency to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in or acquiesce in the use of any lists, names or

other information obtained from the reports above provided for, for commercial or political purposes, and a violation of this provision shall constitute a serious misdemeanor.

(C97, s 432; S13, s 432; C24, 27, 31, 35, s 5392; C39, s 3828.059; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 250.10; Ch 1245, 66 GA, ch 4, s 257)

252B.10 CRIMINAL PENALTIES.

1. Any person who willfully requests, obtains, or seeks to obtain paternity determination and support collection data available under section 252B.9 under false pretenses, or who willfully communicates or seeks to communicate such data to any agency or person except in accordance with this chapter, shall be guilty of an aggravated misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate paternity determination and support collection data except in accordance with this chapter shall be guilty of a simple misdemeanor.

2. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to paternity determination and support collection data recorded under section 252B.9.

(C77, s 252B.10; 67 GA, ch 147, s 123)
Referred to in s 252B.1, Code 1977

262.68 SPEED LIMIT ON INSTITUTIONAL GROUNDS.

The maximum speed limit of all vehicles on institutional roads at institutions under the control of the state board of regents shall be forty-five miles per hour. All driving shall be confined to driveways designated by the state board. Whenever the state board shall determine that the speed limit hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any place of congestion or upon any part of its institutional roads, said board shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such places of congestion or other parts of its institutional roads. Any person violating the aforementioned speed limits shall be guilty of a simple misdemeanor.

(C66, 71, 73, 75, 77, s 262.68; Ch 1245, 66 GA, ch 4, s 258)

264.6 PENALTY.

The members of the board of trustees and the officers of an institution of higher learning who do not file, in accordance with the provisions of this chapter, the record of grades in the office of the registrar of the state university within twelve months after the said institution has been closed or has ceased to function as an educational institution, shall be guilty of a simple misdemeanor.

(C35, s 3953-e6; C39, s 3953.6; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 264.6; Ch 1245, 66 GA, ch 4, s 259)

285.14 NONSTANDARD BUSES--PENALTIES.

Any person who operates or permits to be operated as a school bus to transport pupils, any vehicle which does not comply with the requirements provided by law or by the rules and regulations of the state department of public instruction, or for which there is not a valid temporary certificate for operation, shall be guilty of a simple misdemeanor.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 285.14; Ch 1245, 66 GA, ch 4, s 260)

285.15 FORFEITURE OF REIMBURSEMENT RIGHTS.

The failure of any local district to comply with the provisions of this chapter or any other laws relating to the transportation of pupils, or any rules made by the state department of public instruction under this chapter or the final decisions of the area education agency board, or the final decisions of the state department of public instruction shall during the period such failure to comply existed forfeit the rights to collect transportation costs from school or parents while operating in such illegal manner. Any superintendent, board, or board member who knowingly operates or permits to be operated any school bus transporting public school pupils in violation of any school transportation law shall be deemed guilty of a simple misdemeanor.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 285.15; Ch 1245, 66 GA, ch 4, s 261)
Constitutionality, 51 GA, ch 133, s 17

289.6 VIOLATIONS.

When such part-time school shall have been established, any parent or person in charge of such minor as defined in this chapter who shall violate the provisions of this chapter, shall be guilty of a simple misdemeanor, or any person unlawfully employing any such minor shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 4296; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 289.6; Ch 1245, 66 GA, ch 4, s 262)

297.14 BARBED WIRE PROHIBITED.

No fence provided for in section 297.13 shall be constructed of barbed wire, nor shall any barbed wire fence be placed within ten feet of any school grounds. Any person violating the provisions of this section shall be guilty of a simple misdemeanor.

(C97, s 2817; C24, 27, 31, 35, 39, s 4378; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 297.14; Ch 1245, 66 GA, ch 4, s 263)

299.6 VIOLATIONS.

Any person who shall violate any of the provisions of sections 299.1 to 299.5, inclusive, shall be guilty of a simple misdemeanor.

(S13, s 2823-a; C24, 27, 31, 35, 39, s 4415; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 299.6; Ch 1245, 66 GA, ch 4, s 264)

301.28 OFFICERS AND TEACHERS AS AGENTS FOR BOOKS AND SUPPLIES.

It shall be unlawful for any school director, officer, area education director or teacher to act as agent for any school textbooks or school supplies during such term of office or employment, and any school director, officer, area education director or teacher, who shall act as agent or dealer in school textbooks or school supplies, during the term of such office or employment, shall be deemed guilty of a serious misdemeanor.

(C97, s 2834; C24, 27, 31, 35, 39, s 4468; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 301.28; ch 1245, 66 GA, ch 4, s 265)

306B.6 SIMPLE MISDEMEANOR.

Whoever erects or maintains an advertising device in violation of this chapter or in violation of rules and regulations promulgated by the department under this chapter shall be guilty of a simple misdemeanor.

(C66, 71, 73, 75, 77, s 306B.6; Ch 1245, 66 GA, ch 4, s 266)

309.66 USE OF GRAVEL BEDS.

The board of supervisors may permit private parties or municipal corporations to take materials from such acquired lands in order to improve any street or highway in the county, but it shall be a serious misdemeanor for any person to use or for the board of supervisors to dispose of any such material for any purpose other than for the improvement of such streets or highways.

(S13, ss 2024-i1, -i2; C24, 27, 31, 35, 39, s 4659; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 309.66; Ch 1245, 66 GA, ch 4, s 267)

313A.37 FAILURE TO PAY TOLL--PENALTY.

Any person who uses any toll bridge and fails or refuses to pay the toll provided therefor shall be guilty of a simple misdemeanor.

(C71, 73, 75, 77, s 313A.37; Ch 1245, 66 GA, ch 4, s 268)

317.24 PUNISHMENT OF OFFICER.

Any officer referred to in this chapter who neglects or fails to perform the duties incumbent upon the officer under the provisions of this chapter shall be guilty of a simple misdemeanor.

(S13, s 1565-i, C24, 27, 31, 35, s 4829; C39, s 4829.22; C46, s 317.23; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 317.24; Ch 1245, 66 GA, ch 4, s 269)
Constitutionality, 47 GA, ch 131, s 1

320.8 PENALTY.

Failure to comply with any of the conditions of said grant, whether made such by statute or by agreement, or the laying of any such mains, or the constructing of any such cattleways, without having secured the grant of permission as provided by law shall be deemed a simple misdemeanor. It shall be the duty of the state department of transportation and of the board of supervisors, as regards the highways under their respective jurisdictions, to enforce the provisions of this section and the laws relating thereto.

S13, s 1527-d; C24, 27, 31, 35, 39, s 4862; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 320.8; Ch 1245, 66 GA, ch 4, s 270)

321.1 DEFINITIONS OF WORDS AND PHRASES.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. "Vehicle" does not include:

a. Any device moved by human power.
b. Any device used exclusively upon stationary rails or tracks.

c. Any steering axle, dolly, or other integral part of another vehicle, except an auxiliary axle as defined in subsection 69, which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

d. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.

(Referred to in s 455B.75)

2. "Motor vehicle" means every vehicle which is self-propelled but not including vehicles known as trackless

trolleys which are propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The terms "car," "new car," "used car" or "automobile" shall be synonymous with the term "motor vehicle."

"Used motor vehicle" or "second-hand motor vehicle" means any motor vehicle of a type subject to registration under the laws of this state which have been sold "at retail" as defined in chapter 322 and previously registered in this or any other state.

"New car" means every motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles, which has not been sold "at retail" as defined in chapter 322.

"Used car" means every motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles, which has been sold "at retail" as defined in chapter 322 and previously registered in this state or any other state.

3. a. "Motorcyle" means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground including a motor scooter but excluding a tractor and a motorized bicycle.

b. "Motorized bicycle" or "motor bicycle" means a two-wheeled motor vehicle with an engine having a displacement no greater than fifty cubic centimeters as fixed by the department and not capable of operation at a speed in excess of twenty-five miles per hour on level ground unassisted by human power.

4. "Motor truck" means every motor vehicle designed primarily for carrying livestock, merchandise, freight of any kind, or over nine persons as passengers.

5. "Light delivery truck," "panel delivery truck" or "pickup" means any motor vehicle designed to carry merchandise or freight of any kind, not to exceed two thousand pounds.

6. "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

7. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

8. "Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

9. "Trailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

10. "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Wherever the word "trailer" is used in this chapter, same shall be construed to also include "semitrailer."

A "semitrailer" shall be considered in this chapter separately from its power unit.

11. "Trailer coach" means either a trailer or semitrailer designed for carrying persons.

12. "Specially constructed vehicle" means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

13. "Reconstructed vehicle" means every vehicle of a type required to be registered hereunder materially altered from its

original construction by the removal, addition, or substitution of essential parts, new or used.

14. "Essential parts" means all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

15. "Foreign vehicle" means every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

16. "Implement of husbandry" means every vehicle which is designed for agricultural purposes and exclusively used, except as herein otherwise provided, by the owner thereof in the conduct of his agricultural operations. Implements of husbandry shall also include:

a. Portable livestock loading chutes without regard to whether such chutes are used by the owner in the conduct of his agricultural operations, provided, that such chutes are not used as a vehicle on the highway for the purpose of transporting property.

b. Any vehicle which is principally designed for agricultural purposes and which is moved during daylight hours by a person either:

(1) From a place at which such vehicles are manufactured, fabricated, repaired, or sold at retail to a farm site;

(2) To a place at which such vehicles are manufactured, fabricated, repaired, or sold at retail from a farm site; or

(3) From one farm site to another farm site. For the purpose of this subsection the term "farm site" means a place or location at which vehicles principally designed for agricultural purposes are used or intended to be used in agricultural operations or for the purpose of exhibiting, demonstrating, testing, or experimenting with the same, provided, however, that said place or location shall not be deemed a "farm site" if the movement of said vehicle, from or to the place at which vehicles principally designed for agricultural purposes are manufactured, fabricated, repaired, or sold at retail, exceeds a distance of fifty miles.

Notwithstanding the other provisions of this subsection any vehicle covered thereby if it otherwise qualifies may be registered as special mobile equipment, or operated or moved under the provisions of sections 321.57 to 321.63, if the person in whose name such vehicle is to be registered or to whom a special plate or plates are to be issued elects to do so and under such circumstances the provisions of this subsection shall not be applicable to such vehicle, nor shall such vehicle be required to comply with the provisions of sections 321.384 to 321.429, when such vehicle is moved during daylight hours, provided however, the provisions of section 321.383, shall remain applicable to such vehicle. All self-propelled machinery operated at speeds of less than thirty miles per hour, specifically designed for, or especially adapted to be capable of, incidental over-the-road and primary off-road usage, and used exclusively for the application of plant food materials, agricultural limestone or agricultural chemicals, and not specifically designed or intended for transportation of agricultural limestone and such chemicals and materials. Such machinery shall be operated in compliance with section 321.463.

17. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including trailers and bulk spreaders which are not self-propelled having a gross weight of not more than twelve tons

used for the transportation of fertilizers and chemicals used for farm crop production, and other equipment used primarily for the application of fertilizers and chemicals in farm fields or for farm storage, but not including trucks mounted with applicators of such products, road construction or maintenance machinery and ditch-digging apparatus. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this subsection; provided that nothing contained in this section shall be construed to include portable mills or corn shellers mounted upon a motor vehicle or semitrailer.

18. "Pneumatic tire" means every tire in which compressed air is designed to support the load.

19. "Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

20. "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

21. "Where a vehicle is kept" shall refer to the county of residence of the owner or to the county where the vehicle is mainly kept if said owner is a nonresident of the state.

22. "Garage" means every place of business where motor vehicles are received for housing, storage, or repair for compensation.

23. "Combination" or "combination of vehicles" shall be construed to mean a group consisting of two or more motor vehicles, or a group consisting of a motor vehicle and one or more trailers, semitrailers or vehicles, which are coupled or fastened together for the purpose of being moved on the highways as a unit.

24. "Gross weight" shall mean the empty weight of a vehicle plus the maximum load to be carried thereon. The maximum load to be carried by a passenger-carrying vehicle shall be determined by multiplying one hundred fifty pounds by the number of passenger seats carried by such vehicle.

"Unladen weight" means the weight of a vehicle or vehicle combination without load.

25. "Combined gross weight" shall mean the gross weight of a motor vehicle plus the gross weight of a trailer or semitrailer to be drawn thereby.

26. "Authorized emergency vehicle" means vehicles of the fire department, police vehicles, ambulances and emergency vehicles owned by the United States, this state or any subdivision of this state or any municipality therein, and such privately owned ambulances, rescue or disaster vehicles as are designated or authorized by the director of transportation.

27. "School bus" means every vehicle operated for the transportation of children to or from school, except vehicles which are: (a) Privately owned and not operated for compensation, (b) Used exclusively in the transportation of the children in the immediate family of the driver, (c) Operated by a municipally or privately owned urban transit company for the transportation of children as part of or in addition to their regularly scheduled service, or (d) Designed to carry not more than nine persons as passengers, either school owned or privately owned, which are used to transport pupils to activity events in which the pupils are participants or used to transport pupils to their homes in case of illness or other emergency situations. The vehicles operated under the provisions of paragraph "d" of this section shall be operated by employees of the school district who are specifically approved by the local superintendent of schools for the assignment.

28. "Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

29. "Railroad train" means an engine or locomotive with or without cars coupled thereto, operated upon rails.

30. "Railroad corporation" means any corporation organized under the laws of this state or any other state for the purpose of operating the railroad within this state.

31. "Explosives" mean any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combusive units or other ingredients in such proportions, quantities, or packing that on ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

32. "Flammable liquid" means any liquid which has a flash point of 70 degrees F. or less, as determined by a Tagliabue or equivalent closed cup test device.

33. "Department" means the state department of transportation. "Commission" means the state transportation commission.

34. "Director" means the director of the state department of transportation or his designee.

35. "Person" means every natural person, firm, copartnership, association, or corporation. Where the term "person" is used in connection with the registration of a motor vehicle, it shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals which owns or controls such motor vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesman, or otherwise.

(See also s 321.499)

36. "Owner" means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of a security agreement with an immediate right of possession vested in the debtor, then such debtor shall be deemed the owner for the purpose of this chapter.

(Referred to in s 321.126)

37. "Nonresident" means every person who is not a resident of this state.

38. "Dealer" means every person engaged in the business of buying, selling or exchanging vehicles of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

39. "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer.

40. "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at an established place of business in this state.

41. "Established place of business" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where his books and records are kept and a large share of his business is transacted.

42. "Operator" means every person, other than a chauffeur, who is in actual physical control of a motor vehicle upon a highway.

43. "Chauffeur" means any person who operates a motor vehicle in the transportation of persons, including school buses, for wages, compensation or hire, or any person who operates a truck tractor, road tractor or any motor truck which

is required to be registered at a gross weight classification exceeding five tons, or any such motor vehicle exempt from registration which would be within such gross weight classification if not so exempt except when such operation by the owner or operator is occasional and merely incidental to his principal business.

Subject to the provisions of section 321.179, a farmer or his hired help shall not be deemed a chauffeur, when operating a truck owned by him, and used exclusively in connection with the transportation of his own products or property.

44. "Driver" means every person who drives or is in actual physical control of a vehicle.

45. "Peace officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 801.4.

46. "Local authorities" mean every county, municipal, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state.

47. "Pedestrian" means any person afoot.

48. "Street" or "highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

49. "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

50. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

51. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

52. "Laned highway" means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

53. "Through (or thru) highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter or such entrances are controlled by a police officer or traffic-control signal. The term "arterial" shall be synonymous with "through" or "thru" when applied to highways of this state.

54. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

55. "Crosswalk" means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or, any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

56. "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

57. "Business district" means the territory contiguous to and including a highway when fifty percent or more of the

frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business.

58. "Residence district" means the territory within a city contiguous to and including a highway, not comprising a business, suburban or school district, where forty percent or more of the frontage on such highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business.

59. "School district" means the territory contiguous to and including a highway for a distance of two hundred feet in either direction from a schoolhouse in a city.

(Referred to in s 321.285(4))

60. "Suburban district" means all other parts of a city not included in the business, school or residence districts.

61. The linear measure of the plot of ground upon which the building is located abutting upon the highway shall be deemed "frontage occupied by the building," and the phrase "frontage on such highway for a distance of three hundred feet or more" shall mean the total frontage on both sides of the highway for such distance.

62. "Official traffic-control devices" mean all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

(Referred to in s 319.12)

63. "Official traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

64. "Railroad sign" or "signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

65. "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

66. "Right of way" means the privilege of the immediate use of the highway.

67. "Alley" means a thoroughfare laid out, established and platted as such, by constituted authority.

68. a. "Mobile home" means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

b. "Travel trailer" means a vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed to permit the vehicle to be used as a place of human habitation by one or more persons. Said vehicle may be up to eight feet in width and its over-all length shall not exceed thirty-two feet. Such vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If any such vehicle is used in this state as a place of human habitation for more than ninety consecutive days in one location it shall be classed as a mobile home regardless of the size limitations herein provided.

c. "Fifth-wheel travel trailer" means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed forty feet.

69. "Auxiliary axle" means a transferable axle with pneumatic tires utilized to convert any single axle to a tandem

axle, or to convert any semitrailer to a full trailer with four or more wheels and which may be registered as if a vehicle.

70. "Tandem axle" means any two or more consecutive axles whose centers are more than forty inches but not more than eighty-four inches apart.

71. "Guaranteed arrest bond certificate" means any printed, unexpired certificate issued by an automobile club or association to any of its members, or any printed, unexpired certificate issued by an insurance company authorized to write automobile liability insurance within this state, which said certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company which is doing business in this state under the provisions of section 515.48, subsection 2, guarantee the appearance of the person whose signature appears on the certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed two hundred dollars. If such insurance company is itself qualified under the provisions of section 515.48, subsection 2, then it may be its own surety. Bail in this form shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law.

(Referred to in s 805.9, Supplement)

72. A "special truck" means a motor truck not used for hire with a gross weight registration of eight through eighteen tons used by a person engaged in farming to transport commodities produced only by the owner, or to transport commodities purchased by the owner for use in his own farming operation or occasional use for charitable purposes.

73. "Component part" means any part of a vehicle, other than a tire, having a component part number.

74. "Component part number" means the vehicle identification derivative consisting of numerical and alphabetical designations affixed to a component part by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the component part.

75. "Vehicle identification number" or the initials VIN mean the numerical and alphabetical designations affixed to a vehicle or a component part of a vehicle by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the vehicle.

76. "Demolisher" means any agency or person whose business is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck or dismantle vehicles.

77. "Multipurpose vehicle" means a motor vehicle designed to carry not more than ten people, and constructed either on a truck chassis or with special features for occasional off-road operation.

78. "Motor vehicle license" means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to operator, chauffeur, and motorized bicycle licenses and instruction and temporary permits.

(S13, ss 1571-m1,-m20; C24, 27, ss 4863, 5030, 13012; C31, 35, ss 4863, 4960-d1, 5030, 13012; C39, s 5000.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.1; Ch 1245, 66 GA, ch 4, s 271; 67 GA, ch 103, ss 4, 5; 67 GA, ch 104, s 1; 67 GA, ch 48, s 30)

Referred to in ss 319.12, 321.121, 321.126, 321.285(4), 321.471, 321.474, 321G.9, 322.3, 326.2(13), 455B.75, 710.14, Code 1977; ss 321.486, 805.9, Supplement

321.78 INJURING OR TAMPERING WITH VEHICLE.

Any person who either individually or in association with one or more other persons willfully injures or tampers with any vehicle or breaks or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a simple misdemeanor.

(C39, s 5006.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.78; Ch 1245, 66 GA, ch 4, s 272)
Referred to in s 322.6(9), Code 1977

321.79 INTENT TO INJURE.

Any person who with intent to commit any malicious mischief, injury, or other crime climbs into or upon a vehicle whether it is in motion or at rest or with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended is guilty of a simple misdemeanor.

(C39, s 5006.08; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.79; Ch 1245, 66 GA, ch 4, s 273)

321.91 LIMITATION ON LIABILITY--PENALTY FOR ABANDONMENT.

1. No person, firm, corporation, unit of government, garagekeeper or police authority upon whose property an abandoned vehicle is found or who disposes of such abandoned vehicle in accordance with sections 321.89 and 321.90 shall be liable for damages by reason of the removal, sale, or disposal of such vehicle.

2. Any person who abandons a motor vehicle shall be guilty of a simple misdemeanor.

(C73, 75, 77, s 321.91; Ch 1245, 66 GA, ch 4, s 274)
Referred to in ss 18.11, 321.51(3), 321.89(1), 321.90,
Code 1977

321.97 FRAUDULENT APPLICATIONS.

Any person who fraudulently uses a false or fictitious name in any application for the registration of, or certificate of title to, a vehicle or knowingly makes a false statement or knowingly conceals a material fact or otherwise commits a fraudulent practice.

(S13, s 1571-m26; C24, 27, 31, 35, s 5088; C39, s 5007.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.97; Ch 1245, 66 GA, ch 4, s 275)
Referred to in s 322.6(9), Code 1977

321.98 OPERATION WITHOUT REGISTRATION.

No person shall operate, nor shall an owner knowingly permit to be operated upon any highway any vehicle required to be registered and titled hereunder unless there shall be attached thereto and displayed thereon when and as required by this chapter a valid registration card and registration plate or plates issued therefor for the current registration year and unless a certificate of title has been issued for such vehicle except as otherwise expressly permitted in this chapter. Any violation of this section is a simple misdemeanor.

(C24, 27, 31, 35, s 5085; C39, s 5007.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.98; Ch 1245, 66 GA, ch 4, s 276)
Referred to in s 322.6(9), Code 1977; s 805.8,
Supplement

321.99 IMPROPER USE OF REGISTRATION.

No person shall lend to another any registration card, registration plate, special plate, or permit issued to him or

her if the person desiring to borrow the same would not be entitled to the use thereof, nor shall any person knowingly permit the use of any of the same by one not entitled thereto, nor shall any person display upon a vehicle any registration card, registration plate or permit not issued for such vehicle or not otherwise lawfully used thereon under this chapter. Any violation of this section is a simple misdemeanor.

(SS15, s 1571-m12a; C24, 27, 31, 35, ss 4878, 5080; C39, s 5007.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.99; Ch 1245, 66 GA, ch 4, s 277)

Referred to in s 322.6(9), Code 1977; s 805.8, Supplement

321.100 FALSE EVIDENCES OF REGISTRATION.

It is a fraudulent practice for any person to commit any of the following acts:

1. To alter with a fraudulent intent any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, manufacturer's vehicle identification plate, or permit issued by the department or county treasurer.

2. To forge or counterfeit any such document or plate.

3. To hold or use any such document or plate knowing the same to have been so altered, forged, or falsified.

4. To hold or use any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, manufacturer's vehicle identification plate, or permit issued by the department or county treasurer, for any vehicle to which such document or plate is not legally assigned.

Every person selling new implements of husbandry at retail with a retail list price in excess of five thousand dollars upon which the manufacturer has affixed a vehicle identification number shall maintain a record of such number, the name and address of the purchaser and the date of sale for a period of ten years.

(SS15, s 1571-m 12a; C24, 27, 31 35, s 5080; C39, s 5007.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.100; Ch 1245, 66 GA, ch 4, s 278)

Referred to in s 322.6(9), Code 1977

321.190 ISSUANCE OF NONOPERATOR'S IDENTIFICATION CARDS--FEE.

1. APPLICATION FOR AND CONTENTS OF CARD. The department shall, upon application and payment of the required fee, issue to an applicant a nonoperator's identification card, which card shall bear a distinguishing number assigned to the card holder, the full name, date of birth, sex, residence address, a brief description and a colored photograph of the card holder, the usual signature of the card holder, and such other information as the department may by rule require. The card, including the colored photograph, shall be issued to the applicant at the time of application and no positive or negative photograph shall be retained. The department shall, by rule, establish procedures for the application for, and issuance of, a nonoperator's identification card. An identification card shall not be valid unless it bears the usual signature of the card holder.

The department shall use a process or processes for issuance of a nonoperator's identification card, that prevents, as nearly as possible, the opportunity for alteration or reproduction of, and the superimposition of a photograph on the nonoperator's identification card without ready detection.

The fee for a nonoperator's identification card shall be one dollar and the card shall be valid for the purpose of identification for a period of four years from the date of issuance. A fee of one dollar shall be charged for the voluntary replacement of an identification card.

The nonoperator's identification card fees shall be transmitted by the department to the treasurer of state who shall credit such fees to the general fund of the state.

2. UNLAWFUL USE OF NONOPERATOR'S IDENTIFICATION CARDS. It is a simple misdemeanor, punishable as provided in section 321.482, for any person:

a. To display or permit to be displayed or possess any fictitious or fraudulently altered nonoperator's identification card.

b. To lend his or her nonoperator's identification card to any person or knowingly permit the use of such card by another person.

c. To display or represent as one's own a nonoperator's identification card not issued to such person.

d. To fail or refuse to surrender to the department upon its lawful demand an expired or invalid nonoperator's identification card.

e. To use a false or fictitious name in any application for a nonoperator's identification card or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application.

f. To permit any unlawful use of a nonoperator's identification card issued to such person.

3. COLORED PHOTOGRAPH--PROCEDURES. The department shall in issuing licenses, permits and nonoperator's identification cards bearing a colored photograph of the licensee, permittee or card holder use such processes that prevent to the maximum extent possible, the alteration or reproduction of the license, permit or card including the ability to superimpose a photograph on a license, permit or card without ready detection.

(C77, s 321.190; 67 GA, ch 147, s 124)

321.216 UNLAWFUL USE OF LICENSE.

It is a simple misdemeanor for any person:

1. To display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious or fraudulently altered temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license.

2. To lend his temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license to any other person or knowingly permit the use thereof by another.

3. To display or represent as one's own any temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license not issued to him.

4. To fail or refuse to surrender to the department upon its lawful demand any temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license which has been suspended, revoked, or canceled.

5. To use a false or fictitious name in any application for a temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application.

6. To permit any unlawful use of a temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license issued to him.

7. To obtain, possess or have in one's control or on one's premises blank motor vehicle license forms.

(C31, 35, ss 4960-d46,-d52; C39, s 5015.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.216; Ch 1245, 66 GA, ch 4, s 279; 67 GA, ch 103, s 46)

321.217 PERJURY.

Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed, is guilty of a class "D" felony.

(C31, 35, s 4960-d47; C39, s 5015.02; C46, 50, 54, 58, 62 66, 71, 73, 75, 77, s 321.217; Ch 1245, 66 GA, ch 4, s 280)

321.218 DRIVING WHILE LICENSE DENIED, SUSPENDED OR REVOKED.

Any person whose operator's or chauffeur's license or driving privilege, has been denied, canceled, suspended or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while such license or privilege is denied, canceled, suspended, or revoked, is guilty of a simple misdemeanor. The sentence imposed under this section shall not be suspended by the court, notwithstanding the provisions of section 907.3 or any other provision of statute. The department, upon receiving the record of the conviction of any person under this section upon a charge of driving a motor vehicle while the license of such person was suspended or revoked, shall extend the period of suspension or revocation for an additional like period, and the department shall not issue a new license during such additional period.

Any person operating a motorized bicycle on the highways of the state not possessed of an operator's or chauffeur's license valid for operation of motorcycles or a valid motorized bicycle license, shall, upon conviction, be guilty of a simple misdemeanor.

(C31, 35, ss 4960-d34,-d51; C39, s 5015.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.218; Ch 1245, 66 GA, ch 4, s 281; 67 GA, ch 147, ss 101, 137)

321.266 REPORTING ACCIDENTS.

1. The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication give notice of such accident to the sheriff of the county in which said accident occurred, or the nearest office of the Iowa highway safety patrol, or to any other peace officer as near as practicable to the place where the accident occurred.

2. The driver of a vehicle involved in an accident resulting in injury to or death of any person, or total property damage to an apparent extent of two hundred fifty dollars or more shall also, within seventy-two hours after such accident, forward a written report of such accident to the department.

3. Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in subsections 1 to 3 of this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four hours after completing such investigation, forward a written report of such accident to the department.

4. Any carrier transporting hazardous materials by rail, air, water, or upon a public highway in this state, in the case of an accident involving the transportation of hazardous materials, shall immediately notify the police radio broadcasting system established by the commissioner of public safety pursuant to section 750.1 or shall notify a peace officer of

the county, township, or municipality in which the accident occurs. When a local law enforcement agency is informed of the accident, the agency shall notify the Iowa highway safety patrol. For purposes of this section "hazardous substances" shall mean hazardous substances as defined in the federal Transportation Safety Act of 1974 (Public Law 93-633, section 103). A person who violates any provision of this subsection shall, upon conviction, be guilty of a serious misdemeanor.

(S13, s 1571-m23; C24, ss 5073, 5075, 5104; C27, 31, 35, ss 5073, 5075, 5105-a35, 5105-c21; C39, s 5020.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.266; 67 GA, ch 147, s 125)

Referred to in ss 321.228, 321.238, 321.265, 321.267, 321.271, Code 1977

321.277 RECKLESS DRIVING.

Any person who drives any vehicle in such manner as to indicate either a willful or a wanton disregard for the safety of persons or property is guilty of reckless driving.

