

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>最高人民法院关于适用《中华人民共和国刑事诉讼法》的解释</p>	<p><b>Interpretation of the Supreme People’s Court concerning the Implementation of the Criminal Procedure Law of People’s Republic of China</b></p>
<p>最高人民法院公告</p>	<p><b>Announcement of the Supreme People’s Court</b></p>
<p>《最高人民法院关于适用〈中华人民共和国刑事诉讼法〉的解释》已于 2012 年 11 月 5 日由最高人民法院审判委员会第 1559 次会议通过，现予公布，自 2013 年 1 月 1 日起施行。</p> <p style="text-align: right;">最高人民法院</p> <p style="text-align: right;">2012 年 12 月 20 日</p>	<p>The Interpretation of the Supreme People’s Court concerning the Implementation of the Criminal Procedure Law of People’s Republic of China, as adopted at the 1,559th session of the Judicial Committee of the Supreme People’s Court on November 5th, 2012, is hereby issued and shall come into force on January 1, 2013.</p> <p style="text-align: right;">The Supreme People’s Court December 20<sup>th</sup>, 2012</p>
<p>最高人民法院关于适用《中华人民共和国刑事诉讼法》的解释 (法释〔2012〕21 号)</p>	<p>Interpretation of the Supreme People’s Court concerning the Implementation of the Criminal Procedure Law of People’s Republic of China (Interpretation No. 21 [2012] of the Supreme People’s Court)</p>
<p style="text-align: center;">目 录</p> <p>第一章 管 辖</p> <p>第二章 回 避</p> <p>第三章 辩护与代理</p> <p>第四章 证 据</p>	<p style="text-align: center;">Table of Contents</p> <p><b>Chapter 1 Jurisdiction</b></p> <p><b>Chapter 2 Recusal</b></p> <p><b>Chapter 3 Defense and Representation</b></p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaalaw@nyu.edu](mailto:usasiaalaw@nyu.edu).

<p>第一节 一般规定</p> <p>第二节 物证、书证的审查与认定</p> <p>第三节 证人证言、被害人陈述的审查与认定</p> <p>第四节 被告人供述和辩解的审查与认定</p> <p>第五节 鉴定意见的审查与认定</p> <p>第六节 勘验、检查、辨认、侦查实验等笔录的审查与认定</p> <p>第七节 视听资料、电子数据的审查与认定</p> <p>第八节 非法证据排除</p> <p>第九节 证据的综合审查与运用</p>	<p><b>Chapter 4 Evidence</b></p> <p>Section One General Provisions</p> <p>Section Two Examination and Determination of Physical and Documentary Evidence</p> <p>Section Three Examination and Determination of Witness Testimony and Victim Statements</p> <p>Section Four Examination and Determination of Defendant Confessions and Explanations</p> <p>Section Five Examination and Determination of Forensic Analyst Opinions</p> <p>Section Six Examination and Determination of Crime Scene Investigation, Inspection, Identification, Investigative testing, and Other Reports</p> <p>Section Seven Examination and Determination of Audio-Visual Materials and Electronic Data</p> <p>Section Eight Exclusion of Illegally Obtained Evidence</p> <p>Section Nine Comprehensive examination and application of evidence</p>
<p><b>第五章 强制措施</b></p>	<p><b>Chapter 5 Compulsory Measures</b></p>
<p><b>第六章 附带民事诉讼</b></p>	<p><b>Chapter 6 Collateral Civil Actions</b></p>
<p><b>第七章 期间、送达、审理期限</b></p>	<p><b>Chapter 7 Time Periods, Service of Process and Maximum Time Allowed for</b></p>
<p><b>第八章 审判组织</b></p>	

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usiasialaw@nyu.edu](mailto:usiasialaw@nyu.edu).

<p><b>第九章 公诉案件第一审普通程序</b></p> <p>第一节 审查受理与庭前准备</p> <p>第二节 宣布开庭与法庭调查</p> <p>第三节 法庭辩论与最后陈述</p> <p>第四节 评议案件与宣告判决</p> <p>第五节 法庭纪律与其他规定</p> <p><b>第十章 自诉案件第一审程序</b></p> <p><b>第十一章 单位犯罪案件的审理</b></p> <p><b>第十二章 简易程序</b></p> <p><b>第十三章 第二审程序</b></p> <p><b>第十四章 在法定刑以下判处刑罚和特殊假释的核准</b></p> <p><b>第十五章 死刑复核程序</b></p> <p><b>第十六章 查封、扣押、冻结财物及其处理</b></p>	<p><b>Trial</b></p> <p><b>Chapter 8 Adjudicative Decision-making Bodies</b></p> <p><b>Chapter 9 Trial Procedure - First Instance Public Prosecution</b></p> <p>Section One Case Acceptance and Pretrial Preparation</p> <p>Section Two Announcement of the Court Hearing and Court Investigation</p> <p>Section Three Court Debate and Conclusive Statement</p> <p>Section Four Deliberation and Announcement of Judgment</p> <p>Section Five Discipline and Other Rules</p> <p><b>Chapter 10 Trial Procedure in Private Prosecution Cases</b></p> <p><b>Chapter 11 Trial of Cases involving Unit Crimes</b></p> <p><b>Chapter 12 Simplified Procedure</b></p> <p><b>Chapter 13 Procedures for Second Instance</b></p> <p><b>Chapter 14 Procedure for Approval of Below-Statutory-Minimum Sentences and Parole under Special Circumstances</b></p>
--	--

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第十七章 审判监督程序</b></p> <p><b>第十八章 涉外刑事案件的审理和司法协助</b></p> <p><b>第十九章 执行程序</b></p> <p>    第一节 死刑的执行</p> <p>    第二节 死刑缓期执行、无期徒刑、有期徒刑、拘役的交付执行</p> <p>    第三节 管制、缓刑、剥夺政治权利的交付执行</p> <p>    第四节 财产刑和附带民事裁判的执行</p> <p>    第五节 减刑、假释案件的审理</p> <p>    第六节 缓刑、假释的撤销</p> <p><b>第二十章 未成年人刑事案件诉讼程序</b></p> <p>    第一节 一般规定</p> <p>    第二节 开庭准备</p>	<p><b>Chapter 15 Death Penalty Review Procedure</b></p> <p><b>Chapter 16 Sealing, Seizing and Freezing of Property and Its Processing</b></p> <p><b>Chapter 17 Adjudication Supervision Procedure</b></p> <p><b>Chapter 18 Adjudication and Judicial Assistance in Criminal Cases Involving Foreign Jurisdictional Issues</b></p> <p><b>Chapter 19 Procedures for the Imposition of Sentences</b></p> <p>    Section One Implementation of the Death Penalty</p> <p>    Section Two Surrender for Service of Sentences to the Death Penalty with Reprieve, Life Imprisonment, Fixed-Term Imprisonment and Short-Term Imprisonment</p> <p>    Section Three Surrender for Service of Sentences to Controlled Release, Suspended Sentence, and Deprivation of Political Rights</p> <p>    Section Four Enforcement of Property-related Penalties and Collateral Civil Judgments</p> <p>    Section Five Adjudication of Sentence Reduction and Release on Parole</p> <p>    Section Six Revocation of Release on Probation or Parole</p>
--	--

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>第三节 审判</p> <p>第四节 执行</p> <p>第二十一章 当事人和解的公诉案件诉讼程序</p> <p>第二十二章 犯罪嫌疑人、被告人逃匿、死亡案件违法所得的没收程序</p> <p>第二十三章 依法不负刑事责任的精神病人的强制医疗程序</p> <p>第二十四章 附则</p>	<p><b>Chapter 20 Adjudication Procedures for Juvenile Criminal Cases</b></p> <p>Section One General Provisions</p> <p>Section Two Trial Preparation</p> <p>Section Three Trial</p> <p>Section Four Enforcement</p> <p><b>Chapter 21 Procedure for Public Prosecutions Where There is a Criminal Reconciliation Between the Parties to the Case</b></p> <p><b>Chapter 22 Procedure for the Confiscation of Illegal Income in Cases involving the Escape or Death of a Criminal Suspect or Defendant</b></p> <p><b>Chapter 23 Procedures for Compulsory Treatment of Mentally Ill Persons Not Bearing Criminal Responsibility in Accordance with Law</b></p> <p><b>Chapter 24 Supplementary Provisions</b></p>
<p>2012年3月14日，第十一届全国人民代表大会第五次会议通过了《关于修改〈中华人民共和国刑事诉讼法〉的决定》。为正确理解和适用修改后的刑事诉讼法，结合人民法院审判工作实际，制定本解释。</p>	<p>The Decision of the National People's Congress on Amending the Criminal Procedure Law of the People's Republic of China was adopted at the 5th session of the Eleventh National People's Congress of the People's Republic of China on March 14, 2012. For the purpose of property interpreting and applying the revised Criminal Procedure Law, and in light of judicial practice, this Interpretation is formulated as follows.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

第一章 管辖	Chapter 1 Jurisdiction
<p><b>第一条</b> 人民法院直接受理的自诉案件包括：</p> <p>（一）告诉才处理的案件：</p> <p>1.侮辱、诽谤案（刑法第二百四十六条规定的，但严重危害社会秩序和国家利益的除外）；</p> <p>2.暴力干涉婚姻自由案（刑法第二百五十七条第一款规定的）；</p> <p>3.虐待案（刑法第二百六十条第一款规定的）；</p> <p>4.侵占案（刑法第二百七十条规定的）。</p> <p>（二）人民检察院没有提起公诉，被害人有证据证明的轻微刑事案件：</p> <p>1.故意伤害案（刑法第二百三十四条第一款规定的）；</p> <p>2.非法侵入住宅案（刑法第二百四十五条规定的）；</p> <p>3.侵犯通信自由案（刑法第二百五十二条规定的）；</p> <p>4.重婚案（刑法第二百五十八条规定的）；</p>	<p><b>Article 1</b> Private prosecution cases that people's courts shall hear directly include:</p> <p>(1) Cases accepted only upon the filing of a complaint:</p> <p>1. cases of defamation or libel (stipulated by Article 246 of the Criminal Law, except for cases that involve serious injury to social order or state interests);</p> <p>2. cases of forcible interference with freedom of marriage (stipulated by Article 257, paragraph 1 of the Criminal Law);</p> <p>3. cases of abuse (stipulated by Article 260 of the Criminal Law);</p> <p>4. cases of embezzlement (stipulated by Article 270 of the Criminal Law).</p> <p>(2) cases of slight criminality that the People's Procuratorate has not prosecuted, but for which a victim has evidence proving a crime:</p> <p>1. cases of intentional injury (stipulated by Article 234, paragraph 1 of the Criminal Law);</p> <p>2. cases of unlawful trespass (stipulated by Article 245 of the Criminal</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>5.遗弃案（刑法第二百六十一条规定的）；</p> <p>6.生产、销售伪劣商品案（刑法分则第三章第一节规定的，但严重危害社会秩序和国家利益的除外）；</p> <p>7.侵犯知识产权案（刑法分则第三章第七节规定的，但严重危害社会秩序和国家利益的除外）；</p> <p>8.刑法分则第四章、第五章规定的，对被告人可能判处三年有期徒刑以下刑罚的案件。</p> <p>本项规定的案件，被害人直接向人民法院起诉的，人民法院应当依法受理。对其中证据不足、可以由公安机关受理的，或者认为对被告人可能判处三年以上有期徒刑以上刑罚的，应当告知被害人向公安机关报案，或者移送公安机关立案侦查。</p> <p>（三）被害人有证据证明对被告人侵犯自己人身、财产权利的行为应当依法追究刑事责任，且有证据证明曾经提出控告，而公安机关或者人民检察院不予追究被告人刑事责任的案件。</p>	<p>Law);</p> <p>3. cases of interference with the freedom to communicate (stipulated by Article 252 of the Criminal Law);</p> <p>4. cases of bigamy (stipulated by Article 258 of the Criminal Law);</p> <p>5. cases of abandonment (stipulated by Article 261 of the Criminal Law);</p> <p>6. cases involving the production or sale of fake goods, or those of inferior quality (stipulated by Chapter 3, Section One of the special provisions of the Criminal Law, except for cases that involve serious injury to social order or state interests);</p> <p>7. cases involving the infringement of intellectual property (stipulated by Section 7, Chapter 3 of the special provisions of the Criminal Law, except for cases that involve serious injury to social order or state interests);</p> <p>8. cases stipulated by chapters four and five of the special provisions of the Criminal Law in which the possible punishment is a prison term carrying a maximum length of less than three years.</p> <p>People's courts shall accept and hear, in accordance with the law, cases</p>
---	--

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>stipulated by these provisions in which the victim directly files a complaint with the people's court. If the evidence for those cases is insufficient, the cases can be accepted by a public security organ, and, if it is thought that the possible maximum sentence could exceed three years, the court shall either inform the victim to report the complaint to a public security organ or remove the case to the public security organ in order to open an investigation.</p> <p>(3) cases in which the victim has evidence proving that the accused violated the victim's personal or property rights, where such behavior shall be investigated for criminal responsibility according to the law, and in which there is evidence proving that a charge has been filed, but in which the public security organ or people's procuratorate have refused to investigate into criminal responsibility.</p>
<p><b>第二条</b> 犯罪地包括犯罪行为发生地和犯罪结果发生地。</p> <p>针对或者利用计算机网络实施的犯罪，犯罪地包括犯罪行为发生地的网站服务器所在地，网络接入地，网站建立者、管理者所在地，被侵害的计算机信息系统及其管理者所在地，被告人、被害人使用的计算机信息系统所在地，以及被害人财产遭受损失地。</p>	<p><b>Article 2</b> The location of a crime includes both the place where the conduct of the crime occurred and the place where the results of that conduct occurred.</p> <p>For crimes aimed at or utilizing a computer network, the location of the crime includes the location of the network server of the website through which the conduct of the crime occurred, the location of the internet connection, the location of the website's manager or builder, the location of the attacked computer information system and its manager, the location of the victim's or injured party's computer information system, and the place where the injured party suffered material loss.</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第三条</b> 被告人的户籍地为其居住地。经常居住地与户籍地不一致的，经常居住地为其居住地。经常居住地为被告人被追诉前已连续居住一年以上的地方，但住院就医的除外。</p> <p>被告单位登记的住所地为其居住地。主要营业地或者主要办事机构所在地与登记的住所地不一致的，主要营业地或者主要办事机构所在地为其居住地。</p>	<p><b>Article 3</b> The place of household registration of an accused person is that person's domicile. If the regular or habitual residence of the accused is not the same as his or her registered permanent residence, his or her regular or habitual residence is considered to be his or her domicile. The habitual residence of the accused is the place where he or she has continuously resided for more than one year prior to the investigation, not including hospitalization.</p> <p>The registered location for an accused corporate entity or organization is considered to be that corporate entity's or organization's domicile. If the corporate entity's principal place of business or principal place of business administration are not the same as its registered location, its principal place of business or business administration is considered to be its domicile.</p>
<p><b>第四条</b> 在中华人民共和国领域外的中国船舶内的犯罪，由该船舶最初停泊的中国口岸所在地的人民法院管辖。</p>	<p><b>Article 4</b> For all crimes occurring on Chinese vessels operating in waters outside the territory of the People's Republic of China, the people's court located in the first Chinese port at which the vessel docks has jurisdiction.</p>
<p><b>第五条</b> 在中华人民共和国领域外的中国航空器内的犯罪，由该航空器在中国最初降落地地的人民法院管辖。</p>	<p><b>Article 5</b> For all crimes occurring on Chinese aircraft operating outside the territory of the People's Republic of China, the people's court located where the aircraft first lands within China has jurisdiction.</p>
<p><b>第六条</b> 在国际列车上的犯罪，根据我国与相关国家签订的协定确定管辖；没有协定的，由该列车最初停靠的中国车站所在地或者目的地的铁路运输法院管辖。</p>	<p><b>Article 6</b> Jurisdiction for all crimes committed on international trains will be determined on the basis of signed agreements between the People's Republic of China and related countries; if no agreement exists, the railway transportation court located at the station within China where the train first stops, or at that train's destination, has jurisdiction over such crimes.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第七条</b> 中国公民在中国驻外使、领馆内的犯罪，由其主管单位所在地或者原户籍地的人民法院管辖。</p>	<p><b>Article 7</b> For all crimes committed by Chinese citizens in Embassies or Consulates of the People's Republic of China, the people's court located at the site of the responsible authority, or at the original location of household registration of the accused, has jurisdiction.</p>
<p><b>第八条</b> 中国公民在中华人民共和国领域外的犯罪，由其入境地或者离境前居住地的人民法院管辖；被害人是中国公民的，也可由被害人离境前居住地的人民法院管辖。</p>	<p><b>Article 8</b> For crimes committed by Chinese citizens outside of the territory of the People's Republic of China, the people's court located at the accused citizen's place of re-entry into China, or where the citizen was domiciled prior to leaving China, has jurisdiction; if the injured party is a Chinese citizen, the people's court located where the injured party was domiciled prior to leaving China may also have jurisdiction.</p>
<p><b>第九条</b> 外国人在中华人民共和国领域外对中华人民共和国国家或者公民犯罪，根据《中华人民共和国刑法》应当受处罚的，由该外国人入境地、入境后居住地或者被害中国公民离境前居住地的人民法院管辖。</p>	<p><b>Article 9</b> For crimes committed by foreigners against the People's Republic of China or its citizens outside of the territory of the People's Republic of China, when those crimes must be punished according to the Criminal Law of the People's Republic of China, the people's court located where the foreigner resides after his or her entry into China, or where the injured Chinese citizen was domiciled prior to leaving China, has jurisdiction.</p>
<p><b>第十条</b> 对中华人民共和国缔结或者参加的国际条约所规定的罪行，中华人民共和国在所承担条约义务的范围内，行使刑事管辖权的，由被告人被抓获地的人民法院管辖。</p>	<p><b>Article 10</b> For crimes governed by international treaties either concluded or acceded to by the People's Republic of China, and over which the People's Republic of China exercises jurisdiction within the scope of carrying out its obligations pursuant to such treaties, the people's court where a defendant was apprehended has jurisdiction.</p>
<p><b>第十一条</b> 正在服刑的罪犯在判决宣告前还有其他罪没有判决的，由原审地人民法院管辖；由罪犯服刑地或者犯罪地的人民法</p>	<p><b>Article 11</b> If an inmate currently serving a criminal sentence has another pending</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>院审判更为适宜的，可以由罪犯服刑地或者犯罪地的人民法院管辖。</p> <p>罪犯在服刑期间又犯罪的，由服刑地的人民法院管辖。</p> <p>罪犯在脱逃期间犯罪的，由服刑地的人民法院管辖。但是，在犯罪地抓获罪犯并发现其在脱逃期间的犯罪的，由犯罪地的人民法院管辖。</p>	<p>criminal case in which no verdict has yet been reached, the people's court that adjudicated the original case has jurisdiction; if it is more appropriate for the people's court located where the inmate is serving the sentence or where the crime or crimes occurred to hear the case, those courts may have jurisdiction.</p> <p>If an inmate commits a crime while serving a sentence, the people's court located where the inmate is serving the sentence has jurisdiction.</p> <p>If a criminal commits a crime after having escaped from prison while serving a sentence, the people's court located where the criminal was serving the sentence has jurisdiction. However, if the criminal is apprehended or discovered to have escaped while committing a crime, the people's court located where that crime was committed has jurisdiction.</p>
<p><b>第十二条</b> 人民检察院认为可能判处无期徒刑、死刑，向中级人民法院提起公诉的案件，中级人民法院受理后，认为不需要判处无期徒刑、死刑的，应当依法审判，不再交基层人民法院审判。</p>	<p><b>Article 12</b> If the people's procuratorate believes that the possible sentence in a case could be life imprisonment or death, it shall initiate the public prosecution in an intermediate people's court; if, after accepting the case, the intermediate people's court believes that sentences of life imprisonment or death are unnecessary, that court must nonetheless try the case in accordance with the law and not transfer the case to a basic people's court.</p>
<p><b>第十三条</b> 一人犯数罪、共同犯罪和其他需要并案审理的案件，其中一人或者一罪属于上级人民法院管辖的，全案由上级人民法院管辖。</p>	<p><b>Article 13</b> For cases involving one person who commits multiple crimes, or for crimes jointly committed by multiple people, and for cases that must otherwise be heard together, if one person or one crime falls within the jurisdiction of the high people's court, the high people's court has jurisdiction over the entire case.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第十四条</b> 上级人民法院决定审判下级人民法院管辖的第一审刑事案件的，应当向下级人民法院下达改变管辖决定书，并书面通知同级人民检察院。</p>	<p><b>Article 14</b> If a high people's court decides to hear a criminal case as a court of first instance over which a lower court has jurisdiction, the high court must send a change of jurisdiction decision notice to the lower court, and send written notice to the people's procuratorate at the corresponding level.</p>
<p><b>第十五条</b> 基层人民法院对可能判处无期徒刑、死刑的第一审刑事案件，应当移送中级人民法院审判。</p> <p>基层人民法院对下列第一审刑事案件，可以请求移送中级人民法院审判：</p> <ul style="list-style-type: none"><li>（一）重大、复杂案件；</li><li>（二）新类型的疑难案件；</li><li>（三）在法律适用上具有普遍指导意义的案件。</li></ul> <p>需要将案件移送中级人民法院审判的，应当在报请院长决定后，至迟于案件审理期限届满十五日前书面请求移送。中级人民法院应当在接到申请后十日内作出决定。不同意移送的，应当下达不同意移送决定书，由请求移送的人民法院依法审判；同意移送的，应当下达同意移送决定书，并书面通知同级人民检察院。</p>	<p><b>Article 15</b> Basic people's courts must transfer all first-instance criminal cases in which life imprisonment or death are possible sentences to an intermediate people's court.</p> <p>Basic people's courts may request transfer to an intermediate people's court for adjudication the following first instance cases:</p> <ul style="list-style-type: none"><li>(1) Large or complex cases;</li><li>(2) Novel types of difficult cases;</li><li>(3) Cases that bear significance in providing general guidance for the application of law.</li></ul> <p>If it is necessary that a case be transferred to an intermediate people's court, a request for transfer must be made in writing, after a request for a decision has been submitted to the court's president, but no later than fifteen days prior to the expiration of the time period in which the case must be adjudicated. The intermediate people's court must make its decision within ten days after</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	<p>receiving the application. If a transfer is not accepted, written notice of the decision not to accept the transfer must be delivered to the court that originally requested transfer, and the court that requested transfer will adjudicate the case in accordance with the law; if a transfer is accepted, written notice of the decision agreeing to the transfer must be delivered to the court that requested transfer, and the people's procuratorate at the corresponding level shall be sent written notification.</p>
<p><b>第十六条</b> 有管辖权的人民法院因案件涉及本院院长需要回避等原因,不宜行使管辖权的,可以请求移送上一级人民法院管辖。上一级人民法院可以管辖,也可以指定与提出请求的人民法院同级的其他人民法院管辖。</p>	<p><b>Article 16</b> If it would be inappropriate for a people's court that has jurisdictional authority over a case to exercise that jurisdiction, due to reasons such as the need for the court president to recuse himself from the case, it may be requested that the case be transferred to the people's court one level above with jurisdiction over the case. The people's court one level above may exercise jurisdiction over the case, or it may assign jurisdiction over the case to another court at the same level as the court that requested transfer.</p>
<p><b>第十七条</b> 两个以上同级人民法院都有管辖权的案件,由最初受理的人民法院审判。必要时,可以移送被告人主要犯罪地的人民法院审判。</p> <p>管辖权发生争议的,应当在审理期限内协商解决;协商不成的,由争议的人民法院分别层报共同的上级人民法院指定管辖。</p>	<p><b>Article 17</b> If more than two people's courts of the same level have jurisdiction over a case, that case shall be adjudicated by the first court that accepted the case. When necessary, the case may be transferred to the people's court located in the principal location where the defendant committed the crime.</p> <p>If a dispute over jurisdiction occurs, a resolution shall be agreed to within the time period allowed for the adjudication of the case. If such an agreement cannot be reached, the courts with conflicting jurisdictional claims shall report the matter up the court hierarchy to a shared higher court, which will then</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	determine jurisdiction.
<b>第十八条</b> 上级人民法院在必要时，可以指定下级人民法院将其管辖的案件移送其他下级人民法院审判。	<b>Article 18</b> A higher people's court may, when necessary, designate that a lower people's court transfer a case within its jurisdiction to another lower people's court for adjudication.
<b>第十九条</b> 上级人民法院指定管辖，应当将指定管辖决定书分别送达被指定管辖的人民法院和其他有关的人民法院。	<b>Article 19</b> A higher people's court that assigns jurisdiction must serve official notice of its decision to assign jurisdiction separately to the lower court to which jurisdiction has been assigned, and to other relevant people's courts.
<b>第二十条</b> 原受理案件的人民法院在收到上级人民法院改变管辖决定书、同意移送决定书或者指定其他人民法院管辖决定书后，对公诉案件，应当书面通知同级人民检察院，并将案卷材料退回，同时书面通知当事人；对自诉案件，应当将案卷材料移送被指定管辖的人民法院，并书面通知当事人。	<b>Article 20</b> If a court that originally accepted a case receives from a higher court notification of either a decision to change jurisdiction, a decision accepting transfer, or a decision to assign jurisdiction to another court at the same level as it, in cases of public prosecution the original court must send written notice to the people's procuratorate at the corresponding level, return the materials in the case file, and at the same time send written notice to the parties; in cases of private prosecution, the court must deliver the case file materials to the people's court that has been assigned jurisdiction and send written notification to the parties.
<b>第二十一条</b> 第二审人民法院发回重新审判的案件，人民检察院撤回起诉后，又向原第一审人民法院的下级人民法院重新提起公诉的，下级人民法院应当将有关情况层报原第二审人民法院。原第二审人民法院根据具体情况，可以决定将案件移送原第一审人民法院或者其他人民法院审判。	<b>Article 21</b> When a second instance people's court remands a case for retrial, after the people's procuratorate withdraws the prosecution, if the procuratorate initiates a new prosecution in a people's court at a lower level than the original first instance people's court, that lower court must report the relevant circumstances up the court hierarchy to the original second instance people's court. The original second instance people's court may decide, on the basis of the specific circumstances, to transfer the case either to the original first instance

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	people's court or to another p people's court for adjudication.
<b>第二十二条</b> 军队和地方互涉刑事案件，按照有关规定确定管辖。	<b>Article 22</b> In criminal cases in which the army and local court have overlapping jurisdiction, the determination of jurisdiction shall be made in accordance with relevant regulations.
<b>第二章 回避</b>	<b>Chapter 2 Recusal</b>
<b>第二十三条</b> 审判人员具有下列情形之一的，应当自行回避，当事人及其法定代理人有权申请其回避：  （一）是本案的当事人或者是当事人的近亲属的；  （二）本人或者其近亲属与本案有利害关系的；  （三）担任过本案的证人、鉴定人、辩护人、诉讼代理人、翻译人员的；  （四）与本案的辩护人、诉讼代理人有近亲属关系的；  （五）与本案当事人有其他利害关系，可能影响公正审判的。	<b>Article 23</b> If any one of the following circumstances exists with respect to adjudication personnel, they shall voluntarily recuse themselves, and the parties and their agents ad litem have the right to apply for their recusal:  (1) he or she is a party to the present case or is an immediate family member of a party in the present case;  (2) the person him- or herself or his or her immediate family member has an interest in the case;  (3) he or she has been a witness, forensic analyst, defense advocate, litigation advocate, or translator in the present case;  (4) he or she is a close relative of the defense advocate or litigation advocate in the present case;

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(5) he or she has any other type of close relationship with the parties in the present case that might affect the impartiality of the adjudication.</p>
<p><b>第二十四条</b> 审判人员违反规定，具有下列情形之一的，当事人及其法定代理人有权申请其回避：</p> <p>（一）违反规定会见本案当事人、辩护人、诉讼代理人的；</p> <p>（二）为本案当事人推荐、介绍辩护人、诉讼代理人，或者为律师、其他人员介绍办理本案的；</p> <p>（三）索取、接受本案当事人及其委托人的财物或者其他利益的；</p> <p>（四）接受本案当事人及其委托人的宴请，或者参加由其支付费用的活动的；</p> <p>（五）向本案当事人及其委托人借用款物的；</p> <p>（六）有其他不正当行为，可能影响公正审判的。</p>	<p><b>Article 24</b> If, in violation of the law, adjudication personnel engage in any one of the following behaviors, the parties or their agents ad litem have the right to apply for their recusal:</p> <p>(1) he or she unlawfully visits one of the parties, the defense advocate, or the litigation advocate in the present case;</p> <p>(2) he or she recommends or introduces to one of the parties in the present case a defense advocate, litigation advocate, or introduces to an attorney or other personnel those persons involved in handling the present case;</p> <p>(3) he or she extorted or accepted property or other benefit from a party or someone interceding on his behalf in the present case;</p> <p>(4) he or she accepted an invitation to an expensive meal, or to participate in other activities paid for by a party in the present case or someone interceding on behalf of the party;</p> <p>(5) he or she borrowed money or goods from a party in the present case or someone interceding on behalf of the party;</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(6) he or she engaged in other illegitimate conduct which could affect the impartiality of the adjudication.</p>
<p><b>第二十五条</b> 参与过本案侦查、审查起诉工作的侦查、检察人员，调至人民法院工作的，不得担任本案的审判人员。</p> <p>在一个审判程序中参与过本案审判工作的合议庭组成人员或者独任审判员，不得再参与本案其他程序的审判。但是，发回重新审判的案件，在第一审人民法院作出裁判后又进入第二审程序或者死刑复核程序的，原第二审程序或者死刑复核程序中的合议庭组成人员不受本款规定的限制。</p>	<p><b>Article 25</b> No investigator or procurator, who participated in the investigation or review for indictment of the present case, after being transferred to work in the people’s court, may act as adjudication personnel in the same case.</p> <p>A member of a collegial panel or single adjudicator in one adjudication proceeding who participated in the present case’s adjudication must not also participate in the adjudication of other proceedings in the same case. However, in cases that are remanded for re-adjudication, where, after the first instance people’s court issues its ruling, the case begins second instance proceedings again or death penalty review proceedings, members of a collegial panel who participated in the original second instance proceedings or death penalty review proceedings are not subject to the limitations of this provision.</p>
<p><b>第二十六条</b> 人民法院应当依法告知当事人及其法定代理人有权申请回避，并告知其合议庭组成人员、独任审判员、书记员等人员的名单。</p>	<p><b>Article 26</b> The people’s court must notify the parties and their agents ad litem that they have the right to apply for recusal, and provide notice to the parties containing a list of names of the members of their collegial panel, single adjudicator, and court clerk and other personnel.</p>
<p><b>第二十七条</b> 审判人员自行申请回避，或者当事人及其法定代理人申请审判人员回避的，可以口头或者书面提出，并说明理由，由院长决定。</p> <p>院长自行申请回避，或者当事人及其法定代理人申请院长回</p>	<p><b>Article 27</b> If adjudication personnel voluntarily apply to recuse themselves, or if the parties or their agents ad litem apply for recusal of adjudication personnel, the application may be submitted orally or in writing, must contain a description of the reasons for the application, and will be decided by the court president.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>避的，由审判委员会讨论决定。审判委员会讨论时，由副院长主持，院长不得参加。</p>	<p>If the court president voluntarily applies to recuse him or herself, or if a party or his or her agent ad litem applies to recuse the court president, the adjudication committee will discuss and decide the matter. When the adjudication committee discusses the matter, the deputy court president will preside over the discussion, and the court president must not participate.</p>
<p><b>第二十八条</b> 当事人及其法定代理人依照刑事诉讼法第二十九条和本解释第二十四条规定申请回避，应当提供证明材料。</p>	<p><b>Article 28</b> In accordance with Article 29 of the Criminal Procedure Law and Article 24 of the present Interpretation, parties and their agents ad litem must provide supporting materials in support of their applications for recusal.</p>
<p><b>第二十九条</b> 应当回避的审判人员没有自行回避，当事人及其法定代理人也没有申请其回避的，院长或者审判委员会应当决定其回避。</p>	<p><b>Article 29</b> If adjudication personnel who must recuse themselves have not done so voluntarily, and the parties and their agents ad litem also have not applied for their recusal, the court president or the adjudication committee must recuse him or her.</p>
<p><b>第三十条</b> 对当事人及其法定代理人提出的回避申请，人民法院可以口头或者书面作出决定，并将决定告知申请人。</p> <p>当事人及其法定代理人申请回避被驳回的，可以在接到决定时申请复议一次。不属于刑事诉讼法第二十八条、第二十九条规定情形的回避申请，由法庭当庭驳回，并不得申请复议。</p>	<p><b>Article 30</b> A people’s court may decide applications for recusal by parties or their agents ad litem orally or in writing, and notify the applicant(s) of its decision.</p> <p>When an application for recusal by a party or his or her agent ad litem is rejected, upon receipt of the decision, he or she may apply once for reconsideration. Applications for recusal that do not fall within the circumstances provided in Article 28 or Article 29 of the Criminal Procedure Law will be rejected in court, and applicants must not apply for reconsideration.</p>
<p><b>第三十一条</b> 当事人及其法定代理人申请出庭的检察人员回避的，人民法院应当决定休庭，并通知人民检察院。</p>	<p><b>Article 31</b> When a party or his or her agent ad litem applies for the recusal of</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	procuratorial personnel appearing in court on behalf of the procuratorate in a case, the people's court must order an adjournment and notify the people's procuratorate.
<b>第三十二条</b> 本章所称的审判人员,包括人民法院院长、副院长、审判委员会委员、庭长、副庭长、审判员、助理审判员和人民陪审员。	<b>Article 32</b> Adjudication personnel referred to in this Chapter include the court president of the people's court, the deputy court president, adjudication committee members, the presiding judge, deputy presiding judge, judges, assistant judges, and people's assessors.
<b>第三十三条</b> 书记员、翻译人员和鉴定人适用审判人员回避的有关规定,其回避问题由院长决定。	<b>Article 33</b> When clerks, translators, and forensic analysts employ provisions related to the recusal of adjudication personnel, the court president will decide the question of their recusal.
<b>第三十四条</b> 辩护人、诉讼代理人可以依照本章的有关规定要求回避、申请复议。	<b>Article 34</b> Defense advocates and litigation advocates may demand recusal and apply for reconsideration, in accordance with the provisions of this Chapter.
<b>第三章 辩护与代理</b>	<b>Chapter 3 Defense and Representation</b>
<b>第三十五条</b> 人民法院审判案件,应当充分保障被告人依法享有的辩护权利。  被告人除自己行使辩护权以外,还可以委托辩护人辩护。下列人员不得担任辩护人:  (一)正在被执行刑罚或者处于缓刑、假释考验期间的人;  (二)依法被剥夺、限制人身自由的人;	<b>Article 35</b> At trial, the people's court shall fully guarantee a defendant the right to a defense granted by law.  In addition to defending himself, a defendant may retain a defender. The following persons shall not be retained as defenders:  (1) a person serving a criminal sentence, or while on probation for a suspended sentence or parole;

