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CONTENT

Bill for Introduction into the National Assembly—

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THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2026

A Bill for

AN ACT of Parliament to amend the Criminal Procedure Code

ENACTED by the Parliament of Kenya as follows—

Short title.

1. This Act may be cited as the Criminal Procedure Code (Amendment) Act, 2026.

Amendment of section 2 of Cap. 75.

2. Section 2 of the Criminal Procedure Code (hereinafter referred to as the "principal Act"), is amended—

(a) in the definition of "Registrar of the High Court", by deleting the words "includes a Deputy Registrar of the High Court and a district registrar of the High Court" and substituting therefor the words "means the Registrar of the High Court appointed pursuant to section 18 of the High Court (Organization and Administration) Act";

(b) in the definition of "summary trial", by deleting the words "subordinate court" and substituting therefor the words "magistrate's court"; and

(c) by inserting the following new definitions in proper alphabetical sequence—

"intersex person" means a person with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary of female or male due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood;

Cap. 248.

"person with mental illness" has the meaning assigned to it under section 2 of the Mental Health Act;

Amendment of section 4 of Cap. 75.

3. Section 4 of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of section 5 of Cap. 75.

4. Section 5 of the principal Act is amended in subsection (2), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of section 7 of Cap. 75.

5. Section 7 of the principal Act is amended—

(a) in subsection (1), by deleting the words "subordinate court of the first class" and substituting therefor the words "magistrate's court";

(b) by deleting subsection (2);

(c) by deleting subsection (3).

Amendment of section 14 of Cap. 75.

6. Section 14 of the principal Act is amended in subsection (3) by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of section 15 of Cap. 75.

7. Section 15 of the principal Act is amended—

(a) in subsection (1) by deleting the words "corporal punishment";

(b) by inserting the following new subsection immediately after subsection (1) —

"(1A) The operational period under subsection (1) shall not exceed the term of the sentence imposed."

Insertion of new section 27A in Cap. 75.

8. The principal Act is amended by inserting the following new section immediately after section 27—

Mode of searching an intersex person.

27A. Whenever it is necessary to cause an intersex person to be searched, the search shall where reasonably practicable be conducted by a person of the sex which the intersex person shall prefer with strict to regard to decency and in such manner as to protect the dignity of the intersex person.

Amendment of section 36 of Cap. 75.

9. Section 36 of the principal Act is amended by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate court".

Repeal of section 43 of Cap. 75.

10. The principal Act is amended by repealing section 43.

11. The principal Act is amended by repealing section 44. Repeal of section 44 of Cap. 75.

12. The principal Act is amended by repealing section 45. Repeal of section 45 of Cap. 75.

13. The principal Act is amended by repealing section 46. Repeal of section 46 of Cap. 75.

14. The principal Act is amended by repealing section 47. Repeal of section 47 of Cap. 75.

15. The principal Act is amended by repealing section 48. Repeal of section 48 of Cap. 75.

16. The principal Act is amended by repealing section 49. Repeal of section 49 of Cap. 75.

17. The principal Act is amended by repealing section 50. Repeal of section 50 of Cap. 75.

18. The principal Act is amended by repealing section 51. Repeal of section 51 of Cap. 75.

19. The principal Act is amended by repealing section 52. Repeal of section 52 of Cap. 75.

20. The principal Act is amended by repealing section 53. Repeal of section 53 of Cap. 75.

21. The principal Act is amended by repealing section 54. Repeal of section 54 of Cap. 75.

22. The principal Act is amended by repealing section 55. Repeal of section 55 of Cap. 75.

23. The principal Act is amended by repealing section 56. Repeal of section 56 of Cap. 75.

24. The principal Act is amended by repealing section 57. Repeal of section 57 of Cap. 75.

25. The principal Act is amended by repealing section 58. Repeal of section 58 of Cap. 75.

26. The principal Act is amended by repealing section 59. Repeal of section 59 of Cap. 75.

27. The principal Act is amended by repealing section 60. Repeal of section 60 of Cap. 75.

28. The principal Act is amended by repealing section 61. Repeal of section 61 of Cap. 75.

Repeal of section 61A of Cap. 75.

29. The principal Act is amended by repealing section 61A.

Amendment of section 67 of Cap. 75.

30. Section 67 of the principal Act is amended by deleting the words "province or district" wherever they appear and substituting therefor the words "county or sub-county".

Amendment of section 68 of Cap. 75.

31. Section 68 of the principal Act is amended in subsection (1) by deleting the word "district" and substituting therefor the word "county".

Amendment of section 77 of Cap. 75.

32. Section 77 of the principal Act is amended in subsection (2) by deleting the words "sections 140, 141, 145, 166 and 167 of the Penal Code (Cap. 63)" and substituting therefore the words "Sexual Offences Act".

Repeal and replacement of section 79 of Cap. 75.

33. The principal Act is amended by deleting section 79 and substituting therefor the following new section—

Transfer of cases between magistrates.

79. A magistrate may transfer a case of which the magistrate has taken cognizance to any other magistrate with competent jurisdiction to try that case within the local limits of the magistrate's jurisdiction, whether evidence has been taken in that case or not.

Amendment of section 80 of Cap. 75.

34. Section 80 of the principal Act is amended by deleting the words "a magistrate holding a subordinate court of the first class" and substituting therefor the words "another magistrate's court with competent jurisdiction".

Amendment of section 82 of Cap. 75.

35. Section 82 of the principal Act is amended—

(a) in subsection (1) by deleting the words "may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Republic intends that the proceedings shall not continue" and substituting therefor the words "with the permission of the court may enter a *nolle prosequi*"; and

(b) in subsection (2), by inserting the words "with the permission of the court" immediately after the words "*nolle prosequi* is".

36. Section 87 of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court". Amendment of section 87 of Cap. 75.

37. The principal Act is amended by repealing section 89. Repeal of section 89 of Cap. 75.

38. The principal Act is amended by repealing section 90. Repeal of section 90 of Cap. 75.

39. Section 105 of the principal Act is amended in subsection (1) by deleting the words "empowered to hold a subordinate court of the first class" and substituting therefor the words "with competent jurisdiction". Amendment of section 105 of Cap. 75.

40. Section 120 of the principal Act is amended by inserting the following new subsection immediately after subsection (4) — Amendment of section 120 of Cap. 75.

"(5) If that person is an intersex person, the provisions of sections 27A shall apply."

41. Section 123 of the principal Act is amended in subsection (3), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court". Amendment of section 123 of Cap. 75.

42. Section 131 of the principal Act is amended in subsection (3), by deleting the word "movable". Amendment of section 131 of Cap. 75.

43. Section 137B of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court". Amendment of section 137B of Cap. 75.

44. Section 143 of the principal Act is amended in subsection (1) by deleting the words "subordinate court" and substituting therefor the words "magistrate's court". Amendment of section 143 of Cap. 75.

45. Section 149 of the principal Act is amended in subsection (4) by deleting the words "subordinate court" and substituting therefor the words "magistrate's court". Amendment of section 149 of Cap. 75.

46. Section 154 of the principal Act is amended in subsection (1) by deleting the words "magistrate empowered to hold a subordinate court of the first class" and substituting therefor the words "magistrate's court with competent jurisdiction". Amendment of section 154 of Cap. 75.

47. Section 156 of the principal Act is amended by deleting the words "other than a magistrate empowered to Amendment of section 156 of Cap. 75.

hold a subordinate court of the first class" and substituting therefor the words "with competent jurisdiction".

Amendment of section 157 of Cap. 75.

48. Section 157 of the principal Act is amended in subsection (1) by deleting the words "magistrate empowered to hold a subordinate court of the first class (as the case may be)" and substituting therefor the words "magistrate's court with competent jurisdiction as the case may be".

Repeal and replacement of section 162 of Cap. 75.

49. The principal Act is amended by repealing section 162 and substituting therefor the following new section—

Fitness to stand trial.

162. (1) This section shall apply where, in the course of criminal proceedings against an accused person, a question arises, at the instance of the defence, the prosecution, the court or any other person, as to whether or not the accused person is fit to be tried.

(2) An accused person shall be deemed to be unfit to be tried if such person is unable, by reason of mental illness, to understand the nature or course of the proceedings so as to—

(a) plead to the charge;

(b) instruct a legal representative;

(c) make a proper defence; or

(d) understand the evidence.

(3) Where an accused person is before court being tried or is to be tried, any question as to whether or not such person is fit to be tried shall be determined by the court.

(4) For the purposes of determining whether or not to exercise a power under subsection (3), the court—

(a) for that purpose, may commit an accused person to a mental health facility for a period of not more than fourteen days; and

(b) shall direct that the accused person concerned be examined by a qualified mental health practitioner in the mental health facility.

(5) Within the period of committal authorised by the court under subsection (4), the medical officer in charge of the mental health facility shall report to the court on whether, in his or her opinion, the accused person committed under subsection (4)(a), is a person with mental illness and is in need of inpatient care or outpatient care or treatment in a mental health facility.

(6) Where the court determines that an accused person is unfit to be tried that court shall adjourn the proceedings until further order, and may—

(a) if the court is satisfied, having considered the evidence of a medical officer adduced pursuant to subsection (5) and any other evidence before it, that the accused person is a person with mental illness and is in need of inpatient treatment in a mental health facility, commit the accused person to a specified mental health facility;

(b) if the court is satisfied, having considered the evidence of a medical officer adduced pursuant to subsection (5) and any other evidence before it, that the accused person is a person with mental illness and is in need of outpatient care or treatment in a mental health facility, make such order as the court may deem fit in relation to the accused person for outpatient care or treatment in a mental health facility:

Provided that the court may release the accused person on bail on sufficient security being given that the accused person will be properly taken care of and prevented from doing injury to themselves or any other person, and for securing attendance before court or such other officer as the court may appoint in that behalf; or

(c) where the court determines that the accused person is fit to be tried, the proceedings shall continue.

(7) Where, on the trial of an accused person, a question arises as to whether or not the person is fit to be tried and the court considers it is expedient and in the interests of the accused so to do, the court may defer consideration of the question until any time before opening the case for the defence and if, before the question falls to be determined, the court returns a verdict in favour of the accused person or finds the accused person not guilty, as the case may be, on the count or each of the counts on which the accused is being tried, the question shall not be determined and the person shall be acquitted.