Every person convicted of reckless driving shall be guilty of a simple misdemeanor.

(C73, s 4071; C97, s 5039; S13, s 1571-m19; C24, 27, 31, 35, s 5028; C39, ss 5022.04, 5022.05; C46, 50, 54, 58, 62, ss 321.283, 321.284; C66, 71, 73, s 321.283; C75, 77, s 321.277; Ch 1245, 66 GA, ch 4, s 282)

Referred to in ss 321.228, 321.233, Code 1977

321.278 DRAG RACING PROHIBITED.

No person shall engage in any motor vehicle speed contest or exhibition of speed on any street or highway of this state and no person shall aid or abet any motor vehicle speed contest or speed exhibition on any street or highway of this state, except that a passenger shall not be considered as aiding and abetting. Motor vehicle speed contest or exhibition of speed are defined as one or more persons competing in speed in excess of the applicable speed limit in vehicles on the public streets or highways.

Any person who violates the provisions of this section shall be guilty of a simple misdemeanor.

C66, 71, 73, s 321.284; C75, 77, s 321.278; Ch 1245, 66 GA, ch 4, s 283)

321.281 OPERATING WHILE INTOXICATED OR DRUGGED--COPY OF JUDGMENT TO COMMISSION--COMMITMENT OF DEFENDANT FOR TREATMENT.

Whoever operates a motor vehicle upon the public highways of this state while under the influence of an alcoholic beverage, a narcotic, hypnotic or other drug, or any combination of such substances shall, upon conviction or a plea of guilty, be guilty of a serious misdemeanor for the first offense and shall be imprisoned in the county jail not less than two days; be guilty of an aggravated misdemeanor for the second offense and shall be imprisoned in the county jail not less than seven days; and be guilty of a class "D" felony for a third offense and each offense thereafter.

In lieu of, or prior to imposition of, the punishment above described for second offense, third offense and each offense thereafter, the court upon hearing may commit the defendant for treatment of alcoholism or drug addiction or dependency to any hospital or institution in Iowa providing such treatment. The court may prescribe the length of time for such treatment or it may request that the hospital to which the person is committed immediately report to the court when the person has received maximum benefit from the program of the hospital or institution or has recovered from his addiction, dependency or tendency to

chronically abuse alcohol or drugs. A person committed under this section shall be considered a state patient.

The court in pronouncing sentence may provide as to the period during which a new license to operate a motor vehicle shall not be issued to the defendant, provided said period shall not be less than one hundred twenty days for conviction of a first offense of operating a motor vehicle while under the influence of an alcoholic beverage, a narcotic, hypnotic or other drug, or any combination of such substances; of not less than two hundred forty days for conviction of a second offense of such charge; and not less than one year for conviction of a third offense of such charge and for each offense thereafter, notwithstanding the provisions of section 321.212; and the clerk of court shall forthwith certify to the department a true copy of the judgment sentencing the defendant under this section. The department may receive an application for and shall grant a new license at the expiration of the period provided in the judgment of the court notwithstanding the provisions of sections 321.177 and 321.212.

This section shall not apply to a person operating a motor vehicle while under the influence of a narcotic, hypnotic or other drug if such substances were prescribed for such person and have been taken under such prescription and in accordance with the directions of a medical practitioner as defined in section 155.3, subsection 11, provided however there is no evidence of the consumption of alcohol and further provided said medical practitioner has not directed such person to refrain from operating a motor vehicle.

For the purposes of this section, evidence that there was, at the time, more than ten hundredths of one per centum by weight of alcohol in his blood shall be admitted as presumptive evidence that the defendant was under the influence of an alcoholic beverage. No previous conviction for, or plea of guilty to, an offense under this section occurring more than six years prior to the date of the violation being charged shall be used to determine that the violation being charged is a second, third, or subsequent offense.

(S13, s 1571-m23; C24, 27, 31, 35, s 5027; C39, s 5022.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.281; Ch 1245, 66 GA, ch 4, ss 284, 285)
Referred to in ss 321.228, 321.233, 321B.2, 602.18(11), Code 1977; s 321.283, Supplement
"Alcoholic beverage" defined: s 321B.2, Code 1977

321.282 VIOLATIONS.

If any person who has been convicted or pleaded guilty to driving or operating a motor vehicle upon the public highways of this state while in an intoxicated condition is found driving or operating any motor vehicle in violation of the provisions of sections 321.174 and 321.209 the person shall be guilty of a simple misdemeanor.

(C31, 35, s 5027-d2; C39, s 5022.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.282; Ch 1245, 66 GA, ch 4, s 286)
Referred to in ss 321.228, 321.233, Code 1977

321.283 COURT ORDER FOR INSTRUCTION TO DRINKING DRIVERS.

1. DEFINITIONS. As used in this division, unless the context otherwise requires:

a. "Course for drinking drivers" means an approved course designed to inform the offender about drinking and driving and encourage the offender to assess his own drinking and driving behavior in order to select practical alternatives.

b. "Satisfactory completion of a course" means receiving at the completion of a course a grade from the course instructor of "C" or "2.0," or better.

c. "Drivers license" means a license to drive a motor vehicle as an operator or chauffeur.

2. COURT ORDER. After the conviction of a person for operating a motor vehicle while under the influence of an alcoholic beverage, the court in addition to its power to commit the defendant for treatment of alcoholism under section 321.281, may in lieu of, or prior to or after the imposition of punishment for a first offense or prior to or after the imposition of punishment for any subsequent offense, order the defendant, at his own expense, to enroll, attend and successfully complete a course for drinking drivers. A copy of the order shall be forwarded to the department.

3. REFERRED ON CONVICTION. After any conviction for operating a motor vehicle while under the influence of an alcoholic beverage under section 321.281, the court may refer the defendant for treatment at a facility as defined in sections 125.1 to 125.26 and designated by the division on alcoholism. The court may prescribe the length of time for treatment or it may be left to the discretion of the facility to which the defendant was referred. A person referred under this section shall be considered a state patient, and charges and costs for treatment shall be paid for in the manner provided for payment for treatment of alcoholics who have no legal residence in this state.

4. LICENSE REVOKED. When the court orders a person to enroll, attend and successfully complete a course for drinking drivers, the court shall also order that the revocation of the person's drivers license shall be for an indefinite period and until the required course is successfully completed and proof of completion has been filed with the department and the provisions of chapter 321A have been complied with.

5. TRAINING COURSE NOT AVAILABLE. No person shall have his drivers license revoked indefinitely under this division for failure to enroll in a course where the required course is not taught within a radius of one hundred miles from his usual residence.

6. TEMPORARY PERMIT. Any person required to attend a course by the provisions of this division, who is subject to a drivers license suspension or revocation, may be issued a temporary driving permit by the department restricted to driving to and from his home, place of employment, in his employment and the location of the required course. Any person who does not receive a temporary driving permit may after the period of license suspension or revocation under section 321.281 have his drivers license reissued subject to suspension for failure to comply with the provisions of this division. This section shall not permit the issuance of a temporary driving permit or reissuance of a drivers license where the provisions of chapter 321A have not been complied with.

Successful completion of a course required by this division shall not reverse a drivers license suspension or revocation or reduce the length of a suspension or revocation under section 321.281; however, the director may reduce the length of a suspension or revocation contingent upon successful completion of a course for drinking drivers.

7. COURSE OFFERED AT AREA SCHOOLS. The course provided in this division shall be offered on a regular basis at each area school as defined in section 280A.2.

Enrollment in the courses shall not be limited to persons ordered to enroll, attend and successfully complete the course under the provisions of subsection 2, and any person convicted of operating a motor vehicle while under the influence of an

alcoholic beverage who was not ordered to enroll, shall be allowed to enroll and attend a course for drinking drivers.

The course required by this division shall be taught by the area schools under the department of public instruction and approved by the department.

The department of public instruction shall establish reasonable fees to defray the expense of obtaining classroom space, instructor salaries, and class materials. No person shall be denied enrollment in a course by reason of his indigency.

8. NO DISCHARGE FROM EMPLOYMENT. No employer shall discharge a person from his employment solely for the reason of work absence to attend a course required by this division. Any employer who violates this section shall be liable for triple damages occasioned by the unlawful discharge from employment.

9. COURSE AVAILABLE WITHIN ONE YEAR. The course required by this division shall, within the limit of available funds and instructors, be open for enrollment not later than one year after July 1, 1972.

10. HEARING AFTER REVOCATION. Upon written request the department shall afford a person having his drivers license revoked indefinitely under the provisions of this division an opportunity for a hearing before the director, within twenty days after receipt of the request and in the county where the licensee resides unless another county is mutually agreed upon. Following the hearing the revocation may be rescinded if the director determines the revocation is not authorized by this division.

11. LIST OF PLACES AND DATES WHERE COURSE AVAILABLE. The department of public instruction shall prepare a list of the locations of the courses taught under this division, the dates and times taught, the procedure for enrollment, and the schedule of course fees. The list shall be kept current and a copy of the list shall be sent to each court having jurisdiction over offenses provided in chapter 321.

12. DATA PRESERVED. The department of public instruction shall maintain enrollment, attendance, successful and unsuccessful completion data on the persons ordered to enroll, attend and successfully complete a course for drinking drivers. This data shall be regularly forwarded to the department.

13. FEE FOR TEMPORARY PERMIT. The fee for a temporary driving permit under subsection 6 shall be three dollars. The temporary driving permit must be in the permittee's immediate possession while operating a motor vehicle and shall be invalid when the permittee is issued a drivers license. The temporary driving permit shall be canceled upon conviction for a moving traffic violation.

14. PENALTY. Any person violating a restriction or a temporary driving permit issued under subsection 6 shall be guilty of a simple misdemeanor.

(C73, ss 321B.15-321B.28; C75, 77, s 321.283; Ch 1245, 66 GA, ch 4, s 287)

Sections 321.283 and 321.284, Code 1973, transferred to 321.277 and 321.278

321.473 LIMITING TRUCKS.

Local authorities with respect to highways under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

Any person who violates the provisions of the ordinance or resolution shall, upon conviction or a plea of guilty, be subject to a fine determined by dividing the difference between

the actual weight and the maximum weight established by the ordinance or resolution by one hundred, and multiplying the quotient by two dollars.

Local authorities may issue special permits, during periods such restrictions are in effect, to permit limited operation of vehicles upon specified routes with loads in excess of any restrictions imposed under this section, but not in excess of load restrictions imposed by any other provision of this chapter, and such authorities shall issue such permits upon a showing that there is a need to move to market farm produce or to move to any farm, feeds or fuel for home heating purposes.

The department may issue annual special permits for the operation of compacted rubbish vehicles and vehicles which transport compacted rubbish from a rubbish collection point to a landfill area exceeding the weight limitation of section 321.463, but not exceeding a rear axle gross weight for two axle vehicles of twenty-two thousand pounds for the period commencing July 1, 1978 and ending June 30, 1983 and twenty thousand pounds commencing July 1, 1983 and thereafter, and for tandem axle vehicles or transferable auxiliary axle vehicles not exceeding a gross weight on the rear axles of thirty-six thousand pounds. Annual special permits for the operation on secondary roads shall be approved by the county engineer. Annual special permits for a particular vehicle shall not be issued by the department unless prior approval is given by the county engineer of the county in which the vehicle will be operated. Annual special permits for operation on primary roads shall be approved by the state department of transportation. Compacted rubbish vehicles and vehicles which transport compacted rubbish from a rubbish collection point to a landfill area operated pursuant to an annual special permit shall be operated only over routes designated by the local authority. Annual special permits for a particular vehicle shall not be issued by the department unless approved by the local authority responsible for the roads over which the vehicle will be operated. Annual special permits approved by the issuing authority shall be issued upon payment of an annual fee, in addition to other registration fees imposed, of one hundred dollars to be paid to the department for all nongovernmental vehicles.

(C39, s 5035.22; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.473; 67 GA, ch 103, s 53; 67 GA, ch 105, s 1) Referred to in ss 321.236(8), 321.474, Code 1977

321.476 WEIGHING VEHICLES BY DEPARTMENT.

Authority is hereby given to the department to stop any motor vehicle or trailer on the highways for the purposes of weighing and inspection, to weigh and inspect the same and to enforce the provisions of the motor vehicle laws relating to the registration, size, weight, and load of motor vehicles and trailers.

Authority is also hereby granted to subject to weighing and inspection, vehicles which have moved from a highway onto private property under circumstances which indicate that the load of the vehicle, if any, is substantially the same as the load which the vehicle carried before moving onto the private property.

Any person who prevents or in any manner obstructs an officer attempting to carry out the provisions of this section is guilty of a simple misdemeanor.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.476; Ch 1245, 66 GA, ch 4, s 288) Referred to in ss 321.480, 321.481, Code 1977

321.482 SIMPLE MISDEMEANOR.

It is a simple misdemeanor for any person to do any act forbidden or to fail to perform any act required by any of the provisions of this chapter unless any such violation is by this chapter or other law of this state declared to be a felony. Chapter 232 shall have no application in the prosecution of offenses committed in violation of this chapter which are simple misdemeanors.*

(S13, ss 1569, 1571-2a, -m21, -m22, -m26, -m27, -m29, 4808-b; SS15, s 1571-m12a; C24, ss 4903, 5081, 5089, 13119; C27, ss 4903, 5055-b4, 5081, 5089, 13119; C31, ss 4686-c2, 4903, 5055-b4, 5079-d6, 5081, 5089, 13119; C35, ss 4686-c2, 4903, 4991-f5, 5024-e3, 5055-b4, 5067-e2, 5079-d6, 5081, 5089, 13119; C39, s 5036.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.482; Ch 1245, 66 GA, ch 4, s 289)

Referred to in ss 321.17, 321.80, 321.104, 321.193, 321.260, 321.262, 321.294, 321.300, 321.366, 321.369, 321.379, 321.381, 321.452, 321.465, 321.487, 321E.16, Code 1977; ss 80.6, 321.78, 321.79, 321.98, 321.99, 321.190, 321.216, 321.476, 321B.15, Supplement

*Editorial Note: "Misdemeanor" was editorially made plural.

321.483 PENALTY FOR FELONY.

Any person who is convicted of a violation of any of the provisions of this chapter herein declared to constitute a felony, and for which another punishment is not otherwise provided, shall be guilty of a class "D" felony.

(C24, 27, 31, 35, s 5081; C39, s 5036.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.483; Ch 1245, 66 GA, ch 4, s 290)

Referred to in ss 321.77, 321.92, Code 1977; s 321.100, Supplement

321.485 NOTICE TO APPEAR--PROMISE TO APPEAR.

1. Whenever a peace officer has reasonable cause to believe that a person has violated any provision of this chapter punishable as a simple, serious, or aggravated misdemeanor, such officer may:

a. Immediately arrest such person and take him or her before a magistrate; or

b. Without arresting the person, either

(1) Prepare a written citation to appear in court containing the name and address of such person, the operator or chauffeur license number, if any, the registration number, if any, of his or her vehicle, the offense charged, and the time when and place where such person shall appear in court; or

(2) Prepare a memorandum of the alleged traffic violation containing the name and address of such person, the registration number, if any, of his or her vehicle, the offense alleged to have been committed, and such other information as may be prescribed by the commissioner of public safety with the concurrence of the director.

2. If the officer prepares either a citation or a memorandum as provided in this section, the alleged offender shall be requested to sign it. If the person signs, the person may be released without arrest. In case a citation is issued, the signing shall constitute a written promise to appear as stated in the citation. A copy of the citation shall be presented to the person named therein. If a memorandum is prepared, the original shall be retained by the officer, and a copy shall be sent to the department, and a copy shall be presented to the person named therein.

3. For preparing the summons or memorandum referred to in this section, there shall be charged to the person named in the summons or memorandum, upon conviction, a fee of two dollars. The fee shall be assessed as part of the court costs and shall be paid into the general fund of the county.

4. The number of copies and the form of the citations and memorandums authorized by this section shall be as prescribed by the commissioner of public safety with the concurrence of the director.

5. This section shall not apply to a traffic offense which must be charged upon a uniform citation and complaint as provided in section 805.6.

*(C24, 27, 31, 35, s 5082; C39, s 5037.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.485; 67 GA, ch 147, s 126)
Referred to in ss 321.486, 805.6, Supplement*

321.486 AUTHORIZED BOND FORMS.

When bond or bail is required under section 811.2 to guarantee appearance for any offense charged under this chapter, the following nonexclusive forms shall be permitted subject to the following limitations:

1. A current guaranteed arrest bond certificate as defined in section 321.1, subsection 71 shall be considered sufficient surety if the defendant is charged with an offense where the penalty does not exceed two hundred dollars.

2. A valid credit card, as defined in section 537.1301, subsection 17, may be used and shall be sufficient surety when the defendant is charged with any scheduled offense under section 805.8. The defendant may use a credit card for bail purposes only in accordance with rules of the department of public safety adopted pursuant to chapter 17A.

*(C39, s 5037.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 321.486; 67 GA, ch 147, s 126)
Referred to in s 805.6, Supplement*

321A.32 OTHER VIOLATIONS--PENALTIES.

1. Any person whose license or registration or nonresident's operating privilege has been suspended, denied or revoked under this chapter or continues to remain suspended or revoked under this chapter, and who, during such suspension, denial or revocation, or during such continuing suspension or continuing revocation, drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this chapter, shall be guilty of a serious misdemeanor.

2. Any person willfully failing to return license or registration as required in section 321A.31 shall be guilty of a serious misdemeanor.

3. Any person who shall forge or, without authority, sign any notice provided for under section 321A.5 that a policy or bond is in effect, or any evidence of proof of financial responsibility, or who files or offers for filing any such notice or evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a serious misdemeanor.

4. Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be guilty of a serious misdemeanor.

(C31, 35, s 5079-c7; C39, s 5021.05; C46, s 321.279; C50, 54, 58, 62, 66, 71, 73, 75, 77, s 321A.32; Ch 1245, 66 GA, ch 4, s 291)

321B.7 REFUSAL TO SUBMIT.

If a person under arrest refuses to submit to the chemical testing, no test shall be given, but the director, upon the receipt of a sworn report of the peace officer that he or she had reasonable grounds to believe the arrested person to have been operating a motor vehicle upon a public highway of this state while under the influence of an alcoholic beverage, that he or she had placed such person under arrest for the offense of operating a motor vehicle while under the influence of an alcoholic beverage and that the person had refused to submit to the chemical testing, shall revoke his or her license or permit to drive and any nonresident operating privilege for a period of not less than one hundred twenty days nor more than one year; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit within one year from the date of the alleged violation, subject to review as hereinafter provided. The effective date of any such revocation shall be twenty days after the director has mailed notice of such revocation to such person by registered or certified mail.

(C66, 71, 73, 75, 77, s 321B.7; Ch 1245, 66 GA, ch 4, s 292)

Referred to in ss 321.191, 321B.3, Code 1977

321B.15 DRIVING WHILE LICENSE DENIED OR REVOKED.

Any person whose license, or driving privilege, has been denied or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while such license or privilege is denied or revoked, is guilty of a simple misdemeanor and upon conviction shall be punished as provided for simple misdemeanors in section 321.482. The department, upon receiving the record of the conviction of any person under this section upon a charge of driving a motor vehicle while the license of such person was revoked, shall extend the period of revocation for an additional like period, and the department shall not issue a new license during such additional period.

(C75, 77, s 321B.15; Ch 1245, 66 GA, ch 4, s 293)

321F.12 PENALTY.

Any person violating any provision of this chapter shall be guilty of a simple misdemeanor.

(C71, 73, 75, 77, s 321F.12; Ch 1245, 66 GA, ch 4, s 294)

321G.14 PENALTY.

Any person who shall violate any provision of this chapter or any regulation of the commission or director of transportation shall be guilty of a simple misdemeanor.

Chapter 232 shall have no application in the prosecution of offenses which are committed in violation of this chapter, and which constitute simple misdemeanors.

(C71, 73, 75, 77, s 321G.14; Ch 1245, 66 GA, Ch 4, s 295)

322.14 PENALTIES.

Any person violating any of the provisions of this chapter where a penalty is not specifically provided for shall be deemed guilty of a simple misdemeanor.

If a retail installment contract is subject to a provision of the Iowa consumer credit code which is enforced by a criminal penalty, such penalty shall be considered to be specifically provided for a violation of this chapter.

The provisions of this section shall not apply to violations under subsection 5 of section 322.3.

(C39, s 5039.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 322.14; Ch 1245, 66 GA, ch 4, s 296)

323.9 VIOLATIONS.

Any person violating the provisions of this chapter is guilty of a simple misdemeanor.

C75, 77, s 323.9; Ch 1245, 66 GA, ch 4, s 297)

324.14 PENALTY FOR OPERATING UNREGISTERED TRANSPORT.

It shall be unlawful for any person to transport motor fuel in bulk upon the highways of this state in a conveyance the registration of which is required without the evidence of registration provided for and any person found guilty of the unlawful act shall be guilty of a simple misdemeanor, and each cargo so transported shall be considered a separate offense. This penalty shall be in addition to penalties imposed under other provisions of this chapter. Persons transporting motor fuel in bulk upon the highways of this state in an amount of not to exceed four thousand gallons shall not be regarded as transporting in bulk.

(C35, s 5093-f20; C39, s 5093.20; C46, 50, 54, s 324.38; C58, 62, 66, 71, 73, 75, 77, s 324.14; Ch 1245, 66 GA, ch 4, s 298)

Referred to in ss 324.76, Code 1977; s 805.8, Supplement

324.20 POSTING PRICE AND DISCOUNTS.

Every distributor and other person selling motor fuel in this state for resale to dealers in this state, shall keep posted in a conspicuous place most accessible to the public at their place or places of business, including bulk plants, a placard showing in legible words and figures the same height and size, the price per gallon of each grade of motor fuel offered for sale, the amount of state excise tax per gallon thereon, the federal excise tax per gallon thereon, and the total thereof. If any rebate, discount, commission, or other concession is granted by distributors or persons engaged in the sale of motor fuel for resale to dealers of such nature as will reduce the cost or price to any purchaser or dealer in such products, the conditions, quantity, and amount of such rebate, discount, commission or other concession shall be posted as a part of the posted price. All price placards shall be subject to the approval of the department of revenue. Any distributor or person failing to post or keep posted the placard required by this section, or who posts placards not approved by the department of revenue as provided in this section, or who sells any motor fuel for resale at a price which directly or indirectly, by any means or device, deviates from the posted price set forth on the price placard approved by the department of revenue, shall be guilty of a simple misdemeanor. Nothing contained herein shall prohibit or restrict the distribution of earnings to the members of any distributor or person, nor to the distribution to consumers of road maps, publicity and other advertising media carrying the name of the distributor, person, or produce. Each day the required placard remains unposted or an unauthorized placard remains posted, or each deviation from the posted price, shall be considered a separate offense. In the event of a second conviction for the violation of any of

the provisions of this section, the department of revenue may revoke the license of such distributor or person so convicted.

(C27, 31, ss 5093-a3,-a4,-a6,-a7,-a8,-b1; C35, ss 5093-f4, -f15,-f17,-f25,-f31; C39, ss 5093.04, 5093.15, 5093.17, 5093.25, 5093.31; C46, 50, 54, ss 324.4, 324.30, 324.31, 324.47, 324.58, 324.59; C58, 62, 66, 71, 73, 75, 77, s 324.20; Ch 1245, 66 GA, ch 4, s 299)

324.52 FUELS IMPORTED IN SUPPLY TANKS OF MOTOR VEHICLES.

No person shall bring into this state in the fuel supply tanks of a commercial motor vehicle, or any other container, regardless of whether or not the supply tanks are connected to the motor of the vehicle, any motor fuel or special fuel to be used in the operation of the vehicle in this state unless he has paid or made arrangements in advance with the department of revenue for payment of Iowa fuel taxes on the gallonage consumed in operating the vehicle in this state; except that this division shall not apply to a private passenger automobile.

Any person who is unable to display either of the permits provided in section 324.53 and brings into the state in the fuel supply tanks of a commercial motor vehicle more than thirty gallons of motor fuel or special fuel in violation of the provisions of the preceding paragraph is guilty of a simple misdemeanor.

(C35, s 5093-f19; C39, s 5093.19; C46, 50, 54, ss 324.34, 324.37; C58, 62, 66, 71, 73, 75, 77, s 324.52; Ch 1245, 66 GA, ch 4, s 300; 67 GA, ch 107, s 3)
Referred to in ss 324.76, Code 1977; s 805.8, Supplement

324.63 INFORMATION CONFIDENTIAL.

All information obtained by the department of revenue from the examining of reports or records required to be filed or kept under the provisions of this chapter shall be treated as confidential and shall not be divulged except to other state officers, a member or members of the general assembly or any duly appointed committee of either or both houses thereof or to a representative of the state having some responsibility in connection with the collection of the taxes imposed or in proceedings brought under the provisions of this chapter; provided, however, that the department of revenue shall make available for public information on or before the last day of the month following the month in which the tax is required to be paid the names of the distributors and as to each of them the total gallons received in the state and separately, the received gallons (1) exported or sold for export, (2) sold tax-free in the state to entities that are exempt from the tax and (3) sold tax-free in the state to entities required to report and account for the tax thereon. The department of revenue shall also make available to the public information with respect to special fuel dealers and users and as to each of them the gallonage used and taxes paid. The department of revenue, upon request of officials entrusted with enforcement of the motor vehicle fuel tax laws of the federal government or any other state, may forward to such officials any pertinent information which the department may have relative to motor fuel and special fuel provided the officials of the other state furnish to the department of revenue like information.

Any person violating the provisions of this section, and disclosing the contents of any records or reports required to

be kept or made under the provisions of this chapter, except as hereinabove provided, shall be guilty of a simple misdemeanor.

(C27, 31, s 5093-a6; C35, s 5093-f27; C39, s 5093.27; C46, 50, 54, s 324.48; C58, 62, 66, s 324.62; C71, 73, 75, 77, s 324.63; Ch 1245, 66 GA, ch 4, s 301)

324.73 EMBEZZLEMENT OF FUEL TAX MONEY--PENALTY.

Every sale of motor fuel in this state and every sale of special fuel dispensed by the seller into a fuel supply tank of a motor vehicle shall, unless otherwise provided, be presumed to include as a part of the purchase price the fuel tax due the state of Iowa under the provisions of this chapter. Every person collecting fuel tax money as part of the selling price of motor fuel or special fuel, shall hold the tax money in trust for the state of Iowa unless the fuel tax on the fuel has been previously paid to the state of Iowa. Any person receiving fuel tax money in trust and failing to remit it to the department of revenue on or before time required shall be guilty of theft.

(C27, 31, s 5093-a5; C35, ss 5093-f9-f13; C39, ss 5093.09-5093.13; C46, 50, 54, ss 324.16-324.22; C58, 62, 66, s 324.72; C71, 73, 75, 77, s 324.73; Ch 1245, 66 GA, ch 4, s 302)

324.75 PENALTY FOR FALSE CERTIFICATE.

Any person who makes a false certificate, false fuel invoice, false fuel receipt, or false fuel sales ticket in any report, return, application, claim, or evidence required or provided for by this chapter or under any rule or regulation made by the department of revenue shall be guilty of a fraudulent practice.

(C27, 31, ss 5093-a4,-a6,-a7,-a8; C35, s 5093-f31; C39, s 5093.31; C46, 50, 54, ss 324.58, 324.59; C58, 62, 66, s 324.74; C71, 73, 75, 77, s 324.75; Ch 1245, 66 GA, ch 4, s 303)

325.34 SIMPLE MISDEMEANOR.

Every owner, officer, agent, or employee of any motor carrier, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, or regulation, direction, demand, or requirement or any part or provision thereof, of the commission, or who procures, aids, or abets any corporation or person in his failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or regulation or any part or provision thereof, shall be guilty of a simple misdemeanor.

(C24, s 5105; C27, 31, 35, s 5105-a39; C39, s 5100.34; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 325.34; Ch 1245, 66 GA, ch 4, s 304)

325.35 CERTIFICATE CONDITIONED ON FEE.

No motor vehicle engaged in the transportation of property under a certificate of convenience and necessity issued under the provisions of this chapter shall be operated on the highways of this state unless there shall have been paid to the board for the administration of this chapter an annual fee in the amount of five dollars; provided, however, that the fee herein provided shall not be imposed on any tractor or truck tractor; provided, however, that the fee herein provided for each semitrailer shall be in the amount of six dollars.

For the purposes of this section the terms "tractor or truck tractor" shall mean every self-propelled vehicle designed and used primarily for drawing other vehicles and not so con-

structed as to carry a load other than a part of the weight of the vehicle and load so drawn.

It shall be a simple misdemeanor for any motor carrier to operate any motor vehicle for which the annual fee has not been paid and the board may revoke the certificate of convenience and necessity of any such violator.