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(三) 无行为能力或者限制行为能力的人;</p> <p>(四) 人民法院、人民检察院、公安机关、国家安全机关、监狱的现职人员;</p> <p>(五) 人民陪审员;</p> <p>(六) 与本案审理结果有利害关系的人;</p> <p>(七) 外国人或者无国籍人。</p> <p>前款第四项至第七项规定的人员，如果是被告人的监护人、近亲属，由被告人委托担任辩护人的，可以准许。</p>	<p>(2) a person whose personal freedom is deprived of, or restricted in accordance with law;</p> <p>(3) a person who is not-competent or of limited competency.</p> <p>(4) a staff member of a people’s court, a people’s procuratorate, a public security organ, a national security department, or a prison;</p> <p>(5) a people’s juror;</p> <p>(6) a person with an interest in the outcome of the case;</p> <p>(7) a foreign national or a stateless person.</p> <p>Persons under classes four through seven above may serve as defenders, provided that they are a guardian or close relative to a defendant and are retained as a defender by the defendant.</p>
<p><b>第三十六条</b> 审判人员和人民法院其他工作人员从人民法院离任后二年内，不得以律师身份担任辩护人。</p> <p>审判人员和人民法院其他工作人员从人民法院离任后，不得担任原任职法院所审理案件的辩护人，但作为被告人的监护人、</p>	<p><b>Article 36</b> Judges and other staff members of a people’s court shall not serve as defenders in the capacity of a lawyer, for two years after leaving their position with the court.</p> <p>Judges and other staff members of a people’s court, after leaving their</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>近亲属进行辩护的除外。</p> <p>审判人员和人民法院其他工作人员的配偶、子女或者父母不得担任其任职法院所审理案件的辩护人，但作为被告人的监护人、近亲属进行辩护的除外。</p>	<p>positions, shall not serve as defenders in a case tried by the same court, except in their capacity as a guardian or a close relative to the defendant.</p> <p>Spouses, children and parents of judges and other staff members of a people's court shall not serve as defenders in a case tried in the same court, except in their capacity as a guardian or a close relative to the defendant.</p>
<p><b>第三十七条</b> 律师，人民团体、被告人所在单位推荐的人，或者被告人的监护人、亲友被委托为辩护人的，人民法院应当核实其身份证明和授权委托书。</p>	<p><b>Article 37</b> The people's court shall verify the identity of such persons and the power of attorney when the defender retained by a defendant is a lawyer, a person recommended by a people's organization, the defendant's employer, the guardian, or a relative or friend to the defendant.</p>
<p><b>第三十八条</b> 一名被告人可以委托一至二人作为辩护人。</p> <p>一名辩护人不得为两名以上的同案被告人，或者未同案处理但犯罪事实存在关联的被告人辩护。</p>	<p><b>Article 38</b> A defendant may retain one or two defenders.</p> <p>The same defender may not represent more than two defendants in one case or more than two defendants in separate cases but where the underlying facts of the facts of the crime are related.</p>
<p><b>第三十九条</b> 被告人没有委托辩护人的，人民法院自受理案件之日起三日内，应当告知其有权委托辩护人；被告人因经济困难或者其他原因没有委托辩护人的，应当告知其可以申请法律援助；被告人属于应当提供法律援助情形的，应当告知其将依法通知法律援助机构指派律师为其提供辩护。</p> <p>告知可以采取口头或者书面方式。</p>	<p><b>Article 39</b>, A people's court within three days after accepting a case shall inform a defendant who has not retained a defender of his right to do so; when the defendant's failure to retain a defender is due to economic hardship or other reasons, the court shall inform the defendant that he may apply for legal aid; if providing legal aid to a defendant is legally required, the court shall inform the defendant that according to the law a legal aid agency will be contacted to assign a lawyer to defend him.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>Notice to the defendant may be made in oral or written form.</p>
<p><b>第四十条</b> 审判期间，在押的被告人要求委托辩护人的，人民法院应当在三日内向其监护人、近亲属或者其指定的人员转达要求。被告人应当提供有关人员的联系方式。有关人员无法通知的，应当告知被告人。</p>	<p><b>Article 40</b> During the trial stage, if a defendant in custody files a request to retain a defender, the people’s court shall, within three days, convey such a request to the guardian, close relatives or other persons designated by the defendant. The defendant shall provide contact information for such persons. Where such persons cannot be notified, the defendant shall be informed accordingly.</p>
<p><b>第四十一条</b> 人民法院收到在押被告人提出的法律援助申请，应当在二十四小时内转交所在地的法律援助机构。</p>	<p><b>Article 41</b> A people’s court shall, within twenty-four hours of receiving an application for legal aid from a defendant in custody, forward the application to a local legal aid agency.</p>
<p><b>第四十二条</b> 对下列没有委托辩护人的被告人，人民法院应当通知法律援助机构指派律师为其提供辩护：</p> <p>（一）盲、聋、哑人；</p> <p>（二）尚未完全丧失辨认或者控制自己行为能力的精神病人；</p> <p>（三）可能被判处无期徒刑、死刑的人。</p> <p>高级人民法院复核死刑案件，被告人没有委托辩护人的，应当通知法律援助机构指派律师为其提供辩护。</p>	<p><b>Article 42</b> A people’s court shall contact the legal aid agency to assign a lawyer as the defender for a defendant when any of the following circumstances are present , provided that the defendant has not retained his own defender:</p> <p>(1) A person who is blind, deaf or dumb;</p> <p>(2) A person suffering from mental illness but who has not completely lost the ability to identify or control his behavior;</p> <p>(3) A person who may be sentenced to life imprisonment or death.</p> <p>In death penalty cases when a defendant has not retained a defender, the higher people’s court reviewing the capital case shall contact a legal aid agency to have a lawyer assigned to represent the defendant.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第四十三条</b> 具有下列情形之一，被告人没有委托辩护人的，人民法院可以通知法律援助机构指派律师为其提供辩护：</p> <ul style="list-style-type: none"><li>（一）共同犯罪案件中，其他被告人已经委托辩护人；</li><li>（二）有重大社会影响的案件；</li><li>（三）人民检察院抗诉的案件；</li><li>（四）被告人的行为可能不构成犯罪；</li><li>（五）有必要指派律师提供辩护的其他情形。</li></ul>	<p><b>Article 43</b> Under any of the following circumstances, a people’s court may contact a legal aid agency to have a lawyer assigned to represent a defendant who has not already retained a defender:</p> <ul style="list-style-type: none"><li>(1) In a case involving joint crimes and other defendants have retained their own defenders;</li><li>(2) cases with significant social impact;</li><li>(3) cases brought on appeal by a people’s procuratorate;</li><li>(4) where defendant’s act may not amount to a crime;</li><li>(5) other circumstances that necessitate the assignment of a lawyer as a defender.</li></ul>
<p><b>第四十四条</b> 人民法院通知法律援助机构指派律师提供辩护的，应当将法律援助通知书、起诉书副本或者判决书送达法律援助机构；决定开庭审理的，除适用简易程序审理的以外，应当在开庭十五日前将上述材料送达法律援助机构。</p> <p>法律援助通知书应当写明案由、被告人姓名、提供法律援助的理由、审判人员的姓名和联系方式；已确定开庭审理的，应当写明开庭的时间、地点。</p>	<p><b>Article 44</b> When a people’s court notifies a legal aid agency to assign a defender to represent the defendant, it shall serve legal aid notification, a copy of the indictment or the judgment upon the legal aid agency; if the court has decided to try a case, except for one under simplified proceedings, the legal materials specified above shall be served fifteen days before the hearing.</p> <p>The legal aid notification shall specify the cause of action, name of the defendant, reasons for providing legal aid, name and contact information of the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>judge; if it has already been decided that a case will be tried, the notification shall specify the time and place for the hearing.</p>
<p><b>第四十五条</b> 被告人拒绝法律援助机构指派的律师为其辩护, 坚持自己行使辩护权的, 人民法院应当准许。</p> <p>属于应当提供法律援助的情形, 被告人拒绝指派的律师为其辩护的, 人民法院应当查明原因。理由正当的, 应当准许, 但被告人须另行委托辩护人; 被告人未另行委托辩护人的, 人民法院应当在三日内书面通知法律援助机构另行指派律师为其提供辩护。</p>	<p><b>Article 45</b> If a defendant refuses to accept the lawyer assigned by a legal aid agency, and insists on defending himself, the people’s court shall give approval.</p> <p>When providing legal aid is legally required, if the defendant refuses to retain the lawyer assigned to him, the people’s court shall investigate to ascertain the reason for refusal. The court shall give approval if the refusal is justifiable, but the defendant must retain an alternate defender; if he fails to retain an alternate defender, the people’s court shall within three days inform the legal aid agency to assign another lawyer to defend the defendant.</p>
<p><b>第四十六条</b> 审判期间, 辩护人接受被告人委托的, 应当在接受委托之日起三日内, 将委托手续提交人民法院。</p> <p>法律援助机构决定为被告人指派律师提供辩护的, 承办律师应当在接受指派之日起三日内, 将法律援助手续提交人民法院。</p>	<p><b>Article 46</b> During the trial stage, a defender who accepts the assignment to represent the defendant shall, within three days of accepting the assignment, file the engagement letter with the people’s court.</p> <p>When a legal aid agency decides to assign a lawyer to defend the defendant, the lawyer handling the case shall, within three days of accepting the assignment, submit the legal aid representation agreement with the people’s court.</p>
<p><b>第四十七条</b> 辩护律师可以查阅、摘抄、复制案卷材料。其他辩护人经人民法院许可, 也可以查阅、摘抄、复制案卷材料。合议庭、审判委员会的讨论记录以及其他依法不公开的材料不得查阅、摘抄、复制。</p>	<p><b>Article 47</b> A defense lawyer may review, record and make copies of case materials. As permitted by the people’s court, defenders who are not lawyers may also review, record and make copies of case materials. The minutes of a tribunal or an adjudication committee discussing the case, and other materials prohibited</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>辩护人查阅、摘抄、复制案卷材料的，人民法院应当提供方便，并保证必要的时间。</p> <p>复制案卷材料可以采用复印、拍照、扫描等方式。</p>	<p>by law from being discussed shall not be subject to review, recording or copying.</p> <p>The people’s court shall make it convenient and allow the necessary time for defenders who review, record or make copies of case materials.</p> <p>Copying of case materials may employ electronic copying, taking pictures, scanning and other similar means.</p>
<p><b>第四十八条</b> 辩护律师可以同在押的或者被监视居住的被告人会见和通信。其他辩护人经人民法院许可，也可以同在押的或者被监视居住的被告人会见和通信。</p>	<p><b>Article 48</b> A defense lawyer may meet and communicate with a defendant in custody or under residential surveillance. As permitted by the people’s court, defenders who are not lawyers may also meet and communicate with a defendant in custody or under residential surveillance.</p>
<p><b>第四十九条</b> 辩护人认为在侦查、审查起诉期间公安机关、人民检察院收集的证明被告人无罪或者罪轻的证据材料未随案移送，申请人民法院调取的，应当以书面形式提出，并提供相关线索或者材料。人民法院接受申请后，应当向人民检察院调取。人民检察院移送相关证据材料后，人民法院应当及时通知辩护人。</p>	<p><b>Article 49</b> A defender who believes that the public security organ, during the investigation and/or the procuratorate during the review of the indictment, have gathered but failed to submit with the case to the court, exculpatory evidence or facts tending to show the pettiness of the crime, shall make a request to the people’s court in writing and provide all relevant leads or materials. The people’s court, after receiving the application, shall have the procuratorate submit the evidence. After the evidence is submitted by the procuratorate, the people’s court shall notify the defender in a timely manner.</p>
<p><b>第五十条</b> 辩护律师申请向被害人及其近亲属、被害人提供的证人收集与本案有关的材料，人民法院认为确有必要的，应当签发准许调查书。</p>	<p><b>Article 50</b> If the people’s court deems it necessary when a defense attorney applies to gather materials relevant to the case from the victim, his or her close relatives, or a witness provided by the victim, the people’s court shall issue an order giving permission to investigate.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第五十一条</b> 辩护律师向证人或者有关单位、个人收集、调取与本案有关的证据材料，因证人或者有关单位、个人不同意，申请人民法院收集、调取，或者申请通知证人出庭作证，人民法院认为确有必要的，应当同意。</p>	<p><b>Article 51</b> When a defense lawyer applies to the court for permission to gather or submit evidence or require a witness to testify in court after requesting such information regarding the case from a witness, individual or relevant entity and the witness, individual or relevant entity refuses to cooperate, if the people’s court deems it necessary, permission shall be granted to the defense lawyers request. .</p>
<p><b>第五十二条</b> 辩护律师直接申请人民法院向证人或者有关单位、个人收集、调取证据材料，人民法院认为确有收集、调取必要，且不宜或者不能由辩护律师收集、调取的，应当同意。人民法院收集、调取证据材料时，辩护律师可以在场。</p> <p>人民法院向有关单位收集、调取的书面证据材料，必须由提供者签名，并加盖单位印章；向个人收集、调取的书面证据材料，必须由提供者签名。</p> <p>人民法院对有关单位、个人提供的证据材料，应当出具收据，写明证据材料的名称、收到的时间、件数、页数以及是否为原件等，由书记员或者审判人员签名。</p> <p>收集、调取证据材料后，应当及时通知辩护律师查阅、摘抄、复制，并告知人民检察院。</p>	<p><b>Article 52</b> Where a defense lawyer applies directly to the people’s court together or submit evidence from a witness, individual or any other relevant entity, and the people’s court deems the gathering or submission necessary but the evidence is inappropriate or impossible for the defense lawyer to gather or obtain, the people’s court shall give permission. The defense attorney may be present when the evidence has been gathered by or submitted to the people’s court.</p> <p>Documentary evidence gathered by or submitted to the people’s court by a relevant entity must bear the signature of the provider, and the seal of the entity; documentary evidence gather by or submitted to the people’s court by an individual must bear the signature of the provider.</p> <p>Receipts shall be provided by the people’s court to the relevant entity or the individual for evidence collected, indicating the name, time of receipt, number of items, and the number of pages and whether it is the original document or material etc. The receipt shall signed by a clerk or a judge.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>After the gathering or submission of evidence, the defense attorney shall be notified in a timely manner that the evidence is available to review, record, or copy. The people’s procuratorate shall be informed as well.</p>
<p><b>第五十三条</b> 本解释第五十条至第五十二条规定的申请,应当以书面形式提出,并说明理由,写明需要收集、调取证据材料的内容或者需要调查问题的提纲。</p> <p>对辩护律师的申请,人民法院应当在五日内作出是否准许、同意的决定,并通知申请人;决定不准许、不同意的,应当说明理由。</p>	<p><b>Article 53</b> An application filed in accordance to Article 50 through Article 52 of this interpretation shall be in writing, and indicate the grounds for the application, the content of the evidentiary material to be gathered or submitted or an outline of issues to be investigated.</p> <p>The decision to approve or allow an application filed by a defense attorney shall be made and communicated to the defense lawyer by the people’s court within five days; reasons shall be provided if the people’s court decides not to approve or allow the application.</p>
<p><b>第五十四条</b> 人民法院自受理自诉案件之日起三日内,应当告知自诉人及其法定代理人、附带民事诉讼当事人及其法定代理人,有权委托诉讼代理人,并告知如果经济困难的,可以申请法律援助。</p>	<p><b>Article 54</b> The people’s court shall, within three days of accepting a case of private prosecution, inform the private prosecutor or his legal representative, parties to a collateral civil action and their legal representatives of their rights to retain a litigation advocate, and that they may apply for legal aid if they suffer from economic hardship.</p>
<p><b>第五十五条</b> 当事人委托诉讼代理人的,参照适用刑事诉讼法第三十二条和本解释的有关规定。</p>	<p><b>Article 55</b> Where a party retains a litigation advocate, Article 32 of the Criminal Procedure Law and relevant rules in this interpretation shall apply.</p>
<p><b>第五十六条</b> 诉讼代理人有权根据事实和法律,维护被害人、自诉人或者附带民事诉讼当事人的诉讼权利和其他合法权益。</p>	<p><b>Article 56</b> A litigation advocate has the right to, based on the facts and the law, to defend the procedural rights and other legitimate interests of the victim, private prosecutor or party to a collateral civil actions.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第五十七条</b> 经人民法院许可，诉讼代理人可以查阅、摘抄、复制本案的案卷材料。</p> <p>律师担任诉讼代理人，需要收集、调取与本案有关的证据材料的，参照适用本解释第五十一条至第五十三条的规定。</p>	<p><b>Article 57</b> With the permission from the people’s court, a litigation advocate may review, record and make copies of the case materials.</p> <p>Article 51 to Article 53 of this interpretation applies to a lawyer gathering or obtaining evidentiary materials relevant to the case who is retained as a litigation advocate.</p>
<p><b>第五十八条</b> 诉讼代理人接受当事人委托或者法律援助机构指派后，应当在三日内将委托手续或者法律援助手续提交人民法院。</p>	<p><b>Article 58</b> Within three days after accepting to represent a party or the assignment of a case by a legal aid agency, a litigation advocate shall submit the letter of engagement or legal aid representation agreement to the people’s court.</p>
<p><b>第五十九条</b> 辩护人、诉讼代理人复制案卷材料的，人民法院只收取工本费；法律援助律师复制必要的案卷材料的，应当免收或者减收费用。</p>	<p><b>Article 59</b> The people’s court shall collect from defenders and litigation advocates making copies of case materials only the cost of making such copies and shall reduce or waive the fee for legal aid attorneys making necessary copies of case materials.</p>
<p><b>第六十条</b> 辩护律师向人民法院告知其委托人或者其他准备实施、正在实施危害国家安全、公共安全以及严重危害他人人身安全犯罪的，人民法院应当记录在案，立即转告主管机关依法处理，并为反映有关情况的辩护律师保密。</p>	<p><b>Article 60</b> When a defense attorney informs a people’s court that his client or anyone else is about to commit, or is in the process of committing a crime that endangers state security, the public security or a crime that seriously endangers the personal safety of others, the people’s court shall record it, promptly inform the competent organ to handle the situation according to law, and maintain the confidentiality of the reporting attorney.</p>
<p><b>第四章 证据</b></p>	<p><b>Chapter 4 Evidence</b></p>
<p><b>第一节 一般规定</b></p>	<p><b>Section One General Rules</b></p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第六十一条</b> 认定案件事实，必须以证据为根据。</p>	<p><b>Article 61</b> The facts of a case must be determined based upon evidence.</p>
<p><b>第六十二条</b> 审判人员应当依照法定程序收集、审查、核实、认定证据。</p>	<p><b>Article 62</b> Adjudication personnel must collect, examine, verify, and determine the evidence according to legally prescribed procedures.</p>
<p><b>第六十三条</b> 证据未经当庭出示、辨认、质证等法庭调查程序查证属实，不得作为定案的根据，但法律和本解释另有规定的除外。</p>	<p><b>Article 63</b> Evidence that has not been presented in court, identified, examined by the opposing party, or otherwise been investigated and verified via court inquest procedure, must not be used as a basis for a verdict, unless otherwise stipulated by law or the present Interpretation.</p>
<p><b>第六十四条</b> 应当运用证据证明的案件事实包括：</p> <p>（一）被告人、被害人的身份；</p> <p>（二）被指控的犯罪是否存在；</p> <p>（三）被指控的犯罪是否为被告人所实施；</p> <p>（四）被告人有无刑事责任能力，有无罪过，实施犯罪的动机、目的；</p> <p>（五）实施犯罪的时间、地点、手段、后果以及案件起因等；</p> <p>（六）被告人在共同犯罪中的地位、作用；</p> <p>（七）被告人有无从重、从轻、减轻、免除处罚情节；</p> <p>（八）有关附带民事诉讼、涉案财物处理的事实；</p>	<p><b>Article 64</b> Case facts that must be proven by the application of evidence include:</p> <p>(1) the identity of the defendant and victim;</p> <p>(2) whether the alleged crime in fact occurred;</p> <p>(3) whether the alleged crime was in fact committed by the defendant;</p> <p>(4) whether the defendant has the capacity for criminal responsibility, whether there is a culpable mens rea, or a motive or objective for the commission of the crime;</p> <p>(5) the time, place, manner, consequences and causes of the commission of the crime, etc.;</p> <p>(6) the defendant’s status and role in a jointly committed crime;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(九) 有关管辖、回避、延期审理等的程序事实;</p> <p>(十) 与定罪量刑有关的其他事实。</p> <p>认定被告人有罪和对被告人从重处罚，应当适用证据确实、充分的证明标准。</p>	<p>(7) whether the defendant possesses circumstances permitting or requiring heavier or lighter punishment, mitigated (below-minimum) punishment, or exemption from punishment ;</p> <p>(8) facts concerning the handling of property related to the case, where there is a collateral civil action;</p> <p>(9) procedural facts related to jurisdiction, recusal, postponement of adjudication, etc.;</p> <p>(10) Other facts related to conviction or sentencing.</p> <p>The standard of proof to be used to determine guilt and for aggravated sentencing of a defendant shall be that the evidence is definite and sufficient.</p>
<p><b>第六十五条</b> 行政机关在行政执法和查办案件过程中收集的物证、书证、视听资料、电子数据等证据材料，在刑事诉讼中可以作为证据使用；经法庭查证属实，且收集程序符合有关法律、行政法规规定的，可以作为定案的根据。</p> <p>根据法律、行政法规规定行使国家行政管理职权的组织，在行政执法和查办案件过程中收集的证据材料，视为行政机关收集的证据材料。</p>	<p><b>Article 65</b> When administrative authorities collect physical or documentary evidence, audio-visual materials, electronic data and other evidentiary materials in the process of carrying out administrative law enforcement and investigation and handling of the case, these items may be used as evidence in criminal proceedings; after being verified by the court, and if the collection procedures comply with legal and administrative regulatory requirements, these items may be used as a basis for a verdict.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>When government entities that exercise administrative powers at the national level in accordance with the law and administrative regulations collect evidentiary materials in the course of administrative law enforcement and case investigation and handling, these items are considered evidentiary materials collected by administrative authorities.</p>
<p><b>第六十六条</b> 人民法院依照刑事诉讼法第一百九十一条的规定调查核实证据，必要时，可以通知检察人员、辩护人、自诉人及其法定代理人到场。上述人员未到场的，应当记录在案。</p> <p>人民法院调查核实证据时，发现对定罪量刑有重大影响的新的证据材料的，应当告知检察人员、辩护人、自诉人及其法定代理人。必要时，也可以直接提取，并及时通知检察人员、辩护人、自诉人及其法定代理人查阅、摘抄、复制。</p>	<p><b>Article 66</b> In accordance with Article 191 of the Criminal Procedure Law, when a people’s court is investigating and verifying evidence, when necessary, it may notify procuratorial personnel, defenders, complainants in private prosecutions and their agents ad litem to appear in court. If the above-mentioned persons do not appear, this shall be noted in the case file.</p> <p>When a people’s court is investigating and verifying evidence and discovers new evidentiary materials that have a major impact on the conviction or sentencing, it shall notify procuratorial personnel, defenders, complainants in private prosecutions and their agents ad litem. When necessary, it may directly obtain [such materials] and timely notify procuratorial personnel, defenders, complainants in private prosecutions and their agents ad litem to consult, extract and duplicate these materials.</p>
<p><b>第六十七条</b> 下列人员不得担任刑事诉讼活动的见证人：</p> <p>（一）生理上、精神上有缺陷或者年幼，不具有相应辨别能力或者不能正确表达的人；</p> <p>（二）与案件有利害关系，可能影响案件公正处理的人；</p> <p>（三）行使勘验、检查、搜查、扣押等刑事诉讼职权的公安、</p>	<p><b>Article 67</b> The following personnel must not serve as authenticating witnesses in activities related to criminal proceedings:</p> <p>(1) persons with physiological or mental deficiencies or youth, who correspondingly lack the capacity to discern, or are unable to properly express</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>司法机关的工作人员或者其聘用的人员。</p> <p>由于客观原因无法由符合条件的人员担任见证人的，应当在笔录材料中注明情况，并对相关活动进行录像。</p>	<p>themselves;</p> <p>(2) persons with an interest in the case that could affect the impartial handling of the case;</p> <p>(3) Personnel or hired persons from public security and judicial organs who carry out crime scene investigations, inspections, searches, seizures, or other powers in criminal proceedings.</p> <p>If, for objective reasons, it is not possible to have an authenticating witness who satisfies the relevant criteria, this shall be indicated in the record, and related activities shall be videotaped.</p>
<p><b>第六十八条</b> 公开审理案件时，公诉人、诉讼参与者提出涉及国家秘密、商业秘密或者个人隐私的证据的，法庭应当制止。有关证据确与本案有关的，可以根据具体情况，决定将案件转为不公开审理，或者对相关证据的法庭调查不公开进行。</p>	<p><b>Article 68</b> During adjudications open to the public, when the public prosecutor or litigation participants in the proceedings present evidence involving State secrets, commercial secrets or individual privacy, the court shall stop [this from occurring]. If the evidence in question is, however, relevant to the present case, the court may decide, based on the specific circumstances, to convert the adjudication into one that is closed to the public, or to carry out court inquest regarding the relevant evidence in a closed session.</p>
<p><b>第二节 物证、书证的审查与认定</b></p>	<p><b>Section Two Examination and Determination of Physical and Documentary Evidence</b></p>
<p><b>第六十九条</b> 对物证、书证应当着重审查以下内容：</p>	<p><b>Article 69</b> The examination of physical and documentary evidence shall focus on the following content:</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(一) 物证、书证是否为原物、原件，是否经过辨认、鉴定；物证的照片、录像、复制品或者书证的副本、复制件是否与原物、原件相符，是否由二人以上制作，有无制作人关于制作过程以及原物、原件存放于何处的文字说明和签名；</p> <p>(二) 物证、书证的收集程序、方式是否符合法律、有关规定；经勘验、检查、搜查提取、扣押的物证、书证，是否附有相关笔录、清单，笔录、清单是否经侦查人员、物品持有人、见证人签名，没有物品持有人签名的，是否注明原因；物品的名称、特征、数量、质量等是否注明清楚；</p> <p>(三) 物证、书证在收集、保管、鉴定过程中是否受损或者改变；</p> <p>(四) 物证、书证与案件事实有无关联；对现场遗留与犯罪有关的具备鉴定条件的血迹、体液、毛发、指纹等生物样本、痕迹、物品，是否已作 DNA 鉴定、指纹鉴定等，并与被告人或者被害人的相应生物检材、生物特征、物品等比对；</p> <p>(五) 与案件事实有关联的物证、书证是否全面收集。</p>	<p>(1) whether the physical or documentary evidence is the original object or original document, and whether it has undergone identification and forensic analysis; whether photographs, video recordings or replicas of physical evidence, or certified copies or duplicates of documentary evidence, match the originals, whether they were created by two or more people, whether the persons(s) creating them left a written description with signature regarding the process of producing the object or document, the location where original object or document is stored;</p> <p>(2) whether the procedure and manner in which the physical or documentary evidence was collected comply with laws and relevant regulations; whether physical or documentary evidence that has undergone crime scene investigation, inspection, search and collection, or seizure, has related records or an inventory report, and whether the record or inventory report bears the signature of investigative personnel, that of the custodian of the object, or that of an authenticating witness; if an object doesn't bear the signature of the custodian of the object, whether the reason for [lack of the signature] is specified; whether the object's designation, features, number, quality, etc., are clearly indicated;</p> <p>(3) whether the physical or documentary evidence has been damaged or altered during the course of its collection, storage, or forensic analysis;</p>
--	--

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(4) whether the physical or documentary evidence is relevant to the facts of the case; for the bloodstains, bodily fluids, hairs, fingerprints and other biological specimens, stains, and objects that were left at the scene and related to the crime and satisfy the conditions for forensic analysis, whether they have undergone forensic DNA testing, forensic fingerprint testing, etc., and the comparison of these with the defendant's or victim's corresponding biological samples, biological features, biological substances, etc.;</p> <p>(5) whether physical and documentary evidence that is relevant to the facts of the case is collected in entirety.</p>
<p><b>第七十条</b> 据以定案的物证应当是原物。原物不便搬运，不易保存，依法应当由有关部门保管、处理，或者依法应当返还的，可以拍摄、制作足以反映原物外形和特征的照片、录像、复制品。</p> <p>物证的照片、录像、复制品，不能反映原物的外形和特征的，不得作为定案的根据。</p> <p>物证的照片、录像、复制品，经与原物核对无误、经鉴定为真实或者以其他方式确认为真实的，可以作为定案的根据。</p>	<p><b>Article 70</b> In order for physical evidence to constitute a basis for a verdict, it must be the original object. Original objects that are inconvenient to transport or difficult to store shall be stored and handled according to law, by the relevant agency, or, for those objects that must be returned according to law, they may be filmed, or a photograph, video recording or duplicate may be made so as to sufficiently reflect the shape and characteristics of the original object.</p> <p>If a photograph, video recording, or duplicate of physical evidence does not reflect the shape and characteristics of the original object, it must not be used as a basis for a verdict.</p> <p>If a photograph, video recording, or duplicate of physical evidence has been checked against the original object and verified, or if it has been forensically</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaalaw@nyu.edu](mailto:usasiaalaw@nyu.edu).

	<p>determined to be authentic, or if it has been confirmed as authentic via other means, it may be used as a basis for a verdict.</p>
<p><b>第七十一条</b> 据以定案的书证应当是原件。取得原件确有困难的，可以使用副本、复制件。</p> <p>书证有更改或者更改迹象不能作出合理解释，或者书证的副本、复制件不能反映原件及其内容的，不得作为定案的根据。</p> <p>书证的副本、复制件，经与原件核对无误、经鉴定为真实或者以其他方式确认为真实的，可以作为定案的根据。</p>	<p><b>Article 71</b> The documentary evidence that serves as a basis for a verdict must be original. If there is indeed a difficulty to obtain the original, certified copies or duplicates may be used [as a basis for a verdict].</p> <p>When no reasonable explanation can be made for alterations or signs of alteration of documentary evidence, or when certified copies or duplicates of documentary evidence do not reflect the original document and its contents, the evidence must not be used as a basis for a verdict.</p> <p>If a certified copy or duplicate of documentary evidence has been checked against the original document and verified, or if it has been forensically determined to be authentic, or if it has been confirmed as authentic via other means, it may be used as a basis for a verdict.</p>
<p><b>第七十二条</b> 对与案件事实可能有关联的血迹、体液、毛发、人体组织、指纹、足迹、字迹等生物样本、痕迹和物品，应当提取而没有提取，应当检验而没有检验，导致案件事实存疑的，人民法院应当向人民检察院说明情况，由人民检察院依法补充收集、调取证据或者作出合理说明。Forensic testing</p>	<p><b>Article 72</b> For bloodstains, bodily fluids, hairs, human tissue, fingerprints, footprints, writing and other biological specimens, stains and objects that may be relevant to the facts of a case, if these are required to be collected but have not been collected, or if they are required to be tested but have not been tested, and as a result, this creates doubt in the facts of the case, then the people’s court shall clearly explain the circumstances to the people’s procuratorate and the people’s procuratorate will collect or investigate and collect obtain supplementary evidence or provide a reasonable explanation.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

**第七十三条** 在勘验、检查、搜查过程中提取、扣押的物证、书证，未附笔录或者清单，不能证明物证、书证来源的，不得作为定案的根据。

物证、书证的收集程序、方式有下列瑕疵，经补正或者作出合理解释的，可以采用：

（一）勘验、检查、搜查、提取笔录或者扣押清单上没有侦查人员、物品持有人、见证人签名，或者对物品的名称、特征、数量、质量等注明不详的；

（二）物证的照片、录像、复制品，书证的副本、复制件未注明与原件核对无异，无复制时间，或者无被收集、**调取人**签名、盖章的；

（三）物证的照片、录像、复制品，书证的副本、复制件没有制作人关于制作过程和原物、原件存放地点的说明，或者说明中无签名的；

（四）有其他瑕疵的。

对物证、书证的来源、收集程序有疑问，不能作出合理解释的，该物证、书证不得作为定案的根据。

**Article 73** Physical or documentary evidence that is collected or seized during the course of crime scene investigation, inspection, or search, but not accompanied by a record or inventory report and cannot prove its source and origin must not be used as a basis for a verdict.

Where the procedure or manner in which physical or documentary evidence is collected contains the following flaws, if the defect is supplemented and corrected or a reasonable explanation for the flaw is provided, the evidence may be used:

(1) the record of a crime scene investigation, inspection, search, or extraction, or the inventory report of seized items, does not bear the signature of the investigative officer, custodian of the object, or authenticating witness, or the object's designation, features, number, quality, etc., are not stated in detail;

(2) the photograph, video recording or replica of physical evidence, or the certified copy or duplicate of documentary evidence, does not indicate that it has been checked against the original document and verified, does not indicate the time of duplication, or does not bear the signature or stamp of the person who collected or obtained it;

(3) the photograph, video recording or replica of physical evidence, or the certified copy or duplicate of documentary evidence does not bear the creator's

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>description of the process by which it was created or a description of the location where the original object or document is stored, or that description is unsigned;</p> <p>(4) it has other flaws.</p> <p>When there are doubts as to the source and origin or collection process of physical or documentary evidence, and no reasonable explanation can be made, that physical or documentary evidence must not be used as a basis for a verdict.</p>
<p><b>第三节 证人证言、被害人陈述的审查与认定</b></p>	<p><b>Section Three Examination and Determination of Witness Testimony and Victim Statements</b></p>
<p><b>第七十四条</b> 对证人证言应当着重审查以下内容：</p> <p>（一）证言的内容是否为证人直接感知；</p> <p>（二）证人作证时的年龄，认知、记忆和表达能力，生理和精神状态是否影响作证；</p> <p>（三）证人与案件当事人、案件处理结果有无利害关系；</p> <p>（四）询问证人是否个别进行；</p> <p>（五）询问笔录的制作、修改是否符合法律、有关规定，是否注明询问的起止时间和地点，首次询问时是否告知证人有关作证的权利义务和法律责任，证人对询问笔录是否核对确认；</p>	<p><b>Article 74</b> The examination of witness testimony shall focus on the following contents:</p> <p>(1) whether the content of the testimony was directly perceived by the witness;</p> <p>(2) whether, at the time testimony was provided, the witness’s age, cognitive and memory capacity, ability to express him or herself, physiological, or mental condition influenced the testimony;</p> <p>(3) whether the witness has a close relationship with a party in the case or has a stake in the outcome of the case;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(六) 询问未成年证人时，是否通知其法定代理人或者有关人员到场，其法定代理人或者有关人员是否到场；</p> <p>(七) 证人证言有无以暴力、威胁等非法方法收集的情形；</p> <p>(八) 证言之间以及与其他证据之间能否相互印证，有无矛盾。</p>	<p>(4) whether the witness was questioned individually;</p> <p>(5) whether the creation and correction of the transcript of questioning comply with laws and relevant regulations, whether the start and end time and location of questioning are indicated, whether, at the time of the first questioning, the witness was notified of the rights, duties, and legal responsibilities related to providing testimony, and whether the witness checked the transcript of questioning and verified and confirmed it;</p> <p>(6) when questioning juvenile witnesses, whether the agent ad litem or relevant personnel were notified to be present, and whether the agent ad litem or relevant personnel were in fact present;</p> <p>(7) whether the witness's testimony was collected under circumstances involving the use of violence, threats, or other unlawful methods;</p> <p>(8) whether witness testimony mutually corroborates or contradicts itself and whether it corroborates or contradicts other evidence.</p>
<p><b>第七十五条</b> 处于明显醉酒、中毒或者麻醉等状态，不能正常感知或者正确表达的证人所提供的证言，不得作为证据使用。</p> <p>证人的猜测性、评论性、推断性的证言，不得作为证据使用，但根据一般生活经验判断符合事实的除外。</p>	<p><b>Article 75</b> When a witness is clearly intoxicated or under the influence of poison or other drugs, or is anesthetized etc, or is unable to perceive normally, or unable to correctly express him- or herself, the testimony he or she provides must not be used as evidence.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>Speculative, editorial, and inferential testimony by a witness must not be used as evidence unless the testimony can be determined based on common sense to be factual.</p>
<p><b>第七十六条</b> 证人证言具有下列情形之一的，不得作为定案的根据：</p> <p>（一）询问证人没有个别进行的；</p> <p>（二）书面证言没有经证人核对确认的；</p> <p>（三）询问聋、哑人，应当提供通晓聋、哑手势的人员而未提供的；</p> <p>（四）询问不通晓当地通用语言、文字的证人，应当提供翻译人员而未提供的。</p>	<p><b>Article 76</b> Witness testimony, under any one of the following circumstances, shall not be used as a basis for a verdict:</p> <p>(1) the questioning of the witness was not carried out individually;</p> <p>(2) written testimony was not checked and confirmed by the witness;</p> <p>(3) when questioning deaf or mute persons, personnel proficient in sign language for deaf or mute persons are required to be provided but were not provided;</p> <p>(4) when questioning witnesses who are not proficient in the commonly used local language, a translator is required to be provided but was not provided.</p>
<p><b>第七十七条</b> 证人证言的收集程序、方式有下列瑕疵，经补正或者作出合理解释的，可以采用；不能补正或者作出合理解释的，不得作为定案的根据：</p> <p>（一）询问笔录没有填写询问人、记录人、法定代理人姓名以及询问的起止时间、地点的；</p> <p>（二）询问地点不符合规定的；</p>	<p><b>Article 77</b> When the procedure or method used to collect witness testimony contains any of the following flaws, the testimony may still be used if the defects are supplemented and corrected or a reasonable explanation is given; if there is no supplement and correction or reasonable explanation, the statement must not be used as a basis for a verdict:</p> <p>(1) the transcript of questioning does not include the family and given</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(三) 询问笔录没有记录告知证人有关作证的权利义务和法律责任的;</p> <p>(四) 询问笔录反映出在同一时段, 同一询问人员询问不同证人的。</p>	<p>names of the questioner, note-taker, agent ad litem, or the start and end time and location of the questioning;</p> <p>(2) the location where questioning took place does not comply with regulations;</p> <p>(3) the transcript of questioning does not indicate that the witness was informed of the rights, duties and legal responsibilities related to providing testimony;</p> <p>(4) transcripts of questioning show that a single questioner was questioning different witnesses during the same time period.</p>
<p><b>第七十八条</b> 证人当庭作出的证言, 经控辩双方质证、法庭查证属实的, 应当作为定案的根据。</p> <p>证人当庭作出的证言与其庭前证言矛盾, 证人能够作出合理解释, 并有相关证据印证的, 应当采信其庭审证言; 不能作出合理解释, 而其庭前证言有相关证据印证的, 可以采信其庭前证言。</p> <p>经人民法院通知, 证人没有正当理由拒绝出庭或者出庭后拒绝作证, 法庭对其证言的真实性无法确认的, 该证人证言不得作为定案的根据。</p>	<p><b>Article 78</b> Testimony presented in court by witnesses, which has undergone examination by both prosecution and defense and has been checked and verified by the court, shall be used as a basis for a verdict.</p> <p>When testimony presented in court by a witness contains contradictions with the witness’s testimony prior to trial, if the witness can provide a reasonable explanation and there is corresponding corroborative evidence, his or her in-court testimony shall be credited; if the witness cannot provide a reasonable explanation, but if there is corresponding evidence that corroborates his or her testimony prior to trial, his or her testimony prior to trial may be credited.</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaalaw@nyu.edu](mailto:usasiaalaw@nyu.edu).