(8) Upon a determination having been made by the court that an accused person is unfit to be tried, the court may, on application to it in that behalf, allow evidence to be adduced before it as to whether or not the accused person did the act alleged and if the court is satisfied that there is a reasonable doubt as to whether the accused did the act alleged, the court shall order the accused to be discharged.

(9) Where evidence is adduced before the court under subsection (8) but the court decides not to order the accused person to be

discharged, no person shall publish a report of the evidence or decision until such time, if any, as—

(a) the trial of the accused person concludes; or

(b) a decision is made not to proceed with the trial of the person or the trial is otherwise not proceeded with.

(10) A person who contravenes the provisions of subsection (9) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

Repeal and replacement of section 166 of Cap. 75.

50. The principal Act is amended by repealing section 166 and substituting therefor the following new section—

Special finding of not guilty.

166. (1) Where an accused person is tried for an offence and the court finds that the accused person committed the offence or made the omission alleged against him or her and, having heard evidence relating to the mental condition of the accused person, finds that—

(a) the accused person was a person with mental illness at the time; and

(b) the mental illness was such that the accused person ought not to be held responsible for the act or omission alleged by reason of the fact that the accused—

(i) did not know the nature or consequences of the act or omission;

(ii) did not know that what the accused person was doing was wrong; or

(iii)was unable to refrain from committing the act or omission,

the court shall return a special finding to the effect that the accused person is not guilty by reason of inability to understand the nature or consequences of his or her acts or omissions.

(2) The court shall commit a person to a specified mental health facility for a period of not more than fourteen days and direct that during such period the person be examined by the medical officer in charge of the mental health facility.

(3) The court may, on application, after consultation with the medical officer in charge of the mental health facility, extend the period of committal under subsection (2), but the period or the aggregate of the periods for which an accused person may be committed shall not exceed six months.

(4) Within the period of committal authorised by the court under subsection (2), the medical officer in charge of the mental health facility shall report to the court on whether, in his or her opinion, the accused person committed under subsection (2) has mental illness and is in need of inpatient care or treatment in a mental health facility.

(5) If the court, having considered any report submitted to it and such other evidence as may be adduced before it, is satisfied that an accused person found not guilty by reason of inability to understand the nature or consequences of his or her acts or omissions pursuant to subsection (1) has mental illness and is in need of inpatient care or treatment in a mental

health facility, the court shall commit that person to a specified mental health facility.

Repeal of section 167 of Cap. 75.

51. The principal Act is amended by repealing section 167.

Amendment of section 171 of Cap. 75.

52. Section 171 of the principal Act is amended—

(a) in subsection (1), by deleting the words "of a subordinate court of the first or second class"; and

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) A judge of the High Court or a magistrate who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit:

Provided that—

(i) the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a magistrate's court; and

(ii) no such order shall be made if the judge or magistrate considers that the private prosecutor had reasonable grounds for making his complaint.

Amendment of section 197 of Cap. 75.

53. Section 197 of the principal Act is amended subsection (1)(a) by inserting the word "or a computer" immediately after the word "typewriter".

Amendment of section 198 of Cap. 75.

54. Section 198 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

"(4) The language of all courts shall be Kiswahili, English and Kenya Sign Language."

Amendment of section 202 of Cap. 75.

55. Section 202 of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

56. Section 205 of the principal Act is amended by deleting subsection (3). Amendment of section 205 of Cap. 75.

57. Section 219 of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court". Amendment of section 219 of Cap. 75.

58. Section 221 of the principal Act is amended— Amendment of section 221 of Cap. 75.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

"(1) Where a person of not less than eighteen years of age is convicted by a magistrate's court of an offence which is punishable by either that court or another magistrate court with competent jurisdiction, and the court convicting him, after obtaining information as to his or her character and antecedents, is of the opinion that they are such that greater punishment should be inflicted than it has power to inflict, that court may, instead of dealing with him or her itself, commit him or her in custody to the other magistrate's court with competent jurisdiction for sentence."

(b) in subsection (2), by deleting the words "subordinate court of the first class" and substituting therefor the words "magistrate's court"; and

(c) in subsection (3), by deleting the words "subordinate court of the first class" and substituting therefor the words "magistrate's court".

59. Section 275(6)(b) of the principal Act is amended by deleting the words "(provided that the assessors, if any, have been discharged)". Amendment of section 275(6)(b) of Cap. 75.

60. Section 277 of the principal Act is amended— Amendment of section 277(c) of Cap. 75.

(a) in paragraph (c) by deleting the words "and the assessors"; and

(b) in the proviso by deleting the words "and assessors";

61. The principal Act is amended by repealing section 280 and substituting therefor the following new section— Repeal and replacement of section 280 of Cap. 75.

Refusal to plead.

280. If an accused person being arraigned upon an information stands mute of malice, or neither will nor by reason of infirmity can, answer directly to the information, the court may enter a plea of "not guilty" on behalf of the accused person, and plea so entered shall have the same force and effect as if the accused person had actually pleaded it; or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind, and, if he is found of sound mind, shall proceed with the trial, and if he is found of unsound mind, and consequently incapable of making his defence, shall proceed as provided under section 166.

62. Section 334 of the principal Act is amended in subsection (3) by deleting the words "magistrate holding court of the first or second class" and substituting therefor the words "magistrate's court with competent jurisdiction". Amendment of section 334 of Cap. 75.

63. Section 347 of the principal Act is amended in subsection (1)(a) by deleting the words "subordinate court of the first or second class" and substituting therefor the words "magistrate's court". Amendment of section 347 of Cap. 75.

64. Section 348 of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court". Amendment of section 348 of Cap. 75.

65. Section 348A of the principal Act is amended by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court". Amendment of section 348A of Cap. 75.

66. Section 350 of the principal Act is amended in subsection (2) by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court". Amendment of section 350 of Cap. 75.

67. Section 354 (3) of the principal Act is amended— Amendment of section 354 of Cap. 75.

(a) in paragraph (bb), by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court"; and

(b) in paragraph (c), by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court".

Amendment of section 356 of Cap. 75.

68. Section 356 of the principal Act is amended—

(a) in subsection (1), by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court"; and

(b) in subsection (2), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of section 357 of Cap. 75.

69. Section 357 of the principal Act is amended in subsection (1) by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court".

Amendment of section 358 of Cap. 75.

70. Section 358 of the principal Act is amended—

(a) in subsection (1), by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court";

(b) in subsection (2), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court"; and

(c) in subsection (4), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of section 359 of Cap. 75.

71. Section 359 of the principal Act is amended in subsection (1) by deleting the words "subordinate courts" and substituting therefor the words "magistrate's courts".

Amendment of section 360 of Cap. 75.

72. Section 360 of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

73. Section 361 of the principal Act is amended— Amendment of section 361 of Cap. 75.

(a) in subsection (1), by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court";

(b) in subsection (2), by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court";

(c) in subsection (3), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court"; and

(d) in subsection (4), by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court".

74. Section 362 of the principal Act is amended by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court". Amendment of section 362 of Cap. 75.

75. Section 363 of the principal Act is amended— Amendment of section 363 of Cap. 75.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) If a presiding magistrate or head of the court station acting under subsection (1) considers that a finding, sentence or order of the magistrate's court is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.

76. Section 364 of the principal Act is amended— Amendment of section 364 of Cap. 75.

(a) in subsection (1), by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate's court";

(b) in subsection (2), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court"; and

(c) in subsection (3), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of section 366 of Cap. 75.

77. Section 366 of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of section 385 of Cap. 75.

78. Section 385 of the principal Act is amended by deleting the words "magistrate empowered to hold a subordinate court of the first or second class" and substituting therefor the words "magistrate's court".

Amendment of section 386 of Cap. 75.

79. Section 386 of the principal Act is amended—

(a) in subsection (1), by deleting the word "Minister" and substituting therefor the words "Cabinet Secretary"; and

(b) in subsection (2), by deleting the word "Minister" wherever it appears and substituting therefor the words "Cabinet Secretary".

Insertion of new section 389B in Cap. 75.

80. The principal Act is amended by inserting the following new sections immediately after section 389A—

Disposal of forfeited goods.

Cap. 412C.

389B. Where, on the order of a court, goods and other forms of property are to be forfeited to the State, such goods and property shall be disposed of by the Chief Registrar in accordance with Part XIV of the Public Procurement and Asset Disposal Act.

Release of exhibits.

389C. Unless forfeited, all exhibits produced in court shall remain the property of their proprietors and shall, upon proof of such proprietorship, be released to them after judgment unless an appeal has been preferred in which case they shall be released after the determination of the appeal or where no appeal has been filed upon expiry of the time allowed for filing the appeal:

Provided that in appropriate cases, nothing shall prevent a court from ordering the release of such exhibits to their proprietors at any other stage of the trial.

Amendment of section 391 of Cap. 75.

81. Section 391 of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of section 394 of Cap. 75.

82. Section 394 of the principal Act is amended by deleting the word "Minister" and substituting therefor the words "Cabinet Secretary";

Insertion of new section in Cap. 75.

83. The principal Act is amended by inserting the following new section immediately after section 394—

Criminal Procedure Rules Committee.

395. (1) There is established a Criminal Procedure Rules Committee consisting of—

(a) the Chief Justice, or a judge of the Court of Appeal nominated by the Chief Justice, who shall be the chairperson;

(b) a judge of the High Court;

(c) two magistrates, one male and one female and one of whom shall be the Secretary to the Committee;

(d) the Attorney-General or a state counsel nominated by the Attorney-General;

(e) the Director of Public Prosecutions or a prosecution person nominated by the Director of Public Prosecutions;

(f) the Inspector-General of Police or a person nominated by the Inspector-General of Police;

(g) the Commissioner General of Prisons or a person nominated by the Commissioner General of Prisons;

(h) the Chief Executive Officer of the Ethics and Anti-Corruption

Commission or an officer of the Ethics and Anti-Corruption Commission nominated by the Chief Executive Officer;

(i) the Secretary, Probation and Aftercare Services or a person nominated by the Secretary;

(j) two advocates one male and one female, of not less than five years' standing nominated by the Law Society of Kenya; and

(k) two representatives of court users one male and one female, nominated by the Chief Justice.