(C58, 62, 66, 71, 73, 75, 77, s 325.35; Ch 1245, 66 GA, ch 4, s 305)

Referred to in s 325.1(7), Code 1977

326.27 VIOLATIONS TO NEGATE AGREEMENTS.

Operation of a commercial vehicle or vehicles in violation of the requirements of this chapter, the motor vehicle registration laws of this state, or the terms of any agreement negotiated by the department pursuant to this chapter may, after due notice and hearing, be grounds for denial of reciprocal or proportional registration privileges on the vehicle or vehicles of an owner so operated. Any owner denied such reciprocal or proportional registration privileges shall be subject to payment of full annual Iowa registration fees on any such vehicle operated on Iowa highways. In addition to denial of reciprocal or proportional registration privileges, it shall be a simple misdemeanor, unless such act is declared under Iowa law to be a felony, for any person to operate under reciprocity or proportional registration in violation of any requirements of this chapter.

(C66, s 326.7; C71, 73, 75, 77, s 326.27; Ch 1245, 66 GA, ch 4, s 306)

327.9 FEE.

No motor truck engaged in the transportation of property under a truck operator or contract carrier permit issued under the provisions of this chapter shall be operated on the highways of this state unless there shall have been paid to the board for the administration of this chapter an annual fee in the amount of five dollars; provided, however, that the fee herein provided shall not be imposed on any tractor or truck tractor; provided, however, that the fee herein provided for each semitrailer shall be in the amount of six dollars.

For the purposes of this section the terms "tractor or truck tractor" shall mean every self-propelled vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

It shall be a simple misdemeanor for any truck operator or contract carrier to operate any motor truck for which the annual fee has not been paid and the board may revoke the truck operator or contract carrier permit of any such violator or both.

(C31, 35, s 5105-c9; C39, s 5105.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 327.9; Ch 1245, 66 GA, ch 4, s 307)

Referred to in s 327.10, Code 1977

327.22 VIOLATIONS--PUNISHMENT.

Every owner, officer, agent, or employee of any truck operator, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, or regulation, direction, demand, or requirement or any part or provision thereof, of the commission, or the department, or who procures, aids, or abets any corporation or person in his or her failure to obey, observe, or comply with any such order,

decision, rule, direction, demand, or regulation or any part or provision thereof, shall be guilty of a simple misdemeanor.

(C31, 35, s 5105-c25; C39, s 5105.22; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 327.22; Ch 1245, 66 GA, ch 4, s 308)
Constitutionality, 43 GA, ch 129, s 27

327A.18 PENALTIES.

Every owner, officer, agent or employee of any liquid transport carrier, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or requirement or any part or provision thereof of the board, or who procures, aids or abets any corporation or person in his or her* failure to obey, observe, or comply with any such order, decision, rule, direction, demand or regulation or any part or provision thereof, shall be guilty of a simple misdemeanor.

(C62, 66, 71, 73, 75, 77, s 327A.18; Ch 1245, 66 GA, ch 4, s 309)

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

327C.13 HINDERING OR OBSTRUCTING DEPARTMENT.

Any person who shall willfully obstruct the department or board in the performance of their duties, or who shall refuse to give any information within that person's possession that may be required by the department or board within the line of their duty, shall be guilty of a simple misdemeanor.

(C97, s 2115; C24, 27, 31, 35, 39, s 7880; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 474.21; C77, s 327C.13; Ch 1245, 66 GA, ch 4, s 377)

327D.27 PENALTY FOR DISCRIMINATION.

Any corporation making any unjust discrimination as to freight rates, or the rates for the use and transportation of railway cars, or in receiving, handling, or delivering freight, shall be guilty of an aggravated misdemeanor; or shall be subject to the liability prescribed in section 327D.28, to be recovered as therein provided.

(C97, s 2147; C24, 27, 31, 35, 39, s 8064; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 479.29; C77, s 327D.27; Ch 1245, 66 GA, ch 4, s 388)

Referred to in s 327D.40, Code 1977; s 327D.28, Supplement

327D.28 CIVIL FORFEITURE.

Any railway corporation making any unjust discrimination as to passenger or freight rates, or the rates for the use and transportation of railway cars, or in receiving, handling, or delivering freight, shall be guilty of a fraudulent practice.

(C97, s 2148; C24, 27, 31, 35, 39, s 8065; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 479.30; C77, s 327D.28; Ch 1245, 66 GA, ch 4, s 389)

Referred to in s 327D.40, Code 1977; s 327D.27, Supplement

327D.132 VIOLATION--PENALTY.

Any common carrier operating in this state violating any of the provisions of sections 327D.127 to 327D.131 by neglecting

or refusing to weigh cars or to furnish certificates of weights as therein provided shall be guilty of a simple misdemeanor.

(S13, s 2157-q; C24, 27, 31, 35, 39, s 8142; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 479.108; C77, s 327D.132; Ch 1245, 66 GA, ch 4, s 390)

Referred to in s 327D.131, Code 1977

Sections 479.109 to 479.115, Code 1975, repealed by 66 GA, ch 1164, s 98

327F.9 VIOLATIONS.

Any railroad corporation operating a train or engine using any freight car, caboose, or other car contrary to the provisions of sections 327F.6 and 327F.7 shall be guilty of a public offense and shall be subject to a fine of not less than five hundred nor more than one thousand dollars for each and every offense, and moneys so collected shall be credited to the railroad assistance fund.

(C97, s 2083; C24, 27, 31, 35, 39, s 7960; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 477.15; C77, s 327F.9; Ch 1245, 66 GA, ch 4, s 378; 67 GA, ch 147, s 103)
C97, s 2083, editorially divided

327F.13 VIOLATIONS.

Any railway corporation which violates any of the provisions of section 327F.11 shall be deemed guilty of a serious misdemeanor, and each day that every such engine is operated shall constitute a separate and distinct violation of said section.

(S13, s 2083-d; C24, 27, 31, 35, 39, s 7964; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 477.19; C77, s 327F.13; Ch 1245, 66 GA, ch 4, s 379)
Sections 477.20 and 477.21, Code 1975, repealed by 66 GA, ch 170, s 33

327F.16 VIOLATIONS.

Any railroad corporation owning such line of railway or the equipment operated thereon, which shall cause or permit any locomotive, power vehicle, power car, or other equipment used as the equivalent thereof, to be operated without being equipped with the headlight required by the provisions of section 327F.14 shall be deemed guilty of a serious misdemeanor.

(S13, s 2083-h; C24, 27, 31, 35, 39, s 7969; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 477.24; C77, s 327F.16; Ch 1245, 66 GA, ch 4, s 380)
S13, s 2083-h, editorially divided

327F.20 VIOLATIONS.

Any common carrier as provided in section 327F.18 violating any of the provisions of section 327F.19 shall be deemed guilty of a simple misdemeanor.

S13, s 2083-m; C24, 27, 31, 35, 39, s 7973; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 477.28; C77, s 327F.20; Ch 1245, 66 GA, ch 4, s 381)

Referred to in s 327F.18, Code 1977

Sections 477.29 to 477.36, Code 1975, repealed by 66 GA, ch 170, s 33

Sections 477.37 to 477.41, Code 1975, repealed by 66 GA, ch 1164, s 98

327F.28 VIOLATIONS.

Any failure to comply with the provisions of section 327F.27 shall be deemed a simple misdemeanor.

S13, s 2110-j; C24, 27, 31, 35, 39, s 7993; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 477.54; C77, s 327F.28, Ch 1245, 66 GA, ch 4, s 383)

Referred to in s 327F.29, Code 1977

327F.35 PENALTY.

Any railroad corporation found guilty of violating the provisions of section 327F.34 shall be guilty of a simple misdemeanor.

(C66, 71, 73, 75, s 477.62; C77, s 327F.35; Ch 1245, 66 GA, ch 4, s 384)

327F.36 SCREEN EXHAUST FIRE CONTROLS.

No locomotive or other rolling stock shall be operated unless it is equipped with proper deflector and screen exhaust fire controls and uses adequate devices to prevent the escape of blowing or burning materials or substances and is maintained in good working order to protect against the start and spread of fires along the right of way. A violation of this section shall be a simple misdemeanor. The railroad corporation, and any officers, agent, lessee or independent contractor found guilty of a violation of this section shall be guilty of a simple misdemeanor.

(C71, 73, 75, s 477.63; C77, s 327F.36; Ch 1245, 66 GA, ch 4, s 385)

327G.9 FAILURE TO FENCE--GENERAL PENALTY.

If the railroad corporation refuses or neglects to comply with any provision of this chapter relating to the fencing of the tracts, such railroad corporation shall be guilty of a simple misdemeanor and every thirty days' continuance of such refusal or neglect shall constitute a separate and distinct offense.

(C97, s 2058; C24, 27, 31, 35, 39, s 8009; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 478.10; C77, s 327G.9; Ch 1245, 66 GA, ch 4, s 386)

C97, s 2058, editorially divided

327G.14 VIOLATIONS.

Any officer or employee of any railway corporation violating any of the provisions of section 327G.13 shall be guilty of a simple misdemeanor.

(C97, s 2072; C24, 27, 31, 35, 39, s 8019; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 478.20; C77, s 327G.14; Ch 1245, 66 GA, ch 4, s 387)

Referred to in s 327G.32, Code 1977

328.40 PENALTIES.

Any person who violates any of the provisions of this chapter, or who makes any material false statement or representation in any application or statement filed with the department as required by this chapter or any of the rules and regulations issued pursuant thereto shall be guilty of a fraudulent practice.

(C31, 35, s 8338-c8; C39, s 8338.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 328.40; Ch 1245, 66 GA, ch 4, s 310)

328.41 OPERATING RECKLESSLY OR WHILE INTOXICATED.

It shall be unlawful for any person to operate an aircraft in the air space above this state or on the ground or water within this state, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate

an aircraft in the air space above this state or on the ground or water within this state in a careless or reckless manner so as to endanger the life or property of another.

Any person who operates an aircraft in a careless or reckless manner in violation of the provisions of this section shall be guilty of a simple misdemeanor.

Any person who operates any aircraft, while in an intoxicated condition or under the influence of narcotic drugs in violation of this section, shall, upon conviction or a plea of guilty, be punished for the first offense by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not to exceed one year, or by both such fine and imprisonment; for the second offense by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment in the penitentiary for a period of not to exceed one year, or by both such fine and imprisonment; and for a third offense by imprisonment in the penitentiary for a period not to exceed three years.

The court shall after pronouncing sentence cause the clerk to certify a true copy of the judgment to the Iowa liquor control commission. Said commission upon receipt of such copy shall cause notice of such conviction and judgment to be sent to the manager of each liquor store in the state which notice shall be posted therein.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 328.41; Ch 1245, 66 GA, ch 4, s 311)

329.14 ENFORCEMENT AND REMEDIES.

Each violation of this chapter or of any regulations, order, or rules promulgated pursuant to this chapter, shall constitute a simple misdemeanor and each day a violation continues to exist shall constitute a separate offense.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 329.14; Ch 1245, 66 GA, ch 4, s 312)

Referred to in s 329.4(9), Code 1977

332.30 PENALTY.

Any person who violates any of the provisions of sections 332.23 to 332.29 or who violates any of the terms or conditions under which the person is permitted to engage in the business activity for which the person was licensed, shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 5587; C46, 50, 54, 58, s 361.7; C62, 66, 71, 73, 75, 77, s 332.30; Ch 1245, 66 GA, ch 4, s 313)

Referred to in s 332.25, Code 1977

332.49 PEDDLING WITHOUT LICENSE.

Any person peddling outside the limits of a city without such license or after the expiration thereof, shall be guilty of a simple misdemeanor, whether the person be the owner of the goods sold or carried by him or her or not, and, on conviction thereof, shall forfeit and pay into the county treasury, in addition to the penalty imposed therefor, double the amount of the tax for one year as fixed in section 332.45.

(C51, ss 511, 512; R60, s 792; C73, s 907; C97, s 1348; S13, s 1348; C24, 27, 31, 35, 39, s 7178; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 444.17; C77, s 332.49; Ch 1245, 66 GA, ch 4, s 359)

332.51 VIOLATIONS.

Any persons exhibiting any such show without first having obtained such license shall be guilty of a simple misdemeanor, and shall also forfeit and pay to the county treasurer double

the amount fixed for such license, for the benefit of the school fund.

(C97, s 1349; C24, 27, 31, 35, 39, s 7180; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 444.19; C77, s 332.51; Ch 1245, 66 GA, ch 4, s 360)

336A.7 OTHER ATTORNEY APPOINTED.

The court may, for cause, upon the application of the indigent person or the public defender, or on its own motion, appoint an attorney other than the public defender, to represent the indigent person at any state of the proceedings or on appeal. The attorney so appointed shall be compensated as provided in section 815.7.

(C66, 71, 73, 75, 77, s 336A.7; Ch 1245, 66 GA, ch 4, s 314)

336B.2 FINANCIAL STATEMENT.

Before an attorney is appointed under the provisions of sections 68.8, 145.17, 145.19, 222.22, 232.28, or rule 8, rules of criminal procedure, or to represent any person charged with a crime in this state, the court shall require the client, or his parent, guardian, or custodian to complete under oath a detailed financial statement.

(C71, 73, 75, 77, s 336B.2; Ch 1245, 66 GA, ch 4, s 315)

336B.5 FALSE STATEMENT--PENALTY.

Any person that submits to a court or to a public defender a materially false financial statement, for the purpose of obtaining legal assistance at public expense, shall be guilty of a fraudulent practice.

(C71, 73, 75, 77, s 336B.5; Ch 1245, 66 GA, ch 4, s 316)

339.13 WHEN UNLAWFUL TO EMBALM.

It shall be unlawful to embalm a body when the embalmer has any reason to believe death occurred in a manner specified in section 339.6, or when there is evidence sufficient to arouse suspicion of crime in connection with the cause of death of the deceased, or where it is the duty of a medical examiner to view the body and investigate the death of the deceased person, until the permission of a county medical examiner has been obtained. Whenever feasible, the body shall be released to the funeral director for embalming within twenty-four hours of death.

It shall be unlawful to cremate, bury, or send out of the state the body of a deceased person when death occurred in a manner specified in section 339.6, until a medical examiner shall certify in writing that he has viewed the body and has made personal inquiry into the cause and manner of death and that all necessary autopsy or postmortem examinations have been completed. However, the body of a deceased person may be sent out of state for the purpose of an autopsy or postmortem examination if the county medical examiner certifies in writing that the out-of-state autopsy or postmortem examination is necessary or, in the case of a death which is not in the public interest, as defined in section 339.6, if the attending physician certifies to the county medical examiner that the performance of the autopsy out of state is proper.

A fee as set by the board of supervisors shall be paid the county medical examiner for an examination certificate by the person making application therefor, and a copy of such certificate shall be promptly filed by the medical examiner in his office. The certificate of the county medical examiner shall not be required in cases of stillborn infants if a physician was present at the stillbirth and the cause of stillbirth, as certified by the physician according to the provi-

sions of chapter 144, is not such as to require an investigation by a medical examiner.

Any person violating any of the provisions of this section shall be deemed guilty of a serious misdemeanor.

(C62, 66, s 339.12; C71, 73, 75, 77, s 339.13; Ch 1245, 66 GA, ch 4, s 318)

341A.21 SIMPLE MISDEMEANOR.

Any person who willfully violates any of the provisions of this chapter shall be guilty of a simple misdemeanor. The district court shall have jurisdiction of all such offenses.

(C75, 77, s 341A.21; Ch 1245, 66 GA, ch 4, s 319)

343.9 VIOLATIONS.

Any officer of any county, or any deputy or employee of such officer, who violates any of the provisions of sections 343.7 and 343.8, shall be guilty of a simple misdemeanor.

(R60, s 2188; C73, s 558; C97, s 598; C24, 27, 31, 35, 39, s 5257; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 343.9; Ch 1245, 66 GA, ch 4, s 320)

344.10 EXPENDITURES EXCEEDING APPROPRIATION.

It shall be unlawful for any county official, the expenditures of whose office come under the provisions of this chapter, to authorize the expenditure of a sum for his department larger than the amount which has been appropriated by the county board of supervisors.

Any county official in charge of any department or office who violates this law shall be guilty of a simple misdemeanor.

(C31, 35, s 5260-c10; C39, s 5260.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 344.10; Ch 1245, 66 GA, ch 4, s 321)

346.22 VIOLATIONS.

Any officer of any county, or any deputy or employee of such officer, who violates any of the provisions of sections 346.20 and 346.21, shall be guilty of a simple misdemeanor.

(R60, s 2128; C73, s 558; C97, s 598; C24, 27, 31, 35, 39, s 5296; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 346.22; Ch 1245, 66 GA, ch 4, s 322)

350.7 FALSE CLAIM.

Any person who shall claim or attempt to procure any bounty provided for in this chapter upon any animal killed in another state or county, or upon any animal which has been domesticated, or who shall attempt to obtain any bounty by presenting any false claim or spurious exhibit, shall be guilty of a fraudulent practice.

(C97, s 2348; S13, s 2348; C24, 27, 31, 35, 39, s 5419; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 350.7; Ch 1245, 66 GA, ch 4, s 323)

351.43 PENALTY.

Any person refusing to comply with the provisions of sections 351.33 to 351.42 or violating any of their provisions, shall be deemed guilty of a simple misdemeanor.

(C66, 71, 73, 75, 77, s 351.43; Ch 1245, 66 GA, ch 4, s 324)

Referred to in ss 351.36, 351.42, Code 1977

351A.6 PENALTY.

It shall be a simple misdemeanor for any person or corporation to violate any provision of this chapter. Any pound failing or refusing to comply with the provisions of this chapter shall become immediately ineligible for any public moneys notwithstanding the provisions of any contract, and it

shall be unlawful for any public body to pay any public moneys to a pound after receipt by it of a notice of such noncompliance or refusal from any institution authorized by the state department of health to obtain dogs until such time as such institution shall have withdrawn its notice or the state department of health shall have notified such public body that such notice was without foundation.

(C66, 71, 73, 75, 77, s 351A.6; Ch 1245, 66 GA, ch 4, s 325)

356.7 CALENDAR RETURNED.

On or before the fifteenth day of the months of January, April, July and October each year, the sheriff of each county must return a copy of such calendar to the district court of the district within which his or her* county is situated. If a sheriff neglects or refuses to do so, he or she shall be guilty of a simple misdemeanor.

(C51, s 3106; R60, s 5125; C73, s 4726; C97, s 5642; C24, 27, 31, 35, 39, s 5503; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 356.7; Ch 1245, 66 GA, ch 4, s 326)

Referred to in s 356A.5, Code 1977

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

356.23 CRUEL TREATMENT.

If any officer or other person treat any prisoner in a cruel or inhuman manner, he or she shall be guilty of a serious misdemeanor.

(C73, s 4742; C97, s 5658; C24, 27, 31, 35, 39, s 5519; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 356.23; Ch 1245, 66 GA, ch 4, s 327)

356.25 ANNOYANCE OF PRISONER.

Any person persisting in insulting or annoying or communicating with any prisoner, after being commanded by such officer to desist, shall be guilty of a simple misdemeanor.

(C73, s 4743; C97, s 5659; C24, 27, 31, 35, 39, s 5521; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 356.25; Ch 1245, 66 GA, ch 4, s 328)

356A.3 ALTERNATIVE CONFINEMENT OF PRISONERS.

Any district judge may sentence and commit a person to a facility established and maintained pursuant to section 356A.1 or 356A.2 instead of the county jail. A district judge may order the transfer of a person sentenced and committed to the county jail to such a facility upon his or her own motion, the motion of the sentenced and committed person, or the motion of the sheriff. The original order of commitment or the order of transfer to the facility shall set forth the terms and conditions of the detention or commitment; that the detained or committed person shall abide by the terms and conditions of this chapter and the rules of the facility to which committed or transferred. The order shall be read to the detained, committed or transferred person in open court. The committing court or a district judge may order any person who has been detained, committed, or transferred to such a facility to be transferred to the county jail if, upon hearing, the court determines such person has been refractory or disorderly, has willfully destroyed or injured any property in the facility, or has violated any of the terms and conditions of the order of detention, commitment, or transfer or the provisions of this chapter or the rules of the facility wherein the person was detained or committed. Any violations of the order of detention, commitment, or transfer shall further be punished as contempt of court pursuant to chapter 665. The provisions of

section 719.4 shall be applicable to any person detained, committed, or transferred to a facility established and maintained pursuant to this chapter. The county or city to which the cause originally belonged shall be liable for the expense of the original detention, commitment, or transfer and the subsequent expenses of maintaining such person in the facility. The county's expense shall be levied and paid out of the court expense fund pursuant to section 444.10.

(C73, 75, 77, s 356A.3; Ch 1245, 66 GA, ch 4, s 329; 67 GA, ch 147, s 102)

358A.26 PENALTY.

In addition to any other remedy granted herein, the violation of* any regulation, restriction or boundary adopted under this chapter or the occupancy or use of any structure erected, altered or maintained in violation of this chapter shall constitute a simple misdemeanor. Such occupancy or use shall be deemed a continuing violation and may be the subject of repeated prosecutions if so continued.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 358A.26; Ch 1245, 66 GA, ch 4, s 330)

*Editorial note: The spelling of the word "of" was editorially corrected.

364.5 JOINT ACTION--LEAGUE OF MUNICIPALITIES.

A city or a board established to administer a city utility, in the exercise of any of its powers, may act jointly with any public or private agency as provided in chapter 28E.

The financial condition and the transactions of the league of Iowa municipalities shall be audited in the same manner as cities as provided in section 11.18.

It is unlawful for the league of Iowa municipalities to provide any form of aid to a political party or to the campaign of a candidate for political or public office. Any person violating or being an accessory to a violation of this section is guilty of a simple misdemeanor.

A city may enter into an agreement with the federal government acting through any of its authorized agencies, and may carry out provisions of the agreement as necessary to meet federal requirements to obtain the funds or co-operation of the federal government or its agencies for the planning, construction, rehabilitation, or extension of a public improvement.

(S13, s 694-a; C24, 27, 31, 35, 39, s 5684; C46, 50, s 363.62; C54, 58, 62, 66, 71, 73, s 363.43; C75, 77, s 364.5; Ch 1245, 66 GA, ch 4, s 331)

400.30 PENALTY.

The provisions of this chapter shall be strictly carried out by each person or body having powers or duties thereunder, and any act or failure to act tending to avoid or defeat the purposes of such provisions is hereby prohibited and shall be a simple misdemeanor.

(C39, s 5713.1; C46, 50, 54, 58, 62, 66, 71, 73, s 365.30; C75, 77, s 400.30; Ch 1245, 66 GA, ch 4, s 332)
Constitutionality, 47 GA, ch 156, s 24

409.14 APPROVAL CONDITION TO FILING AND RECORDING.

No county recorder shall hereafter file or record, nor permit to be filed or recorded, any plat purporting to lay out or subdivide any tract of land into lots and blocks within any city having a population by the latest federal census of twenty-five thousand or over, or within a city of any size which by ordinance adopts the restrictions of this section or, except as hereinafter provided, within two miles of the limits

of such city, unless such plat has been first filed with and approved by the council of such city as provided in section 409.7, after review and recommendation by the city plan commission in cities where such commission exists.

If in any case the limits of any such city are at any place less than four miles distant from the limits of any other city, then at such place jurisdiction to approve plats shall extend to a line equidistant between the limits of said cities.

For the information of the city council and the city plan commission, where such exists, and to facilitate action on proposed plats, the city council shall have authority by ordinance to prescribe reasonable rules and regulations governing the form of said plats and require such data and information to accompany same on presentation for approval as may be deemed necessary by the said council.

Said plats shall be examined by such city council, and city plan commission where such exists, with a view to ascertaining whether the same conform to the statutes relating to plats within the city and within the limits prescribed by this section, and whether streets, alleys, boulevards, parks and public places shall conform to the general plat of the city and conduce to an orderly development thereof, and not conflict or interfere with rights of way or extensions of streets or alleys already established, or otherwise interfere with the carrying out of the comprehensive city plan, in case such has been adopted by such city. If such plats shall conform to the statutes of the state and ordinances of such city, and if they shall fall within the general plan for such city and the extensions thereof, regard being had for public streets, alleys, parks, sewer connections, water service, and service of other utilities, then it shall be the duty of said council and commission to endorse their approval upon the plat submitted to it; provided that the city council may require as a condition of approval of such plats that the owner of the land bring all streets to a grade acceptable to the council, and comply with such other reasonable requirements in regard to installation of public utilities, or other improvements, as the council may deem requisite for the protection of the public interest.

The council may require that the owner of the land or his contractor, furnish a good and sufficient bond for the installation of the said improvements according to city specifications and for the repairs necessitated by defects in material or workmanship not to exceed two years from and after completion.

The approval of the city council shall be deemed an acceptance of the proposed dedication for public use, and owners and purchasers shall be deemed to have notice of the public plans, maps and reports of the council and city plan commission, if any, having charge of the design, construction and maintenance of the city streets affecting such property within the jurisdiction of such cities.

If any such plat of land is tendered for recording in the office of the county recorder of any county in which any city of the above class may be situated, it shall be the duty of such county recorder to examine such plat, to ascertain whether the endorsement of approval by the city council, as herein provided for, shall appear thereon. If it shall, and the plat otherwise conforms to the provisions of law, said officer shall accept same for recording. If such endorsement does not appear thereon said officer shall refuse and decline to accept such plat, and any filing thereof shall be void. Any failure to observe the provisions of this section on the part of any

county recorder shall constitute a simple misdemeanor in office.

(C27, 31, 35, s 6278-b1; C39, s 6278.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 409.14; Ch 1245, 66 GA, ch 4, s 333)

Referred to in ss 409.1, 409.16, Code 1977

411.14 PROTECTION AGAINST FRAUD.

Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of such retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a fraudulent practice. Should any change or errors in records result in any member or beneficiary receiving from the retirement system more or less than he or she would have been entitled to receive had the records been correct, the respective board of trustees shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled, shall be paid.

(C35, s 6326-f12; C39, s 6326.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 411.14; Ch 1245, 66 GA, ch 4, s 334)
Constitutionality, 45 Ex GA, ch 75, s 20

413.107 VIOLATIONS.

Every person who shall violate or assist in the violation of any provision of this chapter shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 6433; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 413.107; Ch 1245, 66 GA, ch 4, s 335)
38 GA, ch 123, s 95, editorially divided

413.111 LIEN ON PROPERTY.

The existence of a nuisance in or upon such dwelling, structure on the same lot with a dwelling, or on such lot, which the owner thereof has created or permitted to exist and any violation of this chapter as to such dwelling, structure, and lot of which the owner has been guilty shall in such proceeding subject such dwelling, structure, and lot respectively to a penalty of fifty dollars, which shall be a lien thereon until paid; and any violation of an order made or a notice given by the health officer, permitted or committed by the owner of a dwelling, structure on the same lot with a dwelling, or such lot, shall constitute a simple misdemeanor.

(C24, 27, 31, 35, 39, s 6437; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 413.111; Ch 1245, 66 GA, ch 4, s 336)

422.20 INFORMATION CONFIDENTIAL--PENALTY.

1. It shall be unlawful for any officer or employee of the state to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person shall also be dismissed from office or discharged from employment. Nothing herein shall prohibit turning over to duly authorized officers of the United States

information and income returns pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate.

2. It shall be unlawful for any officer, employee, or agent, or former officer, employee, or agent of the state to disclose to any person, except as authorized in subsection 1 of this section, any federal tax return or return information as defined in section 6103(b) of the Internal Revenue Code of 1954. It shall further be unlawful for any person to whom any federal tax return or return information, as defined in section 6103(b) of the Internal Revenue Code of 1954, is disclosed in a manner unauthorized by subsection 1 of this section to thereafter print or publish in any manner not provided by law any such return or return information. Any person committing an offense against the foregoing provision shall be guilty of a serious misdemeanor.

(C62, 66, 71, 73, 75, 77, s 422.20; Ch 1245, 66 GA, ch 4, s 337; 67 GA, ch 119, s 8)

Referred to in ss 421.1(4), 422.16(9, 11(e)), 422.38, 425.28, 442.16, Code 1977

This section is effective January 1, 1978 for tax years beginning on or after January 1, 1978.

422.25 COMPUTATION OF TAX, INTEREST, AND PENALTIES--LIMITATION.

1. As soon as practicable and in any event within three years after the return is filed the department shall examine it and determine the correct amount of tax, and the amount so determined by the department shall be the tax; provided that if the taxpayer omits from income such an amount as will, under the Internal Revenue Code of 1954, extend the statute of limitations for assessment of federal tax to six years under said Code, the period for examination and determination shall be six years; and provided further that the period for examination and determination shall be unlimited in the case of a false or fraudulent return with intent to evade tax or in the case of failure to file a return. Notwithstanding the periods of limitation for examination and determination heretofore specified, the department shall have six months to make an examination and determination from the date of receipt by the department of notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-months' period, the notice shall be in writing in any form sufficient to inform the department of such final disposition with respect to such year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice. The burden of proof of additional tax owing under the six-year period, or unlimited period, shall be on the department. If the tax found due is greater than the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall notify the taxpayer by certified mail of the total, which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of any month. The notice shall also inform the taxpayer of the additional interest and penalty which will be added to the total due if not paid on or before the last day of the applicable month.