	After notified by the court, if a witness refuses to appear in court without a legitimate reason, or if the witness does appear in court but refuses to testify, and the court has no means to confirm the truthfulness of the witness's testimony, that witness's testimony must not be used as a basis for a verdict.
<b>第七十九条</b> 对被害人陈述的审查与认定, 参照适用本节的有关规定。	<b>Article 79</b> Regarding the examination and determination of victim statements, refer to the relevant provisions in this section.
<b>第四节 被告人供述和辩解的审查与认定</b>	<b>Section Four Examination and Determination of Defendant Confessions and Explanations</b>
<p><b>第八十条</b> 对被告人供述和辩解应当着重审查以下内容:</p> <p>(一) 讯问的时间、地点, 讯问人的身份、人数以及讯问方式等是否符合法律、有关规定;</p> <p>(二) 讯问笔录的制作、修改是否符合法律、有关规定, 是否注明讯问的具体起止时间和地点, 首次讯问时是否告知被告人相关权利和法律规定, 被告人是否核对确认;</p> <p>(三) 讯问未成年被告人时, 是否通知其法定代理人或者有关人员到场, 其法定代理人或者有关人员是否到场;</p> <p>(四) 被告人的供述有无以刑讯逼供等非法方法收集的情形;</p> <p>(五) 被告人的供述是否前后一致, 有无反复以及出现反复的原因; 被告人的所有供述和辩解是否均已随案移送;</p>	<p><b>Article 80</b> Examination of defendant's confessions and explanations shall focus on the following content:</p> <p>(1) whether the time and place of interrogation, the identities and number of interrogators, and the methods of interrogation, etc., comply with laws and relevant regulations;</p> <p>(2) whether the creation and correction of the transcript of interrogation comply with laws and relevant regulations, whether specific start and end time and the location of the interrogation are clearly indicated, whether, at the time of the first interrogation, the defendant was notified of relevant rights and laws and regulations, and whether the defendant reviewed and confirmed the content of the transcript of questioning;</p> <p>(3) when a juvenile defendant is interrogated, whether his or her agent ad litem or relevant personnel have been notified to be present, and whether his or</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(六) 被告人的辩解内容是否符合案情和常理, 有无矛盾;</p> <p>(七) 被告人的供述和辩解与同案被告人的供述和辩解以及其他证据能否相互印证, 有无矛盾。</p> <p>必要时, 可以调取讯问过程的录音录像、被告人进出看守所的健康检查记录、笔录, 并结合录音录像、记录、笔录对上述内容进行审查。</p>	<p>her agent ad litem or relevant personnel were in fact present;</p> <p>(4) whether defendant’s confession was made under the circumstances of extortion of confession by torture or other illegal methods;</p> <p>(5) whether the defendant’s confession is consistent, whether it changes repeatedly, and what the reasons are for the changes; whether all of the defendant’s confessions and explanations have been transferred with the case;</p> <p>(6) whether the content of the defendant’s explanations comply with the facts of the case and common sense, and whether there are contradictions;</p> <p>(7) whether the defendant’s confessions and explanations, the confessions and explanations of other defendants in the same case, and other evidence, are mutually corroborative, or whether there are contradictions.</p> <p>When necessary, the video or audio recording of the interrogation, and the medical intake evaluation and transcript made when the defendant enters the detention center, can be investigated and collected and used to examine whether any of the abovementioned content exist.</p>
<p><b>第八十一条</b> 被告人供述具有下列情形之一的, 不得作为定案的根据:</p>	<p><b>Article 81</b> If any one of the following circumstances exists with respect to a defendant’s confession, [the confession] must not be used as a basis for a verdict:</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(一) 讯问笔录没有经被告人核对确认的;</p> <p>(二) 讯问聋、哑人, 应当提供通晓聋、哑手势的人员而未提供的;</p> <p>(三) 讯问不通晓当地通用语言、文字的被告人, 应当提供翻译人员而未提供的。</p>	<p>(1) the transcript of interrogation has not been checked and confirmed by the defendant;</p> <p>(2) when a deaf or mute person is interrogated, personnel proficient in sign language is required to be provided, but was not provided;</p> <p>(3) when a defendant who is not proficient in the commonly used local language is interrogated, a translator is required to be provided, but was not provided.</p>
<p><b>第八十二条</b> 讯问笔录有下列瑕疵, 经补正或者作出合理解释的, 可以采用; 不能补正或者作出合理解释的, 不得作为定案的根据:</p> <p>(一) 讯问笔录填写的讯问时间、讯问人、记录人、法定代理人等有误或者存在矛盾的;</p> <p>(二) 讯问人没有签名的;</p> <p>(三) 首次讯问笔录没有记录告知被讯问人相关权利和法律规定的。</p>	<p><b>Article 82</b> If the transcript of an interrogation contains any of the following flaws, it may still be used with supplement and correction or with a reasonable explanation; if it cannot be supplemented and corrected or no reasonable explanation is provided, [the transcript] shall not be used as a basis for a verdict:</p> <p>(1) the interrogation transcript contains errors or contradictions involving the time, the interrogators, the note-taker, the agent ad litem, etc.;</p> <p>(2) the interrogators did not sign;</p> <p>(3) the transcript of the first interrogation does not indicate that the person being interrogated was informed of relevant rights and laws and regulations</p>
<p><b>第八十三条</b> 审查被告人供述和辩解, 应当结合控辩双方提供的所有证据以及被告人的全部供述和辩解进行。</p>	<p><b>Article 83</b> Examination of the defendant's confession and explanations shall be conducted by combining all of the evidence provided by both prosecution and</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>被告人庭审中翻供，但不能合理说明翻供原因或者其辩解与全案证据矛盾，而其庭前供述与其他证据相互印证的，可以采信其庭前供述。</p> <p>被告人庭前供述和辩解存在反复，但庭审中供认，且与其他证据相互印证的，可以采信其庭审供述；被告人庭前供述和辩解存在反复，庭审中不供认，且无其他证据与庭前供述印证的，不得采信其庭前供述。</p>	<p>defense and defendant’s confessions and explanations in entirety.</p> <p>If the defendant retracts his confession in court, but cannot reasonably explain the reason for the retraction, or if his explanations contradict with all of the evidence in the case, but his pre-trial confession and other evidence are mutually corroborative, his pre-trial confession may be credited.</p> <p>If the defendant’s pre-trial confession and explanations change repeatedly, but he or she confesses in court, and this confession corroborates other evidence, his or her in-court confession may be credited; if the defendant’s pre-trial confessions and explanations change repeatedly, but he or she does not confess in court, and there is no other evidence corroborating his or her pre-trial confession, his or her pre-trial confession must not be credited.</p>
<p><b>第五节 鉴定意见的审查与认定</b></p>	<p><b>Section Five Examination and Determination of Forensic Analyst Opinions</b></p>
<p><b>第八十四条</b> 对鉴定意见应当着重审查以下内容：</p> <p>（一）鉴定机构和鉴定人是否具有法定资质；</p> <p>（二）鉴定人是否存在应当回避的情形；</p> <p>（三）检材的来源、取得、保管、送检是否符合法律、有关规定，与相关提取笔录、扣押物品清单等记载的内容是否相符，检材是否充足、可靠；</p> <p>（四）鉴定意见的形式要件是否完备，是否注明提起鉴定的事由、<b>鉴定委托人</b>、鉴定机构、鉴定要求、鉴定过程、鉴定方法、鉴定日期等相关内容，是否由鉴定机构加盖司法鉴定专用章并由鉴定人签名、盖章；</p>	<p><b>Article 84</b> Examination of expert analyst opinions shall focus on the following content:</p> <p>(1) whether the expert analyst organization/facility and the expert analyst possess statutory qualifications;</p> <p>(2) whether circumstances exist such that the expert analyst shall recuse him/herself;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(五) 鉴定程序是否符合法律、有关规定;</p> <p>(六) 鉴定的过程和方法是否符合相关专业的<b>规范要求</b>;</p> <p>(七) 鉴定意见是否明确;</p> <p>(八) 鉴定意见与案件待证事实有无关联;</p> <p>(九) 鉴定意见与勘验、检查笔录及相关照片等其他证据是否矛盾;</p> <p>(十) 鉴定意见是否依法及时告知相关人员, 当事人对鉴定意见有无异议。</p>	<p>(3) whether the origin, acquisition, storage, and testing of samples comply with laws and relevant regulations, whether these <b>accord</b> with related extraction records, inventories of seized objects, and other records, and whether the samples are adequate and reliable;</p> <p>(4) whether the formal elements of the expert analyst opinion are complete, whether the subject matter being analyzed, the person commissioning/requesting the expert analysis, the expert analyst institution/facility, the requirements of the analysis, the process used in the analysis, the method of analysis, the date(s) of the analysis, and other related contents are clearly identified, whether the opinion has been stamped by the expert analyst institution/facility with the official appraiser's seal and bears the signature and stamp of the appraiser;</p> <p>(5) whether the procedure used in the expert analysis satisfies laws and relevant regulations;</p> <p>(6) whether the process and methods used in the expert analysis satisfy the requirements of relevant professional <b>codes?</b>;</p> <p>(7) whether the expert analyst opinion is clear and definite;</p> <p>(8) whether the expert analyst opinion is relevant to the facts to be proven in the case;</p>
---	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(9) whether the expert analyst opinion contradicts the crime scene investigation, inspection record and related photographs or other evidence;</p> <p>(10) whether relevant personnel were timely notified of the expert analyst opinion in accordance with law, and whether the parties to the case (defendant and victim) object to the expert analyst opinion.</p>
<p><b>第八十五条</b> 鉴定意见具有下列情形之一的，不得作为定案的根据：</p> <p>（一）鉴定机构不具备法定资质，或者鉴定事项超出该鉴定机构业务范围、技术条件的；</p> <p>（二）鉴定人不具备法定资质，不具有相关专业技术或者职称，或者违反回避规定的；</p> <p>（三）送检材料、样本来源不明，或者因污染不具备鉴定条件的；</p> <p>（四）鉴定对象与送检材料、样本不一致的；</p> <p>（五）鉴定程序违反规定的；</p> <p>（六）鉴定过程和方法不符合相关专业的规范要求的；</p>	<p><b>Article 85</b> If the expert analyst opinion involves? any one of the following circumstances, it shall not be used as a basis for a verdict;</p> <p>(1) the expert analyst institution/facility does not possess statutory qualifications, or the matter being analyzed exceeds the scope of business and technical capacity of the expert analyst institution/facility;</p> <p>(2) if the expert analyst does not possess statutory qualifications, or does not possess the related professional skills or professional title(s), or is in violation of recusal regulations;</p> <p>(3) if the origins of the submitted materials and samples for inspection are unknown, or do not meet the conditions for expert analysis due to contamination;</p> <p>(4) if the object of expert analysis and the submitted materials and samples for inspection are inconsistent;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(七) 鉴定文书缺少签名、盖章的;</p> <p>(八) 鉴定意见与案件待证事实没有关联的;</p> <p>(九) 违反有关规定的其他情形。</p>	<p>(5) if the procedure used in the expert analysis violates regulations;</p> <p>(6) if the process and method used in the expert analysis do not satisfy the requirements of relevant professional codes;</p> <p>(7) if the records of the expert analysis lack a signature or stamp;</p> <p>(8) if the expert analyst opinion is not relevant to the facts to be proven in the case;</p> <p>(9) other circumstances in violation of relevant regulations</p>
<p><b>第八十六条</b> 经人民法院通知，鉴定人拒不出庭作证的，鉴定意见不得作为定案的根据。</p> <p>鉴定人由于不能抗拒的原因或者有其他正当理由无法出庭的，人民法院可以根据情况决定延期审理或者重新鉴定。</p> <p>对没有正当理由拒不出庭作证的鉴定人，人民法院应当通报司法行政机关或者有关部门。</p>	<p><b>Article 86</b> If an expert analyst refuses to appear in court to testify after being notified by a court, the expert analyst opinion shall not be used as a basis for a verdict.</p> <p>If, due to reasons beyond his/her control or other legitimate reasons, the expert analyst cannot appear in court, the people’s court may extend/postpone the trial or order a new expert analysis, based on the circumstances.</p> <p>If an expert analyst refuses to appear in court to testify without a legitimate reason, the people’s court shall notify judicial administrative authority or relevant agencies.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第八十七条</b> 对案件中的专门性问题需要鉴定，但没有法定司法鉴定机构，或者法律、司法解释规定可以进行检验的，可以指派、聘请有专门知识的人进行检验，检验报告可以作为定罪量刑的参考。</p> <p>对检验报告的审查与认定，参照适用本节的有关规定。</p> <p>经人民法院通知，检验人拒不出庭作证的，检验报告不得作为定罪量刑的参考。</p>	<p><b>Article 87</b> If a specialized issue in a case requires expert analysis but there is no judicial expert analysis institution/facility as prescribed by law, or if the law or a judicial interpretation state that testing is permissible, persons with specialized knowledge can be designated to conduct the testing, and the test report may be consulted when determining guilt and sentencing.</p> <p>On the examination and determination of testing reports, refer to relevant provisions in this section.</p> <p>After notification from the people’s court, if a forensic analyst who performed testing forensic analyst who performed testing refuses to appear in court to testify, the testing report shall not be consulted when determining guilt and sentencing.</p>
<p><b>第六节 勘验、检查、辨认、侦查实验等笔录的审查与认定</b></p>	<p><b>Section Six Examination and Determination of Crime Scene Investigation, Inspection, Identification, Investigative testing, and Other Reports</b></p>
<p><b>第八十八条</b> 对勘验、检查笔录应当着重审查以下内容：</p> <p>（一）勘验、检查是否依法进行，笔录的制作是否符合法律、有关规定，勘验、检查人员和见证人是否签名或者盖章；</p> <p>（二）勘验、检查笔录是否记录了提起勘验、检查的事由，勘验、检查的时间、地点，在场人员、现场方位、周围环境等，现场的物品、人身、尸体等的位置、特征等情况，以及勘验、检查、搜查的过程；文字记录与实物或者绘图、照片、录像是否相</p>	<p><b>Article 88</b> Examination of crime scene investigation reports and inspection reports shall focus on the following content:</p> <p>(1) whether the crime scene investigation and inspection were conducted in accordance with law, whether the creation of the record/transcript complied with laws and relevant regulations, whether crime scene investigation and inspection personnel as well as authenticating witnesses signed or affixed their seal;</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>符；现场、物品、痕迹等是否伪造、有无破坏；人身特征、伤害情况、生理状态有无伪装或者变化等；</p> <p>（三）补充进行勘验、检查的，是否说明了再次勘验、检查的原由，前后勘验、检查的情况是否矛盾。</p>	<p>(2) whether crime scene investigation and inspection records noted the subject matter of the crime scene investigation or inspection, the crime scene investigation and inspection time and location, the persons present at the scene, the orientation/layout of the scene, the surrounding environment, etc., the specific locations, characteristics and other circumstances of physical evidence, bodies/persons, corpses, etc., and the processes of crime scene investigation, inspection, and search; whether written records and physical objects or drawings, photographs, video recordings match one another; whether the scene, objects, stains, etc., are fabricated, and whether they have been destroyed; whether the characteristics of bodies/persons, circumstances of injuries, and physiological states have been camouflaged or altered, etc.;</p> <p>(3) whether corrections made to the conduct of crime scene investigation or inspection describe the reason for subsequent crime scene investigation or inspection, and whether there are contradictions between earlier and later crime scene investigations and inspections.</p>
<p><b>第八十九条</b> 勘验、检查笔录存在明显不符合法律、有关规定的情形，不能作出合理解释或者说明的，不得作为定案的根据。</p>	<p><b>Article 89</b> If there are aspects of the crime scene investigation and inspection report that do not comply with laws and relevant regulations and no reasonable explanation or description can be provided, the report shall not be used as a basis for a verdict.</p>
<p><b>第九十条</b> 对辨认笔录应当着重审查辨认的过程、方法，以及辨认笔录的制作是否符合有关规定。</p>	<p><b>Article 90</b> The identification of reports shall focus on examining the process and method, and whether or not the creation of the identification report complies with relevant regulations.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>辨认笔录具有下列情形之一的，不得作为定案的根据：</p> <p>（一）辨认不是在侦查人员主持下进行的；</p> <p>（二）辨认前使辨认人见到辨认对象的；</p> <p>（三）辨认活动没有个别进行的；</p> <p>（四）辨认对象没有混杂在具有类似特征的其他对象中，或者供辨认的对象数量不符合规定的；</p> <p>（五）辨认中给辨认人明显暗示或者明显有指认嫌疑的；</p> <p>（六）违反有关规定、不能确定辨认笔录真实性的其他情形。</p>	<p>If the identification report contains any one of the following circumstances, it shall not be a used as a basis for a verdict:</p> <p>(1) identification was not carried out under the preside of investigative officer;</p> <p>(2) prior to the identification procedure, the identifying person is made to see the object of identification;</p> <p>(3) the identification procedure was not conducted individually;</p> <p>(4) the object of identification was not mixed in with others possessing similar characteristics, or the number of those in the pool for identification does not comply with regulatory requirements;</p> <p>(5) during the identification, the identifying person is given an obvious hint or the suspect is pointed at in an obvious manner;</p> <p>(6) Other circumstances such as the violation of relevant regulations or the inability to confirm the truthfulness of the identification report.</p>
<p><b>第九十一条</b> 对侦查实验笔录应当着重审查实验的过程、方法，以及笔录的制作是否符合有关规定。</p>	<p><b>Article 91</b> The examination of records of investigative testing, shall focus on the process and method, and whether the record’s creation meets the requirements of</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>侦查实验的条件与事件发生时的条件有明显<b>差异</b>，或者存在影响实验结论科学性的其他情形的，侦查实验笔录不得作为定案的根据。</p>	<p>relevant regulations.</p> <p>If there is an obvious <b>discrepancy</b> between the conditions for an investigative testing and the conditions at the time of the incident, or if there are other circumstances that affect the scientific quality of the testing’s conclusions, the record of the investigative testing shall not be used as a basis of a verdict.</p>
<p><b>第七节 视听资料、电子数据的审查与认定</b></p>	<p><b>Section Seven Examination and Determination of Audio-Visual Materials and Electronic Data</b></p>
<p><b>第九十二条</b> 对视听资料应当着重审查以下内容：</p> <p>（一）是否附有提取过程的说明，来源是否合法；</p> <p>（二）是否为原件，有无复制及复制份数；是复制件的，是否附有无法调取原件的原因、复制件制作过程和原件存放地点的说明，制作人、原视听资料持有人是否签名或者盖章；</p> <p>（三）制作过程中是否存在威胁、引诱当事人等违反法律、有关规定的情形；</p> <p>（四）是否写明制作人、持有人的身份，制作的时间、地点、条件和方法；</p> <p>（五）内容和制作过程是否真实，有无剪辑、增加、删改等情形；</p>	<p><b>Article 92</b> The examination of audio-visual materials shall focus on the following content:</p> <p>(1) whether a description of the extraction process is appended, and whether the origin is lawful;</p> <p>(2) whether it is the original item, whether there are duplicates and the number of duplicates; for duplicates, whether a description is appended containing a reason for not being able to investigate and collect the original through investigation, the process of creating the duplicate, an explanation of the storage location of the original, and whether the producer and holder of the original audio file signs or affixes his or her seal;</p> <p>(3) whether threats or inducements of the parties (defendant and victim) or other means that violate the law or relevant regulations were used during the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(六) 内容与案件事实有无关联。</p> <p>对视听资料有疑问的，应当进行鉴定。</p>	<p>creation process;</p> <p>(4) whether the identities of the creator and holder, the time, location, conditions and method of creation are clearly written;</p> <p>(5) whether the contents and the creation process are factual?, whether there have been situations such as edits, additions, or deletions.</p> <p>(6) whether the content is relevant to the facts of the case.</p> <p>If there is doubt regarding an audio-visual material, a forensic evaluation shall be conducted.</p>
<p><b>第九十三条</b> 对电子邮件、电子数据交换、网上聊天记录、博客、微博客、手机短信、电子签名、域名等电子数据，应当着重审查以下内容：</p> <p>(一) 是否随原始存储介质移送；在原始存储介质无法封存、不便移动或者依法应当由有关部门保管、处理、返还时，提取、复制电子数据是否由二人以上进行，是否足以保证电子数据的完整性，有无提取、复制过程及原始存储介质存放地点的文字说明和签名；</p> <p>(二) 收集程序、方式是否符合法律及有关技术规范；经勘验、检查、搜查等侦查活动收集的电子数据，是否附有笔录、清单，并经侦查人员、电子数据持有人、见证人签名；没有持有人签名的，是否注明原因；远程调取境外或者异地的电子数据的，</p>	<p><b>Article 93</b> For electronic mails, electronic data exchanges, online chat records, blogs, micro-blogs, mobile phone text messages, electronic signatures, domain names and other electronic data, the examination shall focus on the following content:</p> <p>(1) whether it was transferred with the original storage media; when original storage media cannot be sealed, or is inconvenient to transfer or if, in accordance with law, it shall be stored, handled or returned by relevant agencies, whether the extraction or copying of electronic data was performed by more than two persons, whether it is sufficient to guarantee the completeness of the electronic data, whether or not the extraction or copying processes and original</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>是否注明相关情况；对电子数据的规格、类别、文件格式等注明是否清楚；</p> <p>（三）电子数据内容是否真实，有无删除、修改、增加等情形；</p> <p>（四）电子数据与案件事实有无关联；</p> <p>（五）与案件事实有关联的电子数据是否全面收集。</p> <p>对电子数据有疑问的，应当进行鉴定或者检验。</p>	<p>storage media storage location contain a description in writing and signature;</p> <p>(2) whether the process and method of collecting the data complied with law and relevant technical procedural standards, whether electronic data through crime scene investigation, inspection, search and other investigative activities has a report or inventory appended to it, and whether it bears the signature of investigative officer, the keeper/holder of the electronic data, or authenticating witness;</p> <p>(3) whether the contents of the electronic data are factual?, whether there are situations such as deletions, alterations, and additions;</p> <p>(4) whether electronic data is relevant to the facts of the case;</p> <p>(5) whether electronic data that is relevant to the facts of the case was collected in its entirety.</p> <p>If there is doubt regarding electronic data, forensic evaluation or investigative inspection shall be conducted.</p>
<p><b>第九十四条</b> 视听资料、电子数据具有下列情形之一的，不得作为定案的根据：</p> <p>（一）经审查无法确定真伪的；</p>	<p><b>Article 94</b> Audio-visual materials and electronic data containing any one of the following circumstances shall not be used as a basis for a verdict:</p> <p>(1) authenticity cannot be confirmed after examination;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(二) 制作、取得的时间、地点、方式等有疑问，不能提供必要证明或者作出合理解释的。</p>	<p>(2) if there is doubt regarding the time, location, and manner of creation or extraction and the required certificate cannot be provided, nor a reasonable explanation.</p>
<p style="text-align: center;"><b>第八节 非法证据排除</b></p>	<p style="text-align: center;"><b>Section Eight Exclusion of Illegally Obtained Evidence</b></p>
<p><b>第九十五条</b> 使用肉刑或者变相肉刑，或者采用其他使被告人在肉体上或者精神上遭受剧烈疼痛或者痛苦的方法，迫使被告人违背意愿供述的，应当认定为刑事诉讼法第五十四条规定的“刑讯逼供等非法方法”。</p> <p>认定刑事诉讼法第五十四条规定的“可能严重影响司法公正”，应当综合考虑收集物证、书证违反法定程序以及所造成后果的严重程度等情况。</p>	<p><b>Article 95</b> The use of corporal punishment or disguised corporal punishment, or other methods inflicting severe pain or suffering, physically or mentally on the defendant [and therefore] forces a defendant to make confessions against his or her will, [it] shall be deemed “illegal means such as extortion of confession by torture,” as set out in Article 54 of the Criminal Procedure Law.</p> <p>When determining what “may have a serious impact upon the course of justice,” as set out in Article 54 of the Criminal Procedure Law, the determination shall be made by considering the circumstances comprehensively, including the gravity of procedural violations while collecting physical and documentary evidence and the harm caused.</p>
<p><b>第九十六条</b> 当事人及其辩护人、诉讼代理人申请人民法院排除以非法方法收集的证据的，应当提供涉嫌非法取证的人员、时间、地点、方式、内容等相关线索或者材料。</p>	<p><b>Article 96</b> If a party or his or her defender or litigation advocate files a motion with a people’s court to exclude illegally obtained evidence, he or she shall provide leads such as the person(s) suspect of obtaining evidence illegal, time, place, manner, content and other leads or materials relevant to the alleged illegal method of obtaining evidence.</p>
<p><b>第九十七条</b> 人民法院向被告及其辩护人送达起诉书副本时，应当告知其申请排除非法证据的，应当在开庭审理前提出，但在</p>	<p><b>Article 97</b> When serving a certified copy of an indictment on the defendant and</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>庭审期间才发现相关线索或者材料的除外。</p>	<p>his or her defender, a people’s court shall inform him or her that an application to exclude illegally obtained evidence shall be submitted before the commencement of trial, except for those leads or materials discovered during the period of adjudication in open court.</p>
<p><b>第九十八条</b> 开庭审理前，当事人及其辩护人、诉讼代理人申请人民法院排除非法证据的，人民法院应当在开庭前及时将申请书或者申请笔录及相关线索、材料的复制件送交人民检察院。</p>	<p><b>Article 98</b> Prior to the commencement of adjudication in open court, if a party or his or her defender or litigation advocate files an application with the people’s court to exclude illegally obtained evidence, the people’s court shall serve the application or the transcript of the application and duplicates of relevant leads and materials on the people’s procuratorate in a timely manner before holding a court session.</p>
<p><b>第九十九条</b> 开庭审理前，当事人及其辩护人、诉讼代理人申请排除非法证据，人民法院经审查，对证据收集的合法性有疑问的，应当依照刑事诉讼法第一百八十二条第二款的规定召开庭前会议，就非法证据排除等问题了解情况，听取意见。人民检察院可以通过出示有关证据材料等方式，对证据收集的合法性加以说明。</p>	<p><b>Article 99</b> Prior to the commencement of adjudication in open court, if a party or his or her defender or litigation advocate files an application with the people’s court to exclude illegally obtained evidence, and after a review the people’s court has questions about the legality of the manner in which the evidence was obtained, the court shall hold a pre-trial conference to inquire into and hear opinions about issues such as excluding illegally obtained evidence pursuant to Article 182, paragraph 2 of the Criminal Procedure Law. The prosecution may explain the legality of the manner in which the evidence was obtained by presenting relevant evidentiary materials or other methods.</p>
<p><b>第一百条</b> 法庭审理过程中，当事人及其辩护人、诉讼代理人申请排除非法证据的，法庭应当进行审查。经审查，对证据收集的合法性有疑问的，应当进行调查；没有疑问的，应当当庭说明情况和理由，继续法庭审理。当事人及其辩护人、诉讼代理人以相</p>	<p><b>Article 100</b> If a party or his or her defender or litigation advocate files an application with a people’s court to exclude illegally obtained evidence during adjudication, the people’s court shall conduct a review. After the review, if there are questions about the legality of the manner in which evidence was obtained,</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>同理由再次申请排除非法证据的，法庭不再进行审查。</p> <p>对证据收集合法性的调查，根据具体情况，可以在当事人及其辩护人、诉讼代理人提出排除非法证据的申请后进行，也可以在法庭调查结束前一并进行。</p> <p>法庭审理过程中，当事人及其辩护人、诉讼代理人申请排除非法证据，人民法院经审查，不符合本解释第九十七条规定的，应当在法庭调查结束前一并进行审查，并决定是否进行证据收集合法性的调查。</p>	<p>the court shall make an inquiry; if there are no doubt with the legality of the manner in which evidence was obtained, the court shall explain the situation and reasons in court, and proceed with the adjudication. If a party or his or her defender or litigation advocate files another application with the people's court to exclude illegally obtained evidence on the same grounds, the court will not conduct a review.</p> <p>The court inquiry into the legality of the manner in which the evidence was collected/obtained may be conducted after a party or his or her defender or litigation advocate files an application with the people's court to exclude illegally obtained evidence, or before the court inquest is concluded, based on the specific circumstances.</p> <p>During the adjudication, upon examination, if a people's court finds that the application filed by a party or his or her defender or litigation advocate to exclude illegally obtained evidence does not meet the requirements prescribed in Article 97 of this Interpretation, the court shall conduct the review before the court inquest is concluded and decide whether or not to conduct an investigation into the manner in which the evidence was obtained.</p>
<p><b>第一百零一条</b> 法庭决定对证据收集的合法性进行调查的，可以由公诉人通过出示、宣读讯问笔录或者其他证据，有针对性地播放讯问过程的录音录像，提请法庭通知有关侦查人员或者其他人员出庭说明情况等方式，证明证据收集的合法性。</p>	<p><b>Article 101</b> If a people's court decides to conduct an investigation into the legality of the manner in which the evidence was obtained, the prosecutor may prove the legality of the manner in which the evidence was obtained by presenting or reading interrogation transcripts or other evidence, playing</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>公诉人提交的取证过程合法的说明材料，应当经有关侦查人员签名，并加盖公章。未经有关侦查人员签名的，不得作为证据使用。上述说明材料不能单独作为证明取证过程合法的根据。</p>	<p>particular audio or video recordings of the interrogation to address specific issues in question, and requesting the court to notify the relevant investigative officer(s) or other personnel to appear in court to explain the situation, and other methods.</p> <p>If the prosecutor submits written explanation letters to support the legality of the manner in which the evidence was obtained, the explanation letters shall be signed by the relevant investigative officer(s) and stamped with an official seal. Without the signature of the relevant investigative officer(s), the explanation letters shall not be used as evidence. The explanation letters, however, cannot be used as the sole evidence to prove the legality of the manner in which the evidence was obtained.</p>
<p><b>第一百零二条</b> 经审理，确认或者不能排除存在刑事诉讼法第五十四条规定的以非法方法收集证据情形的，对有关证据应当排除。</p> <p>人民法院对证据收集的合法性进行调查后，应当将调查结论告知公诉人、当事人和辩护人、诉讼代理人。</p>	<p><b>Article 102</b> After adjudication, if the existence of illegal means to obtain evidence proscribed by Article 54 of the Criminal Procedure Law is substantiated or cannot be ruled out, the evidence at issue shall be excluded.</p> <p>After conducting an investigation into the legality of the manner in which evidence was obtained, the people’s court shall inform the prosecutors, the parties, their defenders, and litigation advocates, of the conclusions of its investigation.</p>
<p><b>第一百零三条</b> 具有下列情形之一的，第二审人民法院应当对证据收集的合法性进行审查，并根据刑事诉讼法和本解释的<b>有关规定</b>作出处理：</p>	<p><b>Article 103</b> Under any one of the following circumstances, a people’s court of second instance shall review the legality of the manner in which the evidence was obtained and handle the matter according to the <b>relevant provisions</b> of the Criminal Procedure Law and this Interpretation:</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(一) 第一审人民法院对当事人及其辩护人、诉讼代理人排除非法证据的申请没有审查，且以该证据作为定案根据的；</p> <p>(二) 人民检察院或者被告人、自诉人及其法定代理人不服第一审人民法院作出的有关证据收集合法性的调查结论，提出抗诉、上诉的；</p> <p>(三) 当事人及其辩护人、诉讼代理人在第一审结束后才发现相关线索或者材料，申请人民法院排除非法证据的。</p>	<p>(1) the people’s court of first instance did not review the application filed by a party, his or her defender or litigation advocate to exclude the illegally obtained evidence, and used the evidence as a basis for the verdict;</p> <p>(2) the people’s procuratorate, the defendant, a complainant in a private prosecution or an agent ad litem does not accept the conclusion of the first instance people’s court’s investigation into the legality of the manner in which the evidence was obtained and submitted a prosecutorial protest or an appeal</p> <p>(3) a party, his or her defender or litigation advocate discovers relevant leads or materials only after the conclusion of the first instance proceedings, and files an application to exclude the illegally obtained evidence.</p>
<p><b>第九节 证据的综合审查与运用</b></p>	<p><b>Section Nine Comprehensive examination and application of evidence</b></p>
<p><b>第一百零四条</b> 对证据的真实性，应当综合全案证据进行审查。</p> <p>对证据的证明力，应当根据具体情况，从证据与待证事实的关联程度、证据之间的联系等方面进行审查判断。</p> <p>证据之间具有内在联系，共同指向同一待证事实，不存在无法排除的矛盾和无法解释的疑问的，才能作为定案的根据。</p>	<p><b>Article 104</b> Regarding the authenticity of evidence, a comprehensive examination of all evidence in the case shall be conducted.</p> <p>Regarding the probative value of evidence, the examination determination and decision shall be made according to specific circumstances from the degree of relevance of the evidence to the facts to be proven in the case, the relationships among the various pieces of evidence, and other aspects.</p> <p>If items of evidence possess intrinsic links to one another, if, they all point</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	to the same fact to be proven in the case and if there are no contradictions that cannot be eliminated or doubts that cannot be explained, only then may they be used as a basis for a verdict.
<p><b>第一百零五条</b> 没有直接证据，但间接证据同时符合下列条件的，可以认定被告人有罪：</p> <p>（一）证据已经查证属实；</p> <p>（二）证据之间相互印证，不存在无法排除的矛盾和无法解释的疑问；</p> <p>（三）全案证据已经形成完整的证明体系；</p> <p>（四）根据证据认定案件事实足以排除合理怀疑，结论具有唯一性；</p> <p>（五）运用证据进行的推理符合逻辑和经验。</p>	<p><b>Article 105</b> If there is no direct evidence, but circumstantial evidence simultaneously satisfies all the conditions below, the defendant may be found guilty:</p> <p>(1) the evidence has been investigated and verified;</p> <p>(2) various items of evidence mutually corroborate one another, and there are no contradictions that cannot be eliminated or doubts that cannot be explained;</p> <p>(3) the totality of the evidence in the case already constitutes a complete set of proof;</p> <p>(4) the determination of the facts in the case by the evidence is sufficient to eliminate reasonable doubt, and there can be only one conclusion;</p> <p>(5) the inferences drawn from the application of evidence satisfy logic and experience.</p>
<p><b>第一百零六条</b> 根据被告人的供述、指认提取到了隐蔽性很强的物证、书证，且被告人的供述与其他证明犯罪事实发生的证据相</p>	<p><b>Article 106</b> If, extremely covert physical or documentary evidence was extracted based on the defendant’s confession and identification, and the defendant’s</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>互印证，并排除串供、逼供、诱供等可能性的，可以认定被告人有罪。</p>	<p>confession mutually corroborating with other evidence proving the occurrence of the crime, and the possibilities such as confession via collusion among co-participants, coerced confession, and confession obtained through enticement are eliminated, the defendant may be convicted.</p>
<p><b>第一百零七条</b> 采取技术侦查措施收集的证据材料，经当庭出示、辨认、质证等法庭调查程序查证属实的，可以作为定案的根据。</p> <p>使用前款规定的证据可能危及有关人员的人身安全，或者可能产生其他严重后果的，法庭应当采取不暴露有关人员身份、技术方法等保护措施，必要时，审判人员可以在庭外核实。</p>	<p><b>Article 107</b> Evidentiary materials collected using technical investigation measures, which have been presented in court, identified, and examined, and inspected and verified through court investigation procedures, may be used as a basis for a verdict.</p> <p>When use of the evidence falling under the provision of the preceding paragraph may endanger the safety of relevant personnel, or may cause other grave consequences, the court shall employ protective measures such as avoid revealing the identity of relevant personnel and technical methods used, etc., and when necessary, the adjudication personnel may verify these [evidence?] outside the court.</p>
<p><b>第一百零八条</b> 对侦查机关出具的被告人到案经过、抓获经过等材料，应当审查是否有出具该说明材料的办案人、办案机关的签名、盖章。</p> <p>对到案经过、抓获经过或者确定被告人有重大嫌疑的根据有疑问的，应当要求侦查机关补充说明。</p>	<p><b>Article 108</b> Materials, related to the process how the defendant came into police custody or was apprehended issued by investigating departments, shall be examined for whether there were signature and/or seal of the persons or departments handling the cases that issued the explanatory materials.</p> <p>If any doubt exists as to the process by which the defendant came into police custody or was apprehended, or as to the certainty of a defendant's being under serious suspicion, the court shall require the investigative organ to</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	supplement its explanation.
<p><b>第一百零九条</b> 下列证据应当慎重使用，有其他证据印证的，可以采信：</p> <p>（一）生理上、精神上有缺陷，对案件事实的认知和表达存在一定困难，但尚未丧失正确认知、表达能力的被害人、证人和被告人所作的陈述、证言和供述；</p> <p>（二）与被告人有亲属关系或者其他密切关系的证人所作的有利被告人的证言，或者与被告人有利害冲突的证人所作的不利被告人的证言。</p>	<p><b>Article 109</b> The following evidence shall be used with caution; if other evidence corroborates it, it may be admitted:</p> <p>(1) Statements, testimony and confessions by victims, witnesses and defendants who are physiologically or mentally disabled, who have certain difficulties understanding and being able to express the case facts, but have not yet lost the ability to correctly understand and express themselves.</p> <p>(2) Testimony favoring the defense given by witnesses who are close relatives or have other close relationships with the defendant, or testimony adverse to the defense given by witnesses who have interests adverse to the defendant.</p>
<p><b>第一百一十条</b> 证明被告人自首、坦白、立功的证据材料，没有加盖接受被告人投案、坦白、检举揭发等的单位的印章，或者接受人员没有签名的，不得作为定案的根据。</p> <p>对被告人及其辩护人提出有自首、坦白、立功的事实和理由，有关机关未予认定，或者有关机关提出被告人有自首、坦白、立功表现，但证据材料不全的，人民法院应当要求有关机关提供证明材料，或者要求相关人员作证，并结合其他证据作出认定。</p>	<p><b>Article 110</b> Evidentiary materials proving that the defendant voluntarily surrendered, confessed and provided cooperation or meritorious performance, shall not be used as a basis of a verdict where the materials do not bear stamps of the unit to which the defendant turned himself in, provided honest information, or exposed others ..</p> <p>Where the relevant organs did not verify the facts and reasons submitted by the defendant or his defense advocate showing that the defendant voluntarily surrendered, confessed and provided cooperation or meritorious performance or where the relevant organs indicate that the defendant voluntarily surrendered,</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>confessed and provided cooperation or meritorious performance but the evidentiary materials are incomplete, the people’s court shall require the relevant organs to provide supporting materials, or require related personnel to testify and make a determination while combining other evidence .</p>
<p><b>第一百一十一条</b> 证明被告人构成累犯、毒品再犯的证据材料,应当包括前罪的裁判文书、释放证明等材料;材料不全的,应当要求有关机关提供。</p>	<p><b>Article 111</b> Evidentiary materials proving that the defendant is a repeat offender or a drug recidivist must include the judgment document of the prior conviction(s), proof of release and other related materials; if the materials are incomplete, the court shall require the relevant organs to provide [the missing materials].</p>
<p><b>第一百一十二条</b> 审查被告人实施被指控的犯罪时或者审判时是否达到相应法定责任年龄,应当根据户籍证明、出生证明文件、学籍卡、人口普查登记、无利害关系人的证言等证据综合判断。</p> <p>证明被告人已满十四周岁、十六周岁、十八周岁或者不满七十五周岁的证据不足的,应当认定被告人不满十四周岁、不满十六周岁、不满十八周岁或者已满七十五周岁。</p>	<p><b>Article 112</b> When examining whether the defendant reaches the legally required age for criminal responsibility while committing the crime charged or at trial, the court shall make a determination based on a comprehensive evaluation of his/her household registration document, birth certificate, student enrollment card, census registration, the testimony of disinterested persons, and other related evidence.</p> <p>If the evidence is insufficient to establish that the defendant is fourteen years of age, sixteen years of age, eighteen years of age, or has not yet reached seventy-five years of age, the court shall find that the defendant has not reached fourteen years of age, has not reached sixteen years of age, has not reached eighteen years of age, or has already reached seventy-five years of age.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