(2) Subject to the powers of the Chief Justice under sections 178 (5), 201, 329F, 357 and 389, the powers of the Attorney-General under section 137O, and the powers of the Cabinet Secretary under sections 386 and 394, the Criminal Procedure Rules Committee shall have the power to make Rules not inconsistent with this Act and, subject thereto, to provide for any matters relating to the procedure of criminal courts.

(3) The Chief Justice may, in consultation with the Criminal Procedure Rules Committee, issue practice notes or directions to resolve procedural difficulties arising under this Act in order to facilitate the attainment of the objects of this Act.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Criminal Procedure Code to align it with the provisions of Article 27 of the Constitution on the right to equal treatment and freedom from discrimination; Article 28 of the Constitution on the right to dignity; Article 29 of the Constitution on the freedom and security of the person; Article 31 of the Constitution on the right to privacy; Article 39 of the Constitution on the right to property; Article 48 of the Constitution on the right of access to justice; Article 49 of the Constitution on the rights of arrested persons; Article 50 of the Constitution on the right to fair hearing, and Article 51 of the Constitution on the right of persons detained, held in custody or imprisoned.

The Bill further seeks to amend the Criminal Procedure Code to review the provisions relating to the transfer of cases between magistrates; to define the operational period for suspended sentences; to align the power of nolle prosequi, language of the courts and administrative units with constitutional provisions and to provide for the forfeiture of immovable property; and disposal of forfeited goods and release of exhibits. The Bill also provides special provisions for the trial and defense of persons with mental illness and aligns the Act with the Mental Health Act (Cap. 248). The Bill seeks to enhance procedural efficiency, professionalism, and accountability in the protection of the rights of arrested persons and further ensure the effective functioning of the criminal justice system in Kenya.

The Bill is informed by legislative reform proposals submitted to Parliament by the National Council on the Administration of Justice.

Clause 1 of the Bill is the short title.

Clause 2 of the Bill seeks to amend section 2 of the principal Act in the definition of "Registrar of the High Court" to align with the provisions of the High Court (Organization and Administration) Act,2015 that establishes the office of "Registrar of the High Court" and remove reference to "district Registrar of the High Court" that no longer exist under that Act.

The amendment also seeks to review the definition of "summary trial" by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The proposal further seeks to introduce new definitions of the words "person with mental illness" and intersex persons.

Clauses 3 and 4 of the Bill seek to amend sections 4 and 5 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 5 of the Bill seeks to amend section 7 of the principal Act by deleting any reference to "subordinate court of the first class" and "subordinate court of the second class" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The ranks of "subordinate court of the first class" and "subordinate court of the second class" do not exist under the Magistrates' Courts Act (Cap. 10).

Clause 6 of the Bill seeks to amend section 14 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Court Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 7 of the Bill proposes to amend section 15 of the principal Act to ensure that the term of the suspended sentence shall not exceed the term of the sentence provided for the offence. The amendment further proposes the deletion of the words "corporal punishment" as a mode of punishment. Article 29(e) of the Constitution provides for the right of a person not to be subjected to corporal punishment.

Clause 8 of the Bill seeks to introduce a new section 27A into the principal Act to provide for the mode of searching an intersex person which shall where reasonably practicable, be conducted by a person of the sex which the intersex person prefers with strict regard to decency of the intersex person. Further, the search is to be conducted in conformity with Article 28 of the Constitution that provides for the right to human dignity.

Clause 9 of the Bill seeks to amend section 36 of the principal Act to amend section 36 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clauses 10-29 of the Bill propose to repeal sections 43-61A of the principal Act that provide for procedure to be followed by the court in

matters relating to security for keeping the peace and good behaviour. The sections proposed for repeal provide for the pre-emptive arrest of a person without the commission of an offence and obligate such a person to execute a bond, based on a suspicion that he or she is likely to commit a crime, without the conduct of a trial to establish the person's guilt or innocence contrary to Articles 27, 28, 39, 49, and 50(2) of the Constitution.

Clause 30 of the Bill seeks to amend section 67 of the principal Act by deleting reference to "province or district" and substituting with the word "county or subcounty" to align the with the administrative units set out in Article 6(1) of the Constitution and section 48 of the County Governments Act, 2012 that provide for sub-counties as administrative units.

Clause 31 of the Bill proposes to amend section 68 of the principal Act by deleting reference to "district" and substituting with the word "county" to align the with the administrative units set out in Article 6(1) of the Constitution.

Clause 32 of the Bill proposes to amend section 77 of the principal Act to delete reference to sections 140,141,145, 166 and 167 of the Penal Code (Cap. 63) which were repealed by the Sexual Offences Act, 2006. Further, the proposed amendments seek to make reference to the Sexual Offences Act No. 3 of 2003 to provide that all proceedings in trials relating to the Sexual Offences Act No. 3 of 2006 shall be held in private. The amendments seek to provide for the right to privacy of victims of sexual offences in line with Article 31 of the Constitution.

Clause 33 of the Bill proposes to amend section 79 of the principal Act that relates to the transfer of cases between Magistrates. The amendment seeks to delete reference to "subordinate court" and "subordinate court of the second class" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of "subordinate court of the second class" does not exist under the Magistrates' Courts Act (Cap. 10).

Clause 34 of the Bill proposes to amend section 80 of the principal Act to delete reference to "a magistrate holding a subordinate court of the first class" and substituting with the words "another magistrate's court with competent jurisdiction" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the

Constitution. The rank of "subordinate court of the first class" does not exist under the Magistrates Courts Act (Cap. 10).

Clause 35 of the Bill proposes to amend section 80 of the principal Act to provide that a *nolle prosequi* shall not be entered proceed without the permission of the Court. Article 157(8) of the Constitution provides that the Director of Public Prosecutions may not discontinue a prosecution without the permission of the court.

Clause 36 of the Bill seeks to amend section 87 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clauses 37 and 38 of the Bill seeks to repeal sections 89 and 90 of the principal Act that provide for the manner of making complaints and drawing of charges and the subsequent issuance of summons and warrant of arrest. The provisions provide that an accused person can be directly be brought before a Magistrate, who can then draft a charge and take plea without the process of drafting a charge and making a decision to charge is adhered to contrary to Article 49 of the Constitution that safeguards the right of an accused person to be informed of the reason for the arrest and Article 50 of the Constitution on the right to fair hearing.

Clause 39 of the Bill seeks to amend section 105 of the principal Act to delete reference to "empowered to hold a subordinate court of the first class" and substituting with the words "with competent jurisdiction" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of "subordinate court of the first class" does not exist under the Magistrates' Courts Act (Cap. 10).

Clause 40 of the Bill seeks to amend section 120 of the principal Act to require a police officer or other person executing a search warrant to conduct any searches in relation to intersex persons in a manner that gives strict regard to decency and protects the right to dignity of intersex persons.

Clause 41 of the Bill seeks to amend section 123 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Court Act (Cap. 10) that provides for the definition of "magistrate's court"

to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 42 of the Bill seeks to amend section 131(3) of the principal Act to include the forfeiture of immovable property where title to the same has been deposited to court for bail and bond purposes.

Clause 43 of the Bill seeks to amend section 137 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 44 of the Bill seeks to amend section 143 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 45 of the Bill seeks to amend section 149 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 46 of the Bill seeks to amend section 154 of the principal Act to delete reference to "magistrate empowered to hold a subordinate court of the first class" and substituting with the words "magistrate's court with competent jurisdiction" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of "subordinate court of the first class" does not exist under the Magistrates' Courts Act (Cap. 10).

Clause 47 of the Bill seeks to amend section 156 of the principal Act to delete reference to "other than a magistrate empowered to hold a subordinate court of the first class" and substituting with the words "with competent jurisdiction" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of "subordinate court of the first class" does not exist under the Magistrates' Courts Act (Cap. 10).

Clause 48 of the Bill seeks to amend section 157 of the principal Act to delete reference to "magistrate empowered to hold a subordinate court of the first class" and substituting with the words "magistrate's court with competent jurisdiction" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of "subordinate court of the first class" does not exist under the Magistrates' Courts Act (Cap. 10).

Clauses 49 and 50 of the Bill seek to delete and substitute sections 162 and 167 of the principal Act to provide for the procedure to be followed while handling persons who are found to be unfit to stand to trial and establish timelines for their treatment and periodic review of such persons to enhance access to treatment and rehabilitation rather than imprisonment and punishment.

Clause 51 of the Bill seeks to repeal section 167 of the principal Act that provides for the detention of an accused person with mental illness person at the pleasure of the President for an indeterminate period contrary to Article 29 of the Constitution that provides for protects persons from cruel, inhuman, and degrading treatment.

Clause 52 of the Bill seeks to amend section 171 of the principal Act to delete reference to "subordinate court" or "subordinate court of the first class or second" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of "subordinate court of the first class or second class" does not exist under the Magistrates' Courts Act (Cap. 10).

Clause 53 of the Bill seeks to amend section 197 of the principal Act to enable the use of computers in the taking of evidence in trials.

Clause 54 of the Bill seeks to amend section 198 of the principal Act to provide the language of all courts to be Kiswahili, English and Kenya Sign Language to reflect the national and official languages as set out in Article 7 of the Constitution.

Clause 55 of the Bill seeks to amend section 202 of the principal Act seeks by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 56 of the Bill seeks to amend section 205 of the principal Act by deleting subsection (3) that makes provision for detention of persons in detention camps as mode of punishment. The Detention Camps Act was repealed by the Community Service Orders Act No. 10 of 1998.

Clause 58 of the Bill seeks to amend section 221 of the principal Act to delete reference to "subordinate court" or "subordinate court of the first class or second" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of "subordinate court of the first class or second class" does not exist under the Magistrates' Courts Act (Cap. 10).

Clauses 59 and 60 of the Bill seeks to amend sections 275 and 277 of the principal Act to delete reference to "assessors". The role of assessors in murder trials was abolished in the Statute Law (Miscellaneous Amendments) Act, 2007.

Clause 61 of the Bill seeks to amend section 280 of the principal Act to delete the provision for postponement of a trial an accused person with mental illness and their subsequent detention at pleasure of the President in a lunatic asylum prison or other suitable place for safe custody for an indeterminate period which is cruel, inhuman, and degrading treatment contrary to Article 29 of the Constitution.

