

capacity either to appreciate its criminality [wrongfulness] or to conform his conduct to the requirements of law.

(5) Definitions. In this Section unless a different meaning plainly is required:

(a) "intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;

(b) "self-induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime.

(c) "pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible.

## 2.09. Duress

(1) It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

(2) The defense provided by this Section is unavailable if the actor recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

(3) It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under this Section. [The presumption that a woman, acting in the presence of her husband, is coerced is abolished.]

(4) When the conduct of the actor would otherwise be justifiable under Section 3.02, this Section does not preclude such defense.

## 2.10. Military Orders

It is an affirmative defense that the actor, in engaging in the conduct charged to constitute an offense, does no more than execute an order of his superior in the armed services which he does not know to be unlawful.

## 2.11. Consent

(1) In General. The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(2) Consent to Bodily Harm. When conduct is charged to constitute an offense because it causes or threatens bodily harm consent to such conduct or to the infliction of such harm is a defense if:

(a) the bodily harm consented to or threatened by the conduct consented to is not serious;  
or

(b) the conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

(c) the consent establishes a justification for the conduct under Article 3 of the Code.

(3) Ineffective Consent. Unless otherwise provided by the Code or by the law defining the offense, assent does not consent if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(b) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) it is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(d) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

## 2.12. De Minimis Infractions

The Court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

(1) was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense; or

(2) did not actually cause or threaten the harm or evil sought to be prevented by the law

defining the offense or did so only to an extent too trivial to warrant the condemnation or conviction; or

(3) presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

The Court shall not dismiss a prosecution under Subsection (3) of this Section without filing a written statement of its reasons.

## 2.13. Entrapment

(1) A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting such offense by either:

(a) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(b) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

(2) Except as provided in Subsection (3) of this Section, a person prosecuted for an offense shall be acquitted if he proves by preponderance of evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried by the Court in the absence of the jury.

(3) The defense afforded by this Section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

## ARTICLE 3

### General Principles of Justification

#### 3.01. Justification an Affirmative Defense; Civil Remedies Unaffected

(1) In any prosecution based on conduct which is justifiable under this Article, justification is an affirmative defense.

(2) The fact that conduct is justifiable under this Article does not abolish or impair any

remedy for such conduct which is available in any civil action.

### 3.02. Justification Generally: Choice of Evils

(1) Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

(a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and

(b) neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this Section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case maybe, suffices to establish culpability.

### 3.03. Execution of Public Duty

(1) Except as provided in Subsection (2) of this Section, conduct is justifiable when it is required or authorized by:

(a) the law defining the duties or functions of a public officer or the assistance to be rendered to such officer in the performance of his duties; or

(b) the law governing the execution of legal process; or

(c) the judgment or order of a competent court or tribunal; or

(d) the law governing the armed services or the lawful conduct of war; or

(e) any other provision of law imposing a public duty.

(2) The other sections of this Article apply to:

(a) the use of force upon or toward the person of another for any of the purposes dealt with in such sections; and

(b) the use of deadly force for any purpose, unless the use of such force is otherwise

expressly authorized by law or occurs in the lawful conduct of war.

(3) The justification afforded by Subsection (1) of this Section applies:

(a) when the actor believes his conduct to be required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and

(b) when the actor believes his conduct to be required or authorized to assist a public officer in the performance of his duties, notwithstanding that the officer exceeded his legal authority.

### 3.04. Use of Force in Self-Protection

(1) Use of Force Justifiable for Protection of the Person. Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

(2) Limitations on Justifying Necessity for Use of Force.

(a) The use of force is not justifiable under this Section:

(i) to resist an arrest which the actor knows is being made by a peace officer, although the arrest is unlawful; or

(ii) to resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(1) the actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest; or

(2) the actor has been unlawfully dispossessed of the property and is making a re-entry or recaption justified by Section 3.06; or

(3) the actor believes that such force is necessary to protect himself against death or serious bodily harm.

(b) The use of deadly force is not justifiable under this Section unless the actor believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or sexual intercourse compelled by force or threat; nor is it justifiable if:

(i) the actor, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter; or

(ii) the actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take, except that:

(1) the actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be; and

(2) a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.

(c) Except as required by paragraphs (a) and (b) of this Subsection, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do or abstaining from any lawful action.