第五章 强制措施	Chapter 5 Compulsory Measures
<p><b>第一百一十三条</b> 人民法院审判案件，根据情况，对被告人可以决定拘传、取保候审、监视居住或者逮捕。</p> <p>对被告人采取、撤销或者变更强制措施的，由院长决定。</p>	<p><b>Article 113</b> While adjudicating a case, the people’s court may, according to the situation, compel the defendant’s appearance, release the defendant on guarantee, implement residential surveillance or formal arrest.</p> <p>The Court President will decide the implementation, revocation, or modification of compulsory measures against the defendant.</p>
<p><b>第一百一十四条</b> 对经依法传唤拒不到庭的被告人，或者根据案件情况有必要拘传的被告人，可以拘传。</p> <p>拘传被告人，应当由院长签发拘传票，由司法警察执行，执行人员不得少于二人。</p> <p>拘传被告人，应当出示拘传票。对抗拒拘传的被告人，可以使用戒具。</p>	<p><b>Article 114</b> If the defendant has already been lawfully summoned and refused to appear in court, or if the case’s situation requires, the defendant may be compelled to appear.</p> <p>Compelled appearance of the defendant shall be carried out in accordance with a signed summons by the Court President, and carried out by judicial police. No fewer than two officers shall carry out the summons.</p> <p>When compelling the defendant to appear, the summons shall be displayed. Restraint implements devices may be used against defendants who resist the summons.</p>
<p><b>第一百一十五条</b> 拘传被告人，持续的时间不得超过十二小时；案情特别重大、复杂，需要采取逮捕措施的，持续的时间不得超过二十四小时。不得以连续拘传的形式变相拘禁被告人。应当保证被拘传人的饮食和必要的休息时间。</p>	<p><b>Article 115</b> A defendant’s compelled appearance shall not exceed 12 hours in duration. If the case is particularly important, complex, or requires carrying out formal arrest measures, the duration shall not exceed 24 hours. Defendants shall not be de facto detained through consecutive compelled appearances. The detainee’s food, drink and rest needs shall be guaranteed.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第一百一十六条</b> 被告人具有刑事诉讼法第六十五条第一款规定情形之一的，人民法院可以决定取保候审。</p> <p>对被告人决定取保候审的，应当责令其提出保证人或者交纳保证金，不得同时使用保证人保证与保证金保证。</p>	<p><b>Article 116</b> The people’s court may release on guarantee defendants who meet the conditions of Criminal Procedure Law, Article 65, paragraph 1.</p> <p>Defendants released on guarantee, shall name a guarantor or post a monetary guarantee, though never both.</p>
<p><b>第一百一十七条</b> 对下列被告人决定取保候审的，可以责令其提出一至二名保证人：</p> <p>（一）无力交纳保证金的；</p> <p>（二）未成年或者已满七十五周岁的；</p> <p>（三）不宜收取保证金的其他被告人。</p>	<p><b>Article 117</b> The following classes of defendants released on guarantee may be required to name between one and two guarantors:</p> <p>(1) those unable to produce a monetary guarantee;</p> <p>(2) minors or those at least 75 years of age;</p> <p>(3) other defendants from whom it would be inappropriate to collect a monetary guarantee.</p>
<p><b>第一百一十八条</b> 人民法院应当审查保证人是否符合法定条件。符合条件的，应当告知其必须履行的义务，并由其出具保证书。</p>	<p><b>Article 118</b> The people’s court shall investigate and confirm that guarantors meet the statutory requirements. Those who qualify shall be informed of their obligations, and issued a letter of guarantee guarantor.</p>
<p><b>第一百一十九条</b> 对决定取保候审的被告人使用保证金保证的，应当依照刑事诉讼法第七十条第一款的规定确定保证金的具体数额，并责令被告人或者为其提供保证金的单位、个人将保证金一次性存入公安机关指定银行的专门账户。</p>	<p><b>Article 119</b> In the case of a defendant to be released on guarantee with a monetary guarantee, the specific amount shall be determined in accordance with Criminal Procedure Law article 70 paragraph 1. The defendant or unit, or individual offering the monetary guarantee on the defendant’s behalf, shall be ordered to make a one-time deposit to the designated special bank account of the public security organ.</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第一百二十条</b> 人民法院向被告宣布取保候审决定后,应当将取保候审决定书等相关材料送交当地同级公安机关执行;被告人不在本地居住的,送交其居住地公安机关执行。</p> <p>对被告人使用保证金保证的,应当在核实保证金已经存入公安机关指定银行的专门账户后,将银行出具的收款凭证一并送交公安机关。</p>	<p><b>Article 120</b> After the people’s court has announced to the defendant its decision to release on guarantee, it shall serve the written decision and related materials to the local public security organ of corresponding level for implementation. If the defendant does not reside in the same locality, it shall be sent the local public security organ in the defendant’s domicile for implementation.</p> <p>When a defendant uses a monetary guarantee, after verifying that the monetary guarantee has been deposited in the public security organ’s designated special bank account, the bank-issued certificate of receipt shall be sent to the public security organ.</p>
<p><b>第一百二十一条</b> 被告人被取保候审期间,保证人不愿继续履行保证义务或者丧失履行保证义务能力的,人民法院应当在收到保证人的申请或者公安机关的书面通知后三日内,责令被告人重新提出保证人或者交纳保证金,或者变更强制措施,并通知公安机关。</p>	<p><b>Article 121</b> While the defendant is out on guarantee, if the guarantor is unwilling to continue fulfilling the guarantee obligations, or loses the ability to fulfill the guarantee obligations, the people’s court shall within three days of receiving the guarantor’s application or written notice from the public security organ, order the defendant to name another guarantor or post a monetary guarantee, or modify the compulsory measures and then notify the public security organ.</p>
<p><b>第一百二十二条</b> 根据案件事实和法律规定,认为已经构成犯罪的被告人在取保候审期间逃匿的,如果系保证人协助被告人逃匿,或者保证人明知被告人藏匿地点但拒绝向司法机关提供,对保证人应当依法追究刑事责任。</p>	<p><b>Article 122</b> When, based on the facts of the case and legal regulations, a defendant is believed to have already committed a crime and absconds while out on guarantee, if the defendant absconds with the aid of the guarantor, or the guarantor knows the location of the absconding defendant but refuses to provide it to the judicial authorities, the guarantor shall be held criminally liable in accordance with the law.</p>
<p><b>第一百二十三条</b> 人民法院发现使用保证金保证的被取保候审</p>	<p><b>Article 123</b> If the people’s court discovers that an individual out on guarantee</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>人违反刑事诉讼法第六十九条第一款、第二款规定的，应当提出没收部分或者全部保证金的书面意见，连同有关材料一并送交负责执行的公安机关处理。</p> <p>人民法院收到公安机关已经没收保证金的书面通知或者变更强制措施的建议后，应当区别情形，在五日内责令被告人具结悔过，重新交纳保证金或者提出保证人，或者变更强制措施，并通知公安机关。</p> <p>人民法院决定对被依法没收保证金的被告人继续取保候审的，取保候审的期限连续计算。</p>	<p>with a monetary guarantee is in violation of Criminal Procedure Law Article 69 paragraph 1 or paragraph 2, it shall bring up the confiscated portion or the entire monetary guarantee in a written opinion and send it, along with any relevant materials, to the public security organ responsible for enforcement for processing.</p> <p>When the people's court receives written notice from the public security organ that it has confiscated the monetary guarantee or advice on modification of compulsory measures, shall on the basis of differing circumstances, within 5 days order the defendant to make a statement of apology, post another monetary guarantee or name another guarantor, or modify the compulsory measures, then notify the public security organ.</p> <p>When the people's court decides that a defendant whose monetary guarantee has been confiscated will continue to be released on guarantee, the time limit will continue counting.</p>
<p><b>第一百二十四条</b> 对被取保候审的被告人的判决、裁定生效后，应当解除取保候审、退还保证金的，如果保证金属于其个人财产，人民法院可以书面通知公安机关将保证金移交人民法院，用以退赔被害人、履行附带民事赔偿义务或者执行财产刑，剩余部分应当退还被告人。</p>	<p><b>Article 124</b> Regarding the judgment or ruling of a defendant out on guarantee, when the judgment or ruling takes effect, the release on guarantee shall be terminated and the monetary guarantee returned. Where the guarantee consists of personal property of the defendant, the people's court can issue written notice to the public security organ to transfer the monetary guarantee to the people's court for restitution to the victim(s), the payment of related civil obligations, or criminal penalties. The remained shall be returned to the defendant.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第一百二十五条</b> 对具有刑事诉讼法第七十二条第一款、第二款规定情形的被告人，人民法院可以决定监视居住。</p> <p>人民法院决定对被告人监视居住的，应当核实其住处；没有固定住处的，应当为其指定居所。</p>	<p><b>Article 125</b> The people’s court may assign residential surveillance to defendants who meet the conditions of Criminal Procedure Law Article 72 paragraph 1.</p> <p>When assigning a defendant residential surveillance, the people’s court shall verify the defendant’s residence. Defendants with no fixed residence shall have one assigned to them.</p>
<p><b>第一百二十六条</b> 人民法院向被告人宣布监视居住决定后，应当将监视居住决定书等相关材料送交被告人住处或者指定居所所在地的同级公安机关执行。</p> <p>对被告人指定居所监视居住后，人民法院应当在二十四小时内，将监视居住的原因和处所通知其家属；确实无法通知的，应当记录在案。</p>	<p><b>Article 126</b> After notifying the defendant of the residential surveillance, the people’ court shall deliver the letter of residential surveillance to the local public security organ of corresponding level at the defendant’s place of residence or assigned residence for enforcement.</p> <p>After the defendant has been assigned residential surveillance, the people’s court shall within 24 hours notify the defendant’s family of the reasons and basis for residential surveillance. If there is definitely impossible to notify, it shall be noted in the case file.</p>
<p><b>第一百二十七条</b> 人民检察院、公安机关已经对犯罪嫌疑人取保候审、监视居住，案件起诉至人民法院后，需要继续取保候审、监视居住或者变更强制措施的，人民法院应当在七日内作出决定，并通知人民检察院、公安机关。</p> <p>决定继续取保候审、监视居住的，应当重新办理手续，期限重新计算；继续使用保证金保证的，不再收取保证金。</p> <p>人民法院不得对被告人重复采取取保候审、监视居住措施。</p>	<p><b>Article 127</b> When the people’s procuratorate and public security organ already released a criminal suspect on guarantee or assigned residential surveillance and an indictment has already been filed in the people’s court, when continued released on guarantee, residential surveillance or modification of compulsory measures is required, the people’s court shall decide within 7 days and notify the people’s procuratorate and the public security organ.</p> <p>If decide to continue release on guarantee or residential surveillance, the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>formalities must be followed again, and a new time limit calculated. When continuing release on bail, do not re-collect the monetary guarantee.</p> <p>The people’s court shall not repeatedly carry out release on guarantee and residential surveillance measures against the defendant.</p>
<p><b>第一百二十八条</b> 对具有刑事诉讼法第七十九条第一款、第二款规定情形的被告人，人民法院应当决定逮捕。</p>	<p><b>Article 128</b> The people’s court shall order the formal arrest of defendants who meet the conditions of Criminal Procedure Law Article 79 paragraph 1 and paragraph 2.</p>
<p><b>第一百二十九条</b> 被取保候审的被告人具有下列情形之一的，人民法院应当决定逮捕：</p> <p>（一）故意实施新的犯罪的；</p> <p>（二）企图自杀、逃跑的；</p> <p>（三）毁灭、伪造证据，干扰证人作证或者串供的；</p> <p>（四）对被害人、举报人、控告人实施打击报复的；</p> <p>（五）经传唤，无正当理由不到案，影响审判活动正常进行的；</p> <p>（六）擅自改变联系方式或者居住地，导致无法传唤，影响审判活动正常进行的；</p>	<p><b>Article 129</b> The people’s court shall order the formal arrest of defendants released on guarantee who meet one or more of the following conditions:</p> <p>(1) deliberately carries out a new crime;</p> <p>(2) attempts suicide or escape;</p> <p>(3) destroys or falsifies evidence, interferes with witness testifying, or commit confession via collusion among co-participants;</p> <p>(4) retaliates against victims, informants or accusers;</p> <p>(5) without reasonable justification fails to appear in court when summoned, influencing normal adjudication procedures;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(七) 未经批准, 擅自离开所居住的市、县, 影响审判活动正常进行, 或者两次未经批准, 擅自离开所居住的市、县的;</p> <p>(八) 违反规定进入特定场所、与特定人员会见或者通信、从事特定活动, 影响审判活动正常进行, 或者两次违反有关规定的;</p> <p>(九) 依法应当决定逮捕的其他情形。</p>	<p>(6) makes unauthorized change to means of contact or domicile, making summons impossible and thereby influencing normal adjudication procedures;</p> <p>(7) without previous approval, makes unauthorized departure from the defendant's city or county of domicile, influencing normal adjudication procedures, or two instances of without previous approval, making unauthorized departure from the defendant's city or county of domicile;</p> <p>(8) violates regulations by entering a specified site, meeting or communicating with specified individuals, undertaking specified activities, thereby influencing normal adjudication procedures, or two instances of violating relevant regulations;</p> <p>(9) other circumstances under which formal arrest is required.</p>
<p><b>第一百三十条</b> 被监视居住的被告人具有下列情形之一的, 人民法院应当决定逮捕:</p> <p>(一) 具有前条第一项至第五项规定情形之一的;</p> <p>(二) 未经批准, 擅自离开执行监视居住的处所, 影响审判活动正常进行, 或者两次未经批准, 擅自离开执行监视居住的处所的;</p> <p>(三) 未经批准, 擅自会见他人或者通信, 影响审判活动正</p>	<p><b>Article 130</b> The people's court shall order the formal arrest of defendants assigned residential surveillance who meet one or more of the following conditions:</p> <p>(1) meets the conditions listed above in paragraph (1) through (5);</p> <p>(2) without previous approval, makes unauthorized departure from the location of supervised residence, influencing normal adjudication procedures, or two instances of without previous approval, making unauthorized departure from</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>常进行，或者两次未经批准，擅自会见他人或者通信的；</p> <p>（四）对因患有严重疾病、生活不能自理，或者因怀孕、正在哺乳自己婴儿而未予逮捕的被告人，疾病痊愈或者哺乳期已满的；</p> <p>（五）依法应当决定逮捕的其他情形。</p>	<p>the location of supervised residence;</p> <p>(3) without previous approval, has unauthorized meetings or communications with others, influencing normal adjudication procedures, or two instances of having unauthorized meetings or communications with others;</p> <p>(4) in the case of a defendant who has not been arrested because he or she suffers from a serious illness and cannot care for himself or herself, is pregnant, or is currently nursing her own child, the disease has been recovered from or the nursing period has ended;</p> <p>(5) other circumstances under which formal arrest is required.</p>
<p><b>第一百三十一条</b> 人民法院作出逮捕决定后，应当将逮捕决定书等相关材料送交同级公安机关执行，并将逮捕决定书抄送人民检察院。逮捕被告人后，人民法院应当将逮捕的原因和羁押的处所，在二十四小时内通知其家属；确实无法通知的，应当记录在案。</p>	<p><b>Article 131</b> After making a decision for formal arrest, the people’s court shall send the formal arrest order and relevant material to the public security organ of corresponding level for enforcement, and send a copy to the people’s procuratorate. After the formal arrest of the defendant, the people’s court shall send notice of the reason for formal arrest and place of detention to the defendants family members within 24 hours. If it is definitely impossible to provide notice, it shall be recorded in the case file.</p>
<p><b>第一百三十二条</b> 人民法院对决定逮捕的被告人，应当在逮捕后二十四小时内讯问。发现不应当逮捕的，应当变更强制措施或者立即释放。</p>	<p><b>Article 132</b> When the people’s court has decided to order arrest of the defendant, the defendant shall be interrogated within 24 hours of the arrest. Upon discovery of that the defendant shall not have been arrested, the compulsory measures shall be modified, or the defendant shall be released immediately.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第一百三十三条</b> 被逮捕的被告人具有下列情形之一的，人民法院可以变更强制措施：</p> <p>（一）患有严重疾病、生活不能自理的；</p> <p>（二）怀孕或者正在哺乳自己婴儿的；</p> <p>（三）系生活不能自理的人的唯一扶养人。</p>	<p><b>Article 133</b> The people’s court may modify the compulsory measures for a defendant who has been arrested under one or more of the following conditions:</p> <p>(1) suffers from a seriously illness and cannot care for himself or herself;</p> <p>(2) pregnant or currently nursing her own child;</p> <p>(3) is the sole guardian of someone who cannot care for himself or herself</p>
<p><b>第一百三十四条</b> 第一审人民法院判决被告人无罪、不负刑事责任或者免除刑事处罚，被告人在押的，应当在宣判后立即释放。</p> <p>被逮捕的被告人具有下列情形之一的，人民法院应当变更强制措施或者予以释放：</p> <p>（一）第一审人民法院判处管制、宣告缓刑、单独适用附加刑，判决尚未发生法律效力的；</p> <p>（二）被告人被羁押的时间已到第一审人民法院对其判处的刑期期限的；</p> <p>（三）案件不能在法律规定的期限内审结的。</p>	<p><b>Article 134</b> If the people’s court of first instance decides that the defendant is innocent, without criminal liability, or exempted from criminal punishment, the defendant in custody shall be immediately released.</p> <p>The people’s court shall modify the compulsory measures of, or release an arrested defendant under one or more of the following conditions:</p> <p>(1) the people’s court of first instance sentences the defendant to supervised release, probation, or only applies accessory punishments, and the judgment has yet have legal effect;</p> <p>(2) the defendant’s time in custody has already reached the sentence term assigned by the people’s court of first instance;</p> <p>(3) the case cannot be completed within the time limit prescribed by</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	regulation.
<b>第一百三十五条</b> 人民法院决定变更强制措施或者释放被告人的,应当立即将变更强制措施决定书或者释放通知书送交公安机关执行。	<b>Article 135</b> When decides to modify compulsory measures or release a defendant, the people’s court shall immediately send the compulsory measure modification letter or release notice to the public security organ.
<b>第一百三十六条</b> 对人民法院决定逮捕的被告人,人民检察院建议释放或者变更强制措施的,人民法院应当在收到建议后十日内将处理情况通知人民检察院。	<b>Article 136</b> In the case of a defendant who the people’s court has decided to arrest, if the people’s procuratorate advises modification of compulsory measures or release, the people’s court shall notify the people’s procuratorate of the processing situation within 24 hours of receiving the advice.
<b>第一百三十七条</b> 被告人及其法定代理人、近亲属或者辩护人申请变更强制措施的,应当说明理由。人民法院收到申请后,应当在三日内作出决定。同意变更强制措施的,应当依照本解释规定处理;不同意的,应当告知申请人,并说明理由。	<b>Article 137</b> When the defendant or the defendant’s agent ad litem, immediate family members or defender applies for modification of compulsory measures, the reason must be explained. The people’s court shall issue a judgment within 3 days of receiving the application. If the people’s court agrees to modify the compulsory measures, it shall be processed in accordance with this Interpretation. If the people’s court does not agree, it shall notify the applicant and explain its reasoning.
<b>第六章 附带民事诉讼</b>	<b>Chapter 6 Collateral Civil Actions</b>
<b>第一百三十八条</b> 被害人因人身权利受到犯罪侵犯或者财物被犯罪分子毁坏而遭受物质损失的,有权在刑事诉讼过程中提起附带民事诉讼;被害人死亡或者丧失行为能力的,其法定代理人、近亲属有权提起附带民事诉讼。  因受到犯罪侵犯,提起附带民事诉讼或者单独提起民事诉讼要求	<b>Article 138</b> A victim who suffers material loss as a result of a criminal violation of their personal rights or as a result of property damage by a criminal offender, shall have the right to file a collateral civil action during a criminal prosecution. If the victim is deceased or has lost the capacity for conduct, his or her legal representative or immediate family members shall have the right to bring the



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasia@nyu.edu](mailto:usasia@nyu.edu).

<p>赔偿精神损失的，人民法院不予受理。</p>	<p>collateral civil action.</p> <p>A people's court shall not accept collateral civil actions or independent civil actions seeking compensation for emotional/psychological damage suffered as a result of being a victim of a criminal offence.</p>
<p><b>第一百三十九条</b> 被告人非法占有、处置被害人财产的，应当依法予以追缴或者责令退赔。被害人提起附带民事诉讼的，人民法院不予受理。追缴、退赔的情况，可以作为量刑情节考虑。</p>	<p><b>Article 139</b> Where a defendant has illegally possessed or disposed of the victim's property, the property shall be recovered according to law or the defendant shall be ordered to make restitution in accordance with the law. If this occurs, the people's court shall not accept a collateral civil action filed by the victim. The recovery, return or restitution of property may be considered by the court as a mitigating circumstance in sentencing.</p>
<p><b>第一百四十条</b> 国家机关工作人员在行使职权时，侵犯他人人身、财产权利构成犯罪，被害人或者其法定代理人、近亲属提起附带民事诉讼的，人民法院不予受理，但应当告知其可以依法申请国家赔偿。</p>	<p><b>Article 140</b> The people's court shall not accept a civil action filed by a victim, his or her agent <i>ad litem</i> or immediate family members, collateral to a criminal case in which an employee of a governmental institution, when exercising his or her official duty, has infringed upon the victim's personal and property rights in violation of the criminal law. However it shall notify him or her that they may apply for State compensation according to law.</p>
<p><b>第一百四十一条</b> 人民法院受理刑事案件后，对符合刑事诉讼法第九十九条和本解释第一百三十八条第一款规定的，可以告知被害人或者其法定代理人、近亲属有权提起附带民事诉讼。</p> <p>有权提起附带民事诉讼的人放弃诉讼权利的，应当准许，并记录在案。</p>	<p><b>Article 141</b> For a criminal case to which Article 99 of the <i>Criminal Procedure Law</i> and Article 138, paragraph 1 of this <i>Interpretation</i> apply, a people's court may, after accepting the case, inform the victim, his or her agent <i>ad litem</i> or immediate family members of their right to bring a collateral civil action.</p> <p>A person who has the right to bring a collateral civil action and who wishes to</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	waive his or her right to litigate must be permitted to do so and this shall be recorded in the case file.
<p><b>第一百四十二条</b> 国家财产、集体财产遭受损失，受损失的单位未提起附带民事诉讼，人民检察院在提起公诉时提起附带民事诉讼的，人民法院应当受理。</p> <p>人民检察院提起附带民事诉讼的，应当列为附带民事诉讼原告人。</p> <p>被告人非法占有、处置国家财产、集体财产的，依照本解释第一百三十九条的规定处理。</p>	<p><b>Article 142</b> Where the responsible unit for state or collective property which has suffered damage has not brought a collateral civil action, but the people’s procuratorate has brought a collateral civil action alongside the public prosecution, the people’s court shall accept the case.</p> <p>The people’s procuratorate bringing the collateral civil action shall be listed as the plaintiff in such cases.</p> <p>Article 139 of this <i>Interpretation</i> shall apply to a defendant who has illegally possessed or disposed of any state property or collective property.</p>
<p><b>第一百四十三条</b> 附带民事诉讼中依法负有赔偿责任的人包括：</p> <p>（一）刑事被告人以及未被追究刑事责任的其他共同侵害人；</p> <p>（二）刑事被告人的监护人；</p> <p>（三）死刑罪犯的遗产继承人；</p> <p>（四）共同犯罪案件中，案件审结前死亡的被告人的遗产继承人；</p> <p>（五）对被害人的物质损失依法应当承担赔偿责任的其他单</p>	<p><b>Article 143</b> Persons who bear legal responsibility to pay compensation in a collateral civil action include:</p> <p>(1) the criminal defendant and other joint offenders who have not yet been investigated for their criminal liability;</p> <p>(2) the guardian of the criminal defendant;</p> <p>(3) heirs to the property of a criminal who has been sentenced to death;</p> <p>(4) in the case of a joint crime, heirs to the property of a defendant who</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>位和个人。</p> <p>附带民事诉讼被告人的亲友自愿代为赔偿的，应当准许。</p>	<p>dies before the trial of the case is concluded.</p> <p>(5) Any other entity or individual legally obliged to pay damage for the material loss suffered by the victim.</p> <p>Families and friends of a defendant to a collateral civil action who volunteer to pay damages on behalf of the defendant shall be permitted to do so.</p>
<p><b>第一百四十四条</b> 被害人或者其法定代理人、近亲属仅对部分共同侵害人提起附带民事诉讼的，人民法院应当告知其可以对其他共同侵害人，包括没有被追究刑事责任的共同侵害人，一并提起附带民事诉讼，但共同犯罪案件中同案犯在逃的除外。</p> <p>被害人或者其法定代理人、近亲属放弃对其他共同侵害人的诉讼权利的，人民法院应当告知其相应法律后果，并在裁判文书中说明其放弃诉讼请求的情况。</p>	<p><b>Article 144</b> The people’s court shall inform a victim, his or her agent <i>ad litem</i>, or his or her immediate family members who have only brought a collateral civil action against some of the joint offenders to a crime, that he, she or they may also bring a collateral civil action against other joint offenders, including those who have not been found to be criminally liable, with the exception of fugitive co-defendants in joint crime cases.</p> <p>The people’s court shall inform a victim, his or her agent <i>ad litem</i> or close relatives who waive the right to sue other joint infringers of the corresponding legal consequences of their waiver, and the people’s court shall record the waiver of the action in the court judgment.</p>
<p><b>第一百四十五条</b> 附带民事诉讼的起诉条件是：</p> <p>（一）起诉人符合法定条件；</p> <p>（二）有明确的被告人；</p>	<p><b>Article 145</b> Conditions for bringing a collateral civil action are:</p> <p>(1) that the plaintiff is legally qualified to bring the action;</p> <p>(2) that there is a clear defendant;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(三) 有请求赔偿的具体要求和事实、理由;</p> <p>(四) 属于人民法院受理附带民事诉讼的范围。</p>	<p>(3) that there are specific claims for compensation, as well as specific supporting facts and legal grounds;</p> <p>(4) that the action fits within the scope of collateral civil actions acceptable to the people's court.</p>
<p><b>第一百四十六条</b> 共同犯罪案件，同案犯在逃的，不应列为附带民事诉讼被告人。逃跑的同案犯到案后，被害人或者其法定代理人、近亲属可以对其提起附带民事诉讼，但已经从其他共同犯罪人处获得足额赔偿的除外。</p>	<p><b>Article 146</b> For a joint criminal case in which a co-defendant is a fugitive, the co-defendant shall not be listed as a defendant in the collateral civil action. The victim, his or her agent <i>ad litem</i>, or immediate family members may bring a collateral civil action against the fugitive co-defendant after he or she appears in court, except when other joint offenders have paid compensation in full.</p>
<p><b>第一百四十七条</b> 附带民事诉讼应当在刑事案件立案后及时提起。</p> <p>提起附带民事诉讼应当提交附带民事起诉状。</p>	<p><b>Article 147</b> A collateral civil action must be brought in a timely manner after the criminal case has commenced.</p> <p>A collateral civil action must be instituted by way of submitting a civil suit.</p>
<p><b>第一百四十八条</b> 侦查、审查起诉期间，有权提起附带民事诉讼的人提出赔偿要求，经公安机关、人民检察院调解，当事人双方已经达成协议并全部履行，被害人或者其法定代理人、近亲属又提起附带民事诉讼的，人民法院不予受理，但有证据证明调解违反自愿、合法原则的除外。</p>	<p><b>Article 148</b> Where a person, having the right to bring a collateral civil action, seeks compensation during the time for investigation and review of indictment, if an agreement has been reached and fully performed by all the parties following mediation conducted by a public security organ or the people's procuratorate, the people's court shall not accept a collateral civil action filed by the victim, his or her agent <i>ad litem</i>, or immediate family members, except when the evidence shows that the mediation violates the principles of voluntariness and legality.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第一百四十九条</b> 被害人或者其法定代理人、近亲属提起附带民事诉讼的，人民法院应当在七日内决定是否立案。符合刑事诉讼法第九十九条以及本解释有关规定的，应当受理；不符合的，裁定不予受理。</p>	<p><b>Article 149</b> Where the victim, his or her agent <i>ad litem</i>, or immediate family members file a collateral civil action, the people’s court shall within seven days render a decision as to whether to open the case. The court shall accept cases that meet the requirements of Article 99 of the <i>Criminal Procedure Law</i> and relevant rules in this <i>Interpretation</i>; and enter a ruling that the case shall not be accepted for those not meeting the requirements.</p>
<p><b>第一百五十条</b> 人民法院受理附带民事诉讼后，应当在五日内将附带民事起诉状副本送达附带民事诉讼被告人及其法定代理人，或者将口头起诉的内容及时通知附带民事诉讼被告人及其法定代理人，并制作笔录。</p> <p>人民法院送达附带民事起诉状副本时，应当根据刑事案件的审理期限，确定被告人及其法定代理人提交附带民事答辩状的时间。</p>	<p><b>Article 151</b> The people’s court shall, within 5 days of accepting a collateral civil action, serve upon the defendants in the collateral civil case or his or her agent <i>ad litem</i> a copy of the complaint, or inform the defendant in the collateral civil action or his or her legal representatives the content of the oral complaint in a timely manner, and make a note in the case file.</p> <p>When the people’s court delivers the copy of a civil complaint, it shall fix the time by which the defendant or his or her legal representative shall submit an answer to the civil complaint according to the maximum time limit allowed for the trial of a criminal case.</p>
<p><b>第一百五十一条</b> 附带民事诉讼当事人对自己提出的主张，有责任提供证据。</p>	<p><b>Article 151</b> Each party to a collateral civil action bears the burden of producing evidence to support claims put forward by that party.</p>
<p><b>第一百五十二条</b> 人民法院对可能因被告人的行为或者其他原因，使附带民事判决难以执行的案件，根据附带民事诉讼原告人的申请，可以裁定采取保全措施，查封、扣押或者冻结被告人的财产；附带民事诉讼原告人未提出申请的，必要时，人民法院也可以采取保全措施。</p>	<p><b>Article 152</b> Where a judgment in a collateral civil action becomes difficult to enforce owing to an act of a defendant or for any other reason, the people’s court may, upon an application filed by the plaintiff to the collateral civil action, enter a ruling to adopt preventative measures to seal, seize or freeze the property of the defendant. The people’s court may adopt preventative measures in the absence of</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaalaw@nyu.edu](mailto:usasiaalaw@nyu.edu).

<p>有权提起附带民事诉讼的人因情况紧急，不立即申请保全将会使其合法权益受到难以弥补的损害的，可以在提起附带民事诉讼前，向被保全财产所在地、被申请人居住地或者对案件有管辖权的人民法院申请采取保全措施。申请人在人民法院受理刑事案件后十五日内未提起附带民事诉讼的，人民法院应当解除保全措施。</p> <p>人民法院采取保全措施，适用民事诉讼法第一百条至第一百零五条的有关规定，但民事诉讼法第一百零一条第三款的规定除外。</p>	<p>an application filed by the plaintiff, provided that the court finds it necessary to do so.</p> <p>In the case of emergency, one with the right to bring a collateral civil action may, before he or she files a collateral civil action in court, apply to the court at the place where the property to be subject to a surety bond is located or at the domicile of the respondent, or at the court with jurisdiction over the case, for the adoption of a surety bond, provided that his or her legitimate interests will suffer irreparable damage if a surety bond is not applied for immediately. The people’s court shall terminate any surety bond adopted if the applicant for the measure fails to file a collateral civil action within 15 days of acceptance of the criminal case in a court.</p> <p>The people’s court shall apply Articles 100 to 105 of the <i>Civil Procedure Law</i> when adopting preventative measures, except for Article 101, paragraph 3 of the <i>Civil Procedure Law</i>.</p>
<p><b>第一百五十三条</b> 人民法院审理附带民事诉讼案件，可以根据自愿、合法的原则进行调解。经调解达成协议的，应当制作调解书。调解书经双方当事人签收后，即具有法律效力。</p> <p>调解达成协议并即时履行完毕的，可以不制作调解书，但应当制作笔录，经双方当事人、审判人员、书记员签名或者盖章后即发生法律效力。</p>	<p><b>Article 153</b> The people’s court hearing a collateral civil action may, according to the principles of voluntariness and legality, conduct a mediation. A mediation agreement shall be produced where the parties reach an agreement through mediation. The settlement agreement shall become effective upon the signature of, and distribution of copies to, both parties.</p> <p>For agreements reached through mediation and immediately implemented, a</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>written settlement agreement is not required, but a record or transcript must be made of the agreement, and the agreement shall become effective in law once both parties, the adjudication personnel and the clerk have signed or sealed the record or transcript.</p>
<p><b>第一百五十四条</b> 调解未达成协议或者调解书签收前当事人反悔的, 附带民事诉讼应当同刑事诉讼一并判决。</p>	<p><b>Article 154</b> Collateral civil actions in which parties fail to reach an agreement through mediation or recant before signing and receiving the agreement, shall be decided along with the criminal case.</p>
<p><b>第一百五十五条</b> 对附带民事诉讼作出判决, 应当根据犯罪行为造成的物质损失, 结合案件具体情况, 确定被告人应当赔偿的数额。</p> <p>犯罪行为造成被害人人身损害的, 应当赔偿医疗费、护理费、交通费等为治疗和康复支付的合理费用, 以及因误工减少的收入。造成被害人残疾的, 还应当赔偿残疾生活辅助具费等费用; 造成被害人死亡的, 还应当赔偿丧葬费等费用。</p> <p>驾驶机动车致人伤亡或者造成公私财产重大损失, 构成犯罪的, 依照《中华人民共和国道路交通安全法》第七十六条的规定确定赔偿责任。</p> <p>附带民事诉讼当事人就民事赔偿问题达成调解、和解协议的, 赔偿范围、数额不受第二款、第三款规定的限制。</p>	<p><b>Article 155</b> In the judgment for a collateral civil action, the amount of compensation a defendant must pay shall be determined according to the material loss caused by the criminal act(s), based on the specific circumstances of the case.</p> <p>Where the victim suffers a personal injury as a result of a criminal offense, he or she shall be entitled to compensation for reasonable expenses for treatment and rehabilitation, such as medical expenses, cost of care, traffic expenses, as well as loss of income due to absence from work. Expenses for physical aids for victims who suffer a physical disability as a result of the crime, or funeral expenses for a victim who dies as a result of the crime, must also be compensated.</p> <p>In cases involving injury or death or severe damage to public or private property as a result of a person driving a vehicle, and where such cases constitute a crime, responsibility for compensation shall be determined according to Article 76 of the <i>Road Traffic Safety Law of the People's Republic of China</i>.</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>Where parties to a collateral civil action have reached an agreement through mediation or negotiation on questions of civil compensation, limitations on the scope and amount of compensation in paragraphs 2 and 3 of this Article shall not apply.</p>
<p><b>第一百五十六条</b> 人民检察院提起附带民事诉讼的，人民法院经审理，认为附带民事诉讼被告人依法应当承担赔偿责任的，应当判令附带民事诉讼被告人直接向遭受损失的单位作出赔偿；遭受损失的单位已经终止，有权利义务继承人的，应当判令其向继承人作出赔偿；没有权利义务继承人的，应当判令其向人民检察院交付赔偿款，由人民检察院上缴国库。</p>	<p><b>Article 156</b> If, after trying a case, the people’s court decides that the defendant to the collateral civil action shall be legally liable to pay compensation, a ruling shall be entered directing the defendant to make compensation directly to the entity that suffers the loss in cases where the collateral civil action has been brought by a people’s procuratorate; if the entity that suffers the loss has ceased to exist, the defendant shall be directed to pay compensation to that entity’s successor in law, which inherits its rights and obligations; in cases where the entity has no successor in law, the compensation shall be paid to the people’s procuratorate for transfer to the State treasury.</p>
<p><b>第一百五十七条</b> 审理刑事附带民事诉讼案件，人民法院应当结合被告人赔偿被害人物质损失的情况认定其悔罪表现，并在量刑时予以考虑。</p>	<p><b>Article 157</b> In a case where it is trying a collateral civil action, the people’s court shall incorporate the defendant’s compensation to the victim when it establishes whether the defendant has expressed remorse for the crime, and shall give consideration to this factor in sentencing.</p>
<p><b>第一百五十八条</b> 附带民事诉讼原告人经传唤，无正当理由拒不到庭，或者未经法庭许可中途退庭的，应当按撤诉处理。</p> <p>刑事被告人以外的附带民事诉讼被告人经传唤，无正当理由拒不到庭，或者未经法庭许可中途退庭的，附带民事部分可以缺</p>	<p><b>Article 158</b> Where the plaintiff to a collateral civil action, without justifiable excuse, fails to attend court after being summonsed, or withdraws from a court hearing without permission from the court, the collateral civil action shall be deemed to have been withdrawn by the plaintiff.</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>席判决。</p>	<p>Where the defendant to a collateral civil action, who is not the defendant to the criminal case, fails to attend court without justifiable excuse after being summonsed, or withdraws from a court hearing without the permission of the court, the court may enter a judgment in absentia for the civil claims.</p>
<p><b>第一百五十九条</b> 附带民事诉讼应当同刑事案件一并审判，只有为了防止刑事案件审判的过分迟延，才可以在刑事案件审判后，由同一审判组织继续审理附带民事诉讼；同一审判组织的成员确实不能继续参与审判的，可以更换。</p>	<p><b>Article 159</b> The collateral civil action shall be heard concurrently with the criminal case; and may only be heard by the same adjudicative decision-making body after the trial of the criminal case in order to prevent excessive delay of the criminal case; a member of the adjudicative decision-making body unable to continue participating in the hearing may be replaced.</p>
<p><b>第一百六十条</b> 人民法院认定公诉案件被告人的行为不构成犯罪，对已经提起的附带民事诉讼，经调解不能达成协议的，应当一并作出刑事附带民事判决。</p> <p>人民法院准许人民检察院撤回起诉的公诉案件，对已经提起的附带民事诉讼，可以进行调解；不宜调解或者经调解不能达成协议的，应当裁定驳回起诉，并告知附带民事诉讼原告人可以另行提起民事诉讼。</p>	<p><b>Article 160</b> Where the people’s court finds the act of a defendant to a public prosecution does not constitute a crime, and no agreement has been reached through mediation after a collateral civil action is filed, the court shall concurrently enter a judgment for the collateral civil action.</p> <p>Where an application to withdraw a prosecution case has been filed by the people’s procuratorate and approved by the people’s court, the court may conduct mediation in the collateral civil action already filed; if it is inappropriate to conduct mediation or no agreement through mediation is reached, the court shall rule that the case is dismissed and inform the plaintiff to the collateral civil action that he or she may bring a civil action separately.</p>
<p><b>第一百六十一条</b> 第一审期间未提起附带民事诉讼，在第二审期间提起的，第二审人民法院可以依法进行调解；调解不成的，告知当事人可以在刑事判决、裁定生效后另行提起民事诉讼。</p>	<p><b>Article 161</b> Where a collateral civil action is not brought until the second instance stage of a case, the people’s court of second instance may conduct mediation in accordance with law; if the mediation is unsuccessful, the court</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	shall inform the parties that they may bring a civil action separately after the criminal verdict or ruling becomes effective.
<b>第一百六十二条</b> 人民法院审理附带民事诉讼案件，不收取诉讼费。	<b>Article 162</b> The people’s court hearing a collateral civil action shall not levy any litigation costs.
<b>第一百六十三条</b> 人民法院审理附带民事诉讼案件，除刑法、刑事诉讼法以及刑事司法解释已有规定的以外，适用民事法律的有关规定。	<b>Article 163</b> When a people’s court hears a collateral civil action, except where otherwise provided for in the <i>Criminal Law</i> , the <i>Criminal Procedure Law</i> and judicial interpretations regarding the administration of criminal justice, it shall apply relevant articles in the <i>Civil Law</i> .
<b>第一百六十四条</b> 被害人或者其法定代理人、近亲属在刑事诉讼过程中未提起附带民事诉讼，另行提起民事诉讼的，人民法院可以进行调解，或者根据物质损失情况作出判决。	<b>Article 164</b> Where the victim, his or her legal representative, or an immediate family member who has not brought a collateral civil action during the criminal process files a separate civil suit, the people’s court may conduct mediation or enter judgment according to the material loss suffered.
<b>第七章 期间、送达、审理期限</b>	<b>Chapter 7 Time Periods, Service of Process and Maximum Time Allowed for Trial</b>
<b>第一百六十五条</b> 以月计算的期限，自本月某日至下月同日为一个月。期限起算日为本月最后一日的，至下月最后一日为一个半月。下月同日不存在的，自本月某日至下月最后一日为一个半月。半个月一律按十五日计算。	<b>Article 165</b> For the calculation of time limits on a monthly basis, the period of one month shall be taken to begin and end on the same calendar day of each month. Where a time limit begins on the last day of a month, the final day of a one-month time limit shall be the last day of the following month. Where the same calendar day does not exist for the following month, the one-month period shall end on the final day of the following month. A time limit of one half of a month shall be 15 days without exception.