See 56 GA, ch 210, s 2 for barred claims

The provisions of 65 GA, ch 244, shall be effective for all outstanding tax audits conducted by the internal revenue service where final disposition of such audits has not been determined by July 1, 1973.

2. In addition to the tax or additional tax as determined by the department under the provisions of subsection 1 of this section, the taxpayer shall pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. In case of failure to file a return with the department on or before the due date (determined with regard to any extension of time for filing), unless it is shown that such failure was due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person fails to remit the tax due with the filing of the return on or before the due date, or fails to pay any amount of any tax required to be shown on the return, there shall be added to the tax a penalty of five percent of the tax due unless it is shown that such failure was due to reasonable cause. In case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false return with intent to evade tax, in lieu of the penalty above provided, there shall be added to the amount required to be shown as tax on such return fifty percent of the amount of such tax. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the return except in the case of willful failure to file a return and willfully filing of a false return with intent to evade tax.

3. If the amount of the tax as determined by the department shall be less than the amount theretofore paid, the excess shall be refunded with interest after sixty days from the date of payment at three-fourths of one percent per month counting each fraction of a month as an entire month under the provisions of such rules as may be prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment shall be considered as having been made at the close of the taxable year in which the net operating loss or net capital loss occurred or sixty days from the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carry back to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

The net operating loss and net capital loss provisions of subsection 3 shall be effective for tax loss years or periods beginning on or after January 1, 1974, except that interest on refunds or credits for periods prior to January 1, 1974, which were created by tax loss years or periods beginning on or after January 1, 1974, shall be limited to six percent per annum.

4. All payments received must be credited first, to the penalty and interest accrued, and then to the tax due.

5. Any person required to supply any information, to pay any tax, or to make, sign, or file any return or supplemental return, who willfully makes any false or fraudulent return, or willfully fails to pay such tax, supply such information, or

make, sign, or file such return, at the time or times required by law, shall be guilty of a fraudulent practice.

6. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required under the provisions of this division shall be prima-facie evidence thereof except as otherwise provided in this section.

7. The periods of limitation provided by this section may be extended by the taxpayer by signing a waiver agreement to be provided by the department. Such agreement shall stipulate the period of extension and the year or years to which such extension applies. It shall further provide that a claim for refund may be filed by the taxpayer at any time during the period of extension. In consideration of such agreement, interest due in excess of thirty-six months on either a tax deficiency or tax refund shall be waived.

8. Any person who willfully attempts in any manner to defeat or evade any tax imposed by this division or the payment thereof, shall upon conviction for each such offense be guilty of a class "D" felony.

9. The jurisdiction of any offense as defined in this section is in the county of the residence of the person so charged, unless such person be a nonresident of this state or his residence in this state is not established, in either of which events jurisdiction of such offense is in the county of the seat of government of the state of Iowa.

10. A prosecution for any offense defined in this section must be commenced within six years after the commission thereof, and not after.

(C35, s 6943-f21; C39, s 6943.057; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 422.25; Ch 1245, 66 GA, ch 4, s 338) Referred to in ss 422.16(9, 11(e)), 422.39, 422.59, 422.66, 442.16, Code 1977

422.40 CANCELLATION OF AUTHORITY--PENALTY--OFFENSES.

1. If a corporation required by the provisions of this division to file any report or return or to pay any tax or fee, either as a corporation organized under the laws of this state, or as a foreign corporation doing business in this state for profit, or owning and using a part or all of its capital or plant in this state, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this division for making such report or return, or for paying such tax or fee, the director may certify such fact to the secretary of state. The secretary of state shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this state by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this state by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by him.

2. Any person or persons who shall exercise or attempt to exercise any powers, privileges, or franchises under articles of incorporation or certificate of authority after the same are canceled, as provided in any section of this division, shall pay a penalty of not less than one hundred dollars nor more than one thousand dollars, to be recovered by an action to be brought by the director.

3. Any corporation whose articles of incorporation or certificate of authority to do business in this state have been

canceled by the secretary of state, as provided in subsection 1, or similar provisions of prior revenue laws, upon the filing, within ten years after such cancellation, with the secretary of state, of a certificate from the department that it has complied with all the requirements of this division and paid all state taxes, fees, or penalties due from it, and upon the payment to the secretary of state of an additional penalty of fifty dollars, shall be entitled again to exercise its rights, privileges, and franchises in this state; and the secretary of state shall cancel the entry made by him under the provisions of subsection 1 or similar provisions of prior revenue laws, and shall issue his certificate entitling such corporation to exercise its rights, privileges and franchises.

Referred to in s 422.16(10,c)

4. Any person, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any requirement of this division or any lawful requirement of the director thereunder, shall fail to pay any tax or to make, sign, or verify any return or to supply any information required by or under the provisions of this division, shall be guilty of a serious misdemeanor. Any person, corporation, or any officer or employee of a corporation, or member or employee of any partnership, who, with intent to evade any of the requirements of this division, or any lawful requirements of the director thereunder, shall make, render, sign, or verify any false or fraudulent return or statement, or shall supply any false or fraudulent information, or who shall aid, abet, direct, cause, or who shall procure anyone so to do, shall be guilty of a fraudulent practice. Such penalty shall be in addition to all other penalties in this division provided.

(C35, s 6943-f36; C39, s 6943.072; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 422.40; Ch 1245, 66 GA, ch 4, s 339)
Referred to in s 422.16(10,c), Code 1977

422.42 DEFINITIONS.

The following words, terms, and phrases, when used in this division, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

2. "Sales" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

3. "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose, other than for processing or for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with taxable services, and the sale of gas, electricity, water, and communication service to retail consumers or users, but does not include commercial fertilizer or agricultural limestone or materials, but not tools or equipment, which are to be used in disease control, weed control, insect control or health promotion of plants or livestock produced as part of agricultural production for market, or electricity or steam or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that such property shall by means of fabrication, compounding, manufacturing, or germination become an integral part of other tangible personal prop-

erty intended to be sold ultimately at retail, or shall be consumed as fuel in creating heat, power, or steam for processing including grain drying or for generating electric current, or consumed in implements of husbandry engaged in agricultural production, or such property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing personal property which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product.

Notwithstanding the foregoing provisions of this subsection, the sale of newsprint and ink delivered after the effective date of this Act* to any person, firm or corporation to be incorporated in or used in the printing of any newspaper, free newspaper or shoppers guide for publication in this state shall be considered as a sale at retail and such person, firm or corporation shall be deemed to be the consumer of such newsprint and ink and subject to the payment of sales tax.

**Chapter 1201, s 5, Acts 63 GA, Second Session*

4. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

5. "Retailer" includes every person engaged in the business of selling tangible goods, wares, merchandise or taxable services at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this division or operating amusement devices or other forms of commercial amusement from which revenues are derived; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this division to regard any salesmen, representatives, truckers, peddlers, or canvassers, as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this division.

6. "Gross receipts" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise; provided, however,

a. That discounts for any purpose allowed and taken on sales shall not be included if excessive sales tax is not collected from the purchaser, nor shall the sale price of property returned by customers when the total sale price thereof is refunded either in cash or by credit.

b. That in all transactions in which tangible personal property is traded toward the purchase price of tangible personal property of greater value, the gross receipts shall be only that portion of the purchase price represented by the difference between the total purchase price of such tangible personal property of greater value and the amount of such tangible personal property traded.

7. "Relief agency" means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work.

8. The word "taxpayer" includes any person within the meaning of subsection 1 hereof, who is subject to a tax imposed by this division, whether acting for himself or as a fiduciary.

9. Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders, for the erection of buildings or the alteration, repair or improvement

of real property, are retail sales in whatever quantity sold. Where the owner, contractor, subcontractor or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, he shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail.

10. The use within this state of tangible personal property by the manufacturer thereof, as building materials, supplies or equipment, in the performance of construction contracts or for any other purpose except for resale or processing, shall, for the purpose of this division, be construed as a sale at retail thereof by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to him of the fabrication or production thereof.

11. "Place of business" shall mean any warehouse, store, place, office, building or structure where goods, wares or merchandise are offered for sale at retail or where any taxable amusement is conducted or each office where gas, water, heat, communication or electric services are offered for sale at retail.

12. "Casual sales" means sales of tangible personal property by the owner of a nonrecurring nature, if the seller, at the time of sale, is not engaged for profit in the business of selling tangible goods or services taxed under section 422.43.

13. "Services" means all acts or services rendered, furnished, or performed, other than services performed on tangible personal property delivered into interstate commerce, or services used in processing of tangible personal property for use in taxable retail sales or services, for an "employer" as defined in section 422.4, subsection 15, for a valuable consideration by any person engaged in any business or occupation specifically enumerated in this division. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user thereof.

14. "User" means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

15. "Value of services" means the price to the user exclusive of any direct tax imposed by the federal government or by this division.

16. "Gross taxable services" means the total amount received in money, credits, property, or other consideration, valued in money, from services rendered, furnished, or performed in this state except where such service is performed on tangible personal property delivered into interstate commerce or is used in processing of tangible personal property for use in taxable retail sales or services and embraced within the provisions of this division. However, the taxpayer may take credit in his report of gross taxable services for an amount equal to the value of services rendered, furnished, or performed when the full value of such services thereof is refunded either in cash or by credit. Taxes paid on gross taxable services represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax due hereunder, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

Where a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building or place where the books, papers and records of the taxpayer are kept shall be deemed to be the taxpayer's place of business.

Every operator of a vending machine or amusement device equipment, the receipts from the operation of which are taxable under section 422.43, shall by means of a sticker identify each such machine operated by him or her to show the valid sales tax permit number issued to him or her under which the sales tax concerning the operation of each given machine is being reported and remitted to the department. The stickers shall be provided by the department and it shall be the duty of each operator to place and maintain same in a place easily seen by the user on each machine operated by him or her. Failure to so identify such machines shall be a simple misdemeanor.

(C35, s 6943-f38; C39, s 6943.074; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 422.42; Ch 1245, 66 GA, ch 4, s 340)

Referred to in ss 422.43, 423.1(8, 10), Code 1977

Amendment to subsection 3 retroactive to January 1, 1970

422.45 EXEMPTIONS.

There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it, the following:

1. The gross receipts from sales of tangible personal property services rendered, furnished, or performed which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The gross receipts from the sales, furnishing or service of transportation service.

3. The gross receipts from sales of educational, religious, or charitable activities, where the entire proceeds therefrom are expended for educational, religious, or charitable purposes, except the gross receipts from games of skill, games of chance, raffles and bingo games as defined in chapter 99B.

4. The gross receipts from sales of vehicles subject to registration.

5. The gross receipts or from services rendered, furnished, or performed and of all sales of goods, wares or merchandise used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of social services, state department of transportation and all divisions, boards, commissions, agencies or instrumentalities of state, federal, county or municipal government which derive disburseable funds from appropriations or allotments of funds raised by the levying and collection of taxes, except sales of goods, wares or merchandise or from services rendered, furnished, or performed and used by or in connection with the operation of any municipally-owned public utility engaged in selling gas, electricity or heat to the general public.

The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise or from services rendered, furnished, or performed and subject to use tax under the provisions of chapter 423.

6. The gross receipts from "casual sales".

7. Any private nonprofit educational institution in this state or any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of social services, state department of transportation, and all divisions, boards,

commissions, agencies or instrumentalities of state, federal, county or municipal government which derive disburseable funds from appropriations or allotments of funds raised by the levying and collection of taxes may make application to the department for the refund of any sales or use tax upon the gross receipts of all sales of goods, wares or merchandise or from services rendered, furnished, or performed to any contractor, used in the fulfillment of any written contract with the state of Iowa or any political subdivision thereof, or any private nonprofit educational institution in this state which property becomes an integral part of the project under contract and at the completion thereof becomes public property, or is devoted to educational uses as specified in this subsection except goods, wares or merchandise or services rendered, furnished, or performed used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public; and excepting such goods, wares and merchandise used in the performance of any contract for a "project" under chapter 419 as defined therein other than goods, wares or merchandise used in the performance of any contract for any "project" under said chapter 419 for which a bond issue was or will have been approved by a municipality prior to July 1, 1968.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares or merchandise or services rendered, furnished, or performed and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit or private nonprofit educational institution which has made any written contract for performance by said contractor. Such forms shall be filed by the contractor with the governmental unit or educational institution before final settlement is made.

b. Such governmental unit or educational institution shall, not more than six months after the final settlement has been made, make application to the department for any refund of the amount of such sales or use tax which shall have been paid upon any goods, wares or merchandise, or services rendered, furnished, or performed, such application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit such claim and, if approved, request the comptroller to issue his warrant to such governmental unit or educational institution in the amount of such sales or use tax which has been paid to the state of Iowa under such contract.

c. Any contractor who shall willfully make false report of tax paid under the provisions of this subsection shall be guilty of a simple misdemeanor and in addition thereto shall be liable for the payment of the tax with penalty and interest thereon.

8. The gross receipts of all sales of goods, wares, or merchandise, or services, used for educational purposes to any private nonprofit educational institution in this state. The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise, or services, subject to use tax under the provisions of chapter 423.

9. Gross receipts from the sales of newspapers, free newspapers or shoppers guides and the printing and publishing thereof.

10. The gross receipts from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

11. The gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft where the fuel tax has been imposed and paid and no refund has been or will be allowed.

12. Gross receipts from the sale of all foods for human consumption which are eligible for purchase with food coupons issued by the United States department of agriculture pursuant to regulations in effect on July 1, 1974, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. However, as used in this subsection, "foods" does not include meals prepared for immediate consumption on or off the premises of the retailer, and does not include foods sold through vending machines.

13. The gross receipts from the sale of prescription drugs, as defined in section 155.3, subsection 10, if dispensed for human use or consumption by a registered pharmacist licensed under chapter 155, a physician and surgeon licensed under chapter 148, an osteopath licensed under chapter 150, and osteopathic physician and surgeon licensed under chapter 150A, a dentist licensed under chapter 153, or a podiatrist licensed under chapter 149.

14. Gross receipts from the sale of insulin, hypodermic syringes, and diabetic testing materials for human use or consumption.

15. Gross receipts from the sale of prosthetic, orthotic or orthopedic devices for human use. For purposes of this subsection, "orthopedic devices" means those devices prescribed to be used for orthopedic purposes by a physician and surgeon licensed under chapter 148, an osteopath licensed under chapter 150, an osteopathic physician and surgeon licensed under chapter 150A, a dentist licensed under chapter 153, or a podiatrist licensed under chapter 149.

16. Gross receipts from the sale of oxygen prescribed by a licensed physician or surgeon, osteopath, or osteopathic physician or surgeon for human use or consumption.

(C35, s 6943-f40; C39, s 6943.076; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 422.45; Ch 1245, 66 GA, ch 4, s 341)

Referred to in ss 422.43, 423.4(3,4), Code 1977

Sales tax exemptions, subsections 12 to 15, applicable

July 1, 1974, 65GA, ch 1221, s 5

Subsection 9 retroactive to January 1, 1970

422.58 PENALTIES--OFFENSES.

1. If any person fails to file a permit holders monthly tax deposit or a return with the department of revenue on or before the due date, unless it is shown that such failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the monthly tax deposit or return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person or permit holder fails to remit the tax due with the filing of the monthly tax deposit or return on or before the due date, or fails to pay any amount of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due, there shall be added to the tax a penalty of five percent on the tax due, unless it is shown that such failure was due to reasonable cause. When penalties are applicable for failure to file a monthly tax deposit or return and failure to pay the tax due or required on the monthly tax deposit or return, the penalty

provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the monthly tax deposit or return. The taxpayer shall also pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the monthly tax deposit or return was required to be filed. Such penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this division. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this division.

2. Any person who shall sell tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, and communication service at retail, or engage in the rendering, furnishing, or performing services enumerated in section 422.43, in this state after the person's license shall have been revoked, or without procuring a license within sixty days after the effective date of this division, as provided in section 422.53, or who shall violate the provisions of section 422.49, and the officers of any corporation who shall so act, shall be guilty of a simple misdemeanor.

3. Any person required to make, render, sign, or certify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the assessment required by law to be made, shall be guilty of a class "D" felony.

4. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this division, shall be prima-facie evidence thereof.

(C35, s 6943-f53; C39, s 6943.089; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 422.58; Ch 1245, 66GA, ch 4, s 342)

422.72 INFORMATION DEEMED CONFIDENTIAL.

1. It shall be unlawful for the director, or any person having an administrative duty under this chapter, or any officer or other employee of the state authorized by the director to examine returns, to divulge or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation under this chapter of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; provided, however, that the director may authorize examination of such returns, if a reciprocal arrangement exists, by tax officers of another state, or the federal government. This subsection shall prevail over the provisions of any general law of this state relating to public records.

2. Federal tax returns, copies of returns, and return information as defined in section 6103(b) of the Internal Revenue Code of 1954, which are required to be filed with the department for the enforcement of the income tax laws of this state, shall be deemed and held as confidential by the department and subject to the disclosure limitations in subsection 1 of this section.

3. Any person violating the provisions of subsections 1 and 2 of this section shall be guilty of a serious misdemeanor.

*(C35, s 6943-f59; C39, s 6943.096; C46, 50, 54, 58, 62, 66, s 422.65; C71, 73, 75, 77, s 422.72; Ch 1245, 66 GA, ch 4, s 343; 67 GA, ch 119, s 11)
Referred to in ss 421.1(4), 422.56, 422.59, 423, 23, 425.28, 442.16, Code 1977*

This section is effective January 1, 1978 for tax years beginning on or after January 1, 1978.

423.11 ABSORBING TAX PROHIBITED.

It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. The director shall have the power to adopt and promulgate rules for adding such tax, or the average equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax. Any person violating any of the provisions of this section within this state shall be guilty of a simple misdemeanor.

*(C39, s 6943.111; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 423.11; Ch 1245, 66 GA, ch 4, s 344)
Referred to in s 423.6(2), Code 1977*

423.19 FRAUD.

Any person required to make, render, sign, or certify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the tax, or amount required to be paid by this chapter, shall be guilty of a fraudulent practice.

(C39, s 6943.119; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 423.19; Ch 1245, 66 GA, ch 4, s 345)

423.20 PENALTY.

Any retailer or other person failing or refusing to furnish any return herein required to be made, or failing or refusing to furnish a supplemental return or other data required by the director, shall be guilty of a simple misdemeanor.

*(C39, s 6943.120; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 423.20; Ch 1245, 66 GA, ch 4, s 346)
Referred to in s 423.11, Supplement*

423.26 PENALTY FOR FALSE STATEMENT.

Any person who willfully makes any false statement in regard to the purchase price of a vehicle subject to taxation under section 423.7 is guilty of a simple misdemeanor.

(C73, 75, 77, s 423.26; Ch 1245, 66 GA, ch 4, s 347)

423A.4 PENALTY.

A person who violates the provisions of this chapter shall upon conviction be guilty of an aggravated misdemeanor.

(C73, 75, 77, s 423A.4; Ch 1245, 66 GA, ch 4, s 348)

424.13 PENALTIES--OFFENSES.

1. If any person fails to file a return with the department of revenue on or before the due time, unless it is shown that such failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the return five percent of the amount of tax if the failure is for

not more than one month, with an additional five percent for each additional month or fraction of a month during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person fails to remit the tax due with the filing of the return on the due date, or fails to pay any amount in respect of any tax required to be shown on the return, there shall be added to the tax a penalty of five percent on such tax due, unless it is shown that such failure was due to reasonable cause. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the return. The taxpayer shall also pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. Such penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed.

2. Any person required to make, render, sign, or verify any return or supplementary return, who makes any false or fraudulent return with the intent to defeat or evade the assessment required by law to be made, shall be guilty of a fraudulent practice.

3. The certificate of the director to the effect that the tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima-facie evidence thereof.

(C35, s 6943-g15; C39, s 6943.138; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 424.13; Ch 1245, 66 GA, ch 4, s 349)

425.13 CONSPIRACY TO DEFRAUD.

If any two or more persons conspire and confederate together with fraudulent intent to obtain the credit provided for under the terms of this chapter by making a false deed, or a false contract of purchase, they are guilty of a fraudulent practice.

(C39, s 6943.154; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 425.13; Ch 1245, 66 GA, ch 4, s 350)

425.14 FALSE AFFIDAVITS.

Any person making a false claim or affidavit for the purpose of securing a homestead tax credit, or for the purpose of aiding another to secure such homestead tax credit, shall be guilty of a fraudulent practice.

*(C39, s 6943.155; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 425.14; Ch 1245, 66 GA, ch 4, s 351)
Constitutionality, 47 GA, ch 195, s 23*

425.29 FALSE CLAIM--PENALTY.

Any person making a false affidavit for the purpose of obtaining reimbursement provided for in this division or who knowingly receives the reimbursement without being legally entitled to it or makes claim for the reimbursement in more than one county in the state shall be guilty of a simple misdemeanor. An action under this section shall be brought in the county in which the affidavit was filed. The claim for reimbursement shall be disallowed in full and if the claim has been paid the amount may be recovered by assessment in the manner that income taxes are assessed pursuant to sections

422.26 and 422.30. The director of revenue shall send a notice of disallowance of the claim.

(C71, 73, s 425.1(5); C75, 77, s 425.29; Ch 1245, 66 GA, ch 4, s 352)

Referred to in s 425.36, Supplement

425.36 DISCRIMINATION IN RENTALS OR RENT CHARGES.

Discrimination by a landlord in the rental of or in rent charges for a homestead because the tenant has received or is eligible for reimbursement under this division is a simple misdemeanor.

(C75, 77, s 425.36; 67 GA, ch 147, s 127)

Referred to in s 135D.33, Code 1977

427.7 PENALTY.

Any person making a false affidavit for the purpose of obtaining the exemption provided for in sections 427.3 to 427.6 or who knowingly receives such exemption without being legally entitled thereto, or who makes claim for exemption in more than one county in the state shall be guilty of a fraudulent practice.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 427.7;

Ch 1245, 66 GA, ch 4, s 353)

Referred to in s 420.207, Code 1977

427.16 EXEMPTION PROVISIONS FOR PERSONAL PROPERTY IN TRANSIT.

1. DEFINITION. When used in this chapter, the term "personal property in transit" means inanimate tangible personal property, goods, wares and merchandise:

a. Which is moving in interstate commerce through or over the state of Iowa, or

b. Which is consigned to a private warehouse within the state of Iowa from outside the state of Iowa for storage in transit to a final destination outside the state of Iowa, whether the out-of-state ultimate destination was specified when transportation begins or afterward.

2. CONSTRUCTION.

a. "Private warehouse", for the purposes of this chapter, shall mean any building, structure, or enclosure used or to be used for storage of inanimate tangible goods, wares or merchandise by and belonging to private person, partnership, joint venture, corporation, fiduciary, trust or estate.

b. "Personal property in transit" is deemed to have acquired no situs in Iowa for purposes of taxation. Such "personal property in transit" shall not be deprived of exemption because it is, or may be, bound, divided, severed, broken in bulk, labeled or relabeled, packaged or repackaged while in the warehouse or because the property is being held for reconignment outside the state of Iowa.

3. BOOKS AND RECORDS.

a. All personal property claimed to be "personal property in transit" shall be designated as such upon the books and records of the warehouse where such personal property is located.

b. The books and records of the warehouse shall be of such nature as to show a description of the property, the quantity, value and source of each shipment received and a description of the property, the quantity, value and destination of all goods taken from the warehouse, with each such receipt or release of such goods dated and described. Such records shall be transmitted to the assessor or assessors of the taxing district or districts in which the warehouse is located for examination and verification and at such time show a recapitulation which must reveal that all shipments (or parts thereof) received are either on hand or disposed of by delivery or destruction and,

if by destruction, by what means destroyed or partially destroyed, and if partially destroyed, then what disposition was effected. The annual date of such transmittal of such records shall be not later than February 1 of each year and shall cover the annual accounting period of the warehouse as established on its books and records for all purposes which period has concluded prior to January 1 of each year. Such other reports as may be required by assessors on a periodic basis may be transmitted in form of a written report or in form of copies of bills of lading countersigned by the consignee or his agent containing the factors first enumerated above, as mutually agreed upon by the assessor, or assessors, and operator of the warehouse.

c. The books and records of any warehouse in which "personal property in transit" is stored shall be open at all times to the inspection of authorized personnel of the department of revenue and the taxing authorities of any political subdivision of the state of Iowa.

4. FORM OF CLAIM. Any person, firm, copartnership, association, corporation, joint venture, fiduciary, trust or estate making claim to no situs status of any property under this chapter shall do so in the form and manner prescribed by the director of revenue on or before February 1 of each personal property assessment year. Such claim shall be filed with the assessor or assessors of the district or districts in which such property is situated. All such claims shall be accompanied by a certification of the warehouse operator as to the status on its books of the property involved, and all such claims shall be allowed in accordance with the decision of the board or boards of review of such taxing district or districts in which the property is situated.

5. ACTUAL VALUE. Where the records of the warehouse indicate, or where an audit of such records indicates, as the case may be, that goods handled by or disposed of through such warehouse with a destination within the state of Iowa, the total market value of such goods with such destination shall be taken into account in determination of their actual value in accordance with sections 428.17 and 428.21, and such actual value shall be the basis for determining the assessed valuation of merchandise inventory of the warehouse for the year next following the year for which such total market value is computed.

6. EVASION OF TAX. If any owner, shipper, warehouse operator, or the agent or employee of any owner, shipper, or warehouse operator shall misrepresent, conceal or secrete any personal property as defined herein of which he is possessed either by title or by custody so as to evade or avoid assessment or levy of taxes, then such owner, shipper, or warehouse operator shall be liable to the taxing district in which the personal property is located at the time of such misrepresentation, concealment or secreting of such personal property for such assessment or levy of taxes so evaded or avoided plus a penalty of five percent for each month of such evasion or avoidance up to a maximum of twenty-five percent plus interest on the amount of such assessment or levy of taxes at the rate of six percent per annum.

7. PENALTY. If any person willfully makes or causes to be made any statement to the officer charged with assessment or valuation of property for tax purposes in his or her taxing district containing a false statement of a material fact, be the person owner, shipper, storageman, or warehouseman, the person shall be guilty of a fraudulent practice.

*(C66, 71, 73, 75, 77, s 427.16; Ch 1245, 66 GA, ch 4, s 354)
See s 427.1(29), Code 1977*

427A.4 LIMIT OF CREDIT.

No person or business enterprise in the state shall be allowed a credit on personal property tax in excess of ten thousand dollars assessed valuation. Any person or business enterprise who owns personal property subject to taxation in more than one county of the state shall designate in reporting such property to the assessor for the purpose of assessment as required in section 427A.1 in which counties of the state the property is located and may claim the entire credit in one county or a proportionate part thereof in each county where the property is situated, and in no case shall he claim more than the ten thousand dollars assessed value for all personal property assessed in all counties.

Each year, on or before July 1, the taxpayer shall deliver to the assessor an application for personal property tax credit and state by such affidavit or affidavits filed in each county where his personal property is situated, that he has not claimed a total personal property tax credit in all counties in excess of a total of ten thousand dollars assessed valuation.

It shall be the duty of the assessor to examine claims for such credit filed with him and recommend on each such claim the disallowance thereof where it appears that an owner of tangible personal property has attempted to divide the ownership thereof for purpose of obtaining additional credit beyond the amount of ten thousand dollars in a year.

If any person fails to make application for the credits provided for under this chapter as hereinrequired, he shall be deemed to have waived the personal property tax credit for the year in which he failed to make claim.

Any person making a false affidavit for the purpose of obtaining the credit provided for in this section, or who knowingly receives such credit without being legally entitled thereto, or who makes claim for credit of more than ten thousand dollars in the state shall be guilty of a fraudulent practice.

*(C71, 73, 75, 77, s 427A.4; Ch 1245, 66 GA, ch 4, s 355)
Referred to in s 427A.9*

428A.10 PENALTY.

Any person, firm or corporation liable for the tax imposed by this chapter who knowingly fails to comply with the provisions of sections 428A.5 and 428A.6 relating to the attachment or cancellation of documentary stamps, shall be guilty of a simple misdemeanor.

(C66, 71, 73, 75, 77, s 428A.10, Ch 1245, 66 GA, ch 4, s 356)

441.19 OWNER TO ASSIST--PROVISIONS FOR ASSESSMENT.

The assessor shall list every person in his or her county or city as the case may be and assess all the property therein, personal and real, except such as is heretofore exempted or otherwise assessed. Any person who shall refuse to assist in making out a list of his or her property, or of any property which the person is by law required to assist in listing, or who shall refuse to make either of the oaths or affirmations or combinations thereof required by section 441.20, shall be guilty of a simple misdemeanor.