Clauses 62-79 of the Bill seeks to amend sections 334, 347, 348 , 348A, 350, 354, 356, 357, 358, 359, 360, 361, 362, 363, 364, 366, 385 and 386 of the principal to delete reference to "subordinate court" or "subordinate court of the first class or second" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of "subordinate court of the first class or second class" does not exist under the Magistrates' Courts Act (Cap. 10).

Clause 80 of the Bill seeks to insert new section 389B and 389C in to the principal Act to provide for the disposal of forfeited goods to the state by the Chief Registrar of the Judiciary in accordance with the Public Procurement and Asset Disposal Act, 2015. The amendment further provides for the release of exhibits, to their rightful proprietors upon proof of such proprietorship after judgment or at any other stage of the trial where the Court deems appropriate in accordance with Article 40 that safeguards against the arbitrary deprivation of a person's property.

Clause 81 of the Bill proposes to amend section 391 of the principal Act seeks by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 82 of the Bill proposes to amend section 394 of the principal Act by deleting the reference to "Minister" and substituting with the words "Cabinet Secretary" in line with the Constitution.

Clause 83 of the Bill proposes to introduce new section 395 into the principal Act to provide to establish the Criminal Procedure Rules Committee that have power to make and review rules related to the procedure of criminal courts.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill does not concern county governments in terms of Article 110(1) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution. Criminal law and courts are functions of the national government as provided in paragraphs 7(b) and 8 of Part 1 of the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 25th February, 2026.

GEORGE GITONGA MURUGARA,
Chairperson, Departmental Committee on Justice and Legal Affairs.

Section 2 of Cap. 75 which it is proposed to amend—

2. Interpretation

In this Code, unless the context otherwise requires—

"**cognizable offence**" means an offence for which a police officer may, in accordance with the First Schedule or under any law for the time being in force, arrest without warrant;

"**complaint**" deleted by Act No. 7 of 2007, Sch.;

"**drug related offence**" means any specified in Part V of the Dangerous Drugs Act (Cap. 245) and includes the possession, manufacture, distribution or receipt of any drug of any quantity whatsoever;

"**non-cognizable offence**" means an offence for which a police officer may not arrest without warrant;

"**officer in charge of a police station**" includes any officer superior in rank to an officer in charge of a police station and also includes, when the officer in charge of the police station is absent from the station-house, or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to that officer, and is above the rank of constable, or, when the Inspector-General of the National Police Service so directs, any other police officer so present;

"**plea agreement**" means an agreement entered into between the prosecution and an accused person in a criminal trial in accordance with Part IV;

"**police officer**" means a police officer or an administration police officer;

"**police station**" means a place designated by the Inspector-General as a police station under section 40 of the National Police Service Act, 2011.

"**prosecutor**" means a public prosecutor or a person permitted by the court to conduct a prosecution under section 88 of the Act;

"**public prosecutor**" means the Director of Public Prosecutions, a state counsel, a person appointed under section 85 or a person acting under the direction of the Director of Public Prosecutions;

"**Registrar of the High Court**" includes a Deputy Registrar of the High Court and a district registrar of the High Court;

"**summary trial**" means a trial held by a subordinate court under Part VI.

Section 4 of Cap. 75 which it is proposed to amend—

4. Offences under Penal Code (Cap. 63)

Subject to this Code, an offence under the Penal Code (Cap. 63) may be tried by the High Court, or by a subordinate court by which the offence is shown in the fifth column of the First Schedule to this Code to be triable.

Section 5 of Cap. 75 which it is proposed to amend—

5. Offences under other laws

(1) An offence under any law other than the Penal Code (Cap. 63) shall, when a court is mentioned in that behalf in that law, be tried by that court.

(2) When no court is so mentioned, it may, subject to this Code, be tried by the High Court, or by a subordinate court by which the offence is shown in the fifth column of the First Schedule to this Code to be triable.

Section 7 of Cap. 75 which it is proposed to amend—

7. Sentences which subordinate courts may pass

(1) A subordinate court of the first class held by—

(a) a chief magistrate, senior principal magistrate, principal magistrate or senior resident magistrate may pass any sentence authorized by law for any offence triable by that court;

(b) a resident magistrate may pass any sentence authorized by law for an offence under section 278, 308(1) or 322 of the Penal Code or under the Sexual Offences Act, 2006.

(2) Subject to subsection (1), a subordinate court of the first class may pass the following sentences in cases where they are authorized by law—

(a) imprisonment for a term not exceeding seven years;

(b) a fine not exceeding twenty thousand shillings;

(c) repealed by Act No. 5 of 2003, s. 60.

(3) A subordinate court of the second class may pass the following sentences in cases where they are authorized by law—

(a) imprisonment for a term not exceeding two years;

(b) a fine not exceeding ten thousand shillings;

(c) repealed by Act No. 5 of 2003, s. 60.

(4) Deleted by Act No. 5 of 2003, s. 60.

(5) In determining the extent of a court's jurisdiction under this section to pass a sentence of imprisonment, the court shall have jurisdiction to pass the full sentence of imprisonment provided for in this section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

Section 14 of Cap. 75 which it is proposed to amend—

14. Sentences in cases of conviction of several offences at one trial

(1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.

(3) Except in cases to which section 7(1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences—

(a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or

(b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.

(4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Section 15 of Cap. 75 which it is proposed to amend—

15. Suspended Sentences

(1) Any court which passes a sentence of imprisonment for a term of not more than two years for any offence may order that the sentence shall not take effect unless during the period specified by the court (hereinafter called the "operational period") the offender commits another offence,

whether that offence is punishable by imprisonment, corporal punishment or by a fine.

(2) Where the offender is convicted of an offence during the operational period the sentence for the first offence in respect of which the offender was convicted under subsection (1) shall thereupon take effect.

(3) Where under subsection (2) the sentence passed for the first offence under subsection (1) takes effect the sentence passed for the subsequent offence shall run consecutively to the sentence passed for the first offence

Section 36 of Cap. 75 which it is proposed to amend—

36. Detention of persons arrested without warrant

When a person has been taken into custody without a warrant for an offence other than murder, treason, robbery with violence and attempted robbery with violence the officer in charge of the police station to which the person has been brought may in any case and shall, if it does not appear practicable to bring that person before an appropriate subordinate court within twenty-four hours after he has been so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with or without sureties, for a reasonable amount to appear before a subordinate court at a time and place to be named in the bond, but where a person is retained in custody he shall be brought before a subordinate court as soon as practicable:

Provided that an officer in charge of a police station may release a person arrested on suspicion on a charge of committing an offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.

Section 43 of Cap. 75 which it is proposed to amend—

43. Security for keeping the peace

(1) Whenever a magistrate empowered to hold a subordinate court of the first class is informed that a person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the magistrate shall examine the informant on oath and may as hereinafter provided require the person in respect of whom the information is laid to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of the magistrate's jurisdiction.

(3) When a magistrate not empowered to proceed under subsection (1) has reason to believe that a person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that a breach of the peace or disturbance cannot be prevented otherwise than by detaining the person in custody, the magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the court), and may send him before a magistrate empowered to deal with the case, with a copy of his reasons.

(4) A magistrate before whom a person is sent under this section may detain that person in custody until the completion of the inquiry hereinafter prescribed.

Section 44 of Cap. 75 which it is proposed to amend—

44. Security for good behaviour from persons disseminating seditious matter

Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that there is within the limits of his jurisdiction a person who, within or without those limits, either orally or in writing or in any other manner, disseminates, or attempts to disseminate, or has recently disseminated, or in any way abets the dissemination of—

(a) Repealed by Act No. 5 of 2003, s. 62;

(b) matter which is likely to be dangerous to peace and good order within Kenya or is likely to lead to the commission of an offence; or

(c) matter concerning a judge which amounts to libel under the Penal Code,

the magistrate may, in the manner provided in this Code, require that person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

Section 45 of Cap. 75 which it is proposed to amend—

45. Security for good behaviour from suspected persons

Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that a person is taking precautions to

conceal his presence within the local limits of the magistrate's jurisdiction, and that there is reason to believe that the person is taking those precautions with a view to committing an offence, the magistrate may, in the manner hereinafter provided, require that person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

Section 46 of Cap. 75 which it is proposed to amend—

46. Security for good behaviour from habitual offenders

Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that a person within the local limits of his jurisdiction—

(a) is by habit a robber, housebreaker or thief; or

(b) is by habit a receiver of stolen property, knowing it to have been stolen; or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or

(d) habitually commits or attempts to commit, or aids or abets in the commission of, an offence punishable under Chapter XXX, Chapter XXXIII or Chapter XXXVI of the Penal Code; or

(e) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or

(f) is so desperate and dangerous as to render his being at large without security hazardous to the community; or

(g) is a member of an unlawful society within the meaning of section 4(1) of the Societies Act (Cap. 108),

the magistrate may, in the manner hereinafter provided, require that person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the magistrate thinks fit, or why an order (hereinafter in this Part referred to as a restriction order) should not be made that he be taken to the district in which his home is situated and be restricted to that district during a period of three years:

Provided that where a magistrate is of the opinion that, having regard to all the circumstances of the case, it is desirable that the person be restricted to some other district he may specify that the person shall be so restricted.

Section 47 of Cap. 75 which it is proposed to amend—

47. Order to be made

When a magistrate acting under section 43, section 44, section 45 or section 46 deems it necessary to require a person to show cause, he shall make an order in writing setting out—

(a) the substance of the information received;

(b) in the case of a restriction order, the district to which the person concerned is to be restricted for a period of three years;

(c) in any other case—

(i) the amount of the bond to be executed;

(ii) the term for which it is to be in force; and

(iii) the number, character and class of securities, if any, required.

Section 48 of Cap. 75 which it is proposed to amend—

48. Procedure in case of person present in court

If the person in respect of whom an order under section 47 is made present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Section 49 of Cap. 75 which it is proposed to amend—

49. Summons or warrant in case of person not so present

If the person in respect of whom an order is made under section 47 is not present in court, the magistrate shall issue a summons requiring him to appear, or, when the person is in custody, a warrant directing the officer in whose custody he is to bring him before the court:

Provided that, whenever it appears to the magistrate upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the magistrate) that there is reason to fear the commission of a breach of the peace, and that a breach of the peace cannot be prevented otherwise than by the immediate arrest of the person, the magistrate may at any time issue a warrant for his arrest.