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第一百六十六条</b> 当事人由于不能抗拒的原因或者有其他正当理由而耽误期限，依法申请继续进行应当在期满前完成的诉讼活动的，人民法院查证属实后，应当裁定准许。</p>	<p><b>Article 166</b> Where a party cannot meet a deadline due to a compelling reason outside of its control or for some other justifiable reason, and that party applies to continue with the procedures that shall have been completed by the deadline, the people’s court shall enter a ruling permitting the application after verification.</p>
<p><b>第一百六十七条</b> 送达诉讼文书，应当由收件人签收。收件人不在的，可以由其成年家属或者所在单位负责收件的人员代收。</p> <p>收件人或者代收人在送达回证上签收的日期为送达日期。</p> <p>收件人或者代收人拒绝签收的，送达人可以邀请见证人到场，说明情况，在送达回证上注明拒收的事由和日期，由送达人、见证人签名或者盖章，将诉讼文书留在收件人、代收人的住处或者单位；也可以把诉讼文书留在受送达人的住处，并采用拍照、录像等方式记录送达过程，即视为送达。</p>	<p><b>Article 167</b> Litigation documents must be signed by the addressee upon receipt of service. Where the addressee is absent, an adult family member of the addressee or the responsible person for the entity where the addressee works may receive the documents and sign on the addressee’s behalf.</p> <p>The date of receipt of service is the date the addressee or the recipient on his or her behalf signs the acknowledgement of service.</p> <p>If the addressee or the recipient on his or her behalf refuses to accept and sign the acknowledgement of service, the person serving the documents may request that an authenticating witness be present and explain the situation to the authenticating witness, recording the fact of refusal and date of service on the service acknowledgment, sign or seal and have the witness sign or seal the service acknowledgment, and leave the court document at the residence or work place of the addressee or the recipient on his or her behalf; alternatively, such documents shall be deemed served if left at the addressee’s residence after the process of serving the document has been recorded with photos, video tape, etc.</p>
<p><b>第一百六十八条</b> 直接送达诉讼文书有困难的，可以委托收件人所在地的人民法院代为送达，或者邮寄送达。</p>	<p><b>Article 168</b> If direct service of litigation documents proves difficult, the people’s court located at the place of the addressee may be entrusted with service of the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	litigation documents, or they may be served by post.
<p><b>第一百六十九条</b> 委托送达的,应当将委托函、委托送达的诉讼文书及送达回证寄送受托法院。受托法院收到后,应当登记,在十日内送达收件人,并将送达回证寄送委托法院;无法送达的,应当告知委托法院,并将诉讼文书及送达回证退回。</p>	<p><b>Article 169</b> Where another court has been entrusted to effect service, the letter entrusting the court to do so, the litigation documents to be served, and the service acknowledgement form shall be sent to the people's court which is to be entrusted to effect service by post. The court entrusted to effect service shall, after receiving the documents, make a record, serve the addressee within 10 days, and mail the service acknowledgment to the court which has entrusted it to do so; in cases where it is unable to serve the addressee, it shall inform the court which has entrusted it to do so, and return the court document and the service acknowledgment form.</p>
<p><b>第一百七十条</b> 邮寄送达的,应当将诉讼文书、送达回证挂号邮寄给收件人。挂号回执上注明的日期为送达日期。</p>	<p><b>Article 170</b> In cases of service by mail, the litigation documents and service acknowledgement form shall be sent to the addressee by registered post. The date noted on the receipt of the registered post is the service date.</p>
<p><b>第一百七十一条</b> 诉讼文书的收件人是军人的,可以通过其所在部队团级以上单位的政治部门转交。</p> <p>收件人正在服刑的,可以通过执行机关转交。</p> <p>收件人正在被采取强制性教育措施的,可以通过强制性教育机构转交。</p> <p>由有关部门、单位代为转交诉讼文书的,应当请有关部门、单位收到后立即交收件人签收,并将送达回证及时寄送人民法院。</p>	<p><b>Article 171</b> Where the addressee is a member of the armed forces, the litigation documents may be delivered to the addressee through the political department of the regiment or superior unit to which he or she belongs to.</p> <p>Where the addressee is serving a sentence, the litigation documents may be delivered to him or her through the enforcement agency.</p> <p>Where the addressee is undergoing compulsory education measures, the litigation documents may be delivered to him or her through the compulsory education agency.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	In case where a relevant department or unit delivers litigation documents to a person, such department or unit must be requested to immediately forward the documents to the addressee, and mail the service acknowledgment form to the people’s court in a timely manner.
<b>第一百七十二条</b> 指定管辖案件的审理期限，自被指定管辖的人民法院收到指定管辖决定书和有关案卷、证据材料之日起计算。	<b>Article 172</b> For a case over which jurisdiction is exercised by assignment, the maximum time allowed for trial shall not commence until the day the assigned people’s court receives the letter of designating jurisdiction, relevant case files and evidence material.
<b>第八章 审判组织</b>	<b>Chapter 8 Adjudicative Decision-making Bodies</b>
<b>第一百七十五条</b> 审判长由审判员担任。助理审判员由本院院长提出，经审判委员会通过，可以临时代行审判员职务，并可以担任审判长。	<b>Article 175</b> The position of chief-judge shall be held by a judge. An assistant judge may serve as a judge temporarily after being nominated by the court president and approved by the court adjudicative committee and may also serve as a chief judge
<b>第一百七十六条</b> 开庭审理和评议案件，应当由同一合议庭进行。合议庭成员在评议案件时，应当独立表达意见并说明理由。意见分歧的，应当按多数意见作出决定，但少数意见应当记入笔录。评议笔录由合议庭的组成人员在审阅确认无误后签名。评议情况应当保密。	<b>Article 176</b> The case-adjudication in open court and case-deliberation shall be conducted by the same collegial panel. During the case-deliberation, members of the collegial panel shall independently express their opinions with explanations. When consensus opinion cannot be reached, the decision shall follow majority’s opinion. The minority opinion shall be entered in the minutes of the deliberation meeting. The minutes shall be signed by the members of the collegial panel after being reviewed and confirmed with no errors in the minutes. Content of the

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	deliberation meeting shall be kept confidential.
<p><b>第一百七十七条</b> 审判员依法独任审判时，行使与审判长相同的职权。</p>	<p><b>Article 177</b> When a case is decided by a single judge according to the law, the single judge exercises the same power as that of a chief judge.</p>
<p><b>第一百七十八条</b> 合议庭审理、评议后，应当及时作出判决、裁定。</p> <p>拟判处死刑的案件、人民检察院抗诉的案件，合议庭应当提请院长决定提交审判委员会讨论决定。</p> <p>对合议庭成员意见有重大分歧的案件、新类型案件、社会影响重大的案件以及其他疑难、复杂、重大的案件，合议庭认为难以作出决定的，可以提请院长决定提交审判委员会讨论决定。</p> <p>人民陪审员可以要求合议庭将案件提请院长决定是否提交审判委员会讨论决定。</p> <p>对提请院长决定提交审判委员会讨论决定的案件，院长认为不必要的，可以建议合议庭复议一次。</p> <p>独任审判的案件，审判员认为有必要的，也可以提请院长决定提交审判委员会讨论决定。</p>	<p><b>Article 178</b> The collegial panel shall make decisions and issue rulings timely after completing court collegial panel hearings and deliberations.</p> <p>Collegial panel shall refer a case to the court president to decide whether the case shall be submitted to the court adjudicative committee for a decision if 1) a death sentence is preliminarily proposed or 2) the case is protested by a people’s procuratorate.</p> <p>The collegial panel may refer a case to the court president to decide whether the case shall be submitted to the court adjudicative committee for deliberation and ruling if 1) a case has generated great controversy among the members of the collegial panel, 2) the case concerned is a new type of case, 3) the case has significant social impact or 4) any other case that is too difficult, complicated or critical for the collegial panel to make a decision.</p> <p>People’s assessor may request the collegial panel to refer a case to the court president to decide whether the case shall be submitted to the court adjudicative committee for deliberation and ruling.</p> <p>If the court president, upon receiving the request from a collegial panel to</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>submit a case to the court adjudicative committee, deems such submission unnecessary, he or she may suggest the collegial panel to deliberate the case one more time.</p> <p>For cases decided by a single judge, if considered necessary, the single-judge may also refer a case to the court president to decide whether the case shall be submitted to the court adjudicative committee for deliberation and ruling.</p>
<p><b>第一百七十九条</b> 审判委员会的决定，合议庭、独任审判员应当执行；有不同意见的，可以建议院长提交审判委员会复议。</p>	<p><b>Article 179</b> A collegial panel and single-judge court shall enforce decisions reached by the court adjudicative committee. [Anyone] with different opinions can recommend the court president submit the case to the court adjudicative committee for re-deliberation.</p>
<p><b>第九章 公诉案件第一审普通程序</b></p>	<p><b>Chapter 9 Trial Procedure - First Instance Public Prosecution</b></p>
<p><b>第一节 审查受理与庭前准备</b></p>	<p><b>Section One Case Acceptance and Pretrial Preparation</b></p>
<p><b>第一百八十条</b> 对提起公诉的案件，人民法院应当在收到起诉书（一式八份，每增加一名被告人，增加起诉书五份）和案卷、证据后，指定审判人员审查以下内容：</p> <p>（一）是否属于本院管辖；</p> <p>（二）起诉书是否写明被告人的身份，是否受过或者正在接受刑事处罚，被采取强制措施的种类、羁押地点，犯罪的时间、地点、手段、后果以及其他可能影响定罪量刑的情节；</p>	<p><b>Article 180</b> For public prosecution cases, the people’s courts shall designate adjudication personnel to examine the following matters upon the receipt of the prosecutor’s claim together with the case file and evidence:</p> <p>(1) whether the case falls in the jurisdiction of the court;</p> <p>(2) whether the following factors are clearly addressed: identity of the defendant(s), the fact whether the defendant is serving or had served criminal</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(三) 是否移送证明指控犯罪事实的证据材料, 包括采取技术侦查措施的批准决定和所收集的证据材料;</p> <p>(四) 是否查封、扣押、冻结被告人的违法所得或者其他涉案财物, 并附证明相关财物依法应当追缴的证据材料;</p> <p>(五) 是否列明被害人的姓名、住址、联系方式; 是否附有证人、鉴定人名单; 是否申请法庭通知证人、鉴定人、有专门知识的人出庭, 并列明有关人员的姓名、性别、年龄、职业、住址、联系方式; 是否附有需要保护的证人、鉴定人、被害人名单;</p> <p>(六) 当事人已委托辩护人、诉讼代理人, 或者已接受法律援助的, 是否列明辩护人、诉讼代理人的姓名、住址、联系方式;</p> <p>(七) 是否提起附带民事诉讼; 提起附带民事诉讼的, 是否列明附带民事诉讼当事人的姓名、住址、联系方式, 是否附有相关证据材料;</p> <p>(八) 侦查、审查起诉程序的各种法律手续和诉讼文书是否齐全;</p> <p>(九) 有无刑事诉讼法第十五条第二项至第六项规定的不追究刑事责任的情形。</p>	<p>punishment, type of coercive measures that have been taken regarding the defendant, place of detention, time, place, method, consequence of the crime committed and any other factors that may affect sentencing;</p> <p>(3) whether evidential materials that serve as proof of the alleged crime have been submitted to court, including decisions to approve the application of technical investigation method as well as evidence collected;</p> <p>(4) whether seal, seizure or freeze of assets has applied to illicit income or any other property and assets involved in the case and whether materials proving the existence of such property and assets that are subject to forfeiture are attached;</p> <p>(5) whether the name, address of residence, contact information of victim(s) are listed; whether lists of names of witnesses and forensic analysts are attached; whether there is any request to subpoena witness, forensic analyst, persons with special knowledge to appear in courts, and, if there is, whether the name, gender, age, profession, address of residence and contact information are provided; whether a name list of witness, appraiser and victim who needs to be protected is attached;</p> <p>(6) in case that an defender or litigation advocate has been retained by a party, or the party has accepted legal aid, whether the name, address of residence</p>
--	--



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>and contact information of the defender or litigation advocate has been provided;</p> <p>(7) whether a collateral civil action is brought to court; if it is, whether the name, address of residence and contact information of the party in the collateral civil action has been attached, as well as related evidential materials;</p> <p>(8) whether the paperwork regarding the investigation, review and prosecute and related litigating documents are complete;</p> <p>(9) whether any circumstances that satisfy the conditions for not investigating criminal responsibility as prescribed in article 15.2-6 of the Criminal Procedural Law are present.</p>
<p><b>第一百八十一条</b> 人民法院对提起公诉的案件审查后,应当按照下列情形分别处理:</p> <p>(一) 属于告诉才处理的案件,应当退回人民检察院,并告知被害人有权提起自诉;</p> <p>(二) 不属于本院管辖或者被告人不在案的,应当退回人民检察院;</p> <p>(三) 不符合前条第二项至第八项规定之一,需要补充材料的,应当通知人民检察院在三日内补送;</p>	<p><b>Article 181</b> After examining the case brought to it by the people’s procuratorate, people’s courts shall take actions as indicated below according to the specific conditions of the case:</p> <p>(1) a people’s court shall return a case to the people’s procuratorate and inform the victim about his/her right to private prosecution if the case falls in the category of prosecute-only-when-informed;</p> <p>(2) a people’s court shall return a case to the people’s procuratorate if the court does not have the jurisdiction over the case or the defendant is still at large;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasia@nyu.edu](mailto:usasia@nyu.edu).

<p>(四) 依照刑事诉讼法第一百九十五条第三项规定宣告被告人无罪后, 人民检察院根据新的事实、证据重新起诉的, 应当依法受理;</p> <p>(五) 依照本解释第二百四十二条规定裁定准许撤诉的案件, 没有新的事实、证据, 重新起诉的, 应当退回人民检察院;</p> <p>(六) 符合刑事诉讼法第十五条第二项至第六项规定情形的, 应当裁定终止审理或者退回人民检察院;</p> <p>(七) 被告人真实身份不明, 但符合刑事诉讼法第一百五十八条第二款规定的, 应当依法受理。</p> <p>对公诉案件是否受理, 应当在七日内审查完毕。</p>	<p>(3) a people's court shall inform the people's procuratorate to provide supplementary materials if requirements prescribed in Article 180.2-8 are not met;</p> <p>(4) if a people's procuratorate brings a case to people's courts based on new fact or evidence against a defendant who had been previously acquitted, the people's courts shall accept a case according to the law;</p> <p>(5) without any support by new fact or evidence, if a people's procuratorate brings to a people's court a case, which had been previously ruled by the court against the procuratorate and allowed to withdraw, the court shall return the case to the people's procuratorate;</p> <p>(6) a people's court shall rule to terminate the litigation or return the case to the people's procuratorate if circumstances prescribed in Article 15.2-6 of the criminal procedural law are present;</p> <p>(7) a people's court shall accept a case if the identity of the defendant cannot be authenticated but the case meets the condition prescribed in Article 158.2.</p> <p>On whether to accept a case brought by people's procuratorates, people's courts shall complete the examination with seven days.</p>
---	--

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

**第一百八十二条** 开庭审理前，人民法院应当进行下列工作：

（一）确定审判长及合议庭组成人员；

（二）开庭十日前将起诉书副本送达被告人、辩护人；

（三）通知当事人、法定代理人、辩护人、诉讼代理人在开庭五日前提供证人、鉴定人名单，以及拟当庭出示的证据；申请证人、鉴定人、有专门知识的人出庭的，应当列明有关人员的姓名、性别、年龄、职业、住址、联系方式；

（四）开庭三日前将开庭的时间、地点通知人民检察院；

（五）开庭三日前将传唤当事人的传票和通知辩护人、诉讼代理人、法定代理人、证人、鉴定人等出庭的通知书送达；通知有关人员出庭，也可以采取电话、短信、传真、电子邮件等能够确认对方收悉的方式；

（六）公开审理的案件，在开庭三日前公布案由、被告人姓名、开庭时间和地点。

上述工作情况应当记录在案。

**Article 182** People’s courts shall conduct the following activities before opening a session of court hearing:

(1) the court shall designate the chief judge and members of the collegial panel;

(2) the court shall deliver a certified copy of the procuratorate’s complaint to the defendant and his/her defender ten days ahead of the hearing;

(3) the court shall inform the party(ies), guardian ad litem, defenders, litigation advocate(s) five days ahead of court hearing to provide a list of witnesses and forensic analysts as well as evidences that they plan to present in court. Such list shall provide the name, gender, age, profession, residential address and contact information of those on the list;

(4) the court shall inform the people’s procuratorate about the time and place of the court hearing three days ahead of the court hearing;

(5) the court shall deliver the subpoena to the parties and notification to the defender, litigation representative, guardian ad litem, witness and forensic analyst three days ahead of the court hearing. Notification to appear in courts can be delivered by means of telephone, text message, fax, email and other means that can have the receipt of the notification ascertained;

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(6) for court hearings that are open to the public, the court shall publicize the nature of the complaint of the case, the name of the defendant and the time and the place of the hearing three days ahead of the hearing.</p> <p>All activities described above shall be entered in court record.</p>
<p><b>第一百八十三条</b> 案件具有下列情形之一的，审判人员可以召开庭前会议：</p> <p>（一）当事人及其辩护人、诉讼代理人申请排除非法证据的；</p> <p>（二）证据材料较多、案情重大复杂的；</p> <p>（三）社会影响重大的；</p> <p>（四）需要召开庭前会议的其他情形。</p> <p>召开庭前会议，根据案件情况，可以通知被告人参加。</p>	<p><b>Article 183</b> Adjudication personnel can decide to hold a pre-trial conference if one of the circumstances described below satisfies:</p> <p>(1) application to expel illegal evidence is submitted by parties and their defenders or litigation advocates;</p> <p>(2) the volume of evidential materials is substantial and the case is serious and complicated;</p> <p>(3) the case has significant social impact;</p> <p>(4) other circumstances that warrant a pre-trial conference.</p> <p>The defendant can be informed to participate in a pre-trial conference, depending on the specific circumstance of the case.</p>
<p><b>第一百八十四条</b> 召开庭前会议，审判人员可以就下列问题向控辩双方了解情况，听取意见：</p>	<p><b>Article 184</b> In the pre-trial conference, adjudication personnel shall enquire and hear from both parties on the following issues:</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(一) 是否对案件管辖有异议;</p> <p>(二) 是否申请有关人员回避;</p> <p>(三) 是否申请调取在侦查、审查起诉期间公安机关、人民检察院收集但未随案移送的证明被告人无罪或者罪轻的证据材料;</p> <p>(四) 是否提供新的证据;</p> <p>(五) 是否对出庭证人、鉴定人、有专门知识的人的名单有异议;</p> <p>(六) 是否申请排除非法证据;</p> <p>(七) 是否申请不公开审理;</p> <p>(八) 与审判相关的其他问题。</p> <p>审判人员可以询问控辩双方对证据材料有无异议,对有异议的证据,应当在庭审时重点调查;无异议的,庭审时举证、质证可以简化。</p> <p>被害人或者其法定代理人、近亲属提起附带民事诉讼的,可以调解。</p>	<p>(1) objection to the court's jurisdiction over the case;</p> <p>(2) request for recusal of court personnel involved in the case;</p> <p>(3) request to collect evidential materials that can prove the defendant's innocence or can be used to mitigate the punishment for the defendant and that had been collected by the public security or people's procuratorate in the course of investigation and review for prosecution and failed to transfer to courts along;</p> <p>(4) request to provide new evidence;</p> <p>(5) objection to the list of witness, forensic analysts and persons with specialized knowledge who are expected to appear in courts;</p> <p>(6) request to exclude illegal evidence;</p> <p>(7) request to close the trial from the public;</p> <p>(8) other issues related to the trial.</p> <p>Adjudication personnel can enquire both parties about their objection to the evidential materials provided by the opposite party. Controversial evidence</p>
---	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>庭前会议情况应当制作笔录。</p>	<p>shall be the focus of the examination at the trial and the examination of non-controversial evidence can be simplified during the trial.</p> <p>If the victim or his/her guardian ad litem or immediate family member(s) brings a collateral civil action, mediation can apply.</p> <p>Pre-trial conference shall be transcribed.</p>
<p><b>第一百八十五条</b> 开庭审理前，合议庭可以拟出法庭审理提纲，提纲一般包括下列内容：</p> <p>（一）合议庭成员在庭审中的分工；</p> <p>（二）起诉书指控的犯罪事实的重点和认定案件性质的要点；</p> <p>（三）讯问被告人时需了解的案情要点；</p> <p>（四）出庭的证人、鉴定人、有专门知识的人、侦查人员的名单；</p> <p>（五）控辩双方申请当庭出示的证据的目录；</p> <p>（六）庭审中可能出现的问题及应对措施。</p>	<p><b>Article 185</b> In preparing for the court hearing, the collegial panel can draft a synopsis of the hearing, which shall include the following contents:</p> <p>(1) the division of labor regarding the hearing among members of the collegial panel;</p> <p>(2) the main facts of the criminal conduct alleged in the procuratorate’s complaint and the key points that determine the characterization of the case;</p> <p>(3) key points that warrant inquiry when interrogating the defendant;</p> <p>(4) list of the names of witnesses, forensic analysts, persons with specialized knowledge and investigating personnel;</p> <p>(5) a table of contents of the evidence that is to be presented at courts per requests from both parties;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	(6) other issues that may rise during the trial and the planned responses.
<p><b>第一百八十六条</b> 审判案件应当公开进行。</p> <p>案件涉及国家秘密或者个人隐私的，不公开审理；涉及商业秘密，当事人提出申请的，法庭可以决定不公开审理。</p> <p>不公开审理的案件，任何人不得旁听，但法律另有规定的除外。</p>	<p><b>Article 186</b> All trials shall be open to the public.</p> <p>Trials can be closed to the public if the cases tried involve state secrets or individuals' privacy. Courts can decide to keep a trial closed to the public if the case concerned involves commercial secret upon requests from the party.</p> <p>No one can observe court trials that are closed to the public, except for circumstances prescribed by law.</p>
<p><b>第一百八十七条</b> 精神病人、醉酒的人、未经人民法院批准的未成年人以及其他不宜旁听的人不得旁听案件审理。</p>	<p><b>Article 187</b> Person who suffers from mental illness, intoxication, minors whose presence has not been approved by courts or other person whose presence in courts is deemed inappropriate shall not be allowed to observe court trials.</p>
<p><b>第一百八十八条</b> 被害人、诉讼代理人经传唤或者通知未到庭，不影响开庭审理的，人民法院可以开庭审理。</p> <p>辩护人经通知未到庭，被告人同意的，人民法院可以开庭审理，但被告人属于应当提供法律援助情形的除外。</p>	<p><b>Article 188</b> Courts can proceed to open hearing if victims and litigation advocates, who have received court subpoena or notification but failed to appear in courts and whose absence does not jeopardize the court procedure.</p> <p>Courts can proceed to open hearing if the defender fails to appear in courts after having received the notification upon agreement of the defendant, with the exceptional circumstance when the defendant is entitled to legal aid service.</p>
<p><b>第一百八十九条</b> 开庭审理前，书记员应当依次进行下列工作：</p> <p>(一) 受审判长委托，查明公诉人、当事人、证人及其他诉</p>	<p><b>Article 189</b> Before the court commences to open a session of hearing, court clerk shall conduct the following tasks in a sequential manner:</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>讼参与人是否到庭；</p> <p>（二）宣读法庭规则；</p> <p>（三）请公诉人及相关诉讼参与人入庭；</p> <p>（四）请审判长、审判员（人民陪审员）入庭；</p> <p>（五）审判人员就座后，向审判长报告开庭前的准备工作已经就绪。</p>	<p>(1) on behalf of the chief judge, ascertain the presence of the procurator, the parties, witness(es) and other participants of the litigation;</p> <p>(2) announce rules of the court;</p> <p>(3) invite procurators and other participants of the litigation to their seats;</p> <p>(4) invite chief judge, judge (including people’s assessor) to their seats;</p> <p>(5) after all adjudication personnel have seated, report the completion of pre-trial preparation to the chief judge.</p>
<p><b>第二节 宣布开庭与法庭调查</b></p>	<p><b>Section Two Announcement of the Court Hearing and Court Investigation</b></p>
<p><b>第一百九十条</b> 审判长宣布开庭，传被告人到庭后，应当查明被告人的下列情况：</p> <p>（一）姓名、出生日期、民族、出生地、文化程度、职业、住址，或者被告单位的名称、住所地、诉讼代表人的姓名、职务；</p> <p>（二）是否受过法律处分及处分的种类、时间；</p> <p>（三）是否被采取强制措施及强制措施的种类、时间；</p> <p>（四）收到起诉书副本的日期；有附带民事诉讼的，附带民</p>	<p><b>Article 190</b> Chief judge announces the opening of the court hearing. After the defendant has been summoned to court, the court shall ascertain the following information regarding the defendant:</p> <p>(1) name, date of birth, nationality, place of birth, highest education, profession, residence or if the defendant is a legal entity, the name of the legal entity, its residence, the name of its litigation advocate and the representative’s position at the legal entity;</p> <p>(2) whether the defendant has received legal punishment, if so, the type of</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>事诉讼被告人收到附带民事起诉状日期。</p> <p>被告人较多的，可以在开庭前查明上述情况，但开庭时审判长应当作出说明。</p>	<p>the punishment and the date when the punishment is received;</p> <p>(3) whether coercive measure has been applied to the defendant; if so, the type of the measure and when it is received;</p> <p>(4) the date when the certified copy of procuratorate’s complaint is received; if a collateral civil action is also filed against the defendant, the date of receipt of the certified copy of the collateral civil complaint.</p> <p>The court can ascertain information listed above if the case concerns a significant number of defendants. If the court has chosen to do so, the chief judge shall explain the situation at the beginning of the hearing.</p>
<p><b>第一百九十一条</b> 审判长宣布案件的来源、起诉的案由、附带民事诉讼当事人的姓名及是否公开审理；不公开审理的，应当宣布理由。</p>	<p><b>Article 191</b> Chief judge announces the source of the case, the basis of the prosecution, the name of the collateral civil action party(ies) and whether the hearing is open to the public; if the hearing is closed to the public, the reason shall be announced.</p>
<p><b>第一百九十二条</b> 审判长宣布合议庭组成人员、书记员、公诉人名单及辩护人、鉴定人、翻译人员等诉讼参与人的名单。</p>	<p><b>Article 192</b> The chief judge announces members of the collegial panel, the court clerk, name list of the procurators, forensic analysts, interpreters and other participants of the litigation.</p>
<p><b>第一百九十三条</b> 审判长应当告知当事人及其法定代理人、辩护人、诉讼代理人在法庭审理过程中依法享有下列诉讼权利：</p> <p>（一）可以申请合议庭组成人员、书记员、公诉人、鉴定人</p>	<p><b>Article 193</b> The chief judge shall inform the parties and their guardian ad litem, defenders and litigation advocates about the following rights that they are entitled to enjoy during the court hearing according to the law:</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>和翻译人员回避；</p> <p>（二）可以提出证据，申请通知新的证人到庭、调取新的证据，申请重新鉴定或者勘验、检查；</p> <p>（三）被告人可以自行辩护；</p> <p>（四）被告人可以在法庭辩论终结后作最后陈述。</p>	<p>(1) they may request for recusal of members of the collegial panel, court clerk, procurators, forensic analysts and interpreters;</p> <p>(2) they may provide evidence and submit application to the court to summon new witness, to collect new evidence, to apply for permission to conduct new forensic authentication, crime scene investigation or examination;</p> <p>(3) the defendant can choose to defend for himself.</p> <p>(4) the defendant may provide a final statement at the end of the court debate.</p>
<p><b>第一百九十四条</b> 审判长应当询问当事人及其法定代理人、辩护人、诉讼代理人是否申请回避、申请何人回避和申请回避的理由。</p> <p>当事人及其法定代理人、辩护人、诉讼代理人申请回避的，依照刑事诉讼法及本解释的有关规定处理。</p> <p>同意或者驳回回避申请的决定及复议决定，由审判长宣布，并说明理由。必要时，也可以由院长到庭宣布。</p>	<p><b>Article 194</b> The chief judge shall ask the parties or their guardian ad litem, defenders or litigation advocates whether they have recusal requests, of whom and the reasons for such request.</p> <p>If parties and their guardian ad litem, defenders and litigation advocates request for recusal, the court shall make decisions according to the Criminal Procedural Law and this judicial interpretation.</p> <p>Decisions to grant or dismiss the request and the decisions of the review of the initial decisions shall be announced by the chief judge with supportive reasoning. If necessary, the decisions mentioned above can be announced by the court president at court.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第一百九十五条</b> 审判长宣布法庭调查开始后,应当先由公诉人宣读起诉书;有附带民事诉讼的,再由附带民事诉讼原告人或者其法定代理人、诉讼代理人宣读附带民事起诉状。</p>	<p><b>Article 195</b> The court investigation session, announced by the chief judge, shall begin with the procurator reading the procurator’s complaint. It shall be followed by the reading of the complaint of the claimant or his/her guardian ad litem or litigation representative, if a collateral civil action is attached to the prosecution.</p>
<p><b>第一百九十六条</b> 起诉书指控的被告人的犯罪事实为两起以上的,法庭调查一般应当分别进行。</p>	<p><b>Article 196</b> If the alleged criminal conduct involves more than two criminal acts, court investigation shall be conducted for each act separately.</p>
<p><b>第一百九十七条</b> 在审判长主持下,被告人、被害人可就起诉书指控的犯罪事实分别陈述。</p>	<p><b>Article 197</b> The defendant and victim(s) may provide a statement respectively regarding the alleged criminal acts.</p>
<p><b>第一百九十八条</b> 在审判长主持下,公诉人可以就起诉书指控的犯罪事实讯问被告人。</p> <p>经审判长准许,被害人及其法定代理人、诉讼代理人可就公诉人讯问的犯罪事实补充发问;附带民事诉讼原告人及其法定代理人、诉讼代理人可就附带民事部分的事实向被告人发问;被告人的法定代理人、辩护人,附带民事诉讼被告人及其法定代理人、诉讼代理人可以在控诉一方就某一问题讯问完毕后向被告人发问。</p>	<p><b>Article 198</b> Moderated by the chief-judge, the procurator may interrogate the defendant concerning the alleged criminal act provided in the indictment.</p> <p>Upon approval of the chief-judge, the victim or his or her agent ad litem or litigation advocate may ask additional questions concerning the criminal act alleged by the procurator; the plaintiff in a collateral civil action or his or her agent ad litem or litigation advocate may ask additional questions concerning the facts related to the collateral civil action; following each interrogation question asked by the procurator, victim, collateral civil plaintiff or their agents or advocates, the defendant’s agent ad litem or defender and the defendant in the collateral civil action or his or her agent ad litem or litigation advocate may question the defendant concerning any question that was posed by the procurator.</p>
<p><b>第一百九十九条</b> 讯问同案审理的被告人,应当分别进行。必要时,可以传唤同案被告人等到庭对质。</p>	<p><b>Article 199</b> If a case has multiple defendants, the interrogation shall be conducted separately. If necessary, the court can summon other defendant(s) to</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaalaw@nyu.edu](mailto:usasiaalaw@nyu.edu).

	court to challenge or be challenged regarding evidence.
<b>第二百条</b> 经审判长准许，控辩双方可以向被害人、附带民事诉讼原告人发问。	<b>Article 200</b> Upon approval by the chief judge, both parties can question the victim or claimant of the collateral civil action.
<b>第二百零一条</b> 审判人员可以讯问被告人。必要时，可以向被害人、附带民事诉讼当事人发问。	<b>Article 201</b> Adjudication personnel may interrogate the defendant. When necessary, they may also question the victim or the parties to the collateral civil action.
<b>第二百零二条</b> 公诉人可以提请审判长通知证人、鉴定人出庭作证，或者出示证据。被害人及其法定代理人、诉讼代理人，附带民事诉讼原告人及其诉讼代理人也可以提出申请。  在控诉一方举证后，被告人及其法定代理人、辩护人可以提请审判长通知证人、鉴定人出庭作证，或者出示证据。	<b>Article 202</b> The procurator may request the chief judge to summon witnesses or forensic analysts to appear to court to provide testimony or to exhibit evidence.  Once the procurator has shown its evidence, the defendant and his/her guardian ad litem or defender can request the chief judge to summon witnesses and forensic analysts to appear to court to provide testimony or exhibit evidence.
<b>第二百零三条</b> 控辩双方申请证人出庭作证，出示证据，应当说明证据的名称、来源和拟证明的事实。法庭认为有必要的，应当准许；对方提出异议，认为有关证据与案件无关或者明显重复、不必要，法庭经审查异议成立的，可以不予准许。	<b>Article 203</b> To request the court to summon witness to provide testimony or exhibit evidence in courts, both the procurator and the defender shall identify the name, source of the evidence, as well as the purported fact. Court shall permit such request if the court considers such request necessary. If the opposing party objects such request and believes that certain evidence bears no relevance to the dispute or evidently repetitive or unnecessary, the court may reject such request if the objection stands after court examination.
<b>第二百零四条</b> 已经移送人民法院的证据，控辩双方需要出示的，可以向法庭提出申请。法庭同意的，应当指令值庭法警出示、播放；需要宣读的，由值庭法警交由申请人宣读。	<b>Article 204</b> If the procurator or the defender needs to exhibit evidence that has been transferred to court, he/she may submit a request to the court. If the court agrees, it shall instruct the bailiff in duty to exhibit and play the evidence in