(3) Use of Confinement as Protective Force. The justification afforded by this Section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

### 3.05. Use of Force for the Protection of Other Persons

(1) Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward the person of another is justifiable to protect a third person when:

(a) the actor would be justified under Section 3.04 in using such force to protect himself against the injure he believes to be threatened to the person whom he seeks to protect; and

(b) under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and

(c) the actor believes that his intervention is necessary for the protection of such other person.

(2) Notwithstanding Subsection (1) of this Section:

(a) when the actor would be obliged under Section 3.04 to retreat, to surrender the possession of a thing or to comply with a demand before using force in self-protection, he is not obliged to do so before using force for the protection of another person, unless he knows that he

can thereby secure the complete safety of such other person; and

(b) when the person whom the actor seeks to protect would be obliged under Section 3.04 to retreat, to surrender the possession of a thing or to comply with a demand if he knew that he could obtain complete safety by so doing, the actor is obliged to try to cause him to do so before using force in his protection if the actor knows that he can obtain complete safety in that way; and

(c) neither the actor nor the person whom he seeks to protect is obliged to retreat when the other's dwelling or place of work to any greater extent than in his own.

### 3.06 Use of Force for the Protection of Property

(1) Use of Force Justifiable for Protection of Property. Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

(a) to prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property, provided that such land or movable property is, or is believed by the actor to be, in his possession or in the possession of another person for whose protection he acts; or

(b) to effect an entry or re-entry upon land or to retake tangible movable property, provided that the actor believes that he or the person by whose authority he acts or a person from whom he or such other person derives title was unlawfully dispossessed of such land or movable property and is entitled to possession, and provided, further, that:

(i) the force is used immediately or on fresh pursuit after such dispossession; or

(ii) the actor believes that the person against whom he uses force has no claim of right to the possession of the property and, in the case of land, the circumstances, as the actor believes them to be, are of such urgency that it would be an exceptional hardship to postpone the entry or re-entry until a court order is obtained.

(2) Meaning of Possession. For the purposes of Subsection (1) of this Section:

(a) a person who has parted with the custody of property to another who refuses to restore it to him is no longer in possession, unless the property is movable and was and still is located on land in his possession;

(b) a person who has been dispossessed of land does not regain possession thereof merely by setting foot thereon;

(c) a person who has a license to use or occupy real property is deemed to be in possession thereof except against the licensor acting under claim of right.

(3) Limitations on Justifiable Use of Force.

(a) Request to Desist. The use of force is justifiable under this Section only if the actor first requests the person against whom such forces is used to desist from his interference with the property, unless the actor believes that:

(i) such request would be useless; or

(ii) it would be dangerous to himself or another person to make the request; or

(iii) substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.

(b) Exclusion of Trespasser. The use of force to prevent or terminate a trespass is not justifiable under this Section if the actor knows that the exclusion of the trespasser will expose him to substantial danger of serious bodily harm.

(c) Resistance of Lawful Re-entry or Recaption. The use of force to prevent an entry or re-entry upon land or the recaption of movable property is not justifiable under this Section, although the actor believes that such re-entry or recaption is unlawful, if:

(i) the re-entry or recaption is made by or on behalf of a person who was actually dispossessed of the property; and

(ii) it is otherwise justifiable under paragraph (1)(b) of this Section.

(d) Use of Deadly Force. The use of deadly force is not justifiable under this Section unless the actor believes that:

(i) the person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or

(ii) the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either:

(1) has employed or threatened deadly force against or in the presence of the actor; or

(2) the use of force other than deadly force to prevent the commission or the consummation of the crime would expose the actor or another in his presence to substantial danger of serious bodily harm.

(4) Use of Confinement as Protective Force. The justification afforded by this Section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he can do so with safety to the property, unless the person confined has been arrested on a charge of crime.



(5) Use of Device to Protect Property. The justification afforded by this Section extends to the use of a device for the purpose of protecting property only if:

(a) the device is not designed to cause or known to create a substantial risk of causing death or serious bodily harm; and

(b) the use of the particular device to protect the property from entry or trespass is reasonable under the circumstances, as the actor believes them to be; and

(c) the device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.

(6) Use of Force to Pass Wrongful Obstructor. The use of force to pass a person whom the actor believes to be purposely or knowingly and unjustifiably obstructing the actor from going to a place to which he may be unlawfully go is justifiable, provided that:

(a) the actor believes that the person against whom he uses force has no claim of right to obstruct the actor; and

(b) the actor is not being obstructed from entry or movement on land which he knows to be in the possession or custody of the person obstructing him, or in the possession or custody of another person by whose authority the obstructor acts, unless the circumstances, as the actor believes them to be, are of such urgency that it would not be reasonable to postpone the entry or movement on such land until a court order is obtained; and

(c) the force used is not greater than would be justifiable if the person obstructing the actor were using force against him to prevent his passage.