1. Supplemental and optional to the procedure for the assessment of property by the assessor as provided in this chapter, the assessor is hereby authorized to require from all persons required to list their property for taxation as provided by sections 428.1, 428.2 and 428.3, a supplemental return to be prescribed by the director of revenue upon which such person shall list his property. Such supplemental return shall be in substantially the same form as now prescribed by

law for the assessment rolls used in the listing of property by the assessors, and the director of revenue may prescribe separate supplemental forms for the listing of personal property, both tangible and intangible. It shall be the duty of every person required to list property for taxation to make a complete listing of such property upon such supplemental forms and to return the same to the assessor as promptly as possible. Such return shall be verified over the signature of the person making the return and the provisions of section 441.25 shall apply to any person making such return. The assessor shall make such supplemental return forms available as soon as practicable after the first day of January of each year. The assessor shall make such supplemental return forms available to the taxpayer by mail, or at a designated place within the taxing district.

2. Upon receipt of such supplemental return from any person the assessor shall prepare a roll assessing such person as hereinafter provided. In the preparation of such assessment roll the assessor shall be guided not only by the information contained in such supplemental roll, but by any other information he may have or which may be obtained by him as prescribed by the law relating to the assessment of property. The assessor shall not be bound by any values as listed in such supplemental return, and he may include in the assessment roll any property omitted from the supplemental return which in the knowledge and belief of the assessor should be listed as required by law by the person making the supplemental return. Upon completion of such roll he shall deliver to the person submitting such supplemental return a copy of the assessment roll, either personally or by mail.

3. Any taxpayer aggrieved by the action of the assessor in the preparation of an assessment roll upon which a supplemental return has been made shall have the same rights and privileges of appeal as provided by law in connection with the assessment rolls prepared in entirety by the assessor, but no assessment rolls prepared by the assessor after receiving a supplemental return shall be deemed insufficient or invalid because of the fact that such assessment roll does not bear the signature of the person assessed, and the signature of the person listing property upon the supplemental return shall be deemed a signature on the roll as prepared by the assessor.

4. The supplemental returns herein provided for shall be preserved in the same manner as assessment rolls, but shall be confidential to the assessor, board of review, or director of revenue, and shall not be open to public inspection, but any final assessment roll as made out by the assessor shall be a public record, provided that such supplemental return shall be available to counsel of either the person making the return or of the public, in case any appeal is taken to the board of review or to the court.

5. In the event of failure of any person required to list property to make a supplemental return, as required herein, on or before the fifteenth day of February of any year when such listing is required, the assessor shall proceed in the listing and assessment of his property as provided by this chapter, and no person subject to taxation shall be relieved of his obligation to list his property through failure to make a supplemental return as herein provided, and any roll prepared by the assessor after receiving a supplemental return or when prepared in accordance with other provisions of this chapter, shall be a valid assessment.

6. The provisions of this chapter relating to assessment rolls shall be applicable to the preparation of rolls upon

which a supplemental return has been received, insofar as they are not in conflict with the provision of this section.

(C51, s 477; R60, s 734; C73, s 823; C97, s 1354; S13, s 1354; C24, 27, 31, 35, 39, s 7107; C46, s 441.2; C50, 54, 58, s 441.11; C62, 66, 71, 73, 75, 77, s 441.19; Ch 1245, 66 GA, ch 4, s 357)

444.7 EXCESSIVE TAX PROHIBITED.

It is hereby made a simple misdemeanor for the board of supervisors to authorize, or the county auditor to carry upon the tax lists for any year, an amount of tax for any public purpose in excess of the amount certified or authorized as provided by law. The state comptroller shall prescribe and furnish the county auditors forms and instructions to aid them in determining the legality and authorized amount of tax levies. In the case of an excessive levy, it shall be the duty of the county auditor to reduce it to the maximum amount authorized by law, and in any event not in excess of the amount certified; and in case of an illegal levy the county auditor shall not enter or carry any tax on the tax lists for such levy.

(C24, 27, 31, 35, 39, s 7169; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 444.7; Ch 1245, 66 GA, ch 4, s 358)
Referred to in s 444.8, Code 1977

446.26 MISCONDUCT OF OFFICERS.

Any treasurer or auditor failing to attend a sale of lands in person or by deputy shall be guilty of a simple misdemeanor. If such officer or deputy shall sell or assist in selling any real estate, knowing it is not subject to taxation, or that the taxes for which it is sold have been paid, or shall knowingly and willfully sell or assist in selling any real estate for taxes to defraud the owner thereof, or shall knowingly and willfully execute a deed for property so sold, he or she shall be guilty of a serious misdemeanor and shall be liable to pay the injured party all damages sustained by him or her on account thereof, and all such sales shall be void.

(R60, s 774; C73, s 884; C97, s 1429; C24, 27, 31, 35, 39, s 7260; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 446.26; Ch 1245, 66 GA, ch 4, s 361)

446.27 FRAUD OF OFFICERS.

If any treasurer or auditor shall be directly or indirectly concerned in the purchase of any real estate sold for the nonpayment of taxes, the treasurer or auditor and his or her sureties shall be liable on his or her official bond for all damages sustained by the owner of such property, and all such sales shall be void. In addition thereto, the officer so offending shall be guilty of a fraudulent practice.

(R60, s 775; C73, s 885; C97, s 1430; C24, 27, 31, 35, 39, s 7261; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 446.27; Ch 1245, 66 GA, ch 4, s 362)

450.50 REMOVAL OF PROPERTY FROM STATE--BOND.

It shall be unlawful for any person to remove from this state any property, or the proceeds thereof, that may be subject to the tax imposed by this chapter, without paying the said tax to the department of revenue. Any person violating the provision of this section shall be guilty of a serious misdemeanor and upon conviction shall be fined an amount equal to twice the amount of tax, interest, and costs for which the estate may be liable; provided, however, that the penalty hereby imposed shall not be enforced if, prior to the removal of such property or the proceeds thereof, the person desiring to effect such removal files with the clerk a bond conditioned

upon the payment of the tax, interest, and costs, as is provided in section 450.49 hereof.

(S13, s 1481-a15; C24, 27, 31, 35, 39, s 7355; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 450.50; Ch 1245, 66 GA, ch 4, s 363)

450.68 INFORMATION CONFIDENTIAL.

Any and all information acquired by the department of revenue, under and by virtue of the means and methods provided for by sections 450.66 and 450.67 shall be deemed and held as confidential and shall not be disclosed by the department except so far as the same may be necessary for the enforcement and collection of the inheritance tax provided for by the laws of this state; provided, however, that the director of revenue may authorize the examination of the information by other state officers, or, if a reciprocal arrangement exists, by tax officers of another state or of the federal government.

Federal tax returns, copies of returns, and return information as defined in section 6103(b) of the Internal Revenue Code, which are required to be filed with the department for the enforcement of the inheritance and estate tax laws of this state, shall be deemed and held as confidential by the department. However, such returns or return information, may be disclosed by the director to officers or employees of other state agencies, subject to the same confidentiality restrictions imposed on the officers and employees of the department.

It shall be unlawful for any present or former officer or employee of the state to disclose, except as provided by law, any return, return information or any other information deemed and held confidential under the provisions of this section. Any person violating the provisions of this section shall be guilty of a serious misdemeanor.

(C24, 27, 31, 35, 39, s 7373; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 450.68; 67 GA, ch 119, s 12)

Unnumbered paragraphs 2 and 3 are effective January 1, 1978 for tax years beginning on or after January 1, 1978.

452.3 DISCOUNTING WARRANTS.

If the treasurer of state or any county treasurer, by himself or herself or through another, discounts state comptroller's or auditor's warrants, either directly or indirectly, he or she shall be guilty of a serious misdemeanor.

(R60, s 796; C73, s 911; C97, s 1456; C24, 27, 31, 35, 39, s 7401; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 452.3; Ch 1245, 66 GA, ch 4, s 364)

452.4 LOANS BY COUNTY TREASURER.

A county treasurer shall be guilty of a serious misdemeanor for loaning out, or in any manner using for private purposes, state, county, or other funds in the treasurer's hands.

(R60, s 797; C73, s 912; C97, s 1457; S13, s 1457; C24, 27, 31, 35, 39, s 7402; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 452.4; Ch 1245, 66 GA, ch 4, s 365)

452.5 LOANS BY TREASURER OF STATE.

The treasurer of state shall be guilty of a serious misdemeanor for a like violation.

(R60, s 797; C73, s 912; C97, s 1457; S13, s 1457; C24, 27, 31, 35, 39, s 7403; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 452.5; Ch 1245, 66 GA, ch 4, s 366)

452.14 FALSE STATEMENTS OR REPORTS.

Any officer or other person making a false statement or report or in any manner violating any of the provisions of sections 452.10 to 452.13, shall be guilty of a fraudulent practice.

(*S13, s1462-a; C24, 27, 31, 35, 39, s 7416; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 452.14; Ch 1245, 66 GA, ch 4, s 367*)

452.15 OFFICIAL DELINQUENCY.

If any auditor or treasurer or other officer shall neglect or refuse to perform any act or duty specifically required of him or her, such officer shall be guilty of a simple misdemeanor, and he or she and his or her bondsmen shall be liable on his or her official bond for any fine imposed, and for the damages sustained by any person through such neglect or refusal.

(*R60, ss 744, 749, 805; C73, s 919; C97, s 1463; C24, 27, 31, 35, 39, s 7417; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 452.15; Ch 1245, 66 GA, ch 4, s 368*)

455.160 OBSTRUCTING OR DAMAGING.

Any person or persons willfully diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse or breaking down or injuring any levee or the bank of any settling basin, established, constructed, and maintained under any provision of law, or obstructing, or engaging in travel or agricultural practices upon the improvement or rights of way of a levee or drainage district which the governing body thereof has, by resolution, determined to be injurious to such improvement or to interfere with its proper preservation, operation, or maintenance, and has prohibited, shall be deemed guilty of a serious misdemeanor and any such unlawful act as above described is hereby declared to be a nuisance and may be abated as such.

Said governing body shall also have the power to repair any ditch, drain or watercourse, or any levee or bank of any settling basin damaged by any person or persons in violation of the resolution of said governing body, after three days' notice to such person or persons to make such repair, in the event that there is a failure to do so, and the expense thereof shall be assessed to such person or persons and shall be certified and collected as other taxes.

(*C24, 27, 31, 35, 39, s 7580; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 455.160; Ch 1245, 66 GA, ch 4, s 369*)

455A.39 PENALTIES.

Whoever is convicted of erecting, causing or continuing a common or public nuisance, as provided in this chapter, or whoever diverts or withdraws water in violation of the provisions of this chapter, upon conviction, shall be guilty of a simple misdemeanor and each day that such violation continues after conviction shall be considered a separate offense.

(*C50, 54, s 455A.26; C58, 62, 66, 71, 73, 75, 77, s 455A.39; Ch 1245, 66 GA, ch 4, s 370*)
Constitutionality, 53 GA, ch 203, s 43
Constitutionality, 57 GA, ch 229, s 26

455B.64 SIMPLE MISDEMEANOR.

Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, violating any provisions of this part 2 of division III or the rules adopted thereunder after written notice thereof by the executive director is guilty of a simple misdemeanor. Each day

of operation in such violation of said part or any rules adopted thereunder shall constitute a separate offense. It shall be the duty of the appropriate county attorney to secure injunctions of continuing violations of any provisions of said part or the rules adopted thereunder.

(C66, 71, s 136A.17; C73, 75, 77, s 455B.64; Ch 1245, 66 GA, ch 4, s 371)

455B.94 PENALTY.

Any person who violates any provisions of this part 2 of division IV or rules adopted under said part, or any order of the commission or executive director issued pursuant to said part, shall be* guilty of a serious misdemeanor and, in addition, the person may be enjoined from continuing such violation. Each day of continued violation after notice that a violation is being committed shall constitute a separate violation.

(C73, 75, 77, s 455B.94; Ch 1245, 66 GA, ch 4, s 372)

*Editorial note: The second word "be" was editorially omitted.

455B.98 PENALTY.

Any person violating the provisions of section 455B.97, upon conviction, shall be guilty of a simple misdemeanor. The court, in lieu of or in addition to any other sentence imposed, may direct and supervise a labor of litter gathering.

(C73, 75, 77, s 455B.98; Ch 1245, 66 GA, ch 4, s 373)

455B.105 PENALTY.

Any person violating the provisions of sections 455B.100 to 455B.103 or the rules adopted by the commission under said sections is guilty of a simple misdemeanor.

(C73, 75, 77, s 455B.105; Ch 1245, 66 GA, ch 4, s 374)

469.13 VIOLATIONS.

The construction, maintenance, or operation of a dam for the purpose specified herein without a permit first being issued, as in this chapter provided, shall constitute a simple misdemeanor.

(C24, 27, 31, 35, 39, s 7779; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 469.13; Ch 1245, 66 GA, ch 4, s 375)

40 Ex GA, SF 186, s 7, editorially divided

469A.7 PENALTY.

Any person, firm, association or corporation who shall violate the provisions of section 469A.1, shall be guilty of a serious misdemeanor. Each separate day that a violation occurs shall constitute a separate offense.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 469A.7; Ch 1245, 66 GA, ch 4, s 376)

Constitutionality, 52 GA, ch 246, s 9

Prior existing plants, 52 GA, ch 246, s 8

476.14 PENALTIES.

1. Any person who commences to construct a facility as provided in this chapter without having first obtained a certificate, or who constructs, operates or maintains any facility other than in compliance with a certificate issued by the commission or a certificate amended pursuant to this chapter, or who causes any of these acts to occur, shall be liable for a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing

violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the general fund of the state.

2. The district court shall have exclusive jurisdiction to grant restraining orders and temporary or permanent injunctive relief as may be necessary to obtain compliance with this chapter.

3. Persons convicted of violating any provision of this chapter shall be guilty of a simple misdemeanor.

(C77, s 476A.14; 67 GA, Ch 147, s 128)

477.6 DELAY--WILLFUL ERROR--REVEALING CONTENTS.

Any person employed in transmitting messages by telegraph or telephone must do so with fidelity and without unreasonable delay, and if anyone willfully fails thus to transmit them, or intentionally transmits a message erroneously, or makes known the contents of any message sent or received to any person except the person to whom it is addressed, or such person's agent or attorney, or willfully and wrongfully takes or receives any telegraph or telephone message, the person is guilty of a simple misdemeanor.

(C51, s 784; R60, s 1352; C73, s 1328; C97, s 2162; C24, 27, 31, 35, 39, s 8305; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 488.6; C77, s 477.6; Ch 1245, 66 GA, ch 4, s 391)

478.24 VIOLATIONS.

Any person, company or corporation constructing or undertaking to construct or maintain any electric transmission line, without first procuring a franchise for such purpose in accordance with the provisions of this chapter, shall be guilty of a serious misdemeanor; and for violating any of the other provisions of this chapter relating to electric transmission lines or disobeying any order or rule made by the state commerce commission in relation thereto, shall be guilty of a simple misdemeanor.

(S13, s 1527-d; C24, 27, 31, 35, 39, s 8332; C46, 50, 54, 58, 62, s 489.23; C66, 71, 73, 75, s 489.24; C77, s 478.24; Ch 1245, 66 GA, ch 4, s 392)

491.40 FRAUD--PENALTY.

Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall be a fraudulent practice. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud.

(C51, s 686; R60, s 1163; C73, s 1071; C97, s 1620; C24, 27, 31, 35, 39, s 8377; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 491.40; Ch 1245, 66 GA, ch 4 s 393)

Referred to in ss 491.41, 491.42, Code 1977

491.43 KEEPING FALSE ACCOUNTS.

The intentional keeping of false books or accounts shall be a fraudulent practice on the part of any officer, agent, or employee of the corporation guilty thereof, or of anyone whose duty it is to see that such books or accounts are correctly kept.

(C51, s 691; R60, s 1168; C73, s 1075; C97, s 1623; C24, 27, 31, 35, 39, s 8381; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 491.43; Ch 1245, 66 GA, ch 4, s 394)

491.68 FALSE STATEMENTS OR PRETENSES.

Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting, either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, is guilty of a fraudulent practice.

(S13, s 1641-g; C24, 27, 31, 35, 39, s 8404;
C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 491.68;
Ch 1245, 66 GA, ch 4, s 395)

492.3 PENALTIES.

Any person violating the provisions of sections 492.1 and 492.2, or knowingly making a false statement on such certificate, shall be guilty of a fraudulent practice.

(C97, s 1627; S13, s 1627; C24, 27, 31, 35, 39,
s 8410; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,
s 492.3; Ch 1245, 66 GA, ch 4, s 396)
Referred to in s 492.4, Code 1977

492.12 VIOLATIONS.

Any officer, agent or representative of a corporation who violates any of the provisions of sections 492.5 to 492.8 shall be guilty of a simple misdemeanor.

(S13, s 1641-f; C24, 27, 31, 35, 39, s 8419;
C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 492.12;
Ch 1245, 66 GA, ch 4, s 397)

494.13 VIOLATIONS BY OFFICERS.

Any agent, officer, or employee who shall knowingly act or transact such business for such corporation, when it has no valid permit as provided herein, shall be guilty of a simple misdemeanor.

(C97, s 1639; C24, 27, 31, 35, 39, s 8431; C46, 50,
54, 58, 62, 66, 71, 73, 75, 77, s 494.13; Ch 1245,
66 GA, ch 4, s 398)
Referred to in ss 494.8, 495.5, Code 1977

496A.131 PENALTIES IMPOSED UPON OFFICERS AND DIRECTORS.

Each officer and director of a corporation, domestic or foreign, who willfully fails or refuses within the time prescribed by this chapter to answer truthfully and fully reasonable and proper interrogatories propounded to the officer or director by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a fraudulent practice.

(C62, 66, 71, 73, 75, 77, s 496A.131; Ch 1245,
66 GA, ch 4, s 399)

501.6 UNAUTHORIZED COMPANIES--PENALTY.

Any member or representative of any association who shall attempt to issue or sell any stock as contemplated by this chapter or to transact any business whatsoever in the name of or on behalf of such association, not authorized to do business within this state, or which has failed or refused to comply

with the provisions of this chapter, or has violated any of its provisions shall be deemed guilty of a serious misdemeanor.

(S13, s 1920-q; C24, 27, 31, 35, 39, s 8522; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 501.6; Ch 1245, 66 GA, ch 4, s 401)

502.605 CRIMINAL PENALTIES.

1. Any person who willfully and knowingly violates any provision of this chapter, or any rule or order under this chapter, shall be guilty of a class D felony.

2. The administrator may refer such evidence as is available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper county attorney who may, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

3. Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

(SS15, ss 1920-u19,-u20,-u21; C24, 27, ss 8577-8579; C31, 35, ss 8581-c21, -c22, -c23; C39, ss 8581.26-8581.28; C46, 50, 54, 58, 62, 66, 71, 73, 75, ss 502.26-502.28; C77, s 502.605; 67 GA, ch 147, s 129)

503.13 AGGRAVATED MISDEMEANOR.

Any member, salesman, agent, or representative of any association, who shall attempt to issue any membership as contemplated by this chapter, or to transact any business whatsoever, in the name of or on behalf of such association not authorized to do business in this state, or which has failed or refused to comply with the provisions of this chapter, or has violated any of its provisions, shall be deemed guilty of an aggravated misdemeanor.

(C35, s 8581-e13; C39, s 8581.44; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 503.13; Ch 1245, 66 GA, ch 4, s 407)

504.13 PENALTY.

A violation of section 504.12 by a corporation shall be a fraudulent practice. A violation of section 504.12 by an individual conducting an academic course or by an officer or managing head of a corporation shall be a fraudulent practice.

(C27, 31, 35, s 8588-b1; C39, s 8588.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 504.13; Ch 1245, 66 GA, ch 4, s 408)

504A.87 PENALTIES IMPOSED UPON CORPORATION.

Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of five dollars to be assessed by the secretary of state.

Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter reasonable and proper interrogatories propounded by the secretary of state in accordance with the provisions of this chapter, shall be deemed to be guilty of a simple misdemeanor.

The secretary of state may cancel the certificate of incorporation of any corporation that fails or refuses to file its annual report for any year prior to the first day of June of the year in which it is due by issuing a certificate of such cancellation at any time after the expiration of thirty days following the mailing to the corporation of notice of the certification to the attorney general of the failure of the corporation to file such annual report as required by section 504A.54, provided the corporation has not filed such annual

report prior to the issuance of the certificate of cancellation. Upon the issuance of the certificate of cancellation, the secretary of state shall send the certificate to the corporation at its registered office and shall retain a copy thereof in the permanent records of his office.

Upon the issuance of the certificate of cancellation, the corporate existence of the corporation shall terminate, subject to right of reinstatement as herein provided, and the corporation shall cease to conduct its affairs, except insofar as may be necessary for the "winding up" thereof or for securing reinstatement and the right of the corporation to the use of its name shall cease and such name shall thereupon be available to any other corporation or foreign corporation or for reservation as provided in this chapter. The cancellation of the certificate of incorporation of a corporation shall not take away or impair any remedy available to or against such corporation, its directors, officers or members for any right or claim existing or any liability incurred prior to such cancellation, but no action or proceeding thereon may be prosecuted by such corporation until it shall have been reinstated. Any such action or proceeding against such corporation may be defended by the corporation, if it has not been reinstated, in its corporate name to which there shall be appended the word "canceled" followed by the date of the issuance of the certificate of cancellation. Unless the corporation is reinstated, the corporation, upon the issuance of the certificate of cancellation, shall proceed to liquidate its affairs as provided by this chapter in cases of voluntary dissolution. However, the district court in a suit in equity shall have full power to liquidate the assets and affairs of such a corporation upon application by such corporation or in a suit by a member or director or creditor of such corporation when such corporation fails to proceed promptly with such liquidation or to make application to the court therefor. A copy of the certificate of cancellation, certified by the secretary of state, shall be taken and received in all courts as prima-facie evidence of the cancellation of the certificate of incorporation as stated therein.

If the certificate of incorporation of a corporation has been canceled by the secretary of state as provided in this section for failure to file an annual report, such corporation shall be reinstated by the secretary of state at any time within five years following the date of the issuance by the secretary of state of the certificate of cancellation upon:

1. The delivery by the corporation to the secretary of state for filing in his office of an application for reinstatement, executed by its president or vice president and by its secretary or an assistant secretary and verified by one of the officers signing such application, which shall set forth:

a. The date of the issuance by the secretary of state of the certificate of cancellation:

b. The name of the corporation at the time of the issuance of the certificate of cancellation and, if, at the time of the filing of the application for reinstatement, another corporation or foreign corporation is entitled to use such name or such name is then reserved or registered as provided in this chapter, the name of the corporation as changed, which shall be a name then available under the laws of this state; and

c. The address, including street and number, if any, of the registered office of the corporation upon the reinstatement thereof, which shall be located in the same county as the county in which the registered office of the corporation was located at the time of the issuance of the certificate of

cancellation, and the name of its registered agent or agents at such address upon the reinstatement of the corporation;

2. The filing with the secretary of state by the corporation of all annual reports then due and theretofore becoming due;

3. The payment to the secretary of state by the corporation of all annual license fees and penalties then due and theretofore becoming due and an additional penalty of twenty-five dollars.

The secretary of state, upon filing the application for reinstatement, shall issue a certificate of reinstatement and file and record the same in his office and, if the application for reinstatement shall set forth a change in the name of the corporation, as required by this section, the same shall constitute an amendment to the articles of incorporation of the corporation and the certificate of reinstatement shall set forth such fact and shall be filed and recorded in the office of the county recorder. Upon the issuance of the certificate of reinstatement, the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation, except, that the corporation shall not be entitled to use the name of the corporation at the time of the issuance of the certificate of cancellation if another corporation or foreign corporation is entitled to use such name or such name is then reserved as provided in this chapter.

(C66, 71, 73, 75, 77, s 504A.87; Ch 1245, 66 GA, ch 4, s 409)

504A.88 PENALTIES IMPOSED UPON OFFICERS AND DIRECTORS.

Each director and officer of a corporation, domestic or foreign, who willfully fails or refuses within the time prescribed by this chapter to answer truthfully and fully reasonable and proper interrogatories propounded to the director or officer by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a simple misdemeanor.

(C66, 71, 73, 75, 77, s 504A.88; Ch 1245, 66 GA, ch 4, s 410)

506.7 PENALTY.

Any person who violates any of the provisions of the preceding sections of this chapter, or who violates any order of the commissioner of insurance made by authority thereof, shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 8621; C46, 50, 54, 58, 62, s 506.6; C66, 71, 73, 75, 77, s 506.7; Ch 1245, 66 GA, ch 4, s 411)

507.16 UNLAWFUL SOLICITATION OF BUSINESS.

Any officer, manager, agent, or representative of any insurance company contemplated by this chapter, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, solicits insurance for said company, or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said company, shall be deemed guilty of a serious misdemeanor, and the provisions of said sections are hereby extended to all companies contemplated by this chapter.

(S13, s 1821-f; C24, 27, 31, 35, 39, s 8640; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 507.16; Ch 1245, 66 GA, ch 4, s 412)

507A.10 PENALTIES.

Any unauthorized foreign or alien insurer who does any unauthorized act of an insurance business as set forth in this chapter shall be guilty of a fraudulent practice.

(C71, 73, 75, 77, s 507A.10; Ch 1245, 66 GA, ch 4, s 413)

Constitutionality, 62 GA, ch 365, s 12

508.27 VIOLATIONS.

Any company violating any of the provisions of section 508.25 shall be guilty of a simple misdemeanor, and the court may also revoke its authority to do business within this state.

(S13, s 1783-c; C24, 27, 31, 35, 39, s 8670; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 508.27; Ch 1245, 66 GA, ch 4, s 414)

509.18 PROHIBITED DEPOSIT IN FINANCIAL INSTITUTION.

A company or its agent licensed to sell a policy of credit life or credit accident and health insurance or certificate under a policy of group credit life or credit accident and health insurance shall not deposit or offer to deposit funds in a financial institution of this state in exchange for the privilege of selling such insurance to or on behalf of the financial institution. Any person violating the provisions of this section shall be guilty of a simple misdemeanor.

(C75, 77, s 509.18, Ch 1245, 66 GA, ch 4, s 415)

511.16 ILLEGAL BUSINESS.

Any officer, manager, or agent of any life insurance company or association who, with knowledge that it is doing business in an unlawful manner or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such company or association, shall be guilty of an aggravated misdemeanor.

(C97, s 1814; C24, 27, 31, 35, 39, s 8755; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 511.16; Ch 1245, 66 GA, ch 4, s 416)

*Referred to in s 507.16, Supplement
C97, s 1814, editorially divided*

511.18 FRAUD IN PROCURING INSURANCE.

Any agent, physician, or other person who shall knowingly, by means of concealment of facts or false statements, procure or assist in procuring from any life insurance organization any policy or certificate of insurance, shall be guilty of a fraudulent practice.

(C97, s 1816; C24, 27, 31, 35, 39, s 8757; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 511.18; Ch 1245, 66 GA, ch 4, s 417)

512.39 VIOLATIONS.

Any officer, agent, or person acting for any such association or subordinate body thereof within this state, while such association shall be so enjoined or prohibited from doing business pursuant to this chapter, shall be deemed guilty of a serious misdemeanor.

(C97, s 1836; C24, 27, 31, 35, 39, s 8818; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 512.39; Ch 1245, 66 GA, ch 4, s 418)

Referred to in s 512.40, Supplement

512.40 ILLEGAL BUSINESS--AGENTS.

Any person who shall act within this state as an officer, agent, or otherwise for any such association which has failed,

neglected, or refused to comply with, or which has violated any of the provisions of this chapter, or shall have failed or neglected to procure from the commissioner of insurance proper certificate of authority to transact business as provided for by this chapter, shall be guilty of a serious misdemeanor.

(C97, s 1837; C24, 27, 31, 35, 39, s 8819; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 512.40; Ch 1245, 66 GA, ch 4, s 419)

512.41 FALSE REPRESENTATIONS.

Any officer, agent, or member of such association, who shall obtain any money or property belonging thereto by any false or fraudulent representation, shall be guilty of a fraudulent practice.

(C97, s 1838; C24, 27, 31, 35, 39, s 8820; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 512.41; Ch 1245, 66 GA, ch 4, s 420)

512.80 VIOLATIONS.

Any officer, director, or manager of any association violating or consenting to the violation of any of the provisions of sections 512.73 to 512.78 shall be guilty of a serious misdemeanor.

(S13, s 1839-i; C24, 27, 31, 35, 39, s 8868; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 512.80; Ch 1245, 66 GA, ch 4, s 421)

512.103 ILLEGAL BUSINESS.

Any officer, manager, agent, or representative of any association who with knowledge that its certificate of authority has been suspended or revoked, or that it is doing an illegal, unauthorized, or fraudulent business solicits insurance for said association, or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said association, shall be deemed guilty of an aggravated misdemeanor.

(S13, s 1839-f; C24, 27, 31, 35, 39, s 8890; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 512.103; Ch 1245, 66 GA, ch 4, s 422)

512A.8 PENALTIES.

Except as otherwise provided by law, it shall be unlawful for any person or corporation to operate a benevolent association in this state except as provided for in this chapter. Any person violating the provisions of this chapter shall be guilty of a serious misdemeanor.