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>court. If the evidence needs to be read, the bailiff in duty shall hand it to the requesting party to read in court.</p>
<p><b>第二百零五条</b> 公诉人、当事人或者辩护人、诉讼代理人对证人证言有异议，且该证人证言对定罪量刑有重大影响，或者对鉴定意见有异议，申请法庭通知证人、鉴定人出庭作证，人民法院认为有必要的，应当通知证人、鉴定人出庭；无法通知或者证人、鉴定人拒绝出庭的，应当及时告知申请人。</p>	<p><b>Article 205</b> If a procurator, party, defender or litigation advocate has objection towards a witness affidavit and considers the disputed affidavit has significant impact upon conviction and sentencing or if any of the afore-mentioned person has objection of a forensic conclusion, this person may request the court to summon the witness or forensic analyst concerned to appear in court. If considered necessary, the court shall summon the witness or forensic analyst to appear in court; if the witness or forensic analyst cannot be reached or refuses to appear in court, the court shall notify the party who submitted the request in a timely manner.</p>
<p><b>第二百零六条</b> 证人具有下列情形之一，无法出庭作证的，人民法院可以准许其不出庭：</p> <p>（一）在庭审期间身患严重疾病或者行动极为不便的；</p> <p>（二）居所远离开庭地点且交通极为不便的；</p> <p>（三）身处国外短期无法回国的；</p> <p>（四）有其他客观原因，确实无法出庭的。</p> <p>具有前款规定情形的，可以通过视频等方式作证。</p>	<p><b>Article 206</b> Under the following preventative circumstances, the people’s court may permit the witness not to appear in court:</p> <p>(1) the witness is inflicted with serious illness or having restrictions on physical movement at the time of the trial;</p> <p>(2) the place of residence of the witness is far away from the court with inconvenient travelling facilities;</p> <p>(3) the witness is out of the county and cannot return to China in the short future;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(4) the witness is prevented from appearing at court due to other objective obstacles.</p> <p>When the aforementioned circumstance occurs, the witness can provide testimony through remote video communications.</p>
<p><b>第二百零七条</b> 证人出庭作证所支出的交通、住宿、就餐等费用，人民法院应当给予补助。</p>	<p><b>Article 207</b> People’s courts shall provide allowance to compensate the expenses incurred to the witness for appearing in court, including travel, accommodation and meals.</p>
<p><b>第二百零八条</b> 强制证人出庭的，应当由院长签发强制证人出庭令。</p>	<p><b>Article 208</b> If the witness needs to be coerced to appear in court, the coercive measure shall be applied upon the issuance of a court subpoena by the court president.</p>
<p><b>第二百零九条</b> 审判危害国家安全犯罪、恐怖活动犯罪、黑社会性质的组织犯罪、毒品犯罪等案件，证人、鉴定人、被害人因出庭作证，本人或者其近亲属的人身安全面临危险的，人民法院应当采取不公开其真实姓名、住址和工作单位等个人信息，或者不暴露其外貌、真实声音等保护措施。</p> <p>审判期间，证人、鉴定人、被害人提出保护请求的，人民法院应当立即审查；认为确有保护必要的，应当及时决定采取相应保护措施。</p>	<p><b>Article 209</b> In cases where the defendant is charged with the crime of jeopardizing state security, terrorist activities, organized crime and drug crimes, the court shall protect the identity of the witness, forensic analyst or victim, whose appearance in court may jeopardize their safety or that of their immediate family member. Such protective measures include not disclosing their real names, residences, work units and other personal information, or not exposing their bodies or voices.</p> <p>If a witness, forensic analyst or victim applies for protection during the court trial, the court shall examine the application. The court shall make decisions in a timely manner and take protective actions accordingly if the court considers protection is necessary.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第二百一十条</b> 决定对出庭作证的证人、鉴定人、被害人采取不公开个人信息的保护措施的，审判人员应当在开庭前核实其身份，对证人、鉴定人如实作证的保证书不得公开，在判决书、裁定书等法律文书中可以使用化名等代替其个人信息。</p>	<p><b>Article 210</b> When a decision has reached by the court to apply measures to protect the identity of a witness, forensic analyst or victim, the court shall authenticate the identity of the person under protection before the court session starts. The court shall not disclose the pledge to provide truthful testimony written by the witness or forensic analyst to the public. Information concerning their personal identities can be replaced by alien names or other camouflaged substitutes in court decisions, rulings or other legal documents.</p>
<p><b>第二百一十一条</b> 证人、鉴定人到庭后，审判人员应当核实其身份、与当事人以及本案的关系，并告知其有关作证的权利义务和法律责任。</p> <p>证人、鉴定人作证前，应当保证向法庭如实提供证言、说明鉴定意见，并在保证书上签名。</p>	<p><b>Article 211</b> Upon their arrival at court, the adjudication personnel shall authenticate the identity of the witness or forensic analyst, their relation to the parties and the case. The court shall also notify them about their rights and obligations to testify as well as their legal responsibilities.</p> <p>Before testifying at court, the witness or forensic analyst shall pledge to provide testimony or forensic opinions truthfully in a written form with their signature.</p>
<p><b>第二百一十二条</b> 向证人、鉴定人发问，应当先由提请通知的一方进行；发问完毕后，经审判长准许，对方也可以发问。</p>	<p><b>Article 212</b> Witnesses and forensic analysts shall be examined first by the party who requested for the examination, which may be followed by the examination of the opposing party, upon approval by the chief judge.</p>
<p><b>第二百一十三条</b> 向证人发问应当遵循以下规则：</p> <p>（一）发问的内容应当与本案事实有关；</p> <p>（二）不得以诱导方式发问；</p>	<p><b>Article 213</b> The following rules shall be complied with when examining a witness:</p> <p>(1) the content of the question shall be relevant to the fact of the case;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(三) 不得威胁证人;</p> <p>(四) 不得损害证人的人格尊严。</p> <p>前款规定适用于对被告人、被害人、附带民事诉讼当事人、鉴定人、有专门知识的人的讯问、发问。</p>	<p>(2) leading questions are prohibited;</p> <p>(3) threatening witness is prohibited;</p> <p>(4) humiliating witness is prohibited.</p> <p>Aforementioned rules apply to the interrogation and examination of the defendant, victim, party in the collateral civil action, forensic analyst and person with special knowledge.</p>
<p><b>第二百一十四条</b> 控辩双方的讯问、发问方式不当或者内容与本案无关的，对方可以提出异议，申请审判长制止，审判长应当判明情况予以支持或者驳回；对方未提出异议的，审判长也可以根据情况予以制止。</p>	<p><b>Article 214</b> When the question addressed in witness examination is inappropriate or bears no relevance to the case, the opposing party can object and request the chief judge to interrupt the examining party. The chief judge shall make judgment and sustain or overrule the objection. The chief judge can also interrupt and stop the examination on his own initiative according to the circumstances.</p>
<p><b>第二百一十五条</b> 审判人员认为必要时，可以询问证人、鉴定人、有专门知识的人。</p>	<p><b>Article 215</b> The adjudication personnel can interview the witness, forensic analyst or person with special knowledge on their own initiative when they consider such interview as necessary.</p>
<p><b>第二百一十六条</b> 向证人、鉴定人、有专门知识的人发问应当分别进行。证人、鉴定人、有专门知识的人经控辩双方发问或者审判人员询问后，审判长应当告知其退庭。</p> <p>证人、鉴定人、有专门知识的人不得旁听对本案的审理。</p>	<p><b>Article 216</b> Witnesses, forensic analysts and persons with special knowledge shall be questioned separately. Upon the conclusion of the questioning by the parties or adjudication personnel, the chief judge shall ask the witnesses, forensic analysts and persons with special knowledge to withdraw from courts.</p> <p>Witnesses, forensic analysts and persons with special knowledge shall not</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第二百一十七条</b> 公诉人、当事人及其辩护人、诉讼代理人申请法庭通知有专门知识的人出庭，就鉴定意见提出意见的，应当说明理由。法庭认为有必要的，应当通知有专门知识的人出庭。</p> <p>申请有专门知识的人出庭，不得超过二人。有多种类鉴定意见的，可以相应增加人数。</p> <p>有专门知识的人出庭，适用鉴定人出庭的有关规定。</p>	<p>be allowed to observe the court proceeding.</p> <p><b>Article 217</b> Procurators, parties or their defenders or litigation advocates, who have requested the court to summon persons with special knowledge to appear in court and provide opinion regarding forensic conclusions, shall provide reasoning for their opinion. If the court considers necessary, the court can summon the person with special knowledge to appear in court.</p> <p>The number of persons of special knowledge who are requested to appear in court shall not exceed two. The number can be increased if the categories of the forensic conclusions concerned are multiple and diverse.</p> <p>Appearance of persons of special knowledge at court is subject to the same rules regulating the appearance at court of forensic analysts.</p>
<p><b>第二百一十八条</b> 举证方当庭出示证据后，由对方进行辨认并发表意见。控辩双方可以互相质问、辩论。</p>	<p><b>Article 218</b> Once the evidence has been presented by the party who bears the burden of proof, it is the opposing party's turn to examine the evidence and present opinions. The two parties can cross-question and debate.</p>
<p><b>第二百一十九条</b> 当庭出示的证据，尚未移送人民法院的，应当在质证后移交法庭。</p>	<p><b>Article 219</b> Evidence that had been presented at court but yet not sent to the court shall be sent to the court after the examination of the evidence.</p>
<p><b>第二百二十条</b> 法庭对证据有疑问的，可以告知公诉人、当事人及其法定代理人、辩护人、诉讼代理人补充证据或者作出说明；必要时，可以宣布休庭，对证据进行调查核实。</p> <p>对公诉人、当事人及其法定代理人、辩护人、诉讼代理人补</p>	<p><b>Article 220</b> If the court is skeptical about a piece of evidence, it can notify the procurator, party or his/her guardian ad litem, defender or litigation advocate to provide supplementary evidence or explanation. When necessary, the court can adjourn and conduct investigation to authenticate the evidence.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>充的和法庭庭外调查核实取得的证据，应当经过当庭质证才能作为定案的根据。但是，经庭外征求意见，控辩双方没有异议的除外。</p> <p>有关情况，应当记录在案。</p>	<p>Supplementary evidence provided by the procurator, party or his/her guardian ad litem, defender, litigation advocate and evidence acquired [by the court] during investigation outside of the court shall be examined by parties in court before it can admitted, with the exception for undisputed evidence after having consulted the opinion of both parties outside of the court.</p> <p>Relevant information shall be entered into court records.</p>
<p><b>第二百二十一条</b> 公诉人申请出示开庭前未移送人民法院的证据，辩护方提出异议的，审判长应当要求公诉人说明理由；理由成立并确有出示必要的，应当准许。</p> <p>辩护方提出需要对新的证据作辩护准备的，法庭可以宣布休庭，并确定准备辩护的时间。</p> <p>辩护方申请出示开庭前未提交的证据，参照适用前两款的规定。</p>	<p><b>Article 221</b> If the procurator requests for disclosure of evidence that has not been transferred to court before court hearing and the defending party objects, the chief judge shall ask the procurator to provide explanation for such request. Such request shall be granted if the court is convinced by the explanation.</p> <p>If the defending party requests for more time to prepare because of the introduction of the new evidence, the court can declare adjournment and specify the period time that is granted to the defending party.</p> <p>The previous provisions under this article apply when the request for disclosure of new evidence is submitted by the defending party.</p>
<p><b>第二百二十二条</b> 法庭审理过程中，当事人及其辩护人、诉讼代理人申请通知新的证人到庭，调取新的证据，申请重新鉴定或者勘验的，应当提供证人的姓名、证据的存放地点，说明拟证明的案件事实，要求重新鉴定或者勘验的理由。法庭认为有必要的，</p>	<p><b>Article 222</b> During the court hearing, to request the court to summon witness to testify in court or to collect new evidence or conduct new forensic examination or crime scene investigation, parties and their defenders or litigation advocates shall provide the name of the witness concerned and the place where the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>应当同意，并宣布延期审理；不同意的，应当说明理由并继续审理。</p> <p>延期审理的案件，符合刑事诉讼法第二百零二条第一款规定的，可以报请上级人民法院批准延长审理期限。</p> <p>人民法院同意重新鉴定申请的，应当及时委托鉴定，并将鉴定意见告知人民检察院、当事人及其辩护人、诉讼代理人。</p>	<p>evidence is held in custody, indicate the fact that is expected to prove and explain the reasons for new forensic examination or crime scene investigation. The court shall grant the request, if it is considered necessary, and announce that the court hearing will be deferred. If the request is not granted, the court shall explain the reason and proceed with the court hearing.</p> <p>If the circumstances described in Article 202 (1) of the Criminal Procedural Law are met for deferment of hearing, the court may submit an application to the higher court for approval.</p> <p>If the court agrees to conduct new forensic examination, it shall designate the forensic examining body in a timely fashion and notify the conclusion of the new examination to the procuratorate, parties and their defenders of litigation advocates.</p>
<p><b>第二百二十三条</b> 审判期间，公诉人发现案件需要补充侦查，建议延期审理的，合议庭应当同意，但建议延期审理不得超过两次。</p> <p>人民检察院将补充收集的证据移送人民法院的，人民法院应当通知辩护人、诉讼代理人查阅、摘抄、复制。</p> <p>补充侦查期限届满后，经法庭通知，人民检察院未将案件移送人民法院，且未说明原因的，人民法院可以决定按人民检察院撤诉处理。</p>	<p><b>Article 223</b> During the court trial, if the procurator believes the case needs further investigation and suggests deferment of the adjudicative procedure, the collegial panel shall consent. Suggestion to deferment shall not be submitted to court for more than twice.</p> <p>The court shall notify the defender or litigation advocate to read, hand-write selected texts and photocopy the new evidence that are submitted by the procuratorate after the extended investigation.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>If the procuratorate could not submit the case to the court, upon the court’s request, at the deadline of the extended investigation, and fail to provide explanation, the court shall consider the case is withdrawn by the procuratorate.</p>
<p><b>第二百二十四条</b> 人民法院向人民检察院调取需要调查核实的证据材料，或者根据被告人、辩护人的申请，向人民检察院调取在侦查、审查起诉期间收集的有关被告人无罪或者罪轻的证据材料，应当通知人民检察院在收到调取证据材料决定书后三日内移交。</p>	<p><b>Article 224</b> When the court needs to collect evidence from the procuratorate for investigation and authentication, or evidence that may prove the innocence or mitigating circumstance of the defendant</p>
<p><b>第二百二十五条</b> 法庭审理过程中，对与量刑有关的事实、证据，应当进行调查。</p> <p>人民法院除应当审查被告人是否具有法定量刑情节外，还应当根据案件情况审查以下影响量刑的情节：</p> <p>（一）案件起因；</p> <p>（二）被害人有无过错及过错程度，是否对矛盾激化负有责任及责任大小；</p> <p>（三）被告人的近亲属是否协助抓获被告人；</p> <p>（四）被告人平时表现，有无悔罪态度；</p> <p>（五）退赃、退赔及赔偿情况；</p> <p>（六）被告人是否取得被害人或者其近亲属谅解；</p>	<p><b>Article 225</b> During the court hearing, the court shall investigate facts and evidence that may affect sentencing of the case.</p> <p>The court shall examine whether the following circumstances exist which may affect sentencing, in addition to the mandatory circumstances that the court shall apply as prescribed by the law.</p> <p>(1) cause of the case;</p> <p>(2) whether the victim has fault and the extent of the fault, whether the victim is responsible for the escalation of the conflict and the degree of the responsibility;</p> <p>(3) whether the immediate family of the defendant has assisted with the capture of the defendant;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(七) 影响量刑的其他情节。</p>	<p>(4) how the defendant behaves normally; whether the defendant has showed remorse for his act;</p> <p>(5) whether and how much the illicit income has been returned or the victim compensated;</p> <p>(6) whether the defendant has been forgiven by the victim or his/her immediate family members;</p> <p>(7) other circumstances that may affect sentencing.</p>
<p><b>第二百二十六条</b> 审判期间，合议庭发现被告人可能有自首、坦白、立功等法定量刑情节，而人民检察院移送的案卷中没有相关证据材料的，应当通知人民检察院移送。</p> <p>审判期间，被告人提出新的立功线索的，人民法院可以建议人民检察院补充侦查。</p>	<p><b>Article 226</b> During the court hearings, if the collegial panel discovers that the defendant may have come clean to the authority on his or her own initiative, or have confessed or have had other meritorious service that may affect the sentencing, the court shall notify the procuratorate to submit such evidence to the court.</p> <p>During the court hearings, if the defendant provides information that may lead to the discovery of proof of new meritorious service, the court may suggest the procuratorate to conduct additional investigation.</p>
<p><b>第二百二十七条</b> 对被告人认罪的案件，在确认被告人了解起诉书指控的犯罪事实和罪名，自愿认罪且知悉认罪的法律后果后，法庭调查可以主要围绕量刑和其他有争议的问题进行。</p>	<p><b>Article 227</b> In cases where the defendant admits guilt, the court investigation shall focus on sentencing and other controversial issues once the court has ascertained that the defendant understands the offense and criminal facts that are</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>对被告人不认罪或者辩护人作无罪辩护的案件，法庭调查应当在查明定罪事实的基础上，查明有关量刑事实。</p>	<p>alleged in the procurator’s complaint, the voluntariness of his confession and its legal consequences.</p> <p>In cases where the defendant does not admit guilt or his defender chooses a no-guilt defense, the court shall investigate facts that may affect sentencing after having ascertained the facts that may affect conviction.</p>
<p style="text-align: center;"><b>第三节 法庭辩论与最后陈述</b></p>	<p style="text-align: center;"><b>Section Three Court Debate and Conclusive Statement</b></p>
<p><b>第二百二十八条</b> 合议庭认为案件事实已经调查清楚的，应当由审判长宣布法庭调查结束，开始就定罪、量刑的事实、证据和适用法律等问题进行法庭辩论。</p>	<p><b>Article 228</b> Once the collegial panel has ascertained the facts, the chief judge shall declare the completion of the court investigation phase and announce the beginning of the session of court debate on facts that are related to conviction and sentencing, evidence and application of law.</p>
<p><b>第二百二十九条</b> 法庭辩论应当在审判长的主持下，按照下列顺序进行：</p> <p>（一）公诉人发言；</p> <p>（二）被害人及其诉讼代理人发言；</p> <p>（三）被告人自行辩护；</p> <p>（四）辩护人辩护；</p> <p>（五）控辩双方进行辩论。</p>	<p><b>Article 229</b> Court debate shall be moderated by the chief judge, in accordance to the sequence indicated below:</p> <p>(1) procurator speaks;</p> <p>(2) victim or his/her litigation advocate speaks;</p> <p>(3) defendant speaks in his own defense;</p> <p>(4) defender speaks;</p> <p>(5) both parties engage in debate.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第二百三十条</b> 人民检察院可以提出量刑建议并说明理由，量刑建议一般应当具有一定的幅度。当事人及其辩护人、诉讼代理人可以对量刑提出意见并说明理由。</p>	<p><b>Article 230</b> The procuratorate may submit sentencing suggestion with reasoning. The suggested sentence shall have a maximum and minimum limit. Parties of the litigation and their defenders, litigation advocates may submit their own sentencing opinions with reasoning.</p>
<p><b>第二百三十一条</b> 对被告人认罪的案件，法庭辩论时，可以引导控辩双方主要围绕量刑和其他有争议的问题进行。</p> <p>对被告人不认罪或者辩护人作无罪辩护的案件，法庭辩论时，可以引导控辩双方先辩论定罪问题，后辩论量刑问题。</p>	<p><b>Article 231</b> In cases where the defendant has admitted guilt, the court may guide the debate to focus on sentencing and other controversial issues.</p> <p>In cases where the defendant does not admit guilt or his defender chooses a no-guilt defense, the court shall guide the debate to focus on conviction first, followed by sentencing.</p>
<p><b>第二百三十二条</b> 附带民事部分的辩论应当在刑事部分的辩论结束后进行，先由附带民事诉讼原告人及其诉讼代理人发言，后由附带民事诉讼被告人及其诉讼代理人答辩。</p>	<p><b>Article 232</b> Debate on the collateral civil action shall take place after the completion of the debate on the criminal action. Debate on the collateral civil action shall start by an oral statement by the party in the collateral civil action or his/her litigation advocate, followed by the response by the defendant of the collateral civil action or his/her litigation advocate.</p>
<p><b>第二百三十三条</b> 法庭辩论过程中，审判长应当充分听取控辩双方的意见，对控辩双方与案件无关、重复或者指责对方的发言应当提醒、制止。</p>	<p><b>Article 233</b> During the court debate, the chief judge shall allow sufficient opportunities for both parties to express their opinions, which shall not inhibit the judge from reminding or prohibiting either party from making irrelevant, repetitive or accusing statement.</p>
<p><b>第二百三十四条</b> 法庭辩论过程中，合议庭发现与定罪、量刑有关的新的事实，有必要调查的，审判长可以宣布暂停辩论，恢复法庭调查，在对新的事实调查后，继续法庭辩论。</p>	<p><b>Article 234</b> During the court debate, if the collegial panel discovers new facts relevant to conviction or sentencing, which, in the panel's opinion, warrants investigation, the chief judge may adjourn the court debate, resume court</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	investigation and then resume court debate after the investigation on new facts has completed.
<p><b>第二百三十五条</b> 审判长宣布法庭辩论终结后，合议庭应当保证被告人充分行使最后陈述的权利。被告人在最后陈述中多次重复自己的意见的，审判长可以制止。陈述内容蔑视法庭、公诉人，损害他人及社会公共利益，或者与本案无关的，应当制止。</p> <p>在公开审理的案件中，被告人最后陈述的内容涉及国家秘密、个人隐私或者商业秘密的，应当制止。</p>	<p><b>Article 235</b> After the chief judge announces the conclusion of the court debate, the collegial panel shall ensure that the defendant can sufficiently exercise his right to provide a final statement to the court. If the defendant addresses the same issue repetitively, the chief judge can interrupt and end the statement. The statement shall be ended if the content of the statement contains information defying the court or the procurator, harming the interest of other party or of the public, or being irrelevant to the case.</p> <p>In court proceedings that are open to the public, the defendant’s statement shall be interrupted and ended if the content of the statement involves state secrets, individual’s privacy or commercial interests.</p>
<p><b>第二百三十六条</b> 被告人在最后陈述中提出新的事实、证据，合议庭认为可能影响正确裁判的，应当恢复法庭调查；被告人提出新的辩解理由，合议庭认为可能影响正确裁判的，应当恢复法庭辩论。</p>	<p><b>Article 236</b> If he defendant raises new fact or evidence during his/her final statement, which the collegial panel considers may affect the reach of a correct judgment, the court shall resume court investigation. If the defendant raises new reason of defense, which the collegial panel believes may affect the reach of a correct judgment, the court shall resume the court debate.</p>
<b>第四节 评议案件与宣告判决</b>	<b>Section Four Case Deliberation and Announcement of Judgment</b>
<p><b>第二百三十七条</b> 被告人最后陈述后，审判长应当宣布休庭，由合议庭进行评议。</p>	<p><b>Article 237</b> After the defendant has concluded his final statement, the chief judge shall announce the adjournment of the court and the collegial panel shall start the deliberation of the case.</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第二百三十八条</b> 开庭审理的全部活动，应当由书记员制作笔录；笔录经审判长审阅后，分别由审判长和书记员签名。</p>	<p><b>Article 238</b> All adjudicative activities during the trial shall be transcribed by the court clerk. The transcripts shall be reviewed by the chief judge and then signed by the chief judge and the court clerk.</p>
<p><b>第二百三十九条</b> 法庭笔录应当在庭审后交由当事人、法定代理人、辩护人、诉讼代理人阅读或者向其宣读。</p> <p>法庭笔录中的出庭证人、鉴定人、有专门知识的人的证言、意见部分，应当在庭审后分别交由有关人员阅读或者向其宣读。</p> <p>前两款所列人员认为记录有遗漏或者差错的，可以请求补充或者改正；确认无误后，应当签名；拒绝签名的，应当记录在案；要求改变庭审中陈述的，不予准许。</p>	<p><b>Article 239</b> After the trial, court transcripts shall be handed to parties, their guardian ad litem, defender and litigation advocates for them to read or read to the above.</p> <p>Transcribed testimony or opinions delivered by witnesses, forensic analysts or persons with special knowledge at court shall be given a chance to review the transcripts either by providing them the transcripts to read or to be read to them.</p> <p>If any of the above listed parties believe certain parts have been missing in the transcripts or transcribed by mistake, he/she can request the court to enter the missing information or correct the mistake in the transcripts. Once verified, the party who submitted the request shall sign the transcripts. If the party refuses to sign, the refusal shall be recorded. Requests to change the testimony made at court shall be rejected.</p>
<p><b>第二百四十条</b> 合议庭评议案件，应当根据已经查明的事实、证据和有关规定，在充分考虑控辩双方意见的基础上，确定被告人是否有罪、构成何罪，有无从重、从轻、减轻或者免除处罚情节，应否处以刑罚、判处何种刑罚，附带民事诉讼如何解决，查封、扣押、冻结的财物及其孳息如何处理等，并依法作出判决、</p>	<p><b>Article 240</b> The collegial panel shall deliberate the case based on ascertained fact, evidence and relevant law. It shall decide whether the defendant is guilty, guilty for which offense, the existence of aggravating or mitigating circumstances, whether punishment is warranted and the severity of the punishment, how to decide on the collateral civil action, how to handle the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>裁定。</p>	<p>sealed, seized, frozen assets and their accrued proceeds, after having sufficiently considered the opinions from both the procurator and the defense.</p>
<p><b>第二百四十一条</b> 对第一审公诉案件，人民法院审理后，应当按照下列情形分别作出判决、裁定：</p> <p>（一）起诉指控的事实清楚，证据确实、充分，依据法律认定指控被告人的罪名成立的，应当作出有罪判决；</p> <p>（二）起诉指控的事实清楚，证据确实、充分，指控的罪名与审理认定的罪名不一致的，应当按照审理认定的罪名作出有罪判决；</p> <p>（三）案件事实清楚，证据确实、充分，依据法律认定被告人无罪的，应当判决宣告被告人无罪；</p> <p>（四）证据不足，不能认定被告人有罪的，应当以证据不足、指控的犯罪不能成立，判决宣告被告人无罪；</p> <p>（五）案件部分事实清楚，证据确实、充分的，应当作出有罪或者无罪的判决；对事实不清、证据不足部分，不予认定；</p> <p>（六）被告人因不满十六周岁，不予刑事处罚的，应当判决宣告被告人不负刑事责任；</p> <p>（七）被告人是精神病人，在不能辨认或者不能控制自己行为时造成危害结果，不予刑事处罚的，应当判决宣告被告人不负</p>	<p><b>Article 241</b> For publicly prosecuted case at the first instance trial, the court shall render its judgment or decision according to the following circumstances respectively:</p> <p>(1) if the alleged fact by the procurator is clear supported by ascertained and sufficient evidence, the court shall decide the alleged offense is established and render a guilty judgment;</p> <p>(2) if the alleged fact is clear supported by ascertained and sufficient evidence but the alleged offense is different from the offense established by the court, the court shall render a guilty judgment of the offense that is established by the court;</p> <p>(3) if the fact of the case is clear supported by ascertained and sufficient evidence and the court decides that the defendant is innocent according to its interpretation of the law, the court shall render a judgment and announce the defendant is not guilty;</p> <p>(4) if the court cannot decide the guilt of the defendant due to insufficient evidence, the court shall announce the defendant is not guilty on the grounds of insufficient evidence based on which the alleged offense cannot be established;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>刑事责任;</p> <p>(八) 犯罪已过追诉时效期限且不是必须追诉, 或者经特赦令免除刑罚的, 应当裁定终止审理;</p> <p>(九) 被告人死亡的, 应当裁定终止审理; 根据已查明的案件事实和认定的证据, 能够确认无罪的, 应当判决宣告被告人无罪。</p> <p>具有前款第二项规定情形的, 人民法院应当在判决前听取控辩双方的意见, 保障被告人、辩护人充分行使辩护权。必要时, 可以重新开庭, 组织控辩双方围绕被告人的行为构成何罪进行辩论。</p>	<p>(5) if a part of the case has clear facts and supported by ascertained and sufficient evidence, the court shall decide whether the defendant is guilty or not guilty based on this part of the facts. The court shall make no decision on the part of case without clear facts or sufficient evidence;</p> <p>(6) if the defendant is less than sixteen years old and not eligible for criminal punishment, the court shall decide and announce in its judgment that the defendant does not bear criminal responsibility;</p> <p>(7) if the defendant is mentally ill, cannot identify or control his/her acts that result in social harm and hence shall not be held for criminal punishment, the court shall decide and announce in its judgment that the defendant does not bear criminal responsibility;</p> <p>(8) if the prosecuted crime has passed the limits of statute and at the same time is not subject to mandatory prosecution or if the crime is exempted from prosecution through clemency, the court shall render a decision to terminate the adjudication;</p> <p>(9) if the defendant is deceased, the court shall render a decision to terminate the adjudication. If the court is confident that the defendant is not guilty based on the ascertained facts and admitted evidence, the court shall</p>
--	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>render a judgment and announce the defendant is not guilty.</p> <p>In the circumstance described in Article 241(2), the court shall hear the opinions from both parties and ensure the right to defense of the defendant and the defender. When necessary, the court can organize a new court hearing in which the parties will be given an opportunity to debate about the alleged crime has constituted which offense.</p>
<p><b>第二百四十二条</b> 宣告判决前，人民检察院要求撤回起诉的，人民法院应当审查撤回起诉的理由，作出是否准许的裁定。</p>	<p><b>Article 242</b> Before the final judgment is announced, if the procurator requests to withdraw the complaint, the court shall examine the reason provided to support the request and decide whether the withdrawal will be granted.</p>
<p><b>第二百四十三条</b> 审判期间，人民法院发现新的事实，可能影响定罪罪的，可以建议人民检察院补充或者变更起诉；人民检察院不同意或者在七日内未回复意见的，人民法院应当就起诉指控的犯罪事实，依照本解释第二百四十一条的规定作出判决、裁定。</p>	<p><b>Article 243</b> During the court trial, if the court discovers new fact that may affect conviction, the court can advise the procurator to add supplementary contents or adjustment to the complaint; if the procurator disagree or has not responded to the court’s advice within seven days since the advice is made, the court shall decide the case based on the facts stated in the procurator’s complaint according to Article 241 of this Judicial Interpretation.</p>
<p><b>第二百四十四条</b> 对依照本解释第一百八十一条第一款第四项规定受理的案件，人民法院应当在判决中写明被告人曾被人民检察院提起公诉，因证据不足，指控的犯罪不能成立，被人民法院依法判决宣告无罪的情况；前案依照刑事诉讼法第一百九十五条第三项规定作出的判决不予撤销。</p>	<p><b>Article 244</b> If a case falls in the circumstance described in Article 181(4) of this Judicial Interpretation, the court shall state in its judgment the circumstances that the defendant had been prosecuted but acquitted by the court because of insufficient evidence. If the court decision of the case is reached according to Article 195(3) of the Criminal Procedural Code, the court decision is not to be revoked.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第二百四十五条</b> 合议庭成员应当在评议笔录上签名，在判决书、裁定书等法律文书上署名。</p>	<p><b>Article 245</b> Members of the collegial panel shall sign their names on the transcript of the panel deliberation as well as on the court judgment or decision.</p>
<p><b>第二百四十六条</b> 裁判文书应当写明裁判依据，阐释裁判理由，反映控辩双方的意见并说明采纳或者不予采纳的理由。</p>	<p><b>Article 246</b> Court decisions shall state the source of law that has been applied, explain the reasons that the decisions are based upon, reflect opinions of both parties and explain why the opinion is accepted or not accepted.</p>
<p><b>第二百四十七条</b> 当庭宣告判决的，应当在五日内送达判决书。定期宣告判决的，应当在宣判前，先期公告宣判的时间和地点，传唤当事人并通知公诉人、法定代理人、辩护人和诉讼代理人；判决宣告后，应当立即送达判决书。</p> <p>判决书应当送达人民检察院、当事人、法定代理人、辩护人、诉讼代理人，并可以送达被告人的近亲属。判决生效后，还应当送达被告人的所在单位或者原户籍地的公安派出所，或者被告单位的注册登记机关。</p>	<p><b>Article 247</b> If the court judgment is announced immediately following the trial, the judgment shall be delivered within five days after the announcement. If the court judgment is announced on a later date, the court shall announce in advance the date and place where the announcement will be made, summon the parties and notify the procurator, the guardian ad litem, the defender and the litigation advocate. The judgment shall be immediately delivered after the announcement.</p> <p>Court judgments shall be delivered to people’s procuratorate, parties, guardian ad litem, defenders and litigation advocates. It can also be delivered to the immediate family members of the defendant. After the judgment has been effectuated, it shall be delivered to the work unit that the defendant worked at or the precinct of the defendant’s previous place of residence or the institution where the defendant’s work unit was registered.</p>
<p><b>第二百四十八条</b> 宣告判决，一律公开进行。公诉人、辩护人、诉讼代理人、被害人、自诉人或者附带民事诉讼原告人未到庭的，不影响宣判的进行。</p> <p>宣告判决结果时，法庭内全体人员应当起立。</p>	<p><b>Article 248</b> Announcement of court judgment has to be open to the public. Absence of the procurator, defender, litigation advocate, victim, complainant in private prosecution or party in a collateral civil lawsuit shall not prevent the announcement from taking place.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	When the judgment is announced, all attendants shall stand up.
<b>第五节 法庭纪律与其他规定</b>	<b>Section Five Court Discipline and Other Rules</b>
<p><b>第二百四十九条</b> 法庭审理过程中，诉讼参与人、旁听人员应当遵守以下纪律：</p> <p>（一）服从法庭指挥，遵守法庭礼仪；</p> <p>（二）不得鼓掌、喧哗、哄闹、随意走动；</p> <p>（三）不得对庭审活动进行录音、录像、摄影，或者通过发送邮件、博客、微博客等方式传播庭审情况，但经人民法院许可的新闻记者除外；</p> <p>（四）旁听人员不得发言、提问；</p> <p>（五）不得实施其他扰乱法庭秩序的行为。</p>	<p><b>Article 249</b> During the court trial, participants of the litigation and the audience shall comply with the following rules:</p> <p>(1) to comply with the instructions of the court and follow court etiquette;</p> <p>(2) do not applaud, speak loudly, speak in a stirring manner, or wander around;</p> <p>(3) do not audio-record, video-record or take photographs of court activities or broadcast the court activities through email, blog or micro-blog, with the exception for journalists who are approved by the court to conduct the above activities;</p> <p>(4) the audience shall not speak or ask questions at the court;</p> <p>(5) do not disturb court order.</p>
<p><b>第二百五十条</b> 法庭审理过程中，诉讼参与人或者旁听人员扰乱法庭秩序的，审判长应当按照下列情形分别处理：</p> <p>（一）情节较轻的，应当警告制止并进行训诫；</p>	<p><b>Article 250</b> If any participant of the litigation or any person from the audience disturbs court order during the court trial, the chief judge shall make decisions according to the following circumstances:</p> <p>(1) if the circumstance suggests insignificant consequence, the offender</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(二) 不听制止的，可以指令法警强行带出法庭；</p> <p>(三) 情节严重的，报经院长批准后，可以对行为人处一千元以下的罚款或者十五日以下的拘留；</p> <p>(四) 未经许可录音、录像、摄影或者通过邮件、博客、微博客等方式传播庭审情况的，可以暂扣存储介质或者相关设备。</p> <p>诉讼参与人、旁听人员对罚款、拘留的决定不服的，可以直接向上一级人民法院申请复议，也可以通过决定罚款、拘留的人民法院向上一级人民法院申请复议。通过决定罚款、拘留的人民法院申请复议的，该人民法院应当自收到复议申请之日起三日内，将复议申请、罚款或者拘留决定书和有关事实、证据材料一并报上一级人民法院复议。复议期间，不停止决定的执行。</p>	<p>shall be warned and admonished and their conduct stopped;</p> <p>(2) if the offender refuses to obey the court order, the court martial may be instructed to take them out of the court by force;</p> <p>(3) if the circumstance suggests serious consequence, the offender can be fined with a sum below 1000 yuan or subject to detention for less than 15 days, upon approval by the court president;</p> <p>(4) if someone is found to audio-record, video-record or take photographs of court activities or broadcast court activities through email, blog or micro-blog without court approval, the court can confiscate the tapes or other data storage media as well as the equipment.</p> <p>If the punished participants of the litigation or audience disagree with the court decision to fine or detain, they can bring the case directly to the next superior court and request for review or do so through the court which has placed the fine or the detaining order. In the latter case, the court shall submit the request for review, the court decision about the fine or the detention and relevant fact and evidence to the next superior court within three days since its receipt of the request to review from the applicant. During the review the enforcement of the court decision shall not be suspended.</p>
<p><b>第二百五十一条</b> 担任辩护人、诉讼代理人的律师严重扰乱法庭</p>	<p><b>Article 251</b> If a lawyer who serves as a defender or litigation advocate has</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>秩序，被强行带出法庭或者被处以罚款、拘留的，人民法院应当通报司法行政机关，并可以建议依法给予相应处罚。</p>	<p>serious disturbed the court order resulting being evicted from the court or sanctioned by the court with fine or detention, the court shall notify judicial administrative bodies about such conduct and recommend appropriate administrative sanction to be applied.</p>
<p><b>第二百五十二条</b> 聚众哄闹、冲击法庭或者侮辱、诽谤、威胁、殴打司法工作人员或者诉讼参与人，严重扰乱法庭秩序，构成犯罪的，应当依法追究刑事责任。</p>	<p><b>Article 252</b> Conduct including gathering crowds to disturb court order, insulting, libeling, threatening or physically abusing judicial officials or participants of litigation that constitutes a crime shall be subject to criminal investigation and punishment.</p>
<p><b>第二百五十三条</b> 辩护人严重扰乱法庭秩序，被强行带出法庭或者被处以罚款、拘留，被告人自行辩护的，庭审继续进行；被告人要求另行委托辩护人，或者被告人属于应当提供法律援助情形的，应当宣布休庭。</p>	<p><b>Article 253</b> If a defender who is evicted from the court or fined, detained because having committed the offense of disturbing court order and the defendant requests to defend for himself/herself, the court proceeding shall continue; if the defendant requests to engage another defender, or if the defendant is entitled to legal aid, the court shall be adjourned.</p>
<p><b>第二百五十四条</b> 被告人当庭拒绝辩护人辩护，要求另行委托辩护人或者指派律师的，合议庭应当准许。被告人拒绝辩护人辩护后，没有辩护人的，应当宣布休庭；仍有辩护人的，庭审可以继续进行。</p> <p>有多名被告人的案件，部分被告人拒绝辩护人辩护后，没有辩护人的，根据案件情况，可以对该被告人另案处理，对其他被告人的庭审继续进行。</p> <p>重新开庭后，被告人再次当庭拒绝辩护人辩护的，可以准许，但被告人不得再次另行委托辩护人或者要求另行指派律师，由其</p>	<p><b>Article 254</b> If the defendant dismisses the defender and requests to engage another defender or to be assigned a lawyer by the court, the collegial panel shall grant the request. If no defender is available to replace the dismissed defender, the court shall be adjourned. The court proceeding may continue if the new defender is available.</p> <p>In cases with multiple defendants, if no defender is available to replace the defenders dismissed by some of the defendants, the court can decide, with discretion according to the circumstance, to have separate trials for the defendants who are not represented and proceed with the court proceeding</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>自行辩护。</p> <p>被告人属于应当提供法律援助的情形，重新开庭后再次当庭拒绝辩护人辩护的，不予准许。</p>	<p>regarding other defendants who are represented.</p> <p>When the court proceeding is resumed, if the defendant requests to dismiss the defender for the second time, the court shall grant the request. However, the defendant will not be allowed to retain or to be assigned a new defender but has to conduct defense by himself/herself.</p> <p>If the defendant is entitled to legal aid and requests to dismiss the assigned defender for the second time when the court proceeding is resumed, the request shall not be granted.</p>
<p><b>第二百五十五条</b> 法庭审理过程中，辩护人拒绝为被告人辩护的，应当准许；是否继续庭审，参照适用前条的规定。</p>	<p><b>Article 255</b> During the court trial, if the defender decides to withdraw his/her legal representation for the defendant, the court shall permit. Article 254 of this Interpretation shall apply when decisions are to be made regarding whether the court proceeding shall continue without interruption.</p>
<p><b>第二百五十六条</b> 依照前两条规定另行委托辩护人或者指派律师的，自案件宣布休庭之日起至第十五日止，由辩护人准备辩护，但被告人及其辩护人自愿缩短时间的除外。</p>	<p><b>Article 256</b> If the defendant has chosen to replace his defender by engaging a new defender or by requesting the court to assign a lawyer, the court shall be adjourned for 15 days starting from the day when the announcement is made, during which time the defender can prepare for the case. The length of adjournment can be reduced if such a request is raised by the defendant or his/her defender voluntarily.</p>
<p><b>第二百五十七条</b> 有多名被告人的案件，部分被告人具有刑事诉讼法第二百零一条第一款规定情形的，人民法院可以对全案中止审理；根据案件情况，也可以对该部分被告人中止审理，对其他被</p>	<p><b>Article 257</b> In cases with multiple defendants, if some of the defendants meet the requirement prescribed in Article 200(1) of the Criminal Procedural Code, the court can either suspend the adjudication concerning all defendants or suspend</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>告人继续审理。</p> <p>对中止审理的部分被告人，可以根据案件情况另案处理。</p>	<p>the adjudication only concerning those defendants whose cases fall in the category described in Article 200(1) of the Criminal Procedural Code and continue the adjudication concerning other defendants.</p> <p>The court can conduct separate court proceedings concerning those defendants whose cases have been suspended as described above.</p>
<p><b>第二百五十八条</b> 人民检察院认为人民法院审理案件违反法定程序，在庭审后提出书面纠正意见，人民法院认为正确的，应当采纳。</p>	<p><b>Article 258</b> If the procurator regards that the court has violated certain procedures prescribed by law during its adjudication, the procurator can ask the court to rectify the violation through a written request. The court shall accept the request if it agrees with the opinion stated by the procurator.</p>
<p style="text-align: center;"><b>第十章 自诉案件第一审程序</b></p>	<p style="text-align: center;"><b>Chapter 10 Trial Procedure in Private Prosecution Cases</b></p>
<p><b>第二百五十九条</b> 人民法院受理自诉案件必须符合下列条件：</p> <p>（一）符合刑事诉讼法第二百零四条、本解释第一条的规定；</p> <p>（二）属于本院管辖；</p> <p>（三）被害人告诉；</p> <p>（四）有明确的被告人、具体的诉讼请求和证明被告人犯罪事实的证据。</p>	<p><b>Article 259</b> Private prosecution cases to be accepted by the people’s courts must meet the following conditions:</p> <p>(1) comply with Article 204 of the Criminal Procedure Law and Article 1 of this Interpretation;</p> <p>(2) fall within the jurisdiction of the court involved;</p> <p>(3) the prosecution is brought by the victim;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(4) there are specific defendants, specific relief demanded and evidence proving the facts of the defendants' crimes.</p>
<p><b>第二百六十条</b> 本解释第一条规定的案件,如果被害人死亡、丧失行为能力或者因受强制、威吓等无法告诉,或者是限制行为能力人以及因年老、患病、盲、聋、哑等不能亲自告诉,其法定代理人、近亲属告诉或者代为告诉的,人民法院应当依法受理。</p> <p>被害人的法定代理人、近亲属告诉或者代为告诉,应当提供与被害人关系的证明和被害人不能亲自告诉的原因的证明。</p>	<p><b>Article 260</b> With respect to cases provided in Article 1 of this Interpretation, if the victim has died, is disabled or otherwise cannot prosecute due to coercion, intimidation, etc., or is partially disabled and cannot prosecute on their own behalf because of age, illness, blindness, deafness, muteness, etc., and the victims' legal representatives and close family members would prosecute or prosecute on behalf of the victim, the peoples' courts shall accept the cases in accordance with the law.</p> <p>If the victims' legal representatives and close family members prosecute or prosecute on behalf of victim, they shall provide proof of their relationship to the victim and proof of the reasons why the victims cannot prosecute on their own behalf.</p>
<p><b>第二百六十一条</b> 提起自诉应当提交刑事自诉状;同时提起附带民事诉讼的,应当提交刑事附带民事自诉状。</p>	<p><b>Article 261</b> To bring a private prosecution case, one must submit a criminal private prosecution complaint; to bring a parallel civil action, one must submit a civil-action incidental to a privately prosecuted criminal complaint.</p>
<p><b>第二百六十二条</b> 自诉状应当包括以下内容:</p> <p>(一) 自诉人(代为告诉人)、被告人的姓名、性别、年龄、民族、出生地、文化程度、职业、工作单位、住址、联系方式;</p> <p>(二) 被告人实施犯罪的时间、地点、手段、情节和危害后</p>	<p><b>Article 262</b> A private prosecution complaint shall include the following information:</p> <p>(1) the names, gender, age, ethnicity, place of birth, education, occupation, employers, addresses and contact information of the plaintiff (or person representing the plaintiff) and the defendant.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>果等;</p> <p>(三) 具体的诉讼请求;</p> <p>(四) 致送的人民法院和具状时间;</p> <p>(五) 证据的名称、来源等;</p> <p>(六) 证人的姓名、住址、联系方式等。</p> <p>对两名以上被告人提出告诉的, 应当按照被告人的人数提供自诉状副本。</p>	<p>(2) the time, place, cause, circumstances, injury, etc. of the crime committed by the defendant;</p> <p>(3) the specific relief demanded;</p> <p>(4) the people’s court where the complaint will be submitted and time that the complaint will be submitted;</p> <p>(5) the name of all evidence, and where it was obtained, etc. ;</p> <p>(6) names, addresses, contact information, etc. of the witnesses.</p> <p>If a private prosecution is brought against two or more defendants, copies of the private prosecution complaints shall be provided according to the number of defendants.</p>
<p><b>第二百六十三条</b> 对自诉案件, 人民法院应当在十五日内审查完毕。经审查, 符合受理条件的, 应当决定立案, 并书面通知自诉人或者代为告诉人。</p> <p>具有下列情形之一的, 应当说服自诉人撤回起诉; 自诉人不撤回起诉的, 裁定不予受理:</p> <p>(一) 不属于本解释第一条规定的案件的;</p>	<p><b>Article 263</b> With respect to private prosecution cases, the people’s courts shall complete their review within fifteen days. For cases, after review that are found to meet the conditions for acceptance, the people’s courts shall open a case file, and notify in writing the private prosecution plaintiff or his representative.</p> <p>If one of the following situations are present, the people’s court shall convince the private prosecution plaintiff to withdraw their complaint; if the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(二) 缺乏罪证的;</p> <p>(三) 犯罪已过追诉时效期限的;</p> <p>(四) 被告人死亡的;</p> <p>(五) 被告人下落不明的;</p> <p>(六) 除因证据不足而撤诉的以外, 自诉人撤诉后, 就同一事实又告诉的;</p> <p>(七) 经人民法院调解结案后, 自诉人反悔, 就同一事实再行告诉的。</p>	<p>private prosecution plaintiff does not withdraw the complaint, [people's courts] shall not accept the case:</p> <p>(1) the case does not fall within the cases as stated in Article 1 of this Interpretation;</p> <p>(2) evidence of a crime is lacking;</p> <p>(3) the statute of limitations for prosecuting the crime has lapsed;</p> <p>(4) the defendant is dead;</p> <p>(5) the defendant is unaccounted for;</p> <p>(6) except for cases that have been withdrawn due to lack of evidence, when the private prosecution plaintiff has withdrawn the complaint and re-files another complaint based on the same facts;</p> <p>(7) after the people's court has mediated and closed the case, but the private prosecution plaintiff renounced the mediation and re-files a complaint based on the same facts.</p>
<p><b>第二百六十四条</b> 对已经立案, 经审查缺乏罪证的自诉案件, 自诉人提不出补充证据的, 人民法院应当说服其撤回起诉或者裁定</p>	<p><b>Article 264</b> With respect to a private prosecution case that is already filed but upon review is found to lack evidence of a crime and the private prosecution</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>驳回起诉；自诉人撤回起诉或者被驳回起诉后，又提出了新的足以证明被告人有罪的证据，再次提起自诉的，人民法院应当受理。</p>	<p>plaintiff is unable to provide supplemental evidence, the people’s court shall convince the private prosecution plaintiff to withdraw or dismiss the complaint; if after the private prosecution plaintiff withdraws the complaint or the complaint is dismissed, but the private prosecution plaintiff can later provide new evidence that is sufficient to prove the defendant’s guilt, and brings another private-prosecution case, the people’s court shall accept the case.</p>
<p><b>第二百六十五条</b> 自诉人对不予受理或者驳回起诉的裁定不服的，可以提起上诉。</p> <p>第二审人民法院查明第一审人民法院作出的不予受理裁定有错误的，应当在撤销原裁定的同时，指令第一审人民法院立案受理；查明第一审人民法院驳回起诉裁定有错误的，应当在撤销原裁定的同时，指令第一审人民法院进行审理。</p>	<p><b>Article 265</b> If a private prosecution plaintiff does not agree with the refusal to accept or the dismissal of their complaint, they can appeal.</p> <p>If the people’s court of appeals finds that the trial-level people’s court’s refusal to accept a case is in error, it shall reverse the original decision and at the same time instruct the trial-level people’s court to accept and open a case file; if it finds that the trial-level people’s court’s dismissal of the complaint is in error, it shall reverse the original decision and at the same time instruct the trial-level people’s court to proceed with the case.</p>
<p><b>第二百六十六条</b> 自诉人明知有其他共同侵害人，但只对部分侵害人提起自诉的，人民法院应当受理，并告知其放弃告诉的法律后果；自诉人放弃告诉，判决宣告后又对其他共同侵害人就同一事实提起自诉的，人民法院不予受理。</p> <p>共同被害人中只有部分人告诉的，人民法院应当通知其他被害人参加诉讼，并告知其不参加诉讼的法律后果。被通知人接到通知后表示不参加诉讼或者不出庭的，视为放弃告诉。第一审宣判后，被通知人就同一事实又提起自诉的，人民法院不予受理。</p>	<p><b>Article 266</b> If a private prosecution plaintiff knows of the existence of other offending parties but only brings a private prosecution against some of the offending parties, the people’s court shall accept the case and inform the private prosecution plaintiff of the legal consequence of waiving the private prosecution for all offending parties; if the private prosecution plaintiff waives prosecuting all offending parties but, after judgment is declared, brings another private prosecution against a contributing offending party based on the same set of facts, the people’s court is not to accept the case.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>但是，当事人另行提起民事诉讼的，不受本解释限制。</p>	<p>If only some of the victims of a crime bring a private-prosecution, the people’s court shall notify the other victims to participate in the case and inform them of the legal consequences if they do not participate. If the notified parties, after receiving the notification, expressly choose not to participate in the case or do not appear in court, they will be deemed to have abandoned the private prosecution. After the trial judgment is declared, if the notified parties bring a private prosecution based on the same set of facts, the people’s court is not to accept the case. However, a civil action brought separately by the parties is not subject to the limitations of this Interpretation.</p>
<p><b>第二百六十七条</b> 被告人实施两个以上犯罪行为，分别属于公诉案件和自诉案件，人民法院可以一并审理。对自诉部分的审理，适用本章的规定。</p>	<p><b>Article 267</b> If a defendant commits two criminal acts, which are subject to both public-prosecution and private prosecutions, the people’s court may hear the cases together. The rules of this Chapter apply to trials brought under a private prosecution.</p>
<p><b>第二百六十八条</b> 自诉案件当事人因客观原因不能取得的证据，申请人民法院调取的，应当说明理由，并提供相关线索或者材料。人民法院认为有必要的，应当及时调取。</p>	<p><b>Article 268</b> If a party to a private prosecution case cannot obtain certain evidence due to objective reasons and applies to a people’s court to obtain the evidence, it shall state the reasons and provide relevant leads or materials. If the people’s court believes that it is necessary, the people’s court shall obtain the evidence in a timely manner.</p>
<p><b>第二百六十九条</b> 对犯罪事实清楚，有足够证据的自诉案件，应当开庭审理。</p>	<p><b>Article 269</b> With respect to private prosecution cases where the facts of a crime are clear and there is sufficient evidence, the cases shall be tried in open court.</p>
<p><b>第二百七十条</b> 自诉案件，符合简易程序适用条件的，可以适用简易程序审理。</p>	<p><b>Article 270</b> If a private prosecution case meets the conditions for simplified</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>不适用简易程序审理的自诉案件，参照适用公诉案件第一审普通程序的有关规定。</p>	<p>procedure, it may be tried according to the simplified procedure.</p> <p>With respect to private prosecution cases where the simplified procedure is not applicable, they shall be tried using the relevant rules governing normal trial procedures of public prosecution cases as reference.</p>
<p><b>第二百七十一条</b> 人民法院审理自诉案件，可以在查明事实、分清是非的基础上，根据自愿、合法的原则进行调解。调解达成协议的，应当制作刑事调解书，由审判人员和书记员署名，并加盖人民法院印章。调解书经双方当事人签收后，即具有法律效力。调解没有达成协议，或者调解书签收前当事人反悔的，应当及时作出判决。</p> <p>刑事诉讼法第二百零四条第三项规定的案件不适用调解。</p>	<p><b>Article 271</b> In hearing a private prosecution case, the people’s court may, on the basis of establishing facts clearly and recognizing the just and unjust, mediate based on voluntary and legal principles. If the mediation results in an agreement, the people’s court shall make a criminal mediation agreement, to be signed by the judge and clerk and stamped with the people’s court’s seal. The criminal mediation agreement has legal effect when both parties sign to acknowledge receipt. If the mediation does not result in an agreement or a party renounces it, the people’s court shall make a timely judgment.</p> <p>Mediation does not apply to cases provided in Article 204 Item 3 of the Criminal Procedure Law.</p>
<p><b>第二百七十二条</b> 判决宣告前，自诉案件的当事人可以自行和解，自诉人可以撤回自诉。</p> <p>人民法院经审查，认为和解、撤回自诉确属自愿的，应当裁定准许；认为系被强迫、威吓等，并非出于自愿的，不予准许。</p>	<p><b>Article 272</b> Before judgment is announced, parties to a private prosecution case may settle on their own initiative, and the private prosecution plaintiff may withdraw the prosecution complaint.</p> <p>If the people’s court upon review believes that the settlement and withdrawal of a private prosecution complaint was indeed voluntary, it shall approve the settlement; if it believes that the settlement was not made voluntarily</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	and made under coercion, intimidation, etc., it shall not approve the settlement.
<b>第二百七十三条</b> 裁定准许撤诉或者当事人自行和解的自诉案件，被告人被采取强制措施的，人民法院应当立即解除。	<b>Article 273</b> In private prosecution cases where withdrawal of complaint is approved or parties settle on their own initiative and where the defendant is subject to compulsory measures, the people’s courts shall immediately apply relief.
<b>第二百七十四条</b> 自诉人经两次传唤，无正当理由拒不到庭，或者未经法庭准许中途退庭的，人民法院应当裁定按撤诉处理。  部分自诉人撤诉或者被裁定按撤诉处理的，不影响案件的继续审理。	<b>Article 274</b> If a private prosecution plaintiff refuses to appear at a court proceeding without justifiable reasons after two notices are given, or leaves during a court proceeding without the court’s approval, the people’s court shall hold that the complaint has been withdrawn.  The fact that some of the private prosecution plaintiffs withdraw their complaints or decide to have their complaints withdrawn does not prevent the case from continuing to be tried.
<b>第二百七十五条</b> 被告人在自诉案件审判期间下落不明的，人民法院应当裁定中止审理。被告人到案后，应当恢复审理，必要时应当对被告人依法采取强制措施。	<b>Article 275</b> If the defendant cannot be found during the proceedings of a private prosecution case, the people’s court shall suspend the proceedings. After the defendant appears in court, the people’s court shall resume the proceedings and shall impose compulsory measures on the defendant when necessary.
<b>第二百七十六条</b> 对自诉案件，应当参照刑事诉讼法第一百九十五条和本解释第二百四十一条的有关规定作出判决；对依法宣告无罪的案件，其附带民事部分应当依法进行调解或者一并作出判决。	<b>Article 276</b> With respect to private prosecution cases, the people’s court shall enter judgment according to Article 195 of the Criminal Procedure Law and Article 241 of this Interpretation; with respect to cases where the defendant is declared innocent according to the law, the people’s court shall mediate any parallel civil action according to the law or enter a judgment together.