Section 50 of Cap. 75 which it is proposed to amend—

50. Copy of order under section 47 to accompany summons or warrant

Every summons or warrant issued under section 49 shall be accompanied by a copy of the order made under section 47, and the copy

shall be delivered by the officer serving or executing the summons or warrant to the person served with or arrested under it.

Section 51 of Cap. 75 which it is proposed to amend—

51. Power to dispense with personal attendance

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of a person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by an advocate.

Section 52 of Cap. 75 which it is proposed to amend—

52. Inquiry as to truth of information

(1) When an order under section 47 has been read or explained under section 48 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 49, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) The inquiry shall be made, as nearly as may be practicable, in the manner prescribed by this Code for conducting trials and recording evidence in trials before subordinate courts.

(3) For the purposes of this section, the fact that a person comes within the provisions of section 46 may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry they may be dealt with in the same or separate inquiries, as the magistrate thinks just.

Section 53 of Cap. 75 which it is proposed to amend—

53. Order to give security

(1) If upon an inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour that the person in respect of whom the inquiry is made should be made subject to a restriction order or should execute a bond, with or without sureties, the magistrate shall make an order accordingly:

Provided that—

(i) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 47;

(ii) the amount of a bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(iii) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

(2) A person in respect of whom an order is made under this section may appeal to the High Court, and the provisions of Part XI (relating to appeals) shall apply to the appeal.

Section 54 of Cap. 75 which it is proposed to amend—

54. Discharge of person informed against

If on an inquiry under section 52 it is not proved that it is necessary for keeping the peace or maintaining good behaviour that the person in respect of whom the inquiry is made should be subject to a restriction order or should execute a bond, the magistrate shall make an entry on the record to that effect, and, if the person is in custody only for the purposes of the inquiry, shall release him, or, if he is not in custody, shall discharge him.

Section 55 of Cap. 75 which it is proposed to amend—

55. Commencement of period for which security is required

(1) If a person in respect of whom an order is made under section 47 or section 53 is, at the time the order is made, sentenced to or undergoing a sentence of imprisonment, the period of such order shall commence on the expiration of the sentence.

(2) In other cases, the period shall commence on the date of the order unless the magistrate, for sufficient reason, fixes a later date.

Section 56 of Cap. 75 which it is proposed to amend—

56. Contents of bond

The bond to be executed by a person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission of an offence punishable with imprisonment, wherever it may be committed, shall be a breach of the bond.

Section 57 of Cap. 75 which it is proposed to amend—

57. Power to reject sureties

A magistrate may refuse to accept a surety offered under any of the preceding sections of this Part on the ground that, for reasons to be recorded by the magistrate, the surety is an unfit person.

Section 58 of Cap. 75 which it is proposed to amend—

58. Procedure on failure of person to give security

(1) If a person ordered to give security does not give security on or before the date on which the period for which security is to be given commences, he shall, except in the case mentioned in subsection (2), be committed to prison, or, if he is already in prison, be detained in prison until that period expires or until within that period he gives the security to the court or magistrate who made the order requiring it.

(2) When a person has been ordered by a magistrate to give security for a period exceeding one year, the magistrate shall, if the person does not give security, issue a warrant directing him to be detained in prison pending the orders of the High Court, and the proceedings shall be laid as soon as conveniently may be before that court.

(3) The High Court, after examining the proceedings and requiring from the magistrate any further information or evidence which it thinks necessary, may make such order in the case as it thinks fit.

(4) The period, if any, for which any person is imprisoned for failure to give security shall not exceed three years.

(5) If the security is tendered to the officer in charge of the prison, he shall forthwith refer the matter to the court or magistrate who made the order, and shall await the orders of the court or magistrate.

Section 59 of Cap. 75 which it is proposed to amend—

59. Power to release persons imprisoned for failure to give security

Whenever a magistrate empowered to hold a subordinate court of the first class is of the opinion that a person imprisoned for failing to give security may be released without hazard to the community, the magistrate shall make an immediate report of the case for the orders of the High Court, and that court may order the person to be discharged.

Section 60 of Cap. 75 which it is proposed to amend—

60. Power of High Court to cancel bond

The High Court may at any time, for sufficient reasons to be recorded in writing, cancel any order made under section 47 or section 53.

Section 61 of Cap. 75 which it is proposed to amend—

61. Discharge of surities

(1) A surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate empowered to hold a subordinate court of the first class to cancel a bond executed under any of

the preceding sections of this Part within the local limits of his jurisdiction.

(2) On the application being made, the magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom the surety is bound to appear or to be brought before him.

(3) When the person appears or is brought before the magistrate, the magistrate shall cancel the bond and shall order the person to give, for the unexpired portion of the term of the bond, fresh security of the same description as the original security.

(4) Every such order shall for the purposes of sections 56, 57, 58 and 59 be deemed to be an order made under section 53.

Section 61A of Cap. 75 which it is proposed to amend—

61A. Breach of restriction order

A person who, whilst subject to a restriction order, is found outside the district named in the order without the written permission of the chief officer of police of the district, or who fails to comply with any condition attached to that permission, shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months.

Section 67 of Cap. 75 which it is proposed to amend—

67. Accused person to be sent to district where offence committed

Where a person accused of having committed an offence within Kenya has escaped or removed from the province or district within which the offence was committed and is found within another province or district, the court within whose jurisdiction he is found shall cause him to be brought before it, and shall, unless authorized to proceed in the case, send him in custody to the court within whose jurisdiction the offence is alleged to have been committed or require him to give security for his surrender to that court there to answer the charge and to be dealt with according to law.

Section 68 of Cap. 75 which it is proposed to amend—

68. Removal of accused person under warrant

(1) Where a person is to be sent in custody in pursuance of section 67, a warrant shall be issued by the court within whose jurisdiction he is found, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named and to carry him and deliver him up to the court within whose district the offence was committed or may be tried.

(2) The person to whom the warrant is directed shall execute it according to its tenor without delay.

Section 77 of Cap. 75 which it is proposed to amend—

77. Court to be open

(1) Subject to subsection (2), the place in which a criminal court is held for the purpose of trying an offence shall be deemed an open court to which the public generally may have access, so far as it can conveniently contain them:

Provided that the presiding judge or magistrate may order at any stage of the trial of any particular case that the public generally or any particular person shall not have access to or remain in the room or building used by the court.

(2) Notwithstanding the provisions of subsection (1), the proceedings in the trial of any case under sections 140, 141, 145, 166 and 167 of the Penal Code (Cap. 63) shall be held in private and no person shall, in relation to such trial, publish or cause to be published by any means—

(a) any particulars calculated to lead to the identification of the victim; or

(b) any picture of the victim.

(3) A person who contravenes the provisions of subsection (2) commits an offence and is liable on conviction—

(a) in the case of an individual, to a fine not exceeding one hundred thousand shillings; and

(b) in the case of a body corporate, to a fine not exceeding five hundred thousand shillings

Section 79 of Cap. 75 which it is proposed to amend—

79. Transfer of cases between magistrates

A magistrate holding a subordinate court of the first class—

(a) may transfer a case of which he has taken cognizance to any magistrate holding a subordinate court empowered to try that case within the local limits of the first class subordinate courts' jurisdiction; and

(b) may direct or empower a magistrate holding a subordinate court of the second class who has taken cognizance of a case and whether evidence has been taken in that case or not, to transfer it for trial to himself or to any other specified magistrate within the

local limits of his jurisdiction who is competent to try the accused and that magistrate shall dispose of the case accordingly.

Section 80 of Cap. 75 which it is proposed to amend—

80. Transfer of part-heard cases

If in the course of any trial before a magistrate the evidence appears to warrant a presumption that the case is one which should be tried by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to a magistrate holding a subordinate court of the first class empowered to direct the transfer of the case under section 79.

Section 82 of Cap. 75 which it is proposed to amend—

82. Power of Director of Public Prosecutions to enter nolle prosequi

(1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a nolle prosequi, either by stating in court or by informing the court in writing that the Republic intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged; but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts.

(2) If the accused is not before the court when a nolle prosequi is entered, the registrar or clerk of the court shall forthwith cause notice in writing of the entry of the nolle prosequi to be given to the keeper of the prison in which the accused may be detained.

Section 87 of Cap. 75 which it is proposed to amend—

87. Withdrawal from prosecution in trials before subordinate courts

In a trial before a subordinate court a public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions**, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon withdrawal—

(a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(b) if it is made after the accused person is called upon to make his defence, he shall be acquitted.

Section 89 of Cap. 75 which it is proposed to amend—

89. Complaint and charge

(1) Proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without warrant.

**Powers delegated to the Solicitor-General; Deputy Public Prosecutor; Assistant Deputy Public Prosecutor; Principal State Counsel; Provincial State Counsel, Central and Eastern Provinces; Provincial State Counsel, Coast Province; Provincial State Counsel, Nyanza Province; Provincial State Counsel, Rift Valley Province; and Provincial State Counsel, Western Province. (L.N. 106/1984.)

(2) A person who believes from a reasonable and probable cause that an offence has been committed by another person may make a complaint thereof to a magistrate having jurisdiction.

(3) A complaint may be made orally or in writing, but, if made orally, shall be reduced to writing by the magistrate, and, in either case, shall be signed by the complainant and the magistrate.

(4) The magistrate, upon receiving a complaint, or where an accused person who has been arrested without a warrant is brought before him, shall, subject to the provisions of subsection (5), draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged, unless the charge is signed and presented by a police officer.

(5) Where the magistrate is of the opinion that a complaint or formal charge made or presented under this section does not disclose an offence, the magistrate shall make an order refusing to admit the complaint or formal charge and shall record his reasons for the order.

(6) Repealed by Act No. 10 of 1983, Sch.

Section 90 of Cap. 75 which it is proposed to amend—

90. Issue of summons or warrant

(1) Upon receiving a complaint and having signed the charge in accordance with section 89, the magistrate may issue either a summons or a warrant to compel the attendance of the accused person before a subordinate court having jurisdiction to try the offence alleged to have been committed:

Provided that a warrant shall not be issued in the first instance unless the complaint has been made upon oath either by the complainant or by a witness or witnesses.

(2) The validity of proceedings taken in pursuance of a complaint or charge shall not be affected either by a defect in the complaint or charge or by the fact that a summons or warrant was issued without a complaint or charge.