(C71, 73, 75, 77, s 512A.8; Ch 1245, 66 GA, ch 4, s 423)

514B.29 PENALTY.

Where no other penalty is provided for in this chapter, any person who violates any of the provisions of this chapter shall be guilty of a simple misdemeanor.

(C75, 77, s 514B.29; Ch 1245, 66 GA, ch 4, s 424)

515.60 PENALTY.

Any employee, representative, or agent of an insurance company violating any of the provisions of sections 515.52 to 515.59 shall be guilty of a simple misdemeanor.

(C39, s 8943.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 515.60; Ch 1245, 66 GA, ch 4, s 425)
Referred to in s 515.61, Code 1977

515.120 VIOLATIONS.

Any officer, manager, or agent of any insurance company or association who, with knowledge that it is doing business in an

unlawful manner, or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such company or association, shall be guilty of a fraudulent practice.

(C73, s 1147; C97, s 1747; C24, 27, 31, 35, 39, s 8999; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 515.120; Ch 1245, 66 GA, ch 4, s 426)

515.121 OFFICERS PUNISHED.

Any president, secretary, or other officer of any company organized under the laws of this state, or any officer or person doing or attempting to do business in this state for any insurance company organized either within or without this state, failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be guilty of a simple misdemeanor.

(C73, s 1147; C97, s 1748; C24, 27, 31, 35, 39, s 9000 C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 515.121; Ch 1245, 66 GA, ch 4, s 427)

515.132 VIOLATIONS.

Any such company, officer, agent, or employee violating the above provision shall be guilty of a simple misdemeanor.

(C97, s 1754; C24, 27, 31, 35, 39, s 9011; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 515.132; Ch 1245, 66 GA, ch 4, s 428)

515.140 VIOLATIONS--STATUS OF POLICY.

Any insurance company, its officers or agents, or either of them, violating any of the provisions of section 515.138, by issuing, delivering, or offering to issue or deliver any policy of fire insurance on property in this state other or different from the standard form, herein provided for, shall be guilty of a simple misdemeanor, but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same, and such company shall, until the payment of such fine, be disqualified from doing any insurance business in this state; but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same.

(S13, s 1758-c; C24, 27, 31, 35, 39, s 9019; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 515.140; Ch 1245, 66 GA, ch 4, s 429)
Referred to in s 515.141, Code 1977

515.145 VIOLATIONS.

Any violation of section 515.142 shall constitute a simple misdemeanor.

(SS15, s 1758-g; C24, 27, 31, 35, 39, s 9023; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 515.145; Ch 1245, 66 GA, ch 4, s 430)

518A.41 AGENTS TO BE LICENSED.

No person or corporation shall solicit any application for insurance for any association in this state without having procured from the commissioner of insurance a license authorizing him or her* to act as agent. Violation of this provision shall constitute a serious misdemeanor.

(C24, 27, 31, 35, 39, s 9066; C46, 50, 54, 58, 62, s 518.41; C66, 71, 73, 75, 77, s 518A.41; Ch 1245, 66 GA, ch 4, s 431)
39 GA, ch 120, s 15, editorially divided

*Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.

520.14 VIOLATIONS--EXCEPTIONS.

Any attorney who shall exchange any contracts of insurance of the kind and character specified in this chapter, or any attorney or representative of such attorney, who shall solicit or negotiate any applications for the same without the attorney having first complied with the foregoing provisions, shall be deemed guilty of a simple misdemeanor. For the purpose of organization and upon issuance of permit by the commissioner of insurance, powers of attorney and applications for such contracts may be solicited without compliance with the provisions of this chapter, but no attorney, agent, or other person shall make any such contracts of indemnity until all of the provisions of this chapter shall have been complied with.

(C24, 27, 31, 35, 39, s 9095; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 520.14; Ch 1245, 66 GA, ch 4, s 432)

521.15 VIOLATIONS.

Any officer, director or stockholder of any company or companies, as defined in section 521.1, violating or consenting to the violation of any of the provisions of sections 521.2 to 521.13 shall be guilty of a serious misdemeanor.

(S13, s 1821-u; C24, 27, 31, 35, 39, s 9118; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 521.15; Ch 1245, 66 GA, ch 4, s 433)

521A.10 CRIMINAL PROCEEDINGS.

Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this chapter, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court of Polk county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this chapter commits a serious misdemeanor. Any individual who willfully violates this chapter commits a serious misdemeanor.

(C71, 73, 75, 77, s 521A.10; Ch 1245, 66 GA, ch 4, s 434)

522.5 VIOLATIONS.

Any person acting as agent or otherwise representing any insurance company or association, in violation of the provisions of section 522.1, shall be guilty of a serious misdemeanor.

(S13, s 1821-l; C24, 27, 31, 35, 39, s 9123; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 522.5; Ch 1245, 66 GA, ch 4, s 435)

523.2 CONDITIONS.

The commissioner of insurance shall promulgate such rules with respect to the solicitation and voting of proxies as will in the commissioner's opinion best protect the interests of all stockholders or policyholders from whom they are solicited. Any violation of any rule promulgated hereunder shall be deemed a simple misdemeanor.

(S13, s 1821-x; C24, 27, 31, 35, 39, s 9125; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 523.2; Ch 1245, 66 GA, ch 4, s 436)

523A.4 PENALTY.

Any person, firm or corporation, or any agent or representative thereof, who shall violate any of the provisions of sections 523A.1 and 523A.2, or who shall aid and abet in

such violation, shall be deemed guilty of an aggravated misdemeanor.

(C54, 58, 62, 66, 71, 73, 75, 77, s 523A.4; Ch 1245, 66 GA, ch 4, s 437)

524.1601 PENALTIES AND CRIMINAL PROVISIONS APPLICABLE TO DIRECTORS, OFFICERS AND EMPLOYEES OF STATE BANKS.

1. A director, officer or employee of a state bank who willfully violates any of the provisions of subsection 4 of section 524.612, section 524.613, subsection 2 of section 524.706, insofar as such subsection incorporates subsection 4 of section 524.612, or section 524.710, shall be guilty of a serious misdemeanor plus, in the following circumstances, an additional fine or fines equal to:

a. The amount of money or the value of the property which he received for procuring, or attempting to procure, a loan, extension of credit or investment by the state bank, upon conviction of a violation of subsection 1 of section 524.613, or of subsection 1 of section 524.710.

b. The amount by which his deposit account in the state bank is overdrawn, upon conviction of a violation of subsection 2 of section 524.613, or of subsection 2 of section 524.710.

c. The amount of any profit which he receives on the transaction, upon conviction of a violation of subsection 4 of section 524.612, or of subsection 2 of section 524.706, insofar as each applies to purchases from and sales to a state bank upon terms more favorable to such director or officer than those offered to other persons.

d. The amount of profit, fees or other compensation received, upon conviction of a violation of subsection 3 of section 524.710.

2. A director or officer who willfully makes or receives a loan in violation of subsection 1 of section 524.612, or subsection 1 of section 524.706, shall be guilty of a serious misdemeanor and shall be subject to an additional fine equal to that amount of the loan in excess of the limitation imposed by such subsections, and shall be forever disqualified from acting as a director or officer of any state bank. For the purpose of this subsection, amounts which are treated as obligations of an officer or director pursuant to subsection 5 of section 524.612, shall be considered in determining whether the loan or extension of credit is in violation of subsection 1 of section 524.612 and subsection 1 of section 524.706.

3. A director, officer or employee of a state bank who willfully makes or receives a loan or extension of credit of funds held by the state bank as fiduciary, in violation of subsection 4 of section 524.1002, shall be guilty of a serious misdemeanor and shall be subject to a further fine equal to the amount of the loan or extension of credit made in violation of subsection 4 of section 524.1002, and shall be forever disqualified from acting as a director, officer or employee of any state bank.

4. A director, officer or employee of a state bank who willfully violates, or participates in the violation of, section 524.814, or section 524.819, shall be guilty of a serious misdemeanor.

(97, s 1869; S13, s 1869, C24, 27, 31, 35, 39, s 9221; C46, 50, 54, 58, 62, 66, ss 528.7, 528.63; C71, 73, 75, 77, s 524.1601; Ch 1245, 66 GA, ch 4, ss 438, 439)

524.1603 ENGAGING IN BUSINESS UNLAWFULLY.

1. Any person who willfully engages in the business of receiving money for deposit or transacts the business generally done by banks, or who willfully establishes a place of

business for such purposes, in violation of subsection 1 of section 524.107, shall be guilty of a serious misdemeanor.

2. The superintendent may impose a penalty on a state bank of up to one hundred dollars for each day that it violates the provisions of section 524.1201.

(C97, s 1889; S13, s 1889; C24, 27, 31, 35, 39, ss 9151, 9260; C46, 50, 54, 58, 62, 66, ss 524.25, 528.53; C71, 73, 75, 77, s 524.1603, Ch 1245, 66 GA, ch 4, s 440)

524.1604 FAILURE TO FILE REPORT OR MAKE STATEMENT.

1. Any person whose duty it is to make statements or file reports as may be required by this chapter, and who willfully neglects or refuses to perform such duty, shall be guilty of a simple misdemeanor.

2. A state bank which fails to furnish to the superintendent the statement of condition required within the time required by this chapter, or fails to furnish him any report or other information he is legally authorized to request, within ten days of his request therefor, or within the time required by this chapter, shall pay to the superintendent a penalty of fifty dollars for each day of delinquency, unless prior to such delinquency the superintendent has extended the time within which the same may be filed.

3. Any officer or employee who violates section 524.709 shall be guilty of a simple misdemeanor.

(C97, s 1886; S13, s 1871; C24, 27, 31, 35, 39, ss 9226, 9230, 9281; C46, 50, 54, 58, 62, 66, ss 528.20, 528.24, 528.83; C71, 73, 75, 77, s 524.1604; Ch 1245, 66 GA, ch 4, s 441)

524.1605 FALSE STATEMENTS, REPORTS AND FRAUDULENT ACTS.

1. Any director, officer or employee of a state bank who shall knowingly subscribe or make any false statements or false entries in the books, records, or memoranda of a state bank, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe or make false reports, or shall knowingly divert the funds of the state bank to other purposes than those authorized by law, or who commits any other act with intent to defraud the state bank or any other person shall be guilty of a class "C" felony, and shall be forever disqualified from acting as a director, officer or employee of any state bank.

2. Any officer or employee of a state bank who, with intent to defraud the state bank or any other person, certifies any check when there are not sufficient funds on hand available to the credit of the drawer of said check to pay the same, or who issues any certificate of deposit when funds have not been deposited equal to the amount of such certificate, or who, with intent to defraud the state bank or any other person, draws any draft or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation or instrument, or participates in, or receives directly or indirectly any money, property or other benefit from any transaction, loan, contract or other act of a state bank shall be guilty of a class "C" felony, and shall, in either event be forever disqualified from acting as an officer or employee of any state bank.

(C97, s 1887; C24, 27, s 9282; C31, 35, s 9282, 9283-c2; C39, ss 9282, 9283.02; C46, 50, 54, 58, 62, 66, 528.87; C71, 73, 75, 77, s 524.1605; Ch 1245, 66 GA, ch 4, s 442)

524.1606 FRAUDULENT ADVERTISING OR NOTICE.

A state bank shall not publish, disseminate or distribute any advertising or notice containing any false, misleading or deceptive statements concerning the rates, terms or conditions on which loans are made or deposits are received, any charge which the state bank is authorized to impose pursuant to this chapter, or the financial condition of the state bank. Any officer or employee of a state bank who willfully violates the provisions of this section shall be guilty of a fraudulent practice.

*(C97, s 1859; C24, 27, 31, 35, 39, s 9260; C46, 50, 54, 58, 62, 66, ss 526.44, 529.12; C71, 73, 75, 77, s 524.1606; Ch 1245, 66 GA, ch 4, s 443)
Referred to in s 524.1602(6), Code 1977*

524.1607 FALSE STATEMENT FOR CREDIT.

Any person who knowingly makes or causes to be made, directly or indirectly, any false statement in writing, or who procures, knowing that a false statement in writing has been made concerning the financial condition or means or ability to pay of such person, or any other person in which such person is interested or for whom such person is acting, with the intent that such statement shall be relied upon by a bank for the purpose of procuring the delivery of property, the payment of cash or the receipt of credit in any form, for the benefit of such person or of any other person in which such person is interested or for whom such person is acting, shall be guilty of a fraudulent practice.

(C31, 35, s 9283-c3; C39, s 9283.03; C46, 50, 54, 58, 62, 66, s 528.88; C71, 73, 75, 77, s 524.1607; Ch 1245, 66 GA, ch 4, s 444)

524.1608 PENALTY FOR ACCEPTING DEPOSITS WHILE INSOLVENT.

If a state bank shall accept any deposit or renew any certificate of deposit in violation of subsection 5 of section 524.805, any officer or employee knowing of such insolvency who willfully receives, accepts or renews or is accessory to or otherwise knowingly permits such acceptance shall be guilty of a fraudulent practice and shall, in either event be forever disqualified from acting as an officer or employee of any state bank.

(C97, s 1885; C24, 27, 31, 35, 39, s 9280, C46, 50, 54, 58, 62, 66, s 528.82; C71, 73, 75, 77, s 524.1608; Ch 1245, 66 GA, ch 4, s 445)

524.1609 FALSE STATEMENTS CONCERNING STATE BANKS.

Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false statement concerning any state bank which imputes, or tends to impute, insolvency, unsound financial condition or financial embarrassment, or which may tend to cause or provoke, or aid in causing or provoking, a general withdrawal of deposits from such state bank, or which may otherwise injure or tend to injure the business or good will of such state bank, shall be guilty of a simple misdemeanor.

(C31, 35, s 9283-c4; C39, s 9283.04; C46, 50, 54, 58, 62, 66, s 528.89; C71, 73, 75, 77, s 524.1609; Ch 1245, 66 GA, ch 4, s 446)

524.1610 VIOLATION OF PROHIBITION AGAINST RECEIVING A COMMISSION FOR ORGANIZING A STATE BANK.

Any person violating the provisions of section 524.311 shall be guilty of a simple misdemeanor.

(C24, 27, 31, 35, 39, s 9276; C46, 50, 54, 58, 62, 66, s 528.75; C71, 73, 75, 77, s 524.1610; Ch 1245, 66 GA, ch 4, s 447)

524.1611 OFFENSES INVOLVING EMPLOYEES OF DEPARTMENT OF BANKING.

1. Any person violating the provisions of subsection 1 of section 524.211 shall be guilty of a fraudulent practice, and shall be subject to a further fine of a sum equal to the amount of the value of the property given or received or the money so loaned or borrowed. The deputy superintendent, an assistant or examiner convicted of a violation of such subsection shall be immediately discharged from employment and shall be forever disqualified from holding any position in the department of banking.

2. Any examiner violating the provision of section 524.212 shall be guilty of a serious misdemeanor. Any examiner convicted of a violation of section 524.212 shall be immediately discharged from employment and shall be forever disqualified from holding any position in the department of banking.

(C71, 73, 75, 77, s 524.1611; Ch 1245, 66 GA, ch 4, s 448)

524.1807 PENALTIES.

Any bank holding company which willfully violates any provision of sections 524.1801 to 524.1806 shall, upon conviction, be fined not less than one hundred dollars nor more than one thousand dollars for each day during which the violation continues. Any individual who willfully participates in a violation of any provisions of sections 524.1801 to 524.1806 shall be guilty of a serious misdemeanor.

(C73, 75, 77, s 524.1807; Ch 1245, 66 GA, ch 4, s 449)

Referred to in s 524.1801, Code 1977

533.3 RESTRICTION.

No person, firm, corporation, copartnership, or association, except a credit union organized under the provisions of this chapter or under the federal credit union Act (12 U.S.C. s 1751 et seq.) or except the Iowa credit union league, incorporated, or chapters of said league, shall use a name or title containing the words "credit union" or any derivation thereof or shall represent themselves, in their advertising or otherwise, as conducting business as a credit union.

Any person, firm, corporation, copartnership, or association, upon conviction of the violation of the provisions of this section shall be guilty of a serious misdemeanor; and may be enjoined from such continued use of said words, advertising or other representation.

(C27, 31, 35, s 9305-a3; C39, s 9305.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 533.3; Ch 1245, 66 GA, ch 4, s 450)

533.31 PENALTY FOR FALSIFICATION.

Any director, officer, agent, employee, or clerk of any credit union who shall knowingly subscribe or make any false statements or false entries in the books thereof, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe and make false reports, or shall knowingly divert the funds of the credit union to other objects than those authorized by law, shall be guilty of a fraudulent practice and be forever after barred from holding any office created by this chapter.

(C66, 71, s 533.29; C73, 75, 77, s 533.31; Ch 1245, 66 GA, ch 4, s 451)

533A.13 LICENSE MANDATORY TO BUSINESS.

It shall be unlawful for an individual, partnership, unincorporated association, agency or corporation to engage in the business of debt management without first obtaining a

license as required by this chapter. Any individual, partnership, unincorporated association, agency, corporation or any other group of individuals, however organized, or any owner, partner, member, officer, director, employee, agent or representative thereof who shall willfully or knowingly engage in the business of debt management without the license required by this chapter, shall be guilty of a serious misdemeanor.

(C71, 73, 75, 77, s 533A.13; Ch 1245, 66 GA, ch 4, s 452)

533B.5 PENALTY.

Any person violating any provision of this chapter shall be guilty of a serious misdemeanor. Each transaction in violation of this chapter and each day that a violation continues shall be a separate offense.

(C62, 66, 71, 73, 75, 77, s 533B.5; Ch 1245, 66 GA, ch 4, s 453)

Constitutionality, 59 GA, ch 264, s 6

534.13 DEFAMATION OF INSTITUTIONS PROHIBITED--MALICIOUS CIRCULATION OF REPORTS.

Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false report concerning any building and loan or savings and loan association which imputes or tends to impute, insolvency or unsound financial condition or financial embarrassment, or which may tend to cause or provoke or aid in causing or provoking a general withdrawal of funds from such association, or which may otherwise injure or tend to injure the business or good will of such building and loan or savings and loan association, shall be guilty of a serious misdemeanor.

(C35, s 9388-e1; C39, s 9388.2; C46, 50, 54, 58, s 534.87; C62, 66, 71, 73, 75, 77, s 534.13; Ch 1245, 66 GA, ch 4 s 454)

534.57 SALE OF STOCK IF UNAUTHORIZED FOREIGN COMPANY.

It shall be unlawful for an agent, solicitor or other person to sell stock or solicit share accounts or solicit persons to subscribe for same in any association named in section 534.50 which has not been authorized to do business in this state, and any person convicted of so doing shall be guilty of a serious misdemeanor.

(S13, s 1915-a; C24, 27, 31, 35, 39, s 9385; C46, 50, 54, 58, s 534.82; C62, 66, 71, 73, 75, 77, s 534.57; Ch 1245, 66 GA, ch 4, s 455)

534.64 CRIMINAL OFFENSES.

If any officer, director, or agent of any building and loan or savings and loan association shall knowingly and willfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, he or she shall be guilty of perjury. If any director of any such association shall vote to declare a dividend greater than has been earned; or if any officer or director or any agent or employee of any such association shall issue, utter, or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized to do so by the board of directors in pursuance of its lawful power, he or she shall be guilty of a fraudulent practice; or if any such officer, director, agent, or employee shall embezzle or convert to his or her own use, or shall use or pledge for his or her own benefit or purpose, any moneys, securities, credits, or other

property belonging to the association, he or she shall be guilty of theft; or if he or she shall knowingly do or attempt to do business for such association that has not procured and does not hold the certificate of authority therefor as in this chapter provided, he or she shall be guilty of a serious misdemeanor; or if he or she shall knowingly make or cause to be made any false entries in the books of the association, or shall, with the intent to deceive any person making an examination in this chapter required to be made, exhibit to the person making the examination any false entry, paper, or statement, the person shall be guilty of a fraudulent practice; or if he or she shall knowingly do or solicit business for any building and loan or savings and loan association which has not procured the required certificate therefor, he or she shall be guilty of a serious misdemeanor.

(C97, s 1918; C24, 27, 31, 35, 39, s 9388.1; C46, 50, 54, 58, s 534.85; C62, 66, 71, 73, 75, 77, s 534.64; Ch 1245, 66 GA, ch 4, s 456)

Similar provision, s 534.66

534.66 UNINCORPORATED ASSOCIATIONS.

1. STATUTES APPLICABLE. All unincorporated organizations, associations, societies, partnerships, or individuals conducting and carrying on a business, the purpose of which is to create a fund derived from periodical payments by members of such organizations, associations, societies, or other persons, upon contracts or otherwise, as well as from fines, forfeitures, incidental fees, and payment of premiums and interest; which fund is to be loaned or advanced to members of the organization, associations, society, or to the persons making such periodical payments, for the purpose of enabling them to acquire the ownership or free possession of real estate, or personal property, or to construct buildings, or any or all of such purposes, shall be deemed building and loan associations; and the provisions of this chapter shall apply to all such building and loan associations as far as the same can be made applicable to unincorporated organizations, associations, societies, partnerships, or individuals.

2. STATEMENT OF RESOURCES, LIABILITIES, AND PLAN. Every such unincorporated organization, association, society, partnership, or individual conducting and carrying on the business defined in this section shall, before transacting any business in this state, submit to the executive council a full and complete sworn statement of the resources and liabilities of such organization, association, society, partnership, or individual, and of the proposed plan or method of doing business.

3. DEPOSIT OF SECURITIES. No such unincorporated building and loan association shall be permitted to carry on its business within this state unless it shall first deposit with the auditor of state at least fifty thousand dollars of first mortgages and negotiable notes in the same amount secured thereby upon real estate in the state, bearing interest at a rate not less than five percent per annum, which said mortgages shall in no case exceed one-half the actual value of the real estate upon which they are taken.

4. ADDITIONAL DEPOSITS. The auditor of state shall have power and authority to require that such further amount of such securities shall be deposited with him as in his judgment may thereafter be necessary to protect the members of such building and loan association, or the persons making periodical payments thereto.

5. SECURITIES HELD IN TRUST. The notes, mortgages, and securities so deposited with the auditor of state shall, with all interest and accumulations thereon, be held in trust by him

for the purpose of fulfilling and carrying out all contracts made by such building and loan associations with the members thereof, and with the persons making periodical payments thereto.

6. APPROVAL--CERTIFICATE OF AUTHORITY. If the executive council approves the plan or method of business of any such building and loan association, it shall endorse its approval upon the statement of the resources and liabilities and plan of business presented to it, and such statement shall thereupon be filed in the office of the auditor of state, who shall issue a certificate to such building and loan association to transact business within the state, if such association has deposited with him the mortgages and securities required by the other provisions of this chapter.

7. OFFICERS TO GIVE BONDS--APPROVAL. Every officer of such building and loan association who signs or endorses checks, or handles any of the funds or securities thereof, shall give such bond or fidelity insurance for the faithful performance of his duty in such sum as the auditor of state may require, and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by, and deposited with, the auditor of state. And any such bond may be increased or additional sureties required by the auditor of state whenever in his judgment it becomes necessary to protect the interest of the association or its members, or persons making periodical payments of money thereto.

8. EXAMINATION. The auditor of state may at any time he may see proper make, or cause to be made, an examination of any such building and loan association, or he may call upon it for a report of its condition upon any given day which has passed, as often as four times each year, which report shall contain the information hereinafter required.

9. EXPENSE OF EXAMINATION. The expense of making such examination shall be paid by the building and loan association, and if made by the auditor in person he shall be paid his necessary expenses only; if made by an examiner designated by the auditor, he shall receive not to exceed twenty-five dollars a day for the time employed by him, and his necessary expenses.

10. ANNUAL REPORTS. On or before the first day of February of each year, every such building and loan association shall file with the auditor of state its annual report in writing for the year ending on the thirty-first day of December preceding, giving a complete statement in detail of all of its receipts from all sources, and all disbursements made during such year, arranged and itemized as may be required by the auditor of state. Such report shall also show the number of members or persons making periodical payments to such association, the number and amount of loans made to such persons, the interest received therefrom, the number and amounts of mortgages, contracts or other securities held by the association, the actual cash value of the real estate securing such mortgages or contracts, the salary paid to each of its officers during the preceding year, the assets and liability of the association at the end of the year, and any other matters which in the judgment of the auditor of state may be required to give him full information as to the business transacted by such building and loan association.

11. FAILURE TO FURNISH REPORTS. If any such building and loan association shall fail or refuse to furnish the auditor of state the report required in subsection 10, the officers or persons conducting the business of such building and loan association shall forfeit the sum of twenty-five dollars for each day that such report is withheld, and the auditor of state may maintain an action, jointly or severally, against them in

the name of the state to recover such penalty, and the same shall be paid into the state treasury when recovered by him.

12. CRIMINAL OFFENSES. If any officer or agent of any such building and loan association, or any person conducting the business thereof, shall knowingly and willfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, he or she shall be guilty of perjury and punished accordingly. And if any officer, agent or employee of any such association, or any person transacting the business thereof, shall issue, utter, or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized so to do, he or she shall be guilty of a fraudulent practice; or if any such officer, agent, or employee of such association, or any person transacting the business thereof, shall embezzle, convert to his or her own use, or shall use or pledge for his or her own benefit or purpose, any moneys, securities, credits, or other property belonging to the association, he or she shall be guilty of theft; or if the person shall knowingly solicit, transact, or attempt to transact any business for any such association which has not procured and does not hold the certificate of authority from the auditor of state to transact business in this state as provided herein, he or she shall be guilty of a serious misdemeanor; or if he or she shall knowingly make, or cause to be made, any false entries in the books of the association, or shall, with intent to deceive any person making an examination of such association, as herein provided, exhibit to the person making the examination any false entry, paper, or statement, the person shall be guilty of a fraudulent practice.

13. REVOCATION OF CERTIFICATE--RECEIVER. If any such building and loan association holding a certificate of authority to transact business within this state issued by the auditor as herein provided, shall violate any of the provisions of this chapter, or shall fail to deposit with the auditor of state such further amount of mortgages or securities as he may require under this chapter, the auditor of state shall at once revoke such certificate and notify the executive council of the revocation thereof; and under the direction of the executive council, application shall be made by the attorney general to the proper court for the appointment of a receiver to wind up the affairs of the association; and in such proceedings the amount due from the borrowing members or persons making periodical payments upon contracts or mortgages given by them, shall be ascertained in the manner provided in section 534.46; and the amount owing upon such mortgages or contracts from members of the association or persons making periodical payments thereto, shall be treated and considered as due and payable within a reasonable time, to be fixed by the court after the appointment of a receiver.

(S13, ss 1920-a-1920-j; C24, 27, 31, 35, 39, ss 9390-9402; C46, 50, 54, 58, ss 534.89-534.101; C62, 66, 71, 73, 75, 77, s 534.66; Ch 1245, 66 GA, ch 4, s 457)
Similar provision, s 534.64, Code 1977

535.6 INTEREST IN EXCESS OF TWO PERCENT PER MONTH.

Every person or persons, company, corporation, or firm, and every agent of any person, persons, company, corporation, or firm, who shall take or receive, or agree to take or receive, directly or indirectly, by means of commissions or brokerage charges, or otherwise, for the forbearance or use of money in

the sum or amount of more than five hundred dollars a rate greater than two percent per month, shall be deemed guilty of a serious misdemeanor. Nothing herein contained shall be construed as authorizing a higher rate of interest than is now provided by law. Provided, however, this section shall not apply to lawful loans under chapter 536.

(*SS15, s 3041-a; C24, 27, 31, 35, 39, s 9408; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 535.6, Ch 1245, 66 GA, ch 4, s 458*)

536.19 VIOLATIONS.

Any person, copartnership, association, or corporation and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of sections 536.1, 536.12, 536.13 or 536.14, which are not also violations of article 5, part 3, of the Iowa consumer credit code, shall be guilty of a serious misdemeanor. Violations of the Iowa consumer credit code shall be subject to the penalties provided therein.

(*C24, 27, 31, s 9435; C35, s 9438-f19; C39, s 9438.19; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 536.19; Ch 1245, 66 GA, ch 4, s 459*)

536A.27 PENALTY.

If any officer, director or agent of any corporation engaged in the business of operating an industrial loan company shall violate any of the provisions of this chapter which are not also violations of the Iowa consumer credit code; or if any person individually or as a partner, or officer, director or agent of any corporation shall engage in the business of operating an industrial loan company without obtaining the license required by section 536A.3, when that person is not required by section 537.2301 to have a license, he or she shall be guilty of a serious misdemeanor. Violation of the Iowa consumer credit code shall be subject to the penalties provided therein.

(*C66, 71, 73, 75, 77, S 536A.27; Ch 1245, 66 GA, ch 4, s 460*)

537.5301 WILLFUL VOLATIONS.

1. A person who willfully and knowingly makes charges in excess of those permitted by the provisions of article 2, part 4, applying to supervised loans, is guilty of a serious misdemeanor.