### 3.07. Use of Force in Law Enforcement

(1) Use of Force Justifiable to Effect an Arrest. Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(2) Limitations on the Use of Force.

(a) The use of force is not justifiable under this Section unless:

(i) the actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(ii) when the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

(b) The use of deadly force is not justifiable under this Section unless:

(i) the arrest is for a felony; and

(ii) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer; and

(iii) the actor believes that the force employed creates no substantial risk of injury to innocent persons; and

(iv) the actor believes that:

(1) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or

(2) there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.

(3) Use of Force to Prevent Escape from Custody. The use of force to prevent the escape of an arrested person from the custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

(4) Use of Force by Private Person Assisting an Unlawful Arrest.

(a) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful.

(b) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that (i) he believes the arrest is lawful, and (ii) the arrest would be lawful if the facts were as he believes them to be.

(5) Use of Force to Prevent Suicide or the Commission of a Crime.

(a) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:

(i) any limitations imposed by the other provisions of this Article on the justifiable use of

force in self-protection for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

(ii) the use of deadly force is not in any event justifiable under this Subsection unless:

(1) the actor believes that there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or

(2) the actor believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.

(b) The justification afforded by this Subsection extends to the use of confinement as preventive force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

### 3.08. Use of Force by Persons with Special Responsibility for Care, Discipline or Safety of Others

The use of force upon or toward the person of another is justifiable if:

(1) the actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian or other responsible person and:

(a) the force is used for the purpose of safeguarding or promoting the welfare of the minor, including the promotion or punishment of his misconduct; and

(b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme pain or mental distress or gross degradation; or

(2) the actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and:

(a) the actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and

(b) the degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under Subsection (1)(b) of this Section; or

(3) the actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person; and

(a) the force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his misconduct, or, when such incompetent person is in a hospital or other institution for his care and custody, for the maintenance of reasonable discipline in such institution; and

(b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme or unnecessary pain, mental distress, or humiliation; or

(4) the actor is a doctor or other therapist or a person assisting him at his direction, and:

(a) the force is used for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and

(b) the treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent or guardian or other person legally competent to consent in his behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent; or

(5) the actor is a warden or other authorized official of a correctional institution, and:

(a) he believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution, unless his belief in the lawfulness of the rule or procedure sought to be enforced is erroneous and his error is due to ignorance or mistake as to the provisions of the Code, any other provision of the criminal law or the law governing the administration of the institution; and

(b) the nature or degree of force used is not forbidden by Article 303 or 304 of the Code; and

(c) if deadly force is used, its use is otherwise justifiable under this Article; or

(6) the actor is a person responsible for the safety of a vessel or an aircraft or a person acting at his direction, and

(a) he believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order, unless his belief in the lawfulness of the order is erroneous and his error is due to ignorance or mistake as to the law defining his authority; and

(b) if deadly force is used, its use is otherwise justifiable under this Article; or

(7) the actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train or other carrier or in a place where others are assembled, and:

(a) he believes that the force used is necessary for such purpose; and

(b) the force used is not designed to cause or known to create a substantial risk of causing death, bodily harm, or extreme mental distress.

### 3.09. Mistake of Law as to Unlawfulness of Force or Legality of Arrest; Reckless or Negligent Use of Otherwise Justifiable Force; Reckless or Negligent Injury or Risk of Injury to Innocent Persons

(1) The justification afforded by Sections 3.04 to 3.07, inclusive, is unavailable when:

(a) the actor's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

(b) his error is due to ignorance or mistake as to the provisions of the Code, any other provision of the criminal law or the law governing the legality of an arrest or search.

(2) When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under Sections 3.03 to 3.08 but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of his use of force, the justification afforded by those Sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(3) When the actor is justified under Sections 3.03 to 3.08 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those Sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

### 3.10. Justification in Property Crimes

Conduct involving the appropriation, seizure or destruction of, damage to, intrusion on or interference with property is justifiable under circumstances which would establish a defense of privilege in a civil action based thereon, unless:

(1) the Code or the law defining the offense deals with the specific situation involved; or

(2) a legislative purpose to exclude the justification claimed otherwise plainly appears.