(3) A summons or warrant may be issued on a Sunday.

Section 105 of Cap. 75 which it is proposed to amend—

105. Warrants may be directed to landholders, etc.

(1) A magistrate empowered to hold a subordinate court of the first class may direct a warrant to a landholder, farmer or manager of land within the local limits of his jurisdiction for the arrest of an escaped convict or person who has been accused of a cognizable offence and has eluded pursuit.

(2) The landholder, farmer or manager shall acknowledge in writing the receipt of the warrant and shall execute it if the person for whose arrest it was issued is in or enters on his land or farm or the land under his charge.

(3) When the person against whom the warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a magistrate having jurisdiction, unless security is taken under section 103.

Section 120 of Cap. 75 which it is proposed to amend—

120. Persons in charge of closed place to allow ingress and egress

(1) Whenever a building or other place liable to search is closed, a person residing in or being in charge of the building or place shall, on demand of the police officer or other person executing the search warrant and on production of the warrant, allow him free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

(2) If ingress into or egress from the building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 22 or section 23.

(3) Where a person in or about the building or place is reasonably suspected of concealing about his person an article for which search should be made, that person may be searched.

(4) If that person is a woman the provisions of section 27 shall be observed.

Section 123 of Cap. 75 which it is proposed to amend—

123. Bail in certain cases

(1) When a person, other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail:

Provided that the officer or court may, instead of taking bail from the person, release him on his executing a bond without sureties for his appearance as provided hereafter in this Part.

(2) The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive.

(3) The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.

Section 131 of Cap. 75 which it is proposed to amend—

131. Forfeiture of recognizance

(1) Whenever it is proved to the satisfaction of a court by which a recognizance under this Code has been taken, or, when the recognizance is for appearance before a court, to the satisfaction of that court, that the recognizance has been forfeited, the court shall record the grounds of proof, and may call upon any person bound by the recognizance to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover it by issuing a warrant for the attachment and sale of the movable property belonging to that person, or his estate if he is dead.

(3) A warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorize the attachment and sale of the movable property belonging to the person without those limits, when endorsed by a magistrate within the local limits of whose jurisdiction the property is found.

(4) If the penalty is not paid and cannot be recovered by attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment for a term not exceeding six months.

(5) The court may remit a portion of the penalty mentioned and enforce payment in part only.

(6) When a person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of his recognizance, a certified copy of the judgment of the court by which he was convicted may be used as evidence in proceedings under this section against his surety or sureties, and, if the certified copy is so used, the court shall presume that the offence was committed by him unless the contrary is proved.

Section 137B of Cap. 75 which it is proposed to amend—

137B. Plea agreement on behalf of the Republic

A plea agreement on behalf of the Republic shall be entered into by the Director of Public Prosecutions or officers authorized by the Director of Public Prosecutions in accordance with article 157(9) of the Constitution and any other person authorized by any written law to prosecute:

Provided that in any trial before a subordinate court, a public prosecutor may with the prior written approval of the Director of Public Prosecutions or officers subordinate to him, as the case may be, enter into a plea agreement in accordance with section 137A (1).

Section 143 of Cap. 75 which it is proposed to amend—

143. Leave of Director of Public Prosecutions necessary before prosecution instituted

(1) Proceedings for the trial of a person who is not a Kenya citizen for an offence committed within exclusive economic zone and the territorial waters shall not be instituted in any court except with the leave of the Director of Public Prosecutions and upon his certificate that it is expedient that proceedings should be instituted:

Provided that—

(i) proceedings before a subordinate court previous to the committal of an accused person for trial or to the determination of the court that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by the offender for the purposes of the consent and certificate;

(ii) it shall not be necessary to aver in a charge or information that the consent or certificate of the Director of Public Prosecutions required by this section has been given, and the fact of their having been given shall be presumed unless disputed by the accused person at the trial; and the production of a document purporting to be signed by the Director of Public Prosecutions and containing the consent and certificate shall be sufficient evidence for all the purposes of this section of that consent and certificate;

(iii) this section shall not prejudice or affect the trial of an act of piracy as defined by the Law of Nations.

(2) In this section, "offence" means an act, neglect or default of such a description as would, if committed in England, be punishable on indictment according to the law of England for the time being in force.

Section 149 of Cap. 75 which it is proposed to amend—

149. Penalty for non-attendance of witness

(1) A person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or who fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine not exceeding five thousand shillings.

(2) The fine shall be levied by attachment and sale of movable property belonging to the witness within the local limits of the jurisdiction of the court.

(3) In default of recovery of the fine by attachment and sale the witness may, by order of the court, be imprisoned as a civil prisoner for a term of fifteen days unless the fine is paid before the end of term.

(4) For good cause shown, the High Court may remit or reduce a fine imposed under this section by a subordinate court.

Section 154 of Cap. 75 which it is proposed to amend—

154. Issue of commission for examination of witness

(1) Whenever, in the course of a proceeding under this Code, the High Court or a magistrate empowered to hold a subordinate court of the first class is satisfied that the examination of a witness is necessary for the ends of justice, and that the attendance of the witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the court or magistrate

may issue a commission to any magistrate within the local limits of whose jurisdiction the witness resides, to take the evidence of the witness.

(2) The magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the case of a trial.

Section 156 of Cap. 75 which it is proposed to amend—

156. Power of magistrate to apply for issue of commission

Whenever, in the course of a proceeding under this Code before a magistrate other than a magistrate empowered to hold a subordinate court of the first class, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of the witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the magistrate shall apply to the High Court, stating the reasons for the application; and the High Court may either issue a commission in the manner provided in section 154 or reject the application.

Section 157 of Cap. 75 which it is proposed to amend—

157. Return of commission

(1) After a commission issued under section 154 or section 156 has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the High Court or to the magistrate empowered to hold a subordinate court of the first class (as the case may be), and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) A deposition so taken, if it satisfies the conditions prescribed by section 34 of the Evidence Act (Cap. 80) may also be received in evidence at a subsequent stage of the case before another court.

Section 162 of Cap. 75 which it is proposed to amend—

162. Inquiry by court as to soundness of mind of accused

(1)***When in the course of a trial or committal proceedings the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of unsoundness.

(2) If the court is of the opinion that the accused is of unsound mind and consequently incapable of making his defence, it shall postpone further proceedings in the case.

*** Powers delegated to the Minister and to the Permanent Secretary of the Ministry for the time being responsible for prisons, by L.N. 579/1963.

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court or such officer as the court may appoint in that behalf.

(4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall order that the accused be detained in safe custody in such place and manner as it may think fit, and shall transmit the court record or a certified copy thereof to the Minister for consideration by the President.

(5) Upon consideration of the record the President may by order under his hand addressed to the court direct that the accused be detained in a mental hospital or other suitable place of custody, and the court shall issue a warrant in accordance with that order; and the warrant shall be sufficient authority for the detention of the accused until the President makes a further order in the matter or until the court which found him incapable of making his defence orders him to be brought before it again in the manner provided by sections 163 and 164.

Section 166 of Cap. 75 which it is proposed to amend—

166. Defence of lunacy adduced at trial

(1) Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.

(2) When a special finding is so made, the court shall report the case for the order of the President, and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct.

(3) The President may order the person to be detained in a mental hospital, prison or other suitable place of safe custody.

(4) The officer in charge of a mental hospital, prison or other place in which a person is detained by an order of the President under subsection (3) shall make a report in writing to the Minister for the consideration of the President in respect of the condition, history and circumstances of the person so detained, at the expiration of a period of three years from the date of the President's order and thereafter at the expiration of each period of two years from the date of the last report.

(5) On consideration of the report, the President may order that the person so detained be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.

(6) Notwithstanding the subsections (4) and (5), a person or persons thereunto empowered by the President may, at any time after a person has been detained by order of the President under subsection (3), make a special report to the Minister for transmission to the President, on the condition, history and circumstances of the person so detained, and the President, on consideration of the report, may order that the person be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.

(7) The President may at any time order that a person detained by order of the President under subsection (3) be transferred from a mental hospital to a prison or from a mental hospital, or from any place in which he is detained or remains under supervision to either a prison or a mental hospital.

Section 167 of Cap. 75 which it is proposed to amend—

167. Procedure when accused does not understand

(1) *If the accused, though not insane, cannot be made to understand the proceedings—

(a) in cases tried by a subordinate court, the court shall proceed to hear the evidence, and, if at the close of the evidence for the prosecution, and, if the defence has been called upon, of any evidence for the defence, the court is of the opinion that the

evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused, but if the court is of the opinion that the evidence which it has heard would justify a conviction it shall order the accused to be detained during the President's pleasure; but every such order shall be subject to confirmation by the High Court;

(b) in cases tried by the High Court, the Court shall try the case and at the close thereof shall either acquit the accused person or, if satisfied that the evidence would justify a conviction, shall order that the accused person be detained during the President's pleasure.

(2) A person ordered to be detained during the President's pleasure shall be liable to be detained in such place and under such conditions as the President may from time to time by order direct, and whilst so detained shall be deemed to be in lawful custody.

(3) The President may at any time of his own motion, or after receiving a report from any person or persons thereunto empowered by him, order that a person detained as provided in subsection (2) be discharged or otherwise dealt with, subject to such conditions as to the person remaining under supervision in any place or by any person, and such other conditions for ensuring the welfare of the detained person and the public, as the President thinks fit.

(4) When a person has been ordered to be detained during the Presidents pleasure under paragraph (a) or paragraph (b) of subsection (1), the confirming or presiding judge shall forward to the Minister a copy of the notes of evidence taken at the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

Section 171 of Cap. 75 which it is proposed to amend—

171. Power to order costs against accused or private prosecutor

(1) A judge of the High Court or a magistrate of a subordinate court of the first or second class may order a person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as the judge or magistrate may deem fit, in addition to any other penalty imposed.

(2) A judge of the High Court or a magistrate of a subordinate court of the first or second class who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted on a summons or warrant issued by a court on the application of a private

prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit:

Provided that—

(i) the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a subordinate court; and

(ii) no such order shall be made if the judge or magistrate considers that the private prosecutor had reasonable grounds for making his complaint.