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第二百七十七条</b> 告诉才处理和被害人具有证据证明的轻微刑事案件的被告人或者其法定代理人在诉讼过程中，可以对自诉人提起反诉。反诉必须符合下列条件：</p> <p>（一）反诉的对象必须是本案自诉人；</p> <p>（二）反诉的内容必须是与本案有关的行为；</p> <p>（三）反诉的案件必须符合本解释第一条第一项、第二项的规定。</p> <p>反诉案件适用自诉案件的规定，应当与自诉案件一并审理。自诉人撤诉的，不影响反诉案件的继续审理。</p>	<p><b>Article 277</b> In minor criminal cases that are only accepted upon the victim’s complaint and minor criminal cases where the victim has evidence, the defendant or the defendant’s legal representative may, during the litigation process, bring counter-claims against the private prosecution plaintiff. Counter-claims must meet the following conditions:</p> <p>(1) the target of counter-claim must be the private prosecution plaintiff in the same case;</p> <p>(2) the content of the counter-claim must be conduct related to the same case;</p> <p>(3) the counter-claim action must comply with the rules of Article 1 Items 1 and 2 of this Interpretation.</p> <p>The rules governing private prosecution cases apply to any counter-claim cases, and shall be judged together with private prosecution case. The private prosecution plaintiff’s withdrawal of a complaint does not prevent the counter-claim case from continuing to be tried.</p>
<p><b>第十一章 单位犯罪案件的审理</b></p>	<p><b>Chapter 11 Trial of Cases involving Unit Crimes</b></p>
<p><b>第二百七十八条</b> 人民法院受理单位犯罪案件，除依照本解释第一百八十条的有关规定进行审查外，还应当审查起诉书是否列明</p>	<p><b>Article 278</b> When accepting a case that involves a unit crime, in addition to examining in accordance with relevant rules under Article 180 of this</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>被告单位的名称、住所地、联系方式，法定代表人、主要负责人以及代表被告单位出庭的诉讼代表人的姓名、职务、联系方式。需要人民检察院补充材料的，应当通知人民检察院在三日内补送。</p>	<p>Interpretation, the people’s court shall also examine whether the indictment has provided the name, place of domicile, contact information, authorized agent for litigation, chief leader of the defendant unit, and the name, position and contact information of the authorized agent for litigation appearing in court on behalf of the defendant unit. If additional material is needed, [the people’s court] shall inform the people’s procuratorate to submit supplementary material within 3 days.</p>
<p><b>第二百七十九条</b> 被告单位的诉讼代表人，应当是法定代表人或者主要负责人；法定代表人或者主要负责人被指控为单位犯罪直接负责的主管人员或者因客观原因无法出庭的，应当由被告单位委托其他负责人或者职工作为诉讼代表人。但是，有关人员被指控为单位犯罪的其他直接责任人员或者知道案件情况、负有作证义务的除外。</p>	<p><b>Article 279</b> The authorized agent for litigation for the defendant unit shall be its legal representative or chief leader; If the legal representative or the chief leader is accused to be the principal person that bears the direct responsibility for the unit crime, or is not able to appear in court due to an objective reason, the defendant unit shall entrust other leader or employee to be its authorized agent for litigation However, this does not apply if relevant persons are also accused of bearing the direct responsibility for the unit crime or possess knowledge about the case and have the obligation to serve as witnesses.</p>
<p><b>第二百八十条</b> 开庭审理单位犯罪案件，应当通知被告单位的诉讼代表人出庭；没有诉讼代表人参与诉讼的，应当要求人民检察院确定。</p> <p>被告单位的诉讼代表人不出庭的，应当按照下列情形分别处理：</p> <p>（一）诉讼代表人系被告单位的法定代表人或者主要负责人，无正当理由拒不出庭的，可以拘传其到庭；因客观原因无法出庭，</p>	<p><b>Article 280</b> When trying a case that involves a unit crime in open court, the authorized agent for litigation for the defendant unit shall be informed to appear in court; if no legal representative participates in the litigation, [the court] shall require the people’s procuratorate to designate one.</p> <p>A case, where the authorized agent for litigation for the defendant unit refuses to appear in court, shall be handled respectively according to the following circumstances :</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>或者下落不明的，应当要求人民检察院另行确定诉讼代理人；</p> <p>（二）诉讼代理人系被告单位的其他人员的，应当要求人民检察院另行确定诉讼代理人出庭。</p>	<p>(1) where a litigation representative is the legal representative or the chief leader of the defendant unit, and refuses to appear in court without any justified reason, the person may be summoned for compelled appearance; where the absence is due to an objective reason or the person's whereabouts is unknown, the people's procuratorate shall be required to designate another person as the litigation representative;</p> <p>(2) where the authorized agent for litigation is any other person from the defendant unit, the people's procuratorate shall be required to designate another person as the litigation representative to attend the court session.</p>
<p><b>第二百八十一条</b> 被告单位的诉讼代理人享有刑事诉讼法规定的有关被告人的诉讼权利。开庭时，诉讼代理人席位置于审判台前左侧，与辩护人席并列。</p>	<p><b>Article 281</b> The authorized agent for litigation for a defendant unit shall enjoy procedural rights a defendant is entitled to under relevant Articles of the Criminal Procedure Law. During a hearing, the authorized agent for litigation shall be seated along with the defender in front of the judge's bench on the left.</p>
<p><b>第二百八十二条</b> 被告单位委托辩护人，参照适用本解释的有关规定。</p>	<p><b>Article 282</b> Where the defendant unit retains a defender, relevant rules of this Interpretation shall apply.</p>
<p><b>第二百八十三条</b> 对应当认定为单位犯罪的案件，人民检察院只作为自然人犯罪起诉的，人民法院应当建议人民检察院对犯罪单位补充起诉。人民检察院仍以自然人犯罪起诉的，人民法院应当依法审理，按照单位犯罪中的直接负责的主管人员或者其他直接责任人员追究刑事责任，并援引刑法分则关于追究单位犯罪中直接负责的主管人员和其他直接责任人员刑事责任的条款。</p>	<p><b>Article 283</b> If a case, which shall have been determined as one that involves a unit crime, is being prosecuted by the people's procuratorate as one involving only crimes committed by individuals, the people's court shall suggest the people's procuratorate institute a supplementary indictment against the unit criminal suspect. Where the people's procuratorate nonetheless brings a charge on the basis of a crime committed by individuals, the people's court shall try the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	case according to law, criminal liability shall be investigated against the principal person bearing the direct responsibility or other directly responsible persons, and apply specific provisions of the Criminal Law regarding the criminal liability for the principal person bearing the direct responsibility or other directly responsible persons shall be referred to and cited.
<b>第二百八十四条</b> 被告单位的违法所得及其孳息,尚未被依法追缴或者查封、扣押、冻结的,人民法院应当决定追缴或者查封、扣押、冻结。	<b>Article 284</b> For the illegal gain and the interest thereof received by the defendant unit that has not been recovered or seized, impounded or frozen according to law, the people's court shall make a decision to recover, or seize, impound or freeze.
<b>第二百八十五条</b> 为保证判决的执行,人民法院可以先行查封、扣押、冻结被告单位的财产,或者由被告单位提出担保。	<b>Article 285</b> In order to ensure the enforcement of a judgment, the people's court may seize, impound or freeze the property of the defendant unit ex ante, or [require] the defendant unit to post a bond.
<b>第二百八十六条</b> 审判期间,被告单位被撤销、注销、吊销营业执照或者宣告破产的,对单位犯罪直接负责的主管人员和其他直接责任人员应当继续审理。	<b>Article 286</b> Where the defendant unit is revoked or deregistered has its business registration suspended or is declared bankrupt during the trial period, the trial of the principal person bearing the direct responsibility and other directly responsible persons shall continue.
<b>第二百八十七条</b> 审判期间,被告单位合并、分立的,应当将原单位列为被告单位,并注明合并、分立情况。对被告单位所判处的罚金以其在新单位的财产及收益为限。	<b>Article 287</b> Where the defendant unit undergoes merges or spin-offs during the trial period, the original unit shall be listed as the defendant unit, and the merges or spin-offs shall be recorded. The amount of a fine against the original unit shall be limited to its property and gain received in the new unit.
<b>第二百八十八条</b> 审理单位犯罪案件,本章没有规定的,参照适用本解释的有关规定。	<b>Article 288</b> When trying a case that involves a unit crime, for issues not prescribed under this Chapter, other relevant rules in this Interpretation shall apply.

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

第十二章 简易程序	Chapter 12 Simplified Procedure
<p><b>第二百八十九条</b> 基层人民法院受理公诉案件后,经审查认为案件事实清楚、证据充分的,在将起诉书副本送达被告人时,应当询问被告人对指控的犯罪事实的意见,告知其适用简易程序的法律规定。被告人对指控的犯罪事实没有异议并同意适用简易程序的,可以决定适用简易程序,并在开庭前通知人民检察院和辩护人。</p> <p>对人民检察院建议适用简易程序审理的案件,依照前款的规定处理;不符合简易程序适用条件的,应当通知人民检察院。</p>	<p><b>Article 289</b> After a Basic People’s Court accepts a public prosecution case, if the facts of the case are verified to be clear and the evidence is verified to be sufficient, the defendant, when he or she is served with a copy of the indictment, shall be inquired about his or her opinion towards the facts of the crime charged, and informed of the legal rules regarding application of the simplified procedure. Where the defendant raises no objection to the facts of the crime charged and agrees to the application of the simplified procedure, the simplified procedure may be applied, and the people’s procuratorate and defender shall be informed accordingly before the open court session.</p> <p>Where the simplified procedure is recommended by the people’s procuratorate in a case, the above article shall apply; the people’s procuratorate shall be notified if the case does not meet the conditions for the application of simplified procedure.</p>
<p><b>第二百九十条</b> 具有下列情形之一的,不适用简易程序:</p> <p>(一) 被告人是盲、聋、哑人;</p> <p>(二) 被告人是尚未完全丧失辨认或者控制自己行为能力的精神病人;</p> <p>(三) 有重大社会影响的;</p>	<p><b>Article 290</b> Under any of the following circumstances, the simplified procedure does not apply:</p> <p>(1) the defendant is blind, deaf or dumb;</p> <p>(2) the defendant is a mentally ill person who has not completely lost the ability to identify or control his or her behavior;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(四) 共同犯罪案件中部分被告人不认罪或者对适用简易程序有异议的;</p> <p>(五) 辩护人作无罪辩护的;</p> <p>(六) 被告人认罪但经审查认为可能不构成犯罪的;</p> <p>(七) 不宜适用简易程序审理的其他情形。</p>	<p>(3) the case has significant social impact;</p> <p>(4) the case involves joint crime and some defendant pleads not guilty or raises objection to the application of simplified procedure;</p> <p>(5) the defender makes a not-guilty defense for the defendant;</p> <p>(6) the defendant pleads guilty but [the court] after reviewing [the case] decides that his or her action does not constitute a crime;</p> <p>(7) Other circumstances that the application of simplified procedure is otherwise unsuitable.</p>
<p><b>第二百九十一条</b> 适用简易程序审理的案件,符合刑事诉讼法第三十四条第一款规定的,人民法院应当告知被告人及其近亲属可以申请法律援助。</p>	<p><b>Article 291</b> For a case applying the simplified procedure, if conditions under Article 34, Paragraph 1 of the Criminal Procedure Law are met, the people's court shall inform the defendant and his or her immediate family member that they may apply for legal aid.</p>
<p><b>第二百九十二条</b> 适用简易程序审理案件,人民法院应当在开庭三日前,将开庭的时间、地点通知人民检察院、自诉人、被告人、辩护人,也可以通知其他诉讼参与人。</p> <p>通知可以采用简便方式,但应当记录在案。</p>	<p><b>Article 292</b> For a case of which the application of simplified procedure is appropriate, the people's court shall notify the people's procuratorate, the private prosecutor, the defendant, the defender of the time and location of the court session 3 days before the hearing, and the people's court may also notify other litigation participants.</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	The notification may be conducted through a convenient method, but shall be noted in the case file.
<b>第二百九十三条</b> 适用简易程序审理案件，被告人有辩护人的，应当通知其出庭。	<b>Article 293</b> For a case of which the application of the the simplified procedure is appropriate, if the defendant has retained a defender, the defender shall be notified to appear in court for the trial.
<b>第二百九十四条</b> 适用简易程序审理案件，审判长或者独任审判员应当当庭询问被告人对指控的犯罪事实的意见，告知被告人适用简易程序审理的法律规定，确认被告人是否同意适用简易程序。	<b>Article 294</b> For a case of which the application of the simplified procedure is appropriate, the presiding judge or the single judge shall ask for the defendant’s opinion towards the facts of the crime charged, inform the defendant legal rules regarding the application of the simplified procedure, and ascertain whether the defendant agrees on the application of the simplified procedure.
<b>第二百九十五条</b> 适用简易程序审理案件，可以对庭审作如下简化：  （一）公诉人可以摘要宣读起诉书；  （二）公诉人、辩护人、审判人员对被告人的讯问、发问可以简化或者省略；  （三）对控辩双方无异议的证据，可以仅就证据的名称及所证明的事项作出说明；对控辩双方有异议，或者法庭认为有必要调查核实的证据，应当出示，并进行质证；  （四）控辩双方对与定罪量刑有关的事实、证据没有异议的，法庭审理可以直接围绕罪名确定和量刑问题进行。	<b>Article 295</b> For a case of which the application of the simplified procedure is appropriate, the trial procedure may be simplified as follows:  (1) the public prosecutor may read the summary of the indictment;  (2) the public prosecutor, defender, or judge may simplify or skip the interrogation or questioning of the defendant;  (3) for evidence not disputed by both prosecution and defense, [the court] may only explain the name of the evidence and the issue it is proposed to prove; where either prosecution or defense raises an objection, or the court deems it necessary to investigate and verify, the evidence shall be presented and cross-examined;



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>适用简易程序审理案件，判决宣告前应当听取被告人的最后陈述。</p>	<p>(4) where both prosecution and defense do not raise objections to facts or evidence relevant to the conviction and sentencing, the trial may be conducted in such a manner to directly focus on the issue of conviction and sentencing.</p> <p>For a case applying the simplified procedure, the defendant’s closing statement shall be heard before a ruling is announced.</p>
<p><b>第二百九十六条</b> 适用简易程序独任审判过程中，发现对被告人可能判处的有期徒刑超过三年的，应当转由合议庭审理。</p>	<p><b>Article 296</b> When a case is tried by a single judge and the simplified procedure is applied, [the judge] after discovering during the trial that the defendant could be sentenced to prison for a term longer than 3 years, shall transfer the case to be tried by a collegial bench.</p>
<p><b>第二百九十七条</b> 适用简易程序审理案件，一般应当当庭宣判。</p>	<p><b>Article 297</b> In general, the judgment for a case applying the simplified procedure shall generally be announced in court session.</p>
<p><b>第二百九十八条</b> 适用简易程序审理案件，在法庭审理过程中，有下列情形之一的，应当转为普通程序审理：</p> <p>（一）被告人的行为可能不构成犯罪的；</p> <p>（二）被告人可能不负刑事责任的；</p> <p>（三）被告人当庭对起诉指控的犯罪事实予以否认的；</p> <p>（四）案件事实不清、证据不足的；</p>	<p><b>Article 298</b> A case applying the simplified procedure shall be switched to be tried following ordinary procedure under any of the following circumstances during the trial:</p> <p>(1) defendant’s action may not constitute a crime;</p> <p>(2) defendant may not be subject to criminal liability;</p> <p>(3) defendant denies the facts of the crime charged in the indictment in court;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaalaw@nyu.edu](mailto:usasiaalaw@nyu.edu).

<p>(五) 不应当或者不宜适用简易程序的其他情形。</p> <p>转为普通程序审理的案件，审理期限应当从决定转为普通程序之日起计算。</p>	<p>(4) the facts of the case are unclear or the evidence is insufficient;</p> <p>(5) the application of the simplified procedure is otherwise unsuitable or unjustified.</p> <p>For a case switching to the ordinary procedure, the trial period shall begin to count starting on the day the decision to apply ordinary procedure is made.</p>
<p style="text-align: center;"><b>第十三章 第二审程序</b></p>	<p style="text-align: center;"><b>Chapter 13 Procedures for Second Instance</b></p>
<p><b>第二百九十九条</b> 地方各级人民法院在宣告第一审判决、裁定时，应当告知被告人、自诉人及其法定代理人不服判决、裁定的，有权在法定期限内以书面或者口头形式，通过本院或者直接向上一级人民法院提出上诉；被告人的辩护人、近亲属经被告人同意，也可以提出上诉；附带民事诉讼当事人及其法定代理人，可以对判决、裁定中的附带民事部分提出上诉。</p> <p>被告人、自诉人、附带民事诉讼当事人及其法定代理人是否提出上诉，以其在上诉期满前最后一次的意思表示为准。</p>	<p><b>Article 299</b> When announcing a judgment or ruling of first instance, a local people's court at any level shall notify the defendant, private prosecutor or his agent ad litem of the right to appeal in writing or orally within the statutory time limit to the same people's court or the people's court at the next higher level if he or she refuses to accept the judgment or ruling; with the consent of the defendant, the defense advocate or the defendant's immediate family members may also appeal; a party to a related civil action or his agent ad litem may appeal against the portion on the related civil action in the judgment or ruling.</p> <p>Whether a defendant, private prosecutor, related civil action party or his agent ad litem has filed an appeal shall be determined by the last expression of intent before the statutory time limit for appeal expires.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第三百条</b> 人民法院受理的上诉案件，一般应当有上诉状正本及副本。</p> <p>上诉状内容应当包括：第一审判决书、裁定书的文号和上诉人收到的时间，第一审人民法院的名称，上诉的请求和理由，提出上诉的时间。被告人的辩护人、近亲属经被告人同意提出上诉的，还应当写明其与被告人的关系，并应当以被告人作为上诉人。</p>	<p><b>Article 300</b> A case of appeal accepted by a people’s court generally shall include the original and duplicate appeal petition.</p> <p>An appeal petition shall include: docket number of the written judgment or ruling of first instance and the time that an appellant receives the judgment or ruling, name of the people’s court of first instance, the petition and ground for the appeal, and the date of the submission of the appeal. The defense advocate or the defendant’s immediate family members who appeal with defendant’s consent shall also state clearly in writing his or her relationship with the defendant and shall put the defendant as the appellant.</p>
<p><b>第三百零一条</b> 上诉、抗诉必须在法定期限内提出。不服判决的上诉、抗诉的期限为十日；不服裁定的上诉、抗诉的期限为五日。上诉、抗诉的期限，从接到判决书、裁定书的第二日起计算。</p> <p>对附带民事判决、裁定的上诉、抗诉期限，应当按照刑事部分的上诉、抗诉期限确定。附带民事部分另行审判的，上诉期限也应当按照刑事诉讼法规定的期限确定。</p>	<p><b>Article 301</b> An appeal or a prosecutorial appeal must be submitted within the statutory time limit. The time limit to submit an appeal or a prosecutorial appeal against a judgment is 10 days; the time limit to submit an appeal or a prosecutorial appeal against a ruling is 5 days. The time limit for appeal or a prosecutorial appeal shall be counted from the day after the written judgment or ruling is received.</p> <p>The time limit for an appeal or a prosecutorial appeal against a judgment or ruling on a related civil action shall be the same time limit as for that against the criminal portion. The time limit for an appeal or a prosecutorial appeal against a related civil action that is separately adjudicated shall be the time limit prescribed by the Criminal Procedure Law.</p>
<p><b>第三百零二条</b> 上诉人通过第一审人民法院提出上诉的，第一审</p>	<p><b>Article 302</b> If an appellant submits an appeal to a people’s court of first instance,</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaalaw@nyu.edu](mailto:usasiaalaw@nyu.edu).