2. A person who, in violation of the provisions of this Act applying to authority to make supervised loans under section 537.2301, willfully and knowingly engages without a license in the business of making supervised loans, or of taking assignments of and undertaking direct collection of payments from and enforcement of rights against consumers arising from supervised loans, is guilty of a serious misdemeanor.

3. A person who willfully and knowingly engages in the business of entering into consumer credit transactions, or of taking assignments of rights against consumers arising therefrom and undertaking direct collection of payments or enforcement of these rights, without complying with the provisions of this chapter concerning notification under section 537.6202 or payment of fees under section 537.6203, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding one hundred dollars.

4. A person who willfully and knowingly violates the provisions of section 537.7103 is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding one thousand dollars.

(*C75, 77, s 537.5301; Ch 1245, 66 GA, ch 4, s 461*)

537.5302 DISCLOSURE VIOLATIONS.

A person is guilty of a serious misdemeanor if the person willfully and knowingly does any of the following:

1. Gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of the Truth in Lending Act.

2. Uses any rate table or chart, the use of which is authorized by the provisions of the Truth in Lending Act, in a manner which consistently understates the annual percentage rate determined according to those provisions.

3. Otherwise fails to comply with any requirement of the provisions on disclosure of the Truth in Lending Act.

4. The criminal liability of a person under this section is in lieu of and not in addition to his criminal liability under the Truth in Lending Act. No prosecution of a person with respect to the same violation may be maintained pursuant to both this section and the Truth in Lending Act.

(C75, 77, s 537.5302; Ch 1245, 66 GA, ch 4, s 462)
Referred to in s 537.1202, Code 1977

542.11 PENALTIES--SIMPLE MISDEMEANOR.

Any person who engages in business as a grain dealer without obtaining a license or any person in violation of any other provision of this chapter, or any grain dealer who refuses to permit inspection of his or her premises, books, accounts or records as provided in this chapter, shall be guilty of a simple misdemeanor. Each day that any violation continues shall constitute a separate offense. Any person violating the provisions of this chapter may be restrained by an injunction.

(C75, 77, s 542.11; Ch 1245, 66 GA, ch 4, s 463)

543.36 PENALTIES--SIMPLE MISDEMEANOR.

Every person who violates or fails to comply with any of the provisions of this chapter or to comply with any lawfully authorized order, direction, demand, or rule or regulation of the commission shall be guilty of a simple misdemeanor.

(C24, 27, 31, s 9751; C35, s 9751-g33; C39, s 9751.33;
C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 543.36; Ch
1245, 66 GA, ch 4, s 464)

546A.9 PENALTIES.

Any person who shall offer new merchandise for sale at public auction without first securing a license as herein provided, or who shall offer for sale new merchandise different from that shown by, or in excess of the amount and value of, the inventories filed with the application for license, shall be guilty of a serious misdemeanor.

(C54, 58, 62, 66, 71, 73, 75, 77, s 546A.9; Ch 1245, 66
GA, ch 4, s 465)
Constitutionality, 55 GA, ch 239, s 10

547.4 PENALTY.

Any person violating the provisions of this chapter shall be guilty of a simple misdemeanor.

(C27, 31, 35, s 9866-a3; C39, s 9866.3; C46, 50, 54, 58,
62, 66, 71, 73, 75, 77, s 547.4; Ch 1245, 66 GA, ch 4, s
466)
41 GA, ch 183, s 2, editorially divided

551.4 PENALTY.

Any person, firm, company, association, or corporation violating any of the provisions of sections 551.1 and 551.2, and any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same, or any

individual violating any of such provisions shall be guilty of a serious misdemeanor.

(S13, s 5028-c; C24, 27, 31, 35, 39, s 9888; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 551.4; Ch 1245, 66 GA, ch 4, s 467)

Referred to in s 551.6, Code 1977

551A.3 SALES AT LESS THAN COST--PENALTY.

1. It shall be unlawful for any wholesaler or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler or retailer, as the case may be, as defined in this chapter. Any wholesaler or retailer who violates the provisions of this section shall be guilty of a simple misdemeanor.

2. Evidence of advertisement, offering to sell, or sale of cigarettes by any wholesaler or retailer at less than cost to him as defined by this chapter shall be evidence of a violation of this chapter.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 551A.3; Ch 1245, 66 GA, ch 4, s 468)

553.14 CRIMINAL PENALTIES.

A person or a natural person having substantial control over an enterprise who knowingly and willfully engages in conduct prohibited by this chapter shall be, guilty of a serious misdemeanor.

(C97, s 5062; S13, ss 5062, 5067-c, 5077-a5; C24, 27, 31, 35, 39, ss 9908, 9918, 9926; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 553.3, 553.13, 553.21; C77, s 553.14; 67 GA, ch 147, s 130)

556.25 PENALTIES.

1. Any person who willfully fails to render any report or perform other duties required under this chapter, shall be guilty of a simple misdemeanor.

2. Any person who willfully refuses to pay or deliver abandoned property to the treasurer of state as required under this chapter shall be guilty of a serious misdemeanor.

(C71, 73, 75, 77, s 556.25; Ch 1245, 66 GA, ch 4, s 474)

558.40 LIABILITY OF OFFICER.

Any officer, who knowingly misstates a material fact in either of the certificates mentioned in this chapter, shall be liable for all damages caused thereby, and shall be guilty of a serious misdemeanor.

(C51, s 1224; R60, s 2232; C73, s 1964; C97, s 2955; C24, 27, 31, 35, 39, s 10104; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 558.40; Ch 1245, 66 GA, ch 4, s 475)

566A.9 PENALTY.

Any person, firm or corporation violating any of the provisions of this chapter, shall be guilty of a simple misdemeanor.

(C54, 58, 62, 66, 71, 73, 75, 77, s 566A.9; Ch 1245, 66 GA, ch 4, s 476)

570.9 SALE OF CROPS HELD BY LANDLORD'S LIEN.

If any tenant of farm lands, with intent to defraud, shall sell, conceal, or in any manner dispose of any of the grain, or other annual products thereof upon which there is a landlord's lien for unpaid rent, without the written consent of the landlord, the tenant shall be guilty of theft.

(S13, s 4852-a; C24, 27, 31, 35, 39, s 10268; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 570.9; Ch 1245, 66 GA, ch 4, s 477)

Referred to in s 570.10, Code 1977

580.3 SALE OR REMOVAL PROHIBITED--PENALTY.

It shall be unlawful to sell, exchange, or remove permanently from the county any animal subject to the lien herein provided for, without the written consent of the holder of such lien, and any person violating this provision, shall be guilty of a simple misdemeanor.

(C24, 27, 31, s 2969; C35, s 10347-a3; C39, s 10347.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 580.3; Ch 1245, 66 GA, ch 4, s 478)

595.9 VIOLATIONS.

If a marriage is solemnized without procuring a license, the parties married, and all persons aiding them, are guilty of a simple misdemeanor.

(C51, s 1470; R60, s 2522; C73, s 2192; C97, s 3144; C24, 27, 31, 35, 39, s 10435; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 595.9; Ch 1245, 66 GA, ch 4, s 479)

596.6 PENALTY.

Any clerk of the district court who shall unlawfully issue a license to marry to any person who fails to present and file the certificate as required in this chapter, and any person or persons who shall disclose or falsify any matter relating or pertaining to the examination of or certificate about any applicant for license to marry or clinical and laboratory tests taken by any party to a proposed marriage, except as may be required by law, and any person who shall obtain a license to marry contrary to the provisions of this chapter, shall be guilty of a simple misdemeanor.

(C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 596.6; Ch 1245, 66 GA, ch 4, s 480)

598.23 CONTEMPT PROCEEDINGS--ALTERNATIVE TO JAIL SENTENCE.

If any party against whom any temporary order or final decree has been entered shall willfully disobey the same, or secrete his property, he may be cited and punished by the court for contempt and be committed to the county jail for a period of time not to exceed thirty days for each offense.

The court may, as an alternative to punishment for contempt, make an order directing the defaulting party to assign a sufficient amount in salary or wages due, or to become due in the future, from an employer or successor employers, to the clerk of the court where the order or judgment was granted for the purpose of paying the sums in default as well as those to be made in the future. The assignment order shall not be binding upon the employer, but the court shall send a copy of the order, signed by the employee, to the employer and request his co-operation in deducting support payments. For each payment deducted in compliance with such request, the employer shall receive one dollar to cover the expense created by the deduction, which amount shall be deducted from the money due the employee. Compliance by an employer with the court's request shall operate as a discharge of his liability to the employee as to the affected portion of the employee's wages.

Any employer who dismisses an employee due to the entry of an assignment order commits a simple misdemeanor.

(C24, 27, 31, 35, 39, s 10482; C46, 50, 54, 58, 62, 66, s 598.15; C71, 73, 75, 77, s 598.23; Ch 1245, 66 GA, ch 4, s 481)

Referred to in s 598.22, Code 1977

598.26 RECORD--IMPOUNDING--VIOLATION INDICTABLE.

The record and evidence in all cases where a marriage dissolution is sought shall be closed to all but the court and

its officers, and access thereto shall be refused until a decree of dissolution has been entered. If the action is dismissed judgment for costs shall be entered in the judgment docket and lien index. The clerk shall maintain a separate docket for dissolution of marriage actions. No officer or other person shall permit a copy of any of the testimony, or pleading, or the substance thereof, to be made available to any person other than a party or attorney to the action. Nothing in this section shall be construed to prohibit publication of the original notice as provided by the rules of civil procedure. Violation of the provisions of this section shall be a serious misdemeanor.

(C71, 73, 75, 77, s 598.26; Ch 1245, 66 GA, ch 4, s 482)

600.8 PLACEMENT INVESTIGATIONS AND REPORTS.

1. a. A preplacement investigation shall be directed to and a report of this investigation shall answer the following:

(1) Whether the home of the prospective adoption petitioner is a suitable one for the placement of a minor person to be adopted.

(2) How the prospective adoption petitioner's emotional maturity, finances, health, relationships, and any other relevant factor may affect the petitioner's ability to accept, care, and provide a minor person to be adopted with an adequate environment as that person matures.

b. A postplacement investigation and a report of this investigation and a report of this investigation shall:

(1) Verify the allegations of the adoption petition and its attachments and of the report of expenditures required under section 600.9.

(2) Evaluate the progress of the placement of the minor person to be adopted.

(3) Determine whether adoption by the adoption petitioner may be in the best interests of the minor person to be adopted.

c. A background information investigation and a report of this investigation shall not disclose the identity of the natural parents of the minor person to be adopted and shall answer the following:

(1) What is the complete family medical history of the person to be adopted, including any known genetic, metabolic, or familial disorders.

(2) What is the complete medical and developmental history of the person to be adopted.

2. a. A preplacement investigation and report of the investigation shall be completed and the prospective adoption petitioner approved for a placement by the person making the investigation prior to any agency or independent placement of a minor person in the petitioner's home in anticipation of an ensuing adoption. A report of a preplacement investigation that has approved a prospective adoption petitioner for a placement shall not authorize placement of a minor person with that petitioner after one year from the date of the report's issuance. However, if the prospective adoption petitioner is a stepparent or a relative within the fourth degree of consanguinity who has assumed custody of a minor person to be adopted, a preplacement investigation of this petitioner and a report of the investigation may be completed at a time established by the court or may be waived as provided in section 6.

b. If the person making the investigation does not approve a prospective adoption petitioner under paragraph "a" of this subsection, the person investigated may appeal the disapproval as a contested case to the commissioner of social services. Judicial review of any adverse decision by the commissioner may be sought pursuant to chapter 17A.

3. The department, an agency or an investigator shall conduct all investigations and reports required under subsection 2 of this section.

4. A postplacement and a background information investigation and the reports of these investigations shall be completed and the reports filed with the court prior to the holding of the adoption hearing prescribed in section 600.12. Upon the filing of an adoption petition pursuant to section 600.5, the court shall immediately appoint the department, an agency, or an investigator to conduct this investigation and report. Any person, including a juvenile court, who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of the background information investigation and report by disclosing any relevant background information, whether contained in sealed records or not.

5. Any person conducting an investigation under subsections 3 and 4 may, in the investigation or subsequent report, include, utilize, or rely upon any reports, studies, or examinations to the extent they are relevant.

6. Any person conducting an investigation under subsections 3 and 4 may charge a fee which does not exceed the reasonable cost of the services rendered and which is based on a sliding scale schedule relating to the investigated person's ability to pay.

7. Any investigation or report required under this section shall not apply when the person to be adopted is an adult.

8. Any person designated to make an investigation and report under this section may request an agency or state agency, within or outside this state, to conduct a portion of the investigation or the report, as may be appropriate, and to file a supplemental report of such investigation or report with the court.

In the case of the adoption of a minor person by a person domiciled or residing in any other jurisdiction of the United States, any investigation or report required under this section which has been conducted pursuant to the standards of that other jurisdiction shall be recognized in this state.

9. The department may investigate, on its own initiative or on order of the court, any placement made or adoption petition filed under this chapter or chapter 600A and may report its resulting recommendation to the court.

10. The department or an agency or investigator may conduct any investigations required for an interstate or interagency placement.

Any interstate investigations or placements shall follow the procedures and regulations under the interstate compact on the placement of children. Such investigations and placements shall be in compliance with the laws of the states involved.

11. Any person who assists in or impedes the placement or adoption of a minor person in violation of the provisions of this section shall be, upon conviction, guilty of a simple misdemeanor.

12. Any investigation and report required under subsection 1 of this section may be waived by the court if the adoption petitioner is a stepparent of or is related within the fourth degree of consanguinity to the person to be adopted.

(C27, 31, 35, s 10501-b2; C39, s 10501.2; C 46, 50, 54, 58, 62, 66, 71, 73, 75, s 600.2; C77, s 600.8; 67 GA, ch 147, s 131; 67 GA, ch 140, ss 4, 5, 6, 7)

Referred to in ss 600.2, 600.6, 600.11, Code 1977; s 600.16, Supplement

600.9 REPORT OF EXPENDITURES.

1. An adoption petitioner of a minor person shall file with the court, prior to the adoption hearing, a full accounting of all disbursements of any thing of value paid or agreed to be paid by or on behalf of the petitioner in connection with the petitioned adoption. This accounting shall be made by a report prescribed by the court. The report shall be signed and verified by the petitioner* and shall show any expenses incurred in connection with:

- a. The birth of the minor person to be adopted.
- b. Placement of the minor person with the adoption petitioner.
- c. Medical care received by the natural parents or the minor person during the pregnancy or delivery of the minor person.
- d. Any other services relating to the adoption or to the placement of the minor person which were received by or on behalf of the petitioner, the natural parents, or any other person, including legal fees.

The provisions of this subsection do not apply in a stepparent adoption.

2. A natural parent shall not receive any thing of value as a result of the natural parent's child or former child being placed with and adopted by another person, unless that thing of value is commensurate with some necessary service provided the natural parent in relation to childbirth, child raising, or delivering the child for adoption. Any person assisting in any way with the placement or adoption of a minor person shall not charge a fee which is more than usual, necessary, and commensurate with the services rendered. If the natural parent receives any prohibited thing of value, if a person gives a prohibited thing of value, or if a person charges a prohibited fee under this subsection, each such person shall be, upon conviction, guilty of a simple misdemeanor.

(C77, s 600.9; 67 GA, ch 147, s 131)

Referred to in s 600.8, Supplement

**Editorial note: The spelling of the word "petitioner" was editorially corrected.*

600.16 TERMINATION AND ADOPTION RECORD.

1. Any information compiled under section 600.8, subsection 1, paragraph "c", subparagraphs (1) and (2) shall be made available at any time by the clerk of the court, the department or any agency which made the placement to:

- a. The adopting parents.
- b. The adopted person, provided that person is an adult at the time the request for information is made.
- c. Any person approved by the department if the person uses this information solely for the purposes of conducting a legitimate research project or of treating a patient in a medical facility.

2. The permanent termination of parental rights record of the juvenile court under chapter 600A and the permanent adoption record of the court shall be sealed by the clerk of the juvenile court and the clerk of court, as appropriate, when they are complete and after the time for appeal has expired. All papers and records pertaining to a termination of parental rights under chapter 600A and to an adoption, whether a part of the permanent termination and adoption records of the juvenile court and of the court or on file with a guardian, guardian ad litem, custodian, person who placed a minor person, or the department shall not be open to inspection and the identity of the natural parents of an adopted person shall not be revealed. However an agency involved in placement shall contact the adopting parents or the adult adopted child regarding

eligibility of the adopted child for benefits based on entitlement of benefits or inheritance from the terminated natural parents. Also, the clerk of the court shall, upon application to and order of the court for good cause shown, open the permanent adoption record of the court for the adopted person who is an adult and reveal the names of either or both of the natural parents. A natural parent may file an affidavit requesting that the court reveal or not reveal the parent's name. The court shall consider any such affidavit in determining whether there is good cause to order opening of the records. If the adopted person who applies for revelation of the natural parents' name has a sibling who is a minor and who has been adopted by the same parents, the court may deny such application on the grounds that revelation to the applicant may also indirectly and harmfully permit the same revelation to the applicant's minor sibling. To facilitate the natural parents in filing such affidavit, the department shall, upon request of such parent, file an affidavit in the court in which the adoption records have been sealed.

3. Notwithstanding any other provision in this section, the juvenile court or court may, upon competent medical evidence, open termination or adoption records if opening is shown to be necessary to save the life of or prevent irreparable physical harm to an adopted person or the person's offspring. The juvenile court or court shall make every reasonable effort to prevent the identity of the natural parents from becoming revealed under this subsection to the adopted person. The juvenile court or court may, however, permit revelation of the identity of the natural parents to medical personnel attending the adopted person or the person's offspring. These medical personnel shall make every reasonable effort to prevent the identity of the natural parents from becoming revealed to the adopted person.

4. Any person, other than the adopting parents or the adopted person, who discloses information in violation of the provisions of this section shall be, upon conviction, guilty of a simple misdemeanor.

(C46, s 600.9; C50, 54, 58, 62, 66, 71, 73, 75, ss 600.9, 600.10; C77, s 600.16; 67 GA, ch 147, s 132; 67 GA, ch 140, ss 12, 13)

Referred to in s 238.24, Code 1977

601D.7 PENALTY FOR DENYING RIGHTS.

Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with the rights of any person under this chapter shall be guilty of a simple misdemeanor.

(C62, 66, s 351.32; C71, s 93B.7; C73, 75, 77, s 601D.7; Ch 1245, 66 GA, ch 4, s 485)

601E.5 PENALTY.

Any person who is not qualified as a handicapped or paraplegic person and uses a distress flag as provided in this chapter or for any other purpose is guilty of a simple misdemeanor.

(C73, 75, 77, s 601E.5; Ch 1245, 66 GA, ch 4, s 486)

601G.22 PENALTIES.

A person who willfully obstructs or hinders the lawful actions of the citizens' aide or the citizens' aide's staff, or who willfully misleads or attempts to mislead the citizens' aide in his or her inquires, shall be guilty of a simple misdemeanor.

(C73, 75, 77, s 601G.22; Ch 1245, 66 GA, ch 4, s 487)

602.42 COMPOSITION OF COUNTY JUDICIAL MAGISTRATE APPOINTING COMMISSIONS.

1. There shall be in each county a judicial magistrate appointing commission which shall be composed of the following members:

a. A district court judge designated by the chief judge of the district to serve until a successor is designated.

b. Three members appointed by the board of supervisors, except as provided in section 602.43.

c. Two attorneys elected by the county bar.

2. The clerk of the district court shall maintain a permanent record of the name, address, and term of office of each commissioner designated, appointed or elected.

3. A member of a judicial magistrate nominating commission shall be reimbursed for actual and necessary expenses reasonably incurred in the performance of official duties. Reimbursements shall be payable out of the court expense fund of the county in which the member serves, upon certification of such expenses to the county auditor by the district court clerk. Each judicial district may make rules under rule 372 of the rules of civil procedure to provide for the administration of this subsection.

(C73, 75, 77, s 602.42; 67 GA, ch 147, s 104)

Subsections 1 and 2 effective July 1, 1972, 64 GA, ch 1124, s 283 and 65 GA, ch 282, s 1; amendment effective July 1, 1973, 65 GA, ch 282, ss 4, 5; subsection 3 effective January 1, 1978

602.60 JURISDICTION--VENUE.

Judicial magistrates shall have jurisdiction of simple misdemeanors, including traffic and ordinance violations, preliminary hearings, search warrant proceedings, and small claims. They shall also have jurisdiction to exercise the powers specified in sections 644.2 and 644.12 and the power to hear complaints, or preliminary informations, issue warrants, order arrests, make commitments and take bail. They shall have power to act any place within the district as directed, and venue shall be the same as in other district court proceedings. In addition, judicial magistrates appointed pursuant to section 602.51 shall have jurisdiction of indictable misdemeanors, the jurisdiction provided for in section 231.3 when designated a judge of the juvenile court, and jurisdiction in civil actions for money judgments where the amount in controversy does not exceed three thousand dollars and while exercising that jurisdiction, judicial magistrates shall employ district judges' practice and procedure.

For purposes of administration judicial magistrates shall be under the jurisdiction of the chief judge of the judicial district. Judicial magistrates shall be subject to the same rules and laws that apply to district judges except as otherwise provided in this chapter.

(C73, 75, 77, s 602.60; Ch 1245, 66 GA, ch 4, s 488)

Referred to in s 602.32, Code 1977

Effective July 1, 1974, 65 GA, ch 282, s 45

602.62 PROCEDURE.

The criminal procedure before judicial magistrates shall be as provided in chapters 804, 806, 808, 811, and 820, and rules 2 and 32 through 46, rules of criminal procedure. The civil procedure before judicial magistrates shall be as provided in chapters 631 and 648.

(C73, 75, 77, s 602.62; Ch 1245, 66 GA, ch 4, s 489)

607.2 EXEMPTION.

The following persons are exempt from liability to act as jurors:

1. Persons holding office under the laws of the United States or of this state.

2. Practicing attorneys.

3. Persons conscientiously opposed to acting as a juror because of religious faith.

(C51, s 1631; R60, s 2721; C73, s 228; C97, s 333; S13, s 333; C24, 27, 31, 35, 39, s 10843; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 607.2; Ch 1245, 66 GA, ch 4, ss 490, 491; 67 GA, ch 147, s 105)

Members of national guard, s 29A.41, Code 1977; of fire companies, s 102.1, Code 1977

See s 609.2, Code 1977

607.4 FALSE EXCUSE--PROHIBITED REQUESTS.

Any person who knowingly makes any false affidavit, statement, or claim, for the purpose of relieving himself or another from serving as a juror, or any person who requests the judges of election to return the person's name as such juror, shall be guilty of a fraudulent practice.

(C97, s 334; C24, 27, 31, 35, 39, s 10845; C46, 50, 54, 58, 62, 66, 71, 73, 75, s 607.4; Ch 1245, 66 GA, ch 4, s 492)

Contempts, ch 665, Code 1977

609.26 MAXIMUM SERVICE PERMITTED.

Except as provided in rule 3, subsection 3, paragraph "a" of the rules of criminal procedure, no person on the list of grand jurors shall be eligible to serve as a grand juror except for one calendar year of the biennial period for which the list is made.

(C51, s 1642; R60, s 2732; C73, s 239; C97, s 339; S13, s 335-c; C24, 27, 31, 35, 39, s 10884; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 609.26; Ch 1245, 66 GA, ch 4, s 493)

610.21 UNLAWFUL RETENTION OF MONEY.

An attorney who receives the money or property of his or her client in the course of his or her professional business, and refuses to pay or deliver it in a reasonable time, after demand, is guilty of a theft and punished accordingly.

(C51, s 1627; R60, s 2717; C73, s 224; C97, s 330; C24, 27, 31, 35, 39, s 10927; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 610.21; Ch 1245, 66 GA, ch 4, s 494)

Referred to in s 610.22, Code 1977

610.49 DISCLOSURE OF CONFIDENTIAL INFORMATION.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

(C75, 77, s 610.49; Ch 1245, 66 GA, ch 4, s 495)

617.2 PENALTY--AMENDMENT.

If a notice is not filed or returned by the sheriff to the person from whom it was received, or if the return thereon is defective, the officer making the same shall be guilty of a simple misdemeanor and he or she shall be liable to an action for damages by any person aggrieved thereby. The court may, before or after judgment is entered, permit an amendment according to the truth of the case.

(R60, s 2820; C73, s 2606; C97, s 3521; C24, 27, 31, 35, 39, s 11063; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 617.2; Ch 1245, 66 GA, ch 4, s 496)

618.2 VIOLATION.

Any public official who violates the provisions of section 618.1 or who willfully fails to make publication as now required of the public official by law of any notice, report of proceedings or other matter whatsoever, shall be guilty of a simple misdemeanor.

(C97, s 550; C24, 27, 31, 35, 39, s 11099; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 618.2; Ch 1245, 66 GA, ch 4, s 497)

622A.3 COSTS--WHEN TAXED.

An intprepter shall be appointed without expense to the person requiring assistance in the following cases:

1. If the person requiring assistance is a witness in the civil legal proceeding.
2. If the person requiring assistance is indigent and financially unable to secure an interpreter.

In civil cases, every court shall tax the cost of an interpreter the same as other court costs. In criminal cases, where the defendant is indigent, the interpreter shall be considered as a defendant's witness under rule 14, rules of criminal procedure for the purpose of receiving fees, except that subpoenas shall not be required. If the proceeding is before an administrative agency, that agency shall provide such interpreter but may require that a party to the proceeding pay the expense thereof.

(C71, 73, 75, 77, s 622A.3; Ch 1245, 66 GA, ch 4, s 498)

624.14 JUROR AS WITNESS--GROUNDS TO SET ASIDE VERDICT.

If a juror has personal knowledge respecting a fact in controversy in a cause, the juror must declare the same in open court during the trial, and if, during the retirement of the jury, a juror declares any fact which could be evidence in the cause, as of the juror's own knowledge, the jury must return into court, and the juror must be sworn as a witness and examined in the presence of the parties, if the juror's evidence be admissible; and in support of a motion to set aside a verdict, proof of such declaration may be made by any juror.

(C27, 31, 35, s 11496-b1; C39, s 11496.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 624.14; Ch 1245, 66 GA, ch 4, s 499)

627.17 SENDING CLAIMS OUT OF STATE.

Whoever, whether as principal, agent, or attorney, with intent to deprive a resident in good faith of the state of the benefit of the exemption laws thereof, sends a claim against such resident and belonging to a resident, to another state for action, or causes action to be brought on such claim in another state, or assigns or transfers such claim to a nonresident of the state, with intent that action thereon be brought in the courts of another state, the action in either case being one which might have been brought in this state, and the property or debt sought to be reached by such action being such as

might, but for the exemptions laws of this state, have been reached by action in the courts of this state, shall be guilty of a simple misdemeanor.

(C97, s 4018; C24, 27, 31, 35, 39, s 11770; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 627.17; Ch 1245, 66 GA, ch 4, s 500)

657.3 PENALTY--ABATEMENT.

Whoever is convicted of erecting, causing, or continuing a public or common nuisance as provided in this chapter, or at common law when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be guilty of an aggravated misdemeanor and the court, may order such nuisance abated, and issue a warrant as hereinafter provided.

(C51, s 2762; R60, s 4412; C73, s 4092; C97, s 5081; S13, s 5081; C24, 27, 31, 35, 39, s 12397; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 657.3; Ch 1245, 66 GA, ch 4, s 501)

Referred to in s 467D.23, Code 1977

660.11 PENALTY FOR REFUSING TO OBEY ORDER.

Any person who without good reason refuses to obey an order of the court, as herein provided, shall be guilty of contempt, and shall be punished accordingly, and shall be further liable for the damages resulting to any person on account of his or her* disobedience.

(C51, s 2174; R60, s 3756; C73, s 3367; C97, s 4335; C24, 27, 31, 35, 39, s 12439; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 660.11; Ch 1245, 66 GA, ch 4, s 502)

**Editorial note: The words "or her" were editorially added to de-sex the section consistent with other de-sexing amendments to the criminal code passed by the general assembly.*

663.20 PENALTY FOR ELUDING WRIT.

If the defendant attempts to elude the service of the writ, or to avoid the effect thereof by transferring the plaintiff to another, or by concealing the plaintiff, the defendant shall be guilty of a serious misdemeanor, and any person knowingly aiding or abetting in any such act shall be subject to like punishment.

(C51, s 2253; R60, s 3841; C73, s 3467; C97, s 4435; C24, 27, 31, 35, 39, s 12487; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 663.20; Ch 1245, 66 GA, ch 4, s 503)

Referred to in s 663A.1, Code 1977

666.6 REPORT OF FORFEITED BONDS.

Clerks of district court shall, on the first Monday in January in each year, make report in writing to the board of supervisors for their respective counties of all forfeited recognizances in their offices; of all fines, penalties, and forfeitures imposed in their respective courts, which by law go into the county treasury for the benefit of the school fund; in what cause or proceeding, when and for what purpose, against whom and for what amount, rendered; whether said fines, penalties, forfeitures, and recognizances have been paid, remitted, canceled, or otherwise satisfied; if so, when, how, and in what manner, and if not paid, remitted, canceled, or otherwise satisfied, what steps have been taken to enforce the collection thereof.