Section 197 of Cap. 75 which it is proposed to amend—

197. Manner of recording evidence before magistrate

(1) In trials by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner—

(a) the evidence of each witness shall be taken down in writing or on a typewriter in the language of the court by the magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record;

(b) such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative:

Provided that the magistrate may take down or cause to be taken down any particular question and answer.

(2) Notwithstanding the provisions of subsection (1), a record of any proceedings at a trial by or before a magistrate may be taken in shorthand if the magistrate so directs; and a transcript of the shorthand shall be made if the magistrate so orders, and the transcript shall form part of the record.

(3) If a witness asks that his evidence be read over to him the magistrate shall cause that evidence to be read over to him in a language which he understands.

Section 198 of Cap. 75 which it is proposed to amend—

198. Interpretation of evidence to accused or his advocate

(1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language which he understands.

(2) If he appears by advocate and the evidence is given in a language other than English and not understood by the advocate, it shall be interpreted to the advocate in English.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to interpret as much thereof as appears necessary.

(4) The language of the High Court shall be English, and the language of a subordinate court shall be English or Swahili.

Section 202 of Cap. 75 which it is proposed to amend—

202. Non-appearance of complainant at hearing

If, in a case which a subordinate court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, the court shall thereupon acquit the accused, unless for some reason it thinks it proper to adjourn the hearing of the case until some other date, upon such terms as it thinks fit, in which event it may, pending the adjourned hearing, either admit the accused to bail or remand him to prison, or take security for his appearance as the court thinks fit.

Section 205 of Cap. 75 which it is proposed to amend—

205. Adjournment

(1) The court may, before or during the hearing of a case, adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may allow the accused person to go at large, or may commit him to prison, or may release him upon his entering into a recognizance with or without sureties conditioned for his appearance at the time and place to which the hearing or further hearing is adjourned:

Provided that no such adjournment shall be for more than thirty clear days, or, if the accused person has been committed to prison, for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day.

(2) Notwithstanding subsection (1), the court may commit the accused persons to police custody—

(a) for not more than three clear days if there is no prison within five miles of the court-house; or

(b) for not more than seven clear days if there is no prison within five miles of the court-house and the court is not due to sit again at that court-house within three days; or

(c) at the request of the accused person, for not more than fifteen clear days.

(3) For the purposes of this section, in relation to any case where the maximum sentence for the offence with which the accused person is charged is punishable only by fine, or by imprisonment not exceeding twelve months with or without a fine "prison" shall be deemed to include a detention camp established in accordance with the Detention Camps Act (Cap. 91).

Section 219 of Cap. 75 which it is proposed to amend—

219. Limitation of time for summary trials in certain cases

Except where a longer time is specially allowed by law, no offence the maximum punishment for which does not exceed imprisonment for six months, or a fine of one thousand shillings, or both, shall be triable by a subordinate court, unless the charge or complaint relating to it is laid within twelve months from the time when the matter of the charge or complaint arose.

Section 221 of Cap. 75 which it is proposed to amend—

221. Committal to higher court for sentence

(1) Where a person of not less than eighteen years of age is convicted by a subordinate court of the second class of an offence which is punishable by either that court or a subordinate court of the first class, and the court convicting him, after obtaining information as to his character and antecedents, is of the opinion that they are such that greater punishment should be inflicted than it has power to inflict, that court may, instead of dealing with him itself, commit him in custody to the Resident Magistrate's Court for sentence.

(2) Where a person who is not less than eighteen years of age is convicted by a subordinate court of the first class of an offence which is punishable by either that court or the High Court, and the court convicting him, after obtaining information as to his character and antecedents, is of the opinion that they are such that greater punishment should be inflicted than it has power to inflict, that court may, instead of dealing with him itself, commit him in custody to the High Court for sentence.

(3) Where the offender is committed under subsection (1) or subsection (2) for sentence, the court to which he is committed shall inquire into the circumstances of the case, and may deal with the offender in any manner in which he could be dealt with if he had been convicted by that court; and, if that court passes a sentence which the court convicting him had not the power to pass, the offender may appeal against the sentence to the High Court (if sentenced by a subordinate court of the first class), or to the Court of Appeal (if sentenced by the High Court), but otherwise he shall have the same right of appeal in all respects as if he had been sentenced by the court which convicted him.

Section 275 of Cap. 75 which it is proposed to amend—

275. Orders for amendment of information, separate trial, and postponement of trial

(1) Every objection to an information for a formal defect on the face thereof shall be taken immediately after the information has been read over to the accused person and not later.

(2) Where, before a trial upon information or at any stage of the trial, it appears to the court that the information is defective, the court shall make an order for the amendment of the information as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice; and any amendments shall be made upon such terms as to the court shall seem just.

(3) Where an information is so amended, a note of the order for amendment shall be endorsed on the information, and the information shall be treated for the purposes of all proceedings in connexion therewith as having been filed in the amended form.

(4) Where, before a trial upon information or at any stage of the trial, the court is of the opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information, or that for any other reason it is desirable to direct that the accused should be tried separately for any one or more offences charged in an information, the court may order a separate trial of any count or counts of the information.

(5) Where, before a trial upon information or at any stage of the trial, the court is of the opinion that the postponement of the trial of the accused is expedient as a consequence of the exercise of any power of the court under this Code, the court shall make such order as to the postponement of the trial as appears necessary.

(6) Where an order of the court is made under this section for a separate trial or for postponement of a trial—

(a) Repealed by Act No. 7 of 2007, Sch.;

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure on the postponed trial shall be the same in all respects (provided that the assessors, if any, have been discharged) as if the trial had not commenced; and

(c) the court may make such order as to admitting the accused to bail, and as to the enlargement of recognizances and otherwise, as the court thinks fit.

(7) A power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

Section 277 of Cap. 75 which it is proposed to amend—

277. Procedure in case of previous convictions

Where an information contains a count charging an accused person with having been previously convicted for an offence, the procedure shall be as follows—

(a) the part of the information stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he has been previously convicted as alleged in the information, unless and until he has either pleaded guilty to or been convicted of the subsequent offence;

(b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the information;

(c) if he answers that he has been so previously convicted, the judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to or does not answer the question, the court and the assessors shall then hear evidence concerning the previous conviction:

Provided that, if upon the trial of a person for a subsequent offence that person gives evidence of his own good character, the advocate for the prosecution, in answer thereto, may give evidence of the conviction of that person for the previous offence or offences before a verdict of guilty is returned, and the court and assessors shall inquire concerning the previous

conviction or convictions at the same time that they inquire concerning the subsequent offence.

Section 280 of Cap. 75 which it is proposed to amend—

280. Refusal to plead

(1) If an accused person being arraigned upon an information stands mute of malice, or neither will nor by reason of infirmity can, answer directly to the information, the court may order the Registrar or other officer of the court to enter a plea of "not guilty" on behalf of the accused person, and plea so entered shall have the same force and effect as if the accused person had actually pleaded it; or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind, and, if he is found of sound mind, shall proceed with the trial, and if he is found of unsound mind, and consequently incapable of making his defence, shall order the trial to be postponed and the accused person to be kept meanwhile in safe custody in such place and manner as the court thinks fit, and shall report the case for the order of the President.

(2) The President may order the accused person to be confined in a lunatic asylum, prison or other suitable place for safe custody.

Section 334 of Cap. 75 which it is proposed to amend—

334. Warrant for levy of fine, etc.

(1) When a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the movable and immovable property of the person ordered to pay it by distress and sale under warrant; but if he shows sufficient movable property to satisfy the order his immovable property shall not be sold.

(2) The person may pay or tender to the officer having the execution of the warrant the sum therein mentioned together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute it.

(3) A warrant under this section may be executed within the local limits of the jurisdiction of the court issuing it, and it shall authorize the distress and sale of property belonging to the person without those limits when endorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction the property was found.

Section 347 of Cap. 75 which it is proposed to amend—

347. Appeal to High Court

(1) Save as is in this Part provided—

(a) a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court; and

(b) Repealed by Act No. 5 of 2003, s. 93.

(2) An appeal to the High Court may be on a matter of fact as well as on a matter of law.

Section 348 of Cap. 75 which it is proposed to amend—

348. No appeal on plea of guilty, nor in petty cases

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

Section 348A of Cap. 75 which it is proposed to amend—

348A. Right of appeal against acquittal, order of refusal or order of dismissal

(1) When an accused person has been acquitted on a trial held by a subordinate court or High Court, or where an order refusing to admit a complaint or formal charge, or an order dismissing a charge, has been made by a subordinate court or High Court, the Director of Public Prosecutions may appeal to the High Court or the Court of Appeal as the case may be, from the acquittal or order on a matter of fact and law.

(2) If the appeal under subsection (1) is successful, the High Court or Court of Appeal as the case may be, may substitute the acquittal with a conviction and may sentence the accused person appropriately.

Section 350 of Cap. 75 which it is proposed to amend—

350. Petition of appeal

(1) An appeal shall be made in the form of a petition in writing presented by the appellant or his advocate, and every petition shall (unless the High Court otherwise directs) be accompanied by a copy of the judgment or order appealed against.

(2) A petition of appeal shall be signed, if the appellant is not represented by an advocate, by the appellant, and, if the appellant is represented by an advocate, by the advocate, and shall contain particulars of the matters of law or fact in regard to which the subordinate court appealed from is alleged to have erred, and shall specify an address at which notices or documents connected with the appeal may be served on the appellant or, as the case may be, on his advocate; and the appellant shall not be permitted, at the hearing of the appeal, to rely on a ground of appeal other than those set out in the petition of appeal:

Provided that—

(i) subject to the provisions of paragraph (ii), where, within five days of the date of the judgment or order appealed against, the appellant or his advocate has applied to the subordinate court which passed the judgment or made the order for a copy of the record of the proceedings before that court, and where the appeal is entered within the period of limitation prescribed by section 349 but before receipt by the appellant or his advocate of the copy of the record, the petition of appeal may be amended on notice in writing to the Registrar of the High Court and to the Director of Public Prosecutions and without leave of the High Court, within seven days of the receipt by the appellant or his advocate of the copy of the record applied for;

(ii) the provisions of paragraph (i) shall not apply where the petition of appeal is signed by an advocate who represented the appellant in the proceedings before the subordinate court appealed from;

(iii) where a copy of the record of the proceedings before the subordinate court appealed from is applied for by the appellant or his advocate, the date of the receipt thereof by the appellant or his advocate shall be certified to the High Court by the subordinate court, and shall for the purposes of this subsection be deemed to be—

(a) if the copy of the record is delivered otherwise than by post, the date of delivery; and

(b) if the copy of the record is delivered by post, the date on which it is shown, on an advice of the delivery of a registered postal article issued under regulation 37(3) of the East African Postal Regulations, or any provision of law amending or replacing that regulation, to have been delivered,

and no such copy of a record shall be delivered by post otherwise than by registered post;

(iv) save as provided in paragraph (i), a petition of appeal may only be amended with the leave of the High Court and on such terms and conditions, whether as to costs or otherwise, as the High Court may see fit to impose;

(v) notice in writing of an application for leave to amend a petition of appeal shall be given to the Registrar of the High Court and to the Attorney-General not less than three clear days, or such

shorter period as the High Court may in any particular case allow, before the application is made; and an application for leave to amend a petition of appeal shall be made either at the hearing of the appeal or, if made previously, by way of motion in open court.