### 3.11. Definitions

In this Article, unless a different meaning plainly is required:

(1) "unlawful force" means force, including confinement, which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence, or mental capacity; duress; youth; or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this Section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm.

(2) "deadly force" means force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force;

(3) "dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging.

## ARTICLE 4

### RESPONSIBILITY

#### 4.01. Mental Disease or Defect Excluding Responsibility

(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.

(2) As used in this Article, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

#### 4.02. Evidence of Mental Disease or Defect Admissible When Relevant to Element of the Offense; [Mental Disease or Defect Impairing Capacity as Ground for Mitigation of Punishment in Capital Cases]

(1) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.

(2) Whenever the jury or the Court is authorized to determine or to recommend whether or not the defendant shall be sentenced to death or imprisonment upon conviction, evidence that the capacity of the defendant to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect is admissible in favor of sentence of imprisonment.]

#### 4.03. Mental Disease or Defect Excluding Responsibility Is Affirmative Defense; Requirement of Notice; Form of Verdict and Judgment When Finding of Irresponsibility Is Made

(1) Mental disease or defect excluding responsibility is an affirmative defense.

(2) Evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of not guilty or within ten days thereafter or at such later time as the Court may for good cause permit, files a written notice of his purpose to rely on such defense.

(3) When the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

#### 4.04. Mental Disease or Defect Excluding Fitness to Proceed

No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures.

#### 4.05. Psychiatric Examination of Defendant with Respect to Mental Disease or Defect

(1) Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the Court shall appoint at least one qualified psychiatrist or shall request the

Superintendent of the \_\_\_\_\_ Hospital to designate at least one qualified psychiatrist, which

designation may be or include himself, to examine and report upon the mental condition of the defendant. The Court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding sixty days or such longer period as the Court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(2) In such examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(3) The report of the examination shall include the following: (a) a description of the nature of the examination; (b) a diagnosis of the mental condition of the defendant; (c) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense; (d) when a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged; and (e) when directed by the Court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

If the examination can not be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect.

The report of the examination shall be filed [in triplicate] with the clerk of the Court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

#### 4.06. Determination of Fitness to Proceed; Effect of Finding of Unfitness; Proceedings if Fitness is Regained [; Post-Commitment Hearing]

(1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the Court. If neither the prosecuting attorney nor counsel or the defendant contests the finding of the report filed pursuant to Section 4.05, the Court may make the determination on the basis of such report. If the finding is contested, the Court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the Court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in Subsection (3) [Subsections (3) and (4)] of this Section, and the Court shall commit him to the custody of the commissioner of Mental Hygiene [Public Health or Correction] to be placed in an appropriate institution of the Department of Mental Hygiene [Public Health or Correction] for so long as such unfitness shall endure. When the Court, on its own motion or upon the application of the Commissioner of Mental Hygiene [Public Health or Correction] or the prosecuting attorney, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the



proceeding shall be resumed. If, however, the Court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the Court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant to be committed to an appropriate institution of the Department of Mental Hygiene [Public Health].

(3) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

[Alternative: (3) At any time within ninety days after commitment as provided in Subsection (2) of this Section, or at any later time with permission of the Court granted for good cause, the defendant or his counsel or the Commissioner of Mental Hygiene [Public Health or Correction] may apply for a special post-commitment hearing. If the application is made by or on behalf of a defendant not represented by counsel, he shall be afforded a reasonable opportunity to obtain counsel, and if he lacks funds to do so, counsel shall be assigned by the Court. The application shall be granted only if the counsel for the defendant satisfies the Court by affidavit or otherwise that as an attorney he has reasonable grounds for a good faith belief that his client has, on the facts and the law, a defense to the charge other than mental disease or defect excluding responsibility.]

[(4) If the motion for a special post-commitment hearing is granted, the hearing shall be by the Court without a jury. No evidence shall be offered at the hearing by either party on the issue of mental disease or defect as a defense to, or in mitigation of, the crime charged. After hearing, the Court may in an appropriate case quash the indictment or other charge, or find it to be defective or insufficient, or determine that it is not proved beyond a reasonable doubt by the evidence, or otherwise terminate the proceedings on the evidence or the law. In any such case, unless all defects in the proceedings are promptly cured, the Court shall terminate the commitment ordered under Subsection (2) of this Section and order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant to be committed to an appropriate institution of the Department of Mental Hygiene [Public Health].]