Such report must be full, true, and complete with reference to the matters therein contained, and of all things required by this section to be reported, and be under oath, and any officer

failing to make such report shall be guilty of a simple misdemeanor.

(C73, s 3974; C97, s 1302; C24, 27, 31, 35, 39, s 12557; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 666.6; Ch 1245, 66 GA, ch 4, s 504)

CHAPTER 690
BUREAU OF CRIMINAL IDENTIFICATION

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Photographs at Insti-
tutions

690.1 CRIMINAL IDENTIFICATION.

The commissioner of public safety may provide in his department a bureau of criminal identification. He may adopt rules and regulations for the same. The sheriff of each county and the chief of police of each city shall furnish to the department criminal identification records and other information as directed by the commissioner of public safety.

(C24, 27, 31, 35, 39, s 13416; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 749.1)

690.2 FINGER AND PALM PRINTS--DUTY OF SHERIFF AND CHIEF OF POLICE.

It shall be the duty of the sheriff of every county, and the chief of police of each city regardless of the form of government thereof and having a population of ten thousand or over, to take the fingerprints of all persons held either for investigation, for the commission of a felony, as a fugitive from justice, or for bootlegging, the maintenance of an intoxicating liquor nuisance, manufacturing intoxicating liquor, operating a motor vehicle while under the influence of an alcoholic beverage or for illegal transportation of intoxicating liquor, and to take the fingerprints of all unidentified dead bodies in their respective jurisdictions, and to forward such fingerprint records on such forms and in such manner as may be prescribed by the commissioner of public safety, within forty-eight hours after the same are taken, to the bureau of criminal investigation. If the fingerprints of any person are taken under the provisions hereof whose fingerprints are not already on file, and said person is not convicted of any offense, then said fingerprint records shall be destroyed by any officer having them. In addition to the fingerprints as herein provided any such officer may also take the palm prints of any such person.

(C27, 31, 35, s 13417-b1; C39, s 13417.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 749.2)

Referred to in s 321B.2, Code 1977; s 690.3, Supplement "Alcoholic beverage" defined, see s 321B.2, Code 1977

690.3 EQUIPMENT.

The board of supervisors of each county and the council of each city affected by the provisions of section 690.2 shall furnish all necessary equipment and materials for the carrying out of the provisions of said section.

(C27, 31, 35, s 13417-b2; C39, s 13417.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 749.3)

690.4 FINGERPRINTS AND PHOTOGRAPHS AT INSTITUTIONS.

It shall be the duty of the wardens of the penitentiary and men's reformatory, and superintendents of the women's reformatory, the Iowa training school for boys, and the Iowa

training school for girls, to take or procure the taking of the fingerprints, and, in the case of the penitentiary, men's reformatory, and women's reformatory only, Bertillon photographs of any person received on commitment to their respective institutions, and to forward such fingerprint records and photographs within ten days after the same are taken to the division of criminal investigation and bureau of identification, Iowa department of public safety, and to the federal bureau of investigation.

It shall also be the duty of the said wardens and superintendents to procure the taking of five- by seven-inch photographic negative showing a full length view of each convict, prisoner or inmate of the penitentiary, men's reformatory, and women's reformatory in his or her release clothing immediately prior to his or her discharge from the institution either upon expiration of sentence or commitment or on parole, and to forward such photographic negative within two days after the same is taken to the division of criminal investigation and bureau of identification, Iowa department of public safety.

(C50, 54, 58, 62, 66, 71, 73, 75, 77, s 749.4)

CHAPTER 691
STATE CRIMINALISTICS LABORATORY AND MEDICAL EXAMINER

Referred to in ss 339.9, 339.10, Code 1977

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|-------|--|-------|--|
| 691.1 | Laboratory Created | 691.6 | Duties |
| 691.2 | Presumption of Qualification--Acceptance in Evidence | 691.7 | Commissioner to Accept Federal or Private Grants |
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| 691.4 | Copy of Finding to Defendant | 691.9 | Deposit of Ammunition and Firearms |
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691.1 LABORATORY CREATED.

There is hereby created under the control, direction and supervision of the commissioner of public safety a state criminalistics laboratory. The commissioner of public safety may assign the criminalistics laboratory to a division or bureau by a county attorney, medical examiner, or law enforcement agency of this state to aid in any criminal investigation. Agents of the division of criminal investigation and bureau of identification may be assigned to the criminalistics laboratory by the commissioner. New employees shall be appointed pursuant to chapter 19A, and need not qualify as agents for the division of criminal investigation and bureau of identification, and shall not participate in the peace officers' retirement plan established pursuant to chapter 97A.

(C71, 73, 75, 77, s 749A.1)

691.2 PRESUMPTION OF QUALIFICATION--ACCEPTANCE IN EVIDENCE.

It shall be presumed that any employee or technician of the criminalistics laboratory is qualified or possesses the required expertise to accomplish any analysis, comparison, or identification done by him in the course of his employment in the criminalistics laboratory. Any report, or copy thereof, or the findings of the criminalistics laboratory shall be received in evidence in any court, preliminary hearing, and grand jury proceeding in the same manner and with the same force and effect as if the employee or technician of the criminalistics laboratory who accomplished the requested analysis, comparison,

or identification had testified in person. An accused person or his attorney may request that such employee or technician testify in person at a criminal trial on behalf of the state before a jury or to the court, by notifying the proper county attorney at least ten days before the date of such criminal trial.

(C71, 73, 75, 77, s 749A.2)

691.3 COMMISSIONER TO MAKE RULES.

The commissioner of public safety shall make rules defining the capabilities of the criminalistics laboratory. He shall make rules governing the handling of items to be processed by the criminalistics laboratory from the time they are forwarded to the laboratory by a county medical examiner or a city or state law enforcement agency or county sheriff until their return to the forwarder. The rules shall prescribe a method of identifying, forwarding, handling and returning items that will maintain the identity and integrity of the item. An item handled in conformity with the rules shall be presumed to be admissible in evidence as to the period in transit to and from and while in custody of the laboratory without further foundation.

(C71, 73, 75, 77, s 749A.3)

691.4 COPY OF FINDING TO DEFENDANT.

The county attorney shall give the accused person, or his attorney, after an indictment or county attorney's information has been returned, a copy of each report of the findings of the criminalistics laboratory conducted in the investigation of the indictable criminal charge against him at the time of arraignment, or if such report is received after arraignment, upon receipt, whether or not such findings are to be used in evidence within his department. The laboratory shall, within its capabilities, conduct analyses, comparative studies, fingerprint identification, firearms identification, questioned documents studies, and other studies normally performed by a criminalistics laboratory when requested against him. If such report is not given to the accused or his attorney at least four days prior to trial, such fact shall be grounds for a continuance.

(C71, 73, 75, 77, s 749A.4)

691.5 STATE MEDICAL EXAMINER.

There is hereby created the position of state medical examiner. The state medical examiner shall be a physician and surgeon or osteopathic physician and surgeon and be licensed to practice medicine in the state of Iowa, and possess special knowledge in forensic pathology. The state medical examiner shall be appointed by and serve at the pleasure of the governor. The state medical examiner may be a faculty member of the college of medicine or the college of law at the University of Iowa, and any of his assistants or staff may be members of the faculty or staff of the college of medicine or the college of law at the University of Iowa.

(C71, 73, 75, 77, s 749A.5)

691.6 DUTIES.

The duties of the state medical examiner shall be:

1. To provide assistance, consultation, and training to county medical examiners and law enforcement officials.
2. To keep complete records of all relevant information concerning deaths or crimes requiring investigation by the state medical examiner.
3. To promulgate rules pursuant to chapter 17A regarding the manner and techniques to be employed while conducting

autopsies; the nature, character, and extent of investigations to be made in cases of homicide or suspected homicide necessary to allow a medical examiner to render a full and complete analysis and report; the format and matters to be contained in all reports rendered by medical examiners; and all other things necessary to carry out this chapter. All county medical examiners and peace officers shall be subject to such rules.

(C71, 73, 75, 77, s 749A.6)

691.7 COMMISSIONER TO ACCEPT FEDERAL OR PRIVATE GRANTS.

The commissioner of public safety may accept federal or private funds or grants to aid in the establishment or operation of the state criminalistics laboratory, and the board of regents may accept federal or private funds or grants to aid in the establishment of the position of state medical examiner.

(C71, 73, 75, 77, s 749A.7)

691.8 GOVERNOR TO TRANSFER LABORATORY.

The governor shall by executive order provide for the transfer of any appropriate laboratory facilities, equipment, and technical personnel of the state to the state criminalistics laboratory if such transfer will more effectively and efficiently aid the investigation of crime.

(C71, 73, 75, 77, s 749A.8)

691.9 DEPOSIT OF AMMUNITION AND FIREARMS.

1. Ammunition and firearms which are stolen or embezzled or confiscated pursuant to a valid arrest or search warrant and for which lawful possession is not established or for which lawful title cannot be ascertained pursuant to chapters 645 and 809 shall be forwarded to the state criminalistics laboratory for deposit by the law enforcement agency having possession of such items. Ammunition and firearms which were used in the perpetration or attempted perpetration of a criminal offense and are owned by the perpetrator of such offense shall be forfeited to the state, and shall be deposited with the state criminalistics laboratory if no longer required in a criminal action for evidentiary purposes. Ammunition and firearms forfeited shall become the property of the state.

2. Ammunition and firearms other than those forfeited to the state, which come into the possession of the state criminalistics laboratory may, at the discretion of the commissioner of public safety, after being retained for at least one year, be destroyed, retained or exchanged with other public agencies. Ammunition and firearms forfeited to the state may be destroyed, retained, given to or exchanged with other public agencies, within or without the state.

3. Ammunition and firearms subject to this section shall not be subject to the provisions of chapter 556, or any other provisions of law relating to abandoned property.

4. If any person claims to be entitled to any property which may have been disposed of under this section, he may file a claim for the value of such property as provided in chapter 25A.

(C77, s 749A.9)

CHAPTER 692
CRIMINAL HISTORY AND INTELLIGENCE DATA

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692.1 DEFINITIONS OF WORDS AND PHRASES.

As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of public safety.
2. "Bureau" means the department of public safety, division of criminal investigation and bureau of identification.
3. "Criminal history data" means any or all of the following information maintained by the department or bureau in a manual or automated data storage system and individually identified:
 - a. Arrest data.
 - b. Conviction data.
 - c. Disposition data.
 - d. Correctional data.
4. "Arrest data" means information pertaining to an arrest for a public offense and includes the charge, date, time and place. Arrest data includes arrest warrants for all public offenses outstanding and not served and includes the filing of charges, by preliminary information when filed by a peace officer or law enforcement officer or indictment, the date and place of alleged commission and county of jurisdiction.
5. "Conviction data" means information that a person was convicted of or entered a plea of guilty to a public offense and includes the date and location of commission and place and court of conviction.
6. "Disposition data" means information pertaining to a recorded court proceeding subsequent and incidental to a public offense arrest and includes dismissal of the charge, suspension or deferral of sentence.
7. "Correctional data" means information pertaining to the status, location and activities of persons under the supervision of the county sheriff, the division of corrections of the department of social services, board of parole or any other state or local agency performing the same or similar function, but does not include investigative, sociological, psychological, economic or other subjective information maintained by the division of corrections of the department of social services or board of parole.
8. "Public offense" as used in subsections 4, 5 and 6 does not include nonindictable offenses under either chapter 321 or local traffic ordinances.
9. "Individually identified" means criminal history data which relates to a specific person by one or more of the following means of identification:
 - a. Name and alias, if any.
 - b. Social security number.

- c. Fingerprints.
 - d. Other index cross-referenced to paragraphs "a", "b", or "c."
 - e. Other individually identifying characteristics.
10. "Criminal justice agency" means any agency or department of any level of government which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders.
11. "Intelligence data" means information collected where there are reasonable grounds to suspect involvement or participation in criminal activity by any person.
12. "Surveillance data" means information on individuals, pertaining to participation in organizations, groups, meetings or assemblies, where there are no reasonable grounds to suspect involvement or participation in criminal activity by any person.
- (C75, 77, s 749B.1)

692.2 DISSEMINATION OF CRIMINAL HISTORY DATA.

The department and bureau may provide copies or communicate information from criminal history data only to criminal justice agencies, or such other public agencies as are authorized by the confidential records council. The bureau shall maintain a list showing the individual or agency to whom the data is disseminated and the date of dissemination.

Authorized agencies and criminal justice agencies shall request and may receive criminal history data only when:

- 1. The data is for official purposes in connection with prescribed duties, and
- 2. The request for data is based upon name, fingerprints, or other individual identifying characteristics.

The provisions of this section and section 692.3 which relate to the requiring of an individually identified request prior to the dissemination or redissemination of criminal history data shall not apply to the furnishing of criminal history data to the federal bureau of investigation or to the dissemination or redissemination of information that an arrest warrant has been or will be issued, and other relevant information including but not limited to, the offense and the date and place of alleged commission, individually identifying characteristics of the person to be arrested, and the court or jurisdiction issuing the warrant.

(C75, 77, s 749B.2)

Referred to in s 692.20, Supplement

692.3 REDISSEMINATION.

A peace officer, criminal justice agency, or state or federal regulatory agency shall not redisseminate criminal history data, within or without the agency, received from the department or bureau, unless:

- 1. The data is for official purposes in connection with prescribed duties of a criminal justice agency, and
- 2. The agency maintains a list of the persons receiving the data and the date and purpose of the dissemination, and
- 3. The request for data is based upon name, fingerprints, or other individual identification characteristics.

A peace officer, criminal justice agency, or state or federal regulatory agency shall not redisseminate intelligence data, within or without the agency, received from the department or bureau or from any other source, except as provided in subsections 1 and 2.

(C75, 77, s 749B.3)

Referred to in ss 692.2, 692.20, Supplement

692.4 STATISTICS.

The department, bureau, or a criminal justice agency may compile and disseminate criminal history data in the form of statistical reports derived from such information or as the basis of further study provided individual identities are not ascertainable.

The bureau may with the approval of the commissioner of public safety disseminate criminal history data to persons conducting bona fide research, provided the data is not individually identified.

(C75, 77, s 749B.4)

692.5 RIGHT OF NOTICE, ACCESS AND CHALLENGE.

Any person or his attorney with written authorization and fingerprint identification shall have the right to examine criminal history data filed with the bureau that refers to the person. The bureau may prescribe reasonable hours and places of examination.

Any person who files with the bureau a written statement to the effect that a statement contained in the criminal history data that refers to him is nonfactual, or information not authorized by law to be kept, and requests a correction or elimination of that information that refers to him shall be notified within twenty days by the bureau, in writing, of the bureau's decision or order regarding the correction or elimination. Judicial review of the actions of the bureau may be sought in accordance with the terms of the Iowa administrative procedure Act. Immediately upon the filing of the petition for judicial review the court shall order the bureau to file with the court a certified copy of the criminal history data and in no other situation shall the bureau furnish an individual or his attorney with a certified copy, except as provided by this chapter.

Upon the request of the petitioner, the record and evidence in a judicial review proceeding shall be closed to all but the court and its officers, and access thereto shall be refused unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. No person, other than the petitioner shall permit a copy of any of the testimony or pleadings or the substance thereof to be made available to any person other than a party to the action or his attorney. Violation of the provisions of this section shall be a public offense, punishable under section 692.7.

Whenever the bureau corrects or eliminates data as requested or as ordered by the court, the bureau shall advise all agencies or individuals who have received the incorrect information to correct their files. Upon application to the district court and service of notice on the commissioner of public safety, any individual may request and obtain a list of all persons and agencies who received criminal history data referring to him, unless good cause be shown why the individual should not receive said list.

(C75, 77, s 749B.5)

692.6 CIVIL REMEDY.

Any person may institute a civil action for damages under chapter 25A or 613A or to restrain the dissemination of his criminal history data or intelligence data in violation of this chapter, and any person, agency or governmental body proven to have disseminated or to have requested and received criminal history data or intelligence data in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses and reasonable attorneys' fees incurred by the party bringing

the action. In no case shall the award for damages be less than one hundred dollars.

(C75, 77, s 749B.6)

692.7 CRIMINAL PENALTIES.

1. Any person who willfully requests, obtains, or seeks to obtain criminal history data under false pretenses, or who willfully communicates or seeks to communicate criminal history data to any agency or person except in accordance with this chapter, or any person connected with any research program authorized pursuant to this chapter who willfully falsifies criminal history data or any records relating thereto, shall, upon conviction, for each such offense be guilty of an aggravated misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate criminal history data except in accordance with this chapter shall be guilty of a simple misdemeanor.

2. Any person who willfully requests, obtains, or seeks to obtain intelligence data under false pretenses, or who willfully communicates or seeks to communicate intelligence data to any agency or person except in accordance with this chapter, shall for each such offense be guilty of a class "D" felony. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate intelligence data except in accordance with this chapter shall for each such offense be guilty of a serious misdemeanor.

3. If a person convicted under this section is a peace officer, the conviction shall be grounds for discharge or suspension from duty without pay and if the person convicted is a public official or public employee, the conviction shall be grounds for removal from office.

4. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to criminal history data and intelligence data.

(C75, 77, s 749B.7; Ch 1245, 66 GA, ch 4, s 508)

Referred to in ss 692.5, 692.9, Supplement

692.8 INTELLIGENCE DATA.

Intelligence data contained in the files of the department of public safety or a criminal justice agency shall not be placed within a computer data storage system.

Intelligence data in the files of the department may be disseminated only to a peace officer, criminal justice agency, or state or federal regulatory agency, and only if the department is satisfied that the need to know and the intended use are reasonable. Whenever intelligence data relating to a defendant for the purpose of sentencing has been provided a court, the court shall inform the defendant or his attorney that it is in possession of such data and shall, upon request of the defendant or his attorney, permit examination of such data.

If the defendant disputes the accuracy of the intelligence data, he shall do so by filing an affidavit stating the substance of the disputed data and wherein it is inaccurate. If the court finds reasonable doubt as to the accuracy of such information, it may require a hearing and the examination of witnesses relating thereto on or before the time set for sentencing.

(C75, 77, s 749B.8)

692.9 SURVEILLANCE DATA PROHIBITED.

No surveillance data shall be placed in files or manual or automated data storage systems by the department or bureau or by any peace officer or criminal justice agency. Violation of

the provisions of this section shall be a public offense punishable under section 692.7.

(C75, 77, s 749B.9)

692.10 RULES.

The department shall adopt rules designed to assure the security and confidentiality of all criminal history data and intelligence data systems.

(C75, 77, s 749B.10)

Referred to in s 692.19, Supplement

692.11 EDUCATION PROGRAM.

The department shall require an educational program for its employees and the employees of criminal justice agencies on the proper use and control of criminal history data and intelligence data.

(C75, 77, s 749B.11)

692.12 DATA PROCESSING.

Nothing in this chapter shall preclude the use of the equipment and hardware of the data processing service center for the storage and retrieval of criminal history data. Files shall be stored on the computer in such a manner as the files cannot be modified, destroyed, accessed, changed or overlaid in any fashion by noncriminal justice agency terminals or personnel. That portion of any computer, electronic switch or manual terminal having access to criminal history data stored in the state computer must be under the management control of a criminal justice agency.

(C75, 77, s 749B.12)

692.13 REVIEW.

The department shall initiate periodic review procedures designed to determine compliance with the provisions of this chapter within the department and by criminal justice agencies and to determine that data furnished to them is factual and accurate.

(C75, 77, s 749B.13)

692.14 SYSTEMS FOR THE EXCHANGE OF CRIMINAL HISTORY DATA.

The department shall regulate the participation by all state and local agencies in any system for the exchange of criminal history data, and shall be responsible for assuring the consistency of such participation with the terms and purposes of this chapter.

Direct access to such systems shall be limited to such criminal justice agencies as are expressly designated for that purpose by the department. The department shall, with respect to telecommunications terminals employed in the dissemination of criminal history data, insure that security is provided over an entire terminal or that portion actually authorized access to criminal history data.

(C75, 77, s 749B.14)

692.15 REPORTS TO DEPARTMENT.

When it comes to the attention of a sheriff, police department, or other law enforcement agency that a public offense has been committed in its jurisdiction, it shall be the duty of the law enforcement agency to report information concerning such crimes to the bureau on a form to be furnished by the bureau not more than thirty-five days from the time the crime first comes to the attention of such law enforcement agency. These reports shall be used to generate crime statistics. The bureau shall submit statistics to the

governor, legislature and crime commission on a quarterly and yearly basis.

When a sheriff, police department or other law enforcement agency makes an arrest which is reported to the bureau, the arresting law enforcement agency and any other law enforcement agency which obtains custody of the arrested person shall furnish a disposition report to the bureau whenever the arrested person is transferred to the custody of another law enforcement agency or is released without having a complaint or information filed with any court.

Whenever a criminal complaint or information is filed in any court, the clerk shall furnish a disposition report of such case.

The disposition report, whether by a law enforcement agency or court, shall be sent to the bureau within thirty days after disposition on a form provided by the bureau.

(C75, 77, s 749B.15)

692.16 REVIEW AND REMOVAL.

At least every year the bureau shall review and determine current status of all Iowa arrests reported after August 15, 1973, which are at least one year old with no disposition data. Any Iowa arrest recorded within a computer data storage system which has no disposition data after five years shall be removed unless there is an outstanding arrest warrant or detainer on such charge.

(C75, 77, s 749B.16)

692.17 EXCLUSIONS.

Criminal history data in a computer data storage system does not include arrest or disposition data after the person has been acquitted or the charges dismissed.

(C75, 77, s 749B.17)

692.18 PUBLIC RECORDS.

Nothing in this chapter shall prohibit the public from examining and copying the public records of any public body or agency as authorized by chapter 68A.

Criminal history data and intelligence data in the possession of the department or bureau, or disseminated by the department or bureau, are not public records within the provisions of chapter 68A.

(C75, 77, s 749B.18)

692.19 CONFIDENTIAL RECORDS COUNCIL.

There is hereby created a confidential records council consisting of nine regular members. Two members shall be appointed from the house of representatives to serve as ex officio nonvoting members by the speaker of the house, no more than one of whom shall be from the same party. Two members shall be appointed from the senate to serve as ex officio nonvoting members by the lieutenant governor, no more than one of whom shall be from the same party. The other members of the council shall be: A judge of the district court appointed by the chief justice of the supreme court, one local law enforcement official, appointed by the governor; the commissioner of public safety or his designee; and two private citizens not connected with law enforcement, appointed by the governor. The council shall select its own chairman. The members shall serve at the pleasure of those by whom their appointments are made.

The council shall meet at least annually and at any other time upon the call of the governor, the chairman of the council, or any three of its members. Each nonlegislative council member shall be entitled to reimbursement for actual

and necessary expenses incurred in the performance of official duties from funds appropriated to the department of public safety. Each legislative member shall receive expenses pursuant to section 2.10 and section 2.12.

The council shall have the following responsibilities and duties:

1. Shall periodically monitor the operation of governmental information systems which deal with the collection, storage, use and dissemination of criminal history or intelligence data.

2. Shall review the implementation and effectiveness of legislation and administrative rules concerning such systems.

3. May recommend changes in said rules and legislation to the legislature and the appropriate administrative officials.

4. May require such reports from state agencies as may be necessary to perform its duties.

5. May receive and review complaints from the public concerning the operation of such systems.

6. May conduct such inquiries and investigations as it finds appropriate to achieve the purposes of this chapter. Each criminal justice agency in this state and each state and local agency otherwise authorized access to criminal history data is authorized and directed to furnish to the council, upon its request, such statistical data, reports, and other information in its possession as the council deems necessary to carry out its functions under this chapter. However, the council and its members, in such capacity, shall not have access to criminal history data or intelligence data unless it is data from which individual identities are not ascertainable or data which has been masked so that individual identities are not ascertainable. However, the council may examine data from which the identity of an individual is ascertainable if requested in writing by that individual or his attorney with written authorization and fingerprint identification.

7. Shall annually approve rules adopted in accordance with section 692.10 and rules to assure the accuracy, completeness and proper purging of criminal history data.

8. Shall approve all agreements, arrangements and systems for the interstate transmission and exchange of criminal history data.

(C75, 77, s 749B.19)

692.20 MOTOR VEHICLE OPERATOR'S RECORD EXEMPT.

The provisions of sections 692.2 and 692.3 shall not apply to the certifying of an individual's operating record pursuant to section 321A.3.

(C75, 77, s 749B.20)

CHAPTER 693
POLICE RADIO BROADCASTING SYSTEM

Federal funds appropriated, 65 GA, ch 104, s 3

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|------------------------------|------------------------------|
| 693.1 Contract Authorized | 693.5 Option of City Council |
| 693.2 Expenses | to Install--Costs |
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| visors | tions Systems |
| 693.4 Duty of Supervisors | 693.7 Communication with Lo- |
| to Install--Costs | cal Agencies |
| | 693.8 Review Committee |

693.1 CONTRACT AUTHORIZED.

The commissioner of public safety may enter into such contracts as he may deem necessary for the purpose of utilizing a

special radio broadcasting system for law enforcement and police work and for direct and rapid communication with the various peace officers of the state. The said commissioner shall be empowered, subject to the approval of the governor and executive council, to equip divisional headquarters, cars, and motorcycles in his department with radio sending and/or receiving apparatus.

(C31, 35, s 13417-d1; C39, s 13417.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 750.1)
Referred to in ss 321.266, 693.2, Supplement

693.2 EXPENSES.

Any such contract authorized in section 693.1 shall involve no expense to the state, except that the state may buy its own radio remote control system and install the same in the offices of the department of public safety in broadcasting communications and information direct to the peace officers of the state.

(C31, 35, s 13417-d2; C39, s 13417.4; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 750.2)

693.3 NOTIFICATION TO SUPERVISORS.

Whenever the commissioner of public safety has entered into a contract and has established radio broadcasting facilities as is provided in this chapter, he shall at once notify the boards of supervisors of the respective counties that such a radio service has been established.

(C31, 35, s 13417-d3; C39, s 13417.5; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 750.3)
44 GA, ch 241, s 3, editorially divided

693.4 DUTY OF SUPERVISORS TO INSTALL--COSTS.

It shall then be the duty of the board of supervisors of each county to install in the office of the sheriff, such a radio receiving set and a set in at least one motor vehicle used by the sheriff, for use in connection with said state radio broadcasting system. The board of supervisors of any county may install as many additional such radio receiving sets as may be deemed necessary. The cost of such radio receiving sets and the cost of installation thereof shall be paid from the general fund of the county.

(C31, 35, s 13417-d4; C39, s 13417.6; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 750.4)

693.5 OPTION OF CITY COUNCIL TO INSTALL--COSTS.

The council of each city of two thousand or more population may install at least one radio receiving set for use in law enforcement and police work.

(C31, 35, s 13417-d5; C39, s 13417.7; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, s 750.5)

693.6 ADDITIONAL COMMUNICATIONS SYSTEMS.

The board of supervisors of any county shall have in addition to the foregoing the discretionary authority:

1. To purchase, lease, own, and maintain additional radio, electronic communications and telecommunications systems as may be deemed necessary by said agency for the efficient operation of the law enforcement agencies under its jurisdiction, and to pay the cost thereof from the general fund of said county.

2. To enter into lease or contract arrangements for the joint ownership, maintenance, acquisition or leasing of said equipment with any other county and may jointly operate the same with such co-operating agency for the mutual economy and efficiency of both.

(C62, 66, 71, 73, 75, 77, s 750.6)

693.7 COMMUNICATION WITH LOCAL AGENCIES.

The department of public safety shall maintain law enforcement communications with local enforcement agencies using frequencies in use on July 1, 1973. The Iowa highway safety patrol base stations and all Iowa highway safety patrol cars assigned to troopers and sergeants with field enforcement responsibilities shall maintain law enforcement communications with local enforcement agencies using transmitting and receiving frequencies in use by the Iowa highway safety patrol on July 1, 1973.

(C75, 77, s 750.7)

693.8 REVIEW COMMITTEE.

There is established a police communications review committee which shall consist of three members of the senate appointed by the president of the senate and three members of the house of representatives appointed by the speaker of the house. The committee shall select a chairman and shall meet at the call of the chairman.

Members shall be appointed prior to the adjournment of the first regular session of each general assembly and shall serve for terms ending upon the convening of the following general assembly or when their successors are appointed. Vacancies shall be filled in the same manner as original appointments and shall be for the remainder of the unexpired term of the vacancy. The members of the committee shall be reimbursed for actual and necessary expenses incurred in the performance of their duties and shall receive forty dollars for each day in which engaged in the performance of such duties. However, such per diem compensation and expenses shall not be paid when the general assembly is actually in session at the seat of government. Expenses and per diem shall be paid from funds appropriated pursuant to section 2.12.

The police communications review committee shall meet periodically with representatives of the department of public safety and shall review proposed changes of the communications operating procedures of the department which affect operating procedures of local law enforcement agencies.

(C75, 77, s 750.8)

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