Section 354 of Cap. 75 which it is proposed to amend—

354. Powers of High Court

(1) At the hearing of the appeal the appellant or his advocate may address the court in support of the particulars set out in the petition of appeal and the respondent or his advocate may then address the court.

(2) The court may invite the appellant or his advocate to reply upon any matters of law or fact raised by the respondent or his advocate in his address.

(3) The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may—

(a) in an appeal from a conviction—

(i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction; or

(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence; or

(iii) with or without a reduction or increase and with or without altering the finding, alter the nature of the sentence;

(b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;

(bb) in an appeal from an acquittal, an appeal from an order refusing to admit a complaint or formal charge or an appeal from an order dismissing a charge, hear and determine the matter of law and thereupon reverse, affirm or vary the determination of the subordinate court, or remit the matter with the opinion of the High court thereon to the subordinate court for determination, whether by way of rehearing or otherwise, with such directions as the High Court may think necessary, and make such other order in relation to the matter, including an order as to costs, as High Court may think fit;

(c) in an appeal from an acquittal, an appeal from an order refusing to admit a complaint or formal charge or an appeal from an order dismissing a charge, hear and determine the matter of law and thereupon reverse, affirm or vary the determination of the subordinate court, or remit the matter with the opinion of the High Court thereon to the subordinate court for determination, whether by way of re-hearing or otherwise, with such directions as the High Court may think necessary, and make such other order in relation to the matter, including an order as to costs, as the High Court may think fit;

(d) in an appeal from any other order, alter or reverse the order,

and in any case may make any amendment or any consequential or incidental order that may appear just and proper.

(4) Subject to subsection (5), an appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, at the hearing of the appeal:

Provided that where the appeal is on some ground involving a question of law alone, he shall not be entitled to be present except with the leave of the High Court.

(5) The right of an appellant who is in custody to be present at the hearing of the appeal shall be subject to his paying all expenses incidental to his transfer to and from the place where the court sits for the determination of the appeal:

Provided that the court may direct that the appellant be brought before the court in a case where in the opinion of the court his presence is advisable for the due determination of the appeal, in which case the expenses shall be defrayed out of moneys provided by Parliament.

(6) Nothing in subsection (1) shall empower the High Court to impose a greater sentence than might have been imposed by the court which tried the case.

(7) Deleted by Act No. 10 of 1969, Sch.

Section 356 of Cap. 75 which it is proposed to amend—

356. Bail and stay of execution pending the entering of an appeal

(1) The High Court, or the subordinate court which has convicted or sentenced a person, may grant bail or may stay execution on a sentence or order pending the entering of an appeal, on such terms as to security for the payment of money or the performance or non-performance of any act

or the suffering of any punishment ordered by or in the sentence or order as may seem reasonable to the High Court or the subordinate court.

(2) If the person in whose favour bail or a stay of execution is granted under this section is ultimately liable to a sentence of imprisonment, the time during which the person has been released on bail, or during which the execution was stayed, shall be excluded in computing the term of his sentence, unless the High Court, or failing that court the subordinate court which convicted and sentenced the person, otherwise orders.

Section 358 of Cap. 75 which it is proposed to amend—

358. Power to take further evidence

(1) In dealing with an appeal from a subordinate court, the High Court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) When the additional evidence is taken by a subordinate court, that court shall certify the evidence to the High Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the High Court otherwise directs, the accused or his advocate shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

Section 359 of Cap. 75 which it is proposed to amend—

359. Number of judges on an appeal

(1) Appeals from subordinate courts shall be heard by one judge of the High Court, except when in any particular case the Chief Justice, or a judge to whom the Chief Justice has given authority in writing, directs that the appeal be heard by one judge of the High Court.

(2) If on the hearing of an appeal the court is equally divided in opinion the appeal shall be reheard before three judges.

Section 360 of Cap. 75 which it is proposed to amend—

360. Abatement of appeals

Every appeal from a subordinate court (except an appeal from a sentence of a fine) shall finally abate on the death of the appellant.

Section 361 of Cap. 75 which it is proposed to amend—

361. Second appeals

(1) A party to an appeal from a subordinate court may, subject to subsection (8), appeal against a decision of the High Court in its appellate

jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section—

(a) on a matter of fact, and severity of sentence is a matter of fact; or

(b) against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence.

(2) On any such appeal, the Court of Appeal may, if it thinks that the judgment of the subordinate court or of the first appellate court should be set aside or varied on the ground of a wrong decision on a question of law, make any order which the subordinate court or the first appellate court could have made, or may remit the case, together with its judgment or order thereon, to the first appellate court or to the subordinate court for determination, whether or not by way of rehearing, with such directions as the Court of Appeal may think necessary.

(3) If it appears to the Court of Appeal that a party to an appeal, though not properly convicted on some count, has been properly convicted on some other count, the court may, in respect of the count on which it considers that the appellant has been properly convicted, either affirm the sentence passed by the subordinate court or by the first appellate court or pass such other sentence (whether more or less severe) in substitution therefor as it thinks proper.

(4) Where a party to an appeal has been convicted of an offence and the subordinate court or the first appellate court could lawfully have found him guilty of some other offence, and on the finding of the subordinate court or of the first appellate court it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the subordinate court or by the first appellate court a conviction of guilty of that other offence, and pass such sentence in substitution for the sentence passed by the subordinate court or by the first appellate court as may be warranted in law for that other offence.

(5) On any appeal brought under this section, the Court of Appeal may, notwithstanding that it may be of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has in fact occurred.

(6) Where an appeal under this section is pending, a judge of the High Court may grant bail to a convicted person who is a party to the appeal.

(7) For the purposes of this section, an order made by the High Court in the exercise of its revisionary jurisdiction or a decision of the High Court on a case stated shall be deemed to be a decision of the High Court in its appellate jurisdiction.

(8) This section shall not apply to—

(a) a decision of the High Court in its appellate Jurisdiction exercised under section 347(1)(b); or

(b) a refusal by the High Court to admit an appeal out of time under section 349,

and any such decision or refusal shall be final.

Section 362 of Cap. 75 which it is proposed to amend—

362. Power of High Court to call for records

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

Section 363 of Cap. 75 which it is proposed to amend—

363. Subordinate court may call for records of inferior court

(1) A subordinate court of the first class may call for and examine the record of any criminal proceedings of a subordinate court of a lower class than it and established within its local limits of jurisdiction, for the purpose of satisfying itself as to the legality, correctness or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings.

(2) If a subordinate court acting under subsection (1) considers that a finding, sentence or order of the court of lower class is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.

Section 364 of Cap. 75 which it is proposed to amend—

364. Powers of High Court on revision

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(c) in proceedings under section 203 or 296(2) of the Panel Code, the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the Proceeds of Crime and Anti-Money Laundering Act, the Sexual Offences Act and the Counter-Trafficking in Persons Act, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

Section 366 of Cap. 75 which it is proposed to amend—

366. Number of judges in revision

All proceedings before the High Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge:

Provided that when the court is composed of more than one judge and the court is equally divided in opinion, the sentence or order of the subordinate court shall be upheld.

Section 385 of Cap. 75 which it is proposed to amend—

385. Magistrates empowered to hold inquests

A magistrate empowered to hold a subordinate court of the first, or second class, and a magistrate specially empowered in that behalf by the Chief Justice, shall be empowered to hold inquests.

Section 386 of Cap. 75 which it is proposed to amend—

386. Police to inquire and report on suicide, etc.

(1) The officer in charge of a police station, or any other officer specially empowered by the Minister in that behalf, on receiving information that a person—

(a) has committed suicide;

(b) has been killed by another or by an accident;

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence; or

(d) is missing and believed to be dead;

shall immediately give information thereof to the nearest magistrate empowered to hold inquests, and, unless otherwise directed by any rule made by the Minister, shall proceed to the place where the body of the deceased person is, and shall there make an investigation and draw up a report on the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), the marks appear to have been inflicted; and the report shall in the case of paragraph (a), (b) or (c); be forwarded forthwith to the nearest magistrate empowered to hold inquests; and in the case of paragraph (d) shall immediately send to the Director of Public Prosecutions through the Inspector-General of the National Police Service as full a report as possible together with details of all supporting evidence relating to the circumstances surrounding the disappearance and the grounds upon which the death of that person is presumed to have taken place.

(2) When, except in the case of a missing person believed to be dead there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient to do so, he shall, subject to any rule made by the Minister, forward the body, with a view to its being examined, to the nearest medical officer or other person appointed

by the Minister in that behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render the examination useless.

(3) When the body of a person is found or a person has committed suicide or has been killed by another or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, a person finding the body or becoming aware of the death shall immediately give information thereof to the nearest administrative officer or police officer.

Section 391 of Cap. 75 which it is proposed to amend—

391. Shorthand notes of proceedings

Shorthand notes may be taken of the proceedings at the trial of a person before the High Court or a subordinate court, and a transcript of those notes shall be made if the court so directs, and the transcript shall for all purposes be deemed to be the official record of the proceedings at the trial.

Section 394 of Cap. 75 which it is proposed to amend—

394. Expenses of assessors, witnesses, etc.

Subject to any rules which may be made by the Minister, any court may order payment on the part of the Government of the reasonable expenses of a complainant or witness attending before the court for the purposes of an inquiry, trial or other proceeding under this Code.