<p>人民法院应当审查。上诉符合法律规定的，应当在上诉期满后三日内将上诉状连同案卷、证据移送上一级人民法院，并将上诉状副本送交同级人民检察院和对方当事人。</p>	<p>the people’s court of first instance shall examine the appeal. The appeal petition shall be transferred along with the case file and the evidence to a people’s court at the next higher level within 3 days after the time limit for appeal expires, and a duplicate of the appeal petition shall be delivered to a people’s procuratorate at the same level and to the opposite party.</p>
<p><b>第三百零三条</b> 上诉人直接向第二审人民法院提出上诉的，第二审人民法院应当在收到上诉状后三日内将上诉状交第一审人民法院。第一审人民法院应当审查上诉是否符合法律规定。符合法律规定的，应当在接到上诉状后三日内将上诉状连同案卷、证据移送上一级人民法院，并将上诉状副本送交同级人民检察院和对方当事人。</p>	<p><b>Article 303</b> If an appellant appeals directly to a people’s court of second instance, the people’s court of second instance shall deliver the appeal petition to the people’s court of first instance within 3 days after the receipt of the appeal petition. The people’s court of first instance shall examine whether the appeal complies with legal requirements. If legal requirements are met, the appeal petition shall be transferred along with the case file and the evidence to a people’s court at the next higher level within 3 days after the receipt of the appeal petition, and a duplicate of the appeal petition shall be delivered to the people’s procuratorate at the same level and to the opposite party.</p>
<p><b>第三百零四条</b> 上诉人在上诉期限内要求撤回上诉的，人民法院应当准许。</p>	<p><b>Article 304</b> If an appellant, within the time limit for appeal, requests to withdraw an appeal, a people’s court shall permit the request.</p>
<p><b>第三百零五条</b> 上诉人在上诉期满后要求撤回上诉的，第二审人民法院应当审查。经审查，认为原判认定事实和适用法律正确，量刑适当的，应当裁定准许撤回上诉；认为原判事实不清、证据不足或者将无罪判为有罪、轻罪重判等的，应当不予准许，继续按照上诉案件审理。</p> <p>被判处死刑立即执行的被告人提出上诉，在第二审开庭后宣告裁判前申请撤回上诉的，应当不予准许，继续按照上诉案件审</p>	<p><b>Article 305</b> If an appellant requests to withdraw an appeal after the time limit for appeal has expired, a people’s court of second instance shall examine the request. After review, if the original judgment is determined to be correct on the finding of facts and the application of law and appropriate on the meting out of the punishment, a permission shall be granted to the request for withdrawal of the appeal; if the finding of facts is determined to be unclear or evidence not sufficient in the original judgment, or a guilty verdict was rendered on an innocent or a</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>理。</p>	<p>heavy punishment was imposed for a lighter offense, permission shall not be given and the court shall continue to adjudicate the case in accordance with the appellate procedure.</p> <p>If a defendant sentenced to death with immediate execution appeals and petitions to withdraw the appeal before a people’s court of second instance issues a judgment, permission shall not be given to the request for withdrawal and the court shall continue to adjudicate the case in accordance with the appellate procedure.</p>
<p><b>第三百零六条</b> 地方各级人民检察院对同级人民法院第一审判决、裁定的抗诉，应当通过第一审人民法院提交抗诉书。第一审人民法院应当在抗诉期满后三日内将抗诉书连同案卷、证据移送上一级人民法院，并将抗诉书副本送交当事人。</p>	<p><b>Article 306</b> If a local people’s procuratorate at any level issues a prosecutorial appeal against a judgment or ruling of first instance by a people’s court at the same level, it shall submit a written protest to the people’s court of first instance. The people’s court of first instance shall transfer the written protest along with the case file and the evidence to a people’s court at the next higher level and deliver a duplicate of the written protest to the parties within 3 days after the time limit for the prosecutorial appeal expires.</p>
<p><b>第三百零七条</b> 人民检察院在抗诉期限内撤回抗诉的，第一审人民法院不再向上一级人民法院移送案件；在抗诉期满后第二审人民法院宣告裁判前撤回抗诉的，第二审人民法院可以裁定准许，并通知第一审人民法院和当事人。</p>	<p><b>Article 307</b> If a people’s procuratorate withdraws a prosecutorial appeal before the expiration of the time limit for the prosecutorial appeal, the people’s court of first instance no longer transfers the case to the people’s court at the next higher level; if a people’s procuratorate withdraws a prosecutorial appeal after a people’s court of second instance announces a judgment, the people’s court of second instance may issue a ruling to grant permission, , and notifies the people’s court of first instance and parties.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第三百零八条</b> 在上诉、抗诉期满前撤回上诉、抗诉的，第一审判决、裁定在上诉、抗诉期满之日起生效。在上诉、抗诉期满后要求撤回上诉、抗诉，第二审人民法院裁定准许的，第一审判决、裁定应当自第二审裁定书送达上诉人或者抗诉机关之日起生效。</p>	<p><b>Article 308</b> If an appeal or a prosecutorial appeal is withdrawn before the expiration of the time limit for the appeal or the prosecutorial appeal, the judgment or ruling of the people’s court of first instance becomes effective on the day that the time limit for the appeal or the prosecutorial appeal expires. If an appeal or a prosecutorial appeal is withdrawn after the expiration of the time limit for the appeal or the prosecutorial appeal and the people’s court of second instance issues a ruling to permit the appeal or the prosecutorial appeal, the judgment or ruling of the people’s court of first instance becomes effective on the date that the order of the people’s court of second instance is delivered to the appellant or to the protesting procuratorate organ.</p>
<p><b>第三百零九条</b> 第二审人民法院对第一审人民法院移送的上诉、抗诉案卷、证据，应当审查是否包括下列内容：</p> <p>（一）移送上诉、抗诉案件函；</p> <p>（二）上诉状或者抗诉书；</p> <p>（三）第一审判决书、裁定书八份（每增加一名被告人增加一份）及其电子文本；</p> <p>（四）全部案卷、证据，包括案件审理报告和其他应当移送的材料。</p> <p>前款所列材料齐全的，第二审人民法院应当收案；材料不全的，应当通知第一审人民法院及时补送。</p>	<p><b>Article 309</b> A people’s court of second instance shall examine whether the case file and the evidence of an appeal or a prosecutorial appeal transferred over by the people’s court of first instance include the following contents:</p> <p>(1) a letter transferring an appeal or a prosecutorial appeal of a case;</p> <p>(2) an appeal petition or a written protest;</p> <p>(3) written judgment or order of first instance in 8 copies (add one more copy for each additional defendant) and an electronic copy;</p> <p>(4) the entire case file and evidence, including case adjudication report and any other documents that shall be transferred.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>If the transfer of all the documents listed above is complete, the people’s court of second instance shall accept the appeal; if the transfer of all the documents listed above is not complete, the people’s court of second instance shall notify the people’s court of first instance to supplement the transferred material in a timely manner.</p>
<p><b>第三百一十条</b> 第二审人民法院审理上诉、抗诉案件，应当就第一审判决、裁定认定的事实和适用法律进行全面审查，不受上诉、抗诉范围的限制。</p>	<p><b>Article 310</b> A people’s court of second instance, when adjudicating an appeal or a prosecutorial appeal of a case, shall perform a complete review of the judgment or ruling of the people’s court of first instance on the determination of facts and the application of law, not limited to the scope of the appeal or the prosecutorial appeal.</p>
<p><b>第三百一十一条</b> 共同犯罪案件，只有部分被告人提出上诉，或者自诉人只对部分被告人的判决提出上诉，或者人民检察院只对部分被告人的判决提出抗诉的，第二审人民法院应当对全案进行审查，一并处理。</p>	<p><b>Article 311</b> In a case of joint crime, if only some of the defendants submit an appeal, or if a private prosecutor only appeals the judgment on some of the defendants, or a people’s procuratorate only files a prosecutorial appeal against judgment on some of the defendants, a people’s court of second instance shall review and determine the case in its entirety.</p>
<p><b>第三百一十二条</b> 共同犯罪案件，上诉的被告人死亡，其他被告人未上诉的，第二审人民法院仍应对全案进行审查。经审查，死亡的被告人不构成犯罪的，应当宣告无罪；构成犯罪的，应当终止审理。对其他同案被告人仍应作出判决、裁定。</p>	<p><b>Article 312</b> In a case of joint crime, when the appellant died and the other defendants did not appeal, the people’s court of second instance shall still review the entire case. After review, if it is determined that the deceased appellant did not commit a crime, he or she shall be acquitted; if it is determined that the deceased appellant has committed a crime, the review shall be ended. The people’s court shall still issue a judgment or ruling on the other co-defendants.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第三百一十三条</b> 刑事附带民事诉讼案件，只有附带民事诉讼当事人及其法定代理人上诉的，第二审人民法院应当对全案进行审查。经审查，第一审判决的刑事部分并无不当的，第二审人民法院只需就附带民事部分作出处理；第一审判决的附带民事部分事实清楚，适用法律正确的，应当以刑事附带民事裁定维持原判，驳回上诉。</p>	<p><b>Article 313</b> In a case with a related civil action, when only the party to the related civil action and his or her agent ad litem appeal, the people’s court of second instance shall review the entire case. After review, if no inappropriateness is found on the criminal portion of the judgment of the first instance, the people’s court of second instance only needs to decide on the related civil action; if the facts are clear and the application of law is appropriate in the judgment of the first instance on the related civil action, the people’s court of second instance shall issue a ruling to sustain the original judgment and reject the appeal.</p>
<p><b>第三百一十四条</b> 刑事附带民事诉讼案件，只有附带民事诉讼当事人及其法定代理人上诉的，第一审刑事部分的判决在上诉期满后即发生法律效力。</p> <p>应当送监执行的第一审刑事被告人是第二审附带民事诉讼被告人的，在第二审附带民事诉讼案件审结前，可以暂缓送监执行。</p>	<p><b>Article 314</b> In a case with a related civil action, when only the party to the related civil action and his or her agent ad litem appeal, the judgment of the first instance on the criminal portion comes into effect upon the expiration of the time limit for appeal.</p> <p>When the criminal defendant in the first instance ought to be sent to prison is the defendant of the related civil action in the second instance, the transfer to prison may be suspended until the judgment on the related civil action is rendered by the people’s court of second instance.</p>
<p><b>第三百一十五条</b> 对上诉、抗诉案件，应当着重审查下列内容：</p> <p>（一）第一审判决认定的事实是否清楚，证据是否确实、充分；</p> <p>（二）第一审判决适用法律是否正确，量刑是否适当；</p>	<p><b>Article 315</b> The following contents shall be reviewed closely for an appeal or a prosecutorial appeal case:</p> <p>(1) whether the facts determined in the judgment of the first instance are clear, whether evidence is indubitable and sufficient;</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(三) 在侦查、审查起诉、第一审程序中，有无违反法定诉讼程序的情形；</p> <p>(四) 上诉、抗诉是否提出新的事实、证据；</p> <p>(五) 被告人的供述和辩解情况；</p> <p>(六) 辩护人的辩护意见及采纳情况；</p> <p>(七) 附带民事部分的判决、裁定是否合法、适当；</p> <p>(八) 第一审人民法院合议庭、审判委员会讨论的意见。</p>	<p>(2) whether the application of law is appropriate in the judgment of first instance, whether the sentencing is proper;</p> <p>(3) whether the litigation procedure law was violated in the first instance during the course of investigation, review for indictment or trial proceeding;</p> <p>(4) whether any new fact or evidence is provided in the appeal or the prosecutorial appeal;</p> <p>(5) defendant's confession and defense;</p> <p>(6) opinions by defense advocate and how it is credited by the court's ;</p> <p>(7) whether the judgment or ruling on the related civil action is legitimate and appropriate;</p> <p>(8) opinions arising out of the discussion by the collegial panel or the adjudication committee of the first instance.</p>
<p><b>第三百一十六条</b> 第二审期间，被告人除自行辩护外，还可以继续委托第一审辩护人或者另行委托辩护人辩护。</p> <p>共同犯罪案件，只有部分被告人提出上诉，或者自诉人只对部分被告人的判决提出上诉，或者人民检察院只对部分被告人的</p>	<p><b>Article 316</b> During the period of second instance, in addition to self-defense, a defendant may continue to retain the defense advocate from the first instance or may retain another defense advocate.</p> <p>In a case of joint crime, when only some of the defendants appeal or a private</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>判决提出抗诉的，其他同案被告人也可以委托辩护人辩护。</p>	<p>prosecutor appeals only against the judgment on some of the defendants, or the people's procuratorate files a prosecutorial appeal only against the judgment on some of the defendants, the other co-defendants may retain defense advocates as well.</p>
<p><b>第三百一十七条</b> 下列案件，根据刑事诉讼法第二百二十三条第一款的规定，应当开庭审理：</p> <p>（一）被告人、自诉人及其法定代理人对第一审认定的事实、证据提出异议，可能影响定罪量刑的上诉案件；</p> <p>（二）被告人被判处死刑立即执行的上诉案件；</p> <p>（三）人民检察院抗诉的案件；</p> <p>（四）应当开庭审理的其他案件。</p> <p>被判处死刑立即执行的被告人没有上诉，同案的其他被告人上诉的案件，第二审人民法院应当开庭审理。</p> <p>被告人被判处死刑缓期执行的上诉案件，虽不属于第一款第一项规定的情形，有条件的，也应当开庭审理。</p>	<p><b>Article 317</b> In accordance with Article 223 of the Criminal Procedure Law, the following cases shall be adjudicated in open court:</p> <p>(1) where a defendant, a private prosecutor and his agent ad litem objects against the facts and evidence determined in the first instance, that may affect a conviction or sentencing of the case;</p> <p>(2) where the defendant was sentenced to death with immediate execution;</p> <p>(3) the case is the subject of prosecutorial appeal by a people's procuratorate;</p> <p>(4) any other cases that shall be adjudicated in open court.</p> <p>When a defendant sentenced to death with immediate execution does not appeal, but a co-defendant appeals, a people's court of second instance shall adjudicate the case in open court.</p> <p>When defendant sentenced to death sentence with reprieve appeals, even if it</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	is not a case that falls under category (1) of paragraph 1, shall still be heard in open court if circumstance permits.
<b>第三百一十八条</b> 对上诉、抗诉案件，第二审人民法院经审查，认为原判事实不清、证据不足，或者具有刑事诉讼法第二百二十七条规定的违反法定诉讼程序情形，需要发回重新审判的，可以不开庭审理。	<b>Article 318</b> There is no requirement to hear an appeal or a prosecutorial appeal in open court, when a people’s court of second instance, after reviewing, deems that the facts were not clear, the evidence was not sufficient in the original judgment, or there was a violation of statutory litigation procedure prescribed in Article 227 of the Criminal Procedure Law, and it is necessary to remand the case to the lower court for retrial.
<b>第三百一十九条</b> 第二审期间，人民检察院或者被告人及其辩护人提交新证据的，人民法院应当及时通知对方查阅、摘抄或者复制。	<b>Article 319</b> During the period of second instance, when a people’s procuratorate or a defendant and his defense advocate submits new evidence, the People’s Court shall notify the opposite party timely for consult, extract or duplicate.
<b>第三百二十条</b> 开庭审理第二审公诉案件，应当在决定开庭审理后及时通知人民检察院查阅案卷。自通知后的第二日起，人民检察院查阅案卷的时间不计入审理期限。	<b>Article 320</b> To hold a hearing on the second instance in a public prosecution case, the people’s procuratorate shall be timely notified for consultation of case file after the decision to try in open court is made. Starting on the second day after the notification, the consult time by the people’s procuratorate shall not be counted against the maximum time allowed for the trial.
<b>第三百二十一条</b> 开庭审理上诉、抗诉的公诉案件，应当通知同级人民检察院派员出庭。  抗诉案件，人民检察院接到开庭通知后不派员出庭，且未说明原因的，人民法院可以裁定按人民检察院撤回抗诉处理，并通知第一审人民法院和当事人。	<b>Article 321</b> For appeals or prosecutorial appeals against public prosecutions, a people’s procuratorate at the same level shall be notified to send a prosecutor to appear before the court.  For cases of prosecutorial appeals, if the people’s procuratorate, upon receipt of the notification of court hearing, does not send a procurator to appear before the

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usiasialaw@nyu.edu](mailto:usiasialaw@nyu.edu).

	<p>court and no explanations are provided, the people’s court may treat it as a withdrawal of prosecutorial appeal by the people’s procuratorate and issue a ruling accordingly, and notify the people’s court of first instance and parties.</p>
<p><b>第三百二十二条</b> 开庭审理上诉、抗诉案件，除参照适用第一审程序的有关规定外，应当按照下列规定进行：</p> <p>（一）法庭调查阶段，审判人员宣读第一审判决书、裁定书后，上诉案件由上诉人或者辩护人先宣读上诉状或者陈述上诉理由，抗诉案件由检察员先宣读抗诉书；既有上诉又有抗诉的案件，先由检察员宣读抗诉书，再由上诉人或者辩护人宣读上诉状或者陈述上诉理由；</p> <p>（二）法庭辩论阶段，上诉案件，先由上诉人、辩护人发言，后由检察员、诉讼代理人发言；抗诉案件，先由检察员、诉讼代理人发言，后由被告人、辩护人发言；既有上诉又有抗诉的案件，先由检察员、诉讼代理人发言，后由上诉人、辩护人发言。</p>	<p><b>Article 322</b> When adjudicating an appeal or a prosecutorial appeal in open court, in addition to referring to relevant provisions of the procedures for first instance, the following provisions shall be adhered to:</p> <p>(1) during the course of court investigation, after an adjudication personnel reads aloud the judgment or ruling of first instance, for appeals, the appellant or his or her defense advocate reads aloud the appeal petition or state the ground for appeal first, for prosecutorial appeals, a procurator reads aloud the written protest first; for cases with both appeal and prosecutorial appeal, a procurator reads aloud the written protest first, then the appellant or his or her defense advocate reads aloud the appeal petition or the ground for appeal;</p> <p>(2) during the course of court debate, for appeals, the appellant or his or her defense advocate speaks first followed by a procurator or a litigation advocate; for prosecutorial appeal cases, the procurator or a litigation advocate speaks, followed by the appellant or his or her defense advocate; for cases with both appeal and prosecutorial appeal, the procurator or a litigation advocate speaks first, followed by the appellant or his or her defense advocate.</p>
<p><b>第三百二十三条</b> 开庭审理上诉、抗诉案件，可以重点围绕对第一审判决、裁定有争议的问题或者有疑问的部分进行。根据案件</p>	<p><b>Article 323</b> An open court hearing for an appeal or a prosecutorial appeal may focus on the controversial issue or the questionable section of the judgment or</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>情况，可以按照下列方式审理：</p> <p>（一）宣读第一审判决书，可以只宣读案由、主要事实、证据名称和判决主文等；</p> <p>（二）法庭调查应当重点围绕对第一审判决提出异议的事实、证据以及提交的新的证据等进行；对没有异议的事实、证据和情节，可以直接确认；</p> <p>（三）对同案审理案件中未上诉的被告人，未被申请出庭或者人民法院认为没有必要到庭的，可以不再传唤到庭；</p> <p>（四）被告人犯有数罪的案件，对其中事实清楚且无异议的犯罪，可以不在庭审时审理。</p> <p>同案审理的案件，未提出上诉、人民检察院也未对其判决提出抗诉的被告人要求出庭的，应当准许。出庭的被告人可以参加法庭调查和辩论。</p>	<p>ruling of first instance. May hear the case in the following ways based on case circumstances:</p> <p>(1) when reading aloud the judgment of first instance, [a people’s court of second instance] may only read aloud the reason of the case, principle facts, the title of the evidence and the main text of the ruling;</p> <p>(2) court investigation shall focus on the facts and evidence upon which objections to the judgment of first instance are based, and new evidence provided, etc; may affirm the facts, evidence and circumstances not objected to directly;</p> <p>(3) [a people’s court of second instance] may not summon co-defendant who did not appeal, if the person were not asked to appear before the court or the people’s court believes that he or she do not need to appear before the court ;</p> <p>(4) for a case where a defendant commits multiple crimes, there is no need to hear an appeal in open court on the crime that facts are clear and not objected to,</p> <p>When a defendant whose case is heard in the same hearing, but did not file an appeal and against whom the people’s procuratorate did not file a prosecutorial appeal, requests to appear before the people’s court, the people’s court shall permit the request. The defendant who appears before the court may participate in court investigation and court debate.</p>
--	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第三百二十四条</b> 第二审案件依法不开庭审理的,应当讯问被告人,听取其他当事人、辩护人、诉讼代理人的意见。合议庭全体成员应当阅卷,必要时应当提交书面阅卷意见。</p>	<p><b>Article 324</b> For second instance cases that are not required by law to be adjudicated in open court, the court shall nonetheless interrogate the defendant and hear the opinions of other parties, defense advocates and litigation advocates. All the members of the collegial panel shall read the case file and shall, when necessary, submit written opinions regarding the case file.</p>
<p><b>第三百二十五条</b> 审理被告人或者其法定代理人、辩护人、近亲属提出上诉的案件,不得加重被告人的刑罚,并应当执行下列规定:</p> <p>(一) 同案审理的案件,只有部分被告人上诉的,既不得加重上诉人的刑罚,也不得加重其他同案被告人的刑罚;</p> <p>(二) 原判事实清楚,证据确实、充分,只是认定的罪名不当的,可以改变罪名,但不得加重刑罚;</p> <p>(三) 原判对被告人实行数罪并罚的,不得加重决定执行的刑罚,也不得加重数罪中某罪的刑罚;</p> <p>(四) 原判对被告人宣告缓刑的,不得撤销缓刑或者延长缓刑考验期;</p> <p>(五) 原判没有宣告禁止令的,不得增加宣告;原判宣告禁止令的,不得增加内容、延长期限;</p> <p>(六) 原判对被告人判处死刑缓期执行没有限制减刑的,不</p>	<p><b>Article 325</b> When adjudicating an appeal filed by a defendant or his or her agent ad litem, defense advocate or immediate family members, a heavier punishment shall not be imposed upon the defendant, and the following provisions shall be adhered to:</p> <p>(1) when only some of the defendants appeal, neither the defendant nor the other co-defendants shall be subject to heavier punishment;</p> <p>(2) when the determination of the fact is clear, the evidence is indubitable and sufficient in the original judgment, but only the determination of the name of the offense is inappropriate, the name of the offense may be changed, but a heavier punishment shall not be imposed;</p> <p>(3) when the original judgment imposes combined punishments for multiple crimes, a punishment heavier than the combined punishments to be executed, or heavier than that imposed for any one of the multiple crimes shall not be imposed;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>得限制减刑；</p> <p>（七）原判事实清楚，证据确实、充分，但判处的刑罚畸轻、应当适用附加刑而没有适用的，不得直接加重刑罚、适用附加刑，也不得以事实不清、证据不足为由发回第一审人民法院重新审判。必须依法改判的，应当在第二审判决、裁定生效后，依照审判监督程序重新审判。</p> <p>人民检察院抗诉或者自诉人上诉的案件，不受前款规定的限制。</p>	<p>(4) when the original judgment imposes a suspended sentence with probation, the probation shall not be revoked and the probation period for suspension shall not be prolonged.</p> <p>(5) when the original judgment does not issue an injunction, an injunction shall not be added; when the original judgment issued an injunction, addition shall not be made to the content or the time period.</p> <p>(6) when the original judgment sentenced the defendant to death sentence with reprieve with no restriction on sentence reduction, sentence reduction shall not be imposed;</p> <p>(7) when the determination of facts is clear and evidence is indubitable and sufficient in the original judgment, but the punishment is abnormally light or fails to impose a supplementary sentence that shall have been imposed, a heavier punishment shall not be directly imposed, neither shall a supplementary punishment be directly applied, nor shall the case be remanded to the people's court of first instance for retrial based on unclear determination of facts or insufficient evidence. For a case which modification of judgment is legally required, [the people's court] it shall be re-adjudicated in accordance with the trial supervision procedure after the judgment or ruling of the second instance becomes effective.</p>
--	--

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	The aforementioned provisions do not apply to a case of prosecutorial appeal filed by a people's procuratorate or a case of defense appeal filed by a private prosecutor.
<b>第三百二十六条</b> 人民检察院只对部分被告人的判决提出抗诉, 或者自诉人只对部分被告人的判决提出上诉的, 第二审人民法院不得对其他同案被告人加重刑罚。	<b>Article 326</b> When a people's procuratorate only files prosecutorial appeal against the judgments on some of the defendants, or when a private prosecutor only appeals on the judgments on some of the defendants, a people's court of second instance shall not impose a heavier punishment on the other co-defendants.
<b>第三百二十七条</b> 被告人或者其法定代理人、辩护人、近亲属提出上诉的案件, 第二审人民法院发回重新审判后, 除有新的犯罪事实, 人民检察院补充起诉的以外, 原审人民法院不得加重被告人的刑罚。	<b>Article 327</b> For appeals filed by the defendant or his agent ad litem, defense advocate, immediate family members, after the case is remanded for retrial by a people's court of second instance, the people's court of first instance shall not impose a heavier sentence on the defendants, except for cases with new facts of crimes committed or where the people's procuratorate amends the prosecution.
<b>第三百二十八条</b> 原判事实不清、证据不足, 第二审人民法院发回重新审判的案件, 原审人民法院重新作出判决后, 被告人上诉或者人民检察院抗诉的, 第二审人民法院应当依法作出判决、裁定, 不得再发回重新审判。	<b>Article 328</b> After a people's court of second instance remands the case for retrial because of unclear determination of facts or insufficient evidence and the people's court that originally tried the case issues a new judgment, the defendant appeals or the people's procuratorate files a prosecutorial appeal, the people's court of second instance shall issue a judgment or ruling, in accordance with the law, and shall not again remand the case for retrial.
<b>第三百二十九条</b> 第二审人民法院发现原审人民法院在重新审判过程中, 有刑事诉讼法第二百二十七条规定的情形之一, 或者违反第二百二十八条规定的, 应当裁定撤销原判, 发回重新审判。	<b>Article 329</b> A people's court of second instance, after discovering one of the circumstance prescribed by Article 327 of the Criminal Procedure Law or violation of Article 328 during the course of re-adjudication by the people's court that originally tried the case, shall issue a ruling to revoke the original judgment



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	and remand the case for retrial.
<b>第三百三十条</b> 第二审人民法院审理对刑事部分提出上诉、抗诉，附带民事部分已经发生法律效力的案件，发现第一审判决、裁定中的附带民事部分确有错误的，应当依照审判监督程序对附带民事部分予以纠正。	<b>Article 330</b> When a people's court of second instance hears an appeal or a prosecutorial appeal against the criminal portion of a case with an effective judgment on the related civil action, and discovers an error of the original judgment or ruling on the related civil action, it shall correct the judgment on the related civil action in accordance with the procedure for trial supervision.
<b>第三百三十一条</b> 第二审人民法院审理对附带民事部分提出上诉，刑事部分已经发生法律效力的案件，发现第一审判决、裁定中的刑事部分确有错误的，应当依照审判监督程序对刑事部分进行再审，并将附带民事部分与刑事部分一并审理。	<b>Article 331</b> When the people's court of second instance hears an appeal against a related civil action of a case with an effective judgment on the criminal portion, and discovers an error of the original judgment or ruling on the criminal portion, it shall rehear the criminal portion in accordance with the procedure for trial supervision, and adjudicate the criminal portion along with the related civil action.
<b>第三百三十二条</b> 第二审期间，第一审附带民事诉讼原告人增加独立的诉讼请求或者第一审附带民事诉讼被告人提出反诉的，第二审人民法院可以根据自愿、合法的原则进行调解；调解不成的，告知当事人另行起诉。	<b>Article 332</b> During the course of second instance, if a plaintiff of a related civil action of the case of first instance requests to add an independent claim or a defendant of a related civil action of the case of the first instance submits a counterclaim, a people's court of second instance may conduct mediation based on the principles of voluntariness and legitimacy; if mediation fails, the parties shall be notified to file a lawsuit separately.
<b>第三百三十三条</b> 对第二审自诉案件，必要时可以调解，当事人也可以自行和解。调解结案的，应当制作调解书，第一审判决、裁定视为自动撤销；当事人自行和解的，应当裁定准许撤回自诉，并撤销第一审判决、裁定。	<b>Article 333</b> For private prosecution cases of second instance, mediation is allowed if necessary, and voluntary reconciliation by parties is also allowed. If a case concludes through mediation, a mediation statement shall be produced and the judgment or ruling of first instance deemed automatically revoked; when parties

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	voluntarily reconcile, a ruling shall be issued to permit the withdrawal of the private prosecution and revoke the judgment or ruling of first instance.
<b>第三百三十四条</b> 第二审期间，自诉案件的当事人提出反诉的，应当告知其另行起诉。	<b>Article 334</b> During the course of second instance, parties of private prosecution cases who file a counterclaim shall be notified to file a lawsuit separately.
<b>第三百三十五条</b> 第二审人民法院可以委托第一审人民法院代为宣判，并向当事人送达第二审判决书、裁定书。第一审人民法院应当在代为宣判后五日内将宣判笔录送交第二审人民法院，并在送达完毕后及时将送达回证送交第二审人民法院。  委托宣判的，第二审人民法院应当直接向同级人民检察院送达第二审判决书、裁定书。	<b>Article 335</b> A people’s court of second instance may entrust a people’s court of first instance to announce a judgment and deliver the written judgment or ruling of the second instance to the parties. A people’s court of first instance shall, within 5 days of the announcement of the judgment, deliver the written records of the announcement to the people’s court of second instance and forward the receipt of delivery to the people’s court of second instance promptly after the delivery.  In the case of entrusting announcement of judgments, a people’s court of second instance shall deliver the written judgment or ruling of second instance directly to the people’s procuratorate at the same level.
<b>第十四章 在法定刑以下判处刑罚和特殊假释的核准</b>	<b>Chapter 14 Procedure for Approval of Below-Statutory-Minimum Sentences and Parole under Special Circumstances</b>
<b>第三百三十六条</b> 报请最高人民法院核准在法定刑以下判处刑罚的案件，应当按照下列情形分别处理：  (一) 被告人未上诉、人民检察院未抗诉的，在上诉、抗诉期满后三日内报请上一级人民法院复核。上一级人民法院同意原判的，应当书面层报最高人民法院核准；不同意的，应当裁定发	<b>Article 336</b> Cases where a sentence that is less than the statutory minimum prescribed by law is rendered and are hence subject to approval of the Supreme People’s Court shall be handled accordingly in each of the following circumstances:

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>回重新审判，或者改变管辖按照第一审程序重新审理。原判是基层人民法院作出的，高级人民法院可以指定中级人民法院按照第一审程序重新审理；</p> <p>（二）被告人上诉或者人民检察院抗诉的，应当依照第二审程序审理。第二审维持原判，或者改判后仍在法定刑以下判处刑罚的，应当依照前项规定层报最高人民法院核准。</p>	<p>(1) a case in which the defendant doesn't appeal and the people's procuratorate doesn't protest shall be submitted to a people's court at the next higher level for review within 3 days of the expiration of the time limit for appeal and protest. Where the people's court at the next higher level assents to the original judgment, a written request for approving the case shall be submitted to a people's court at the next higher level and all the way up until it reaches the Supreme People's Court; where [the Supreme People's Court] disapproves the case, [the Supreme People's Court] shall remand the case for retrial or grant the jurisdiction over the case to a different court for the case to be re-adjudicated according to first instance procedures. Where the original judgment is delivered by a people's court at the grassroots level, a higher people's court may designate an intermediate people's court to re-adjudicate the case according to first instance procedures;</p> <p>(2) a case in which the defendant appeals or the people's procuratorate protests shall be adjudicated according to second instance procedures. Where the original judgment is affirmed, or where it is modified but the modified punishment remains less than the statutory minimum prescribed by law, a request for approval shall be submitted level by level to people's courts at higher levels until it reaches the Supreme People's Court according to the procedure set out in Subparagraph (1).</p>
<p><b>第三百三十七条</b> 报请最高人民法院核准在法定刑以下判处刑罚的案件，应当报送判决书、报请核准的报告各五份，以及全部</p>	<p><b>Article 337</b> When requesting approval of the Supreme People's Court for a case in which the punishment imposed is less than the statutory minimum prescribed</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>案卷、证据。</p>	<p>by law, five copies of both the judgment and a written report requesting for approval shall be submitted [to the Supreme Court] along with all case files and evidence of the case.</p>
<p><b>第三百三十八条</b> 对在法定刑以下判处刑罚的案件，最高人民法院予以核准的，应当作出核准裁定书；不予核准的，应当作出不予核准裁定书，并撤销原判决、裁定，发回原审人民法院重新审判或者指定其他下级人民法院重新审判。</p>	<p><b>Article 338</b> Where the Supreme People’s Court approves a case in which the punishment imposed is less than the statutory minimum prescribed by law, [the Supreme People’s Court] shall issue a written ruling of approval; where a case is disapproved, [the Supreme People’s Court] shall issue a written ruling of disapproval, overturn the original judgment or ruling and either remand the case to the original court for re-adjudication or designate a different lower-level people’s court to re-adjudicate the case.</p>
<p><b>第三百三十九条</b> 依照本解释第三百三十六条、第三百三十八条规定发回第二审人民法院重新审判的案件，第二审人民法院可以直接改判；必须通过开庭查清事实、核实证据或者纠正原审程序违法的，应当开庭审理。</p>	<p><b>Article 339</b> Where a case is remanded to the people’s court of second instance for re-adjudication under Article 336 and Article 336 of this Interpretation, the people’s court of second instance may directly modify the judgment; [the people’s court of second instance] shall hear the case in open court when the clarification of facts, verification of evidence or rectification of procedural improprieties of the original adjudication must be done through open court hearings.</p>
<p><b>第三百四十条</b> 最高人民法院和上级人民法院复核在法定刑以下判处刑罚案件的审理期限，参照适用刑事诉讼法第二百三十二条的规定。</p>	<p><b>Article 340</b> When reviewing cases in which the punishment imposed is less than the statutory minimum prescribed by law, the Supreme People’s Court and people’s courts at levels above the original trial court shall reference to Article 232 of the Criminal Procedure Law.</p>
<p><b>第三百四十一条</b> 报请最高人民法院核准因罪犯具有特殊情况，不受执行刑期限限制的假释案件，应当按照下列情形分别处理：</p>	<p><b>Article 341</b> Cases where the parole is not subject to limitations on the jail term</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(一) 中级人民法院依法作出假释裁定后,应当报请高级人民法院复核。高级人民法院同意的,应当书面报请最高人民法院核准;不同意的,应当裁定撤销中级人民法院的假释裁定;</p> <p>(二) 高级人民法院依法作出假释裁定的,应当报请最高人民法院核准。</p>	<p>actually served and are hence subject to approval by the Supreme People’s Court shall be handled accordingly in each of the following circumstances:</p> <p>(1) an intermediate people’s court, after making a ruling to grant parole according to law, shall submit the parole ruling to a higher people’s court for review and approval. Where the higher people’s court approves the parole, the ruling shall be submitted to the Supreme People’s Court for review and approval; where the higher people’s court disapproves the parole, [the higher people’s court] shall rule to revoke the parole ruling made by the intermediate people’s court;</p> <p>(2) a higher people’s court, after making a ruling o grant parole according to law, shall submit the parole ruling to the Supreme people’s Court for review and approval.</p>
<p><b>第三百四十二条</b> 报请最高人民法院核准因罪犯具有特殊情况,不受执行刑期限限制的假释案件,应当报送报请核准的报告、罪犯具有特殊情况的报告、假释裁定书各五份,以及全部案卷。</p>	<p><b>Article 342</b> When submitting a parole ruling to the Supreme People’s Court for review and approval because the offender has a special situation and the granting of parole hence is not subject to limitations on the jail term actually served by the offender, five copies of a written report requesting for review and approval, a written report specifying the special situation the offender has and the written ruling concerning the granting of parole shall be submitted [to the Supreme People’s Court] along with all case files.</p>
<p><b>第三百四十三条</b> 对因罪犯具有特殊情况,不受执行刑期限限制的假释案件,最高人民法院予以核准的,应当作出核准裁定书;不</p>	<p><b>Article 343</b> Where the Supreme People’s Court approves the grant of parole in cases where the offender has a special situation and the granting of parole hence</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>予核准的，应当作出不核准裁定书，并撤销原裁定。</p>	<p>is not subject to limitations on the jail term actually served by the offender, [the Supreme People’s Court] shall issue a written ruling approving [the parole ruling]; where [the Supreme People’s Court] disapproves the grant of parole, [the Supreme People’s Court] shall issue a written ruling disapproving the parole ruling and revoke the original ruling.</p>
<p><b>第十五章 死刑复核程序</b></p>	<p><b>Chapter 15 Death Penalty Review Procedure</b></p>
<p><b>第三百四十四条</b> 报请最高人民法院核准死刑案件，应当按照下列情形分别处理：</p> <p>（一）中级人民法院判处死刑的第一审案件，被告人未上诉、人民检察院未抗诉的，在上诉、抗诉期满后十日内报请高级人民法院复核。高级人民法院同意判处死刑的，应当在作出裁定后十日内报请最高人民法院核准；不同意的，应当依照第二审程序提审或者发回重新审判；</p> <p>（二）中级人民法院判处死刑的第一审案件，被告人上诉或者人民检察院抗诉，高级人民法院裁定维持的，应当在作出裁定后十日内报请最高人民法院核准；</p> <p>（三）高级人民法院判处死刑的第一审案件，被告人未上诉、人民检察院未抗诉的，应当在上诉、抗诉期满后十日内报请最高人民法院核准。</p> <p>高级人民法院复核死刑案件，应当讯问被告人。</p>	<p><b>Article 344</b> Cases where death sentences are imposed are subject to approval of the Supreme People’s Court and shall be handled accordingly in each of the following circumstances:</p> <p>(1) where an intermediate people’s court is the first instance court and has imposed the death sentence, if the defendant does not appeal and the people’s procuratorate does not protest, [the case] shall be submitted to a higher people’s court for review and approval within 10 days after the expiration of the time limit for appeal and protest. Where the higher people’s court approves the death sentence, [the case] shall be submitted to the Supreme People’s Court for review and approval within 10 days after the ruling of approval is made; where [the higher people’s court] disapproves the death sentence, [the case] shall be directly tried by the higher people’s court following second instance procedures or be remanded for re-adjudication;</p> <p>(2) where an intermediate people’s court is the first instance court and has</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>imposed the death sentence, if the defendant appeals or the people’s procuratorate protests and a higher people’s court rules to affirm the death sentence, [the case] shall be submitted to the Supreme People’s Court for review and approval within 10 days after the ruling is made;</p> <p>(3) where a higher people’s court is the first instance court and has imposed the death sentence, if the defendant does not appeal and the people’s procuratorate does not protest, [the case] shall be submitted to the Supreme People’s Court for review and approval within 10 days of the expiration of the time limit for appeal and protest.</p> <p>A higher people’s court, when reviewing a death sentence case, shall interrogate/interview the defendant.</p>
<p><b>第三百四十五条</b> 中级人民法院判处死刑缓期执行的第一审案件，被告人未上诉、人民检察院未抗诉的，应当报请高级人民法院核准。</p> <p>高级人民法院复核死刑缓期执行案件，应当讯问被告人。</p>	<p><b>Article 345</b> Where an intermediate people’s court is the first instance court and has imposed the death sentence with a two-year reprieve, if the defendant does not appeal and the people’s procuratorate does not protest, [the case] shall be submitted to a higher people’s court for review and approval.</p> <p>A higher people’s court, when reviewing a death sentence with a two-year reprieve, shall interrogate/interview the defendant.</p>
<p><b>第三百四十六条</b> 报请复核的死刑、死刑缓期执行案件，应当一案一报。报送的材料包括报请复核的报告，第一、二审裁判文书，死刑案件综合报告各五份以及全部案卷、证据。死刑案件综合报</p>	<p><b>Article 346</b> Each death sentence or death sentence with a two-year reprieve subject to approval shall be submitted to [the Supreme People’s Court] individually. The materials submitted shall include five copies of a written report</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>告，第一、二审裁判文书和审理报告应当附送电子文本。</p> <p>同案审理的案件应当报送全案案卷、证据。</p> <p>曾经发回重新审判的案件，原第一、二审案卷应当一并报送。</p>	<p>requesting for review and approval, the written judgments for the first and second stance trials and a comprehensive report on the death penalty case, along with all case files and evidence. Digital copies of the comprehensive report on the death penalty case, the judgments for the first and second instance trials and the adjudication report shall also be attached.</p> <p>Where multiple cases are adjudicated together, all case files and evidence for all cases that have been adjudicated together shall be submitted [to the Supreme People’s Court].</p> <p>Where a case has been remanded for retrial, case files for the original first and second instance trial shall also be submitted [to the Supreme People’s Court].</p>
<p><b>第三百四十七条</b> 报请复核的报告，应当写明案由、简要案情、审理过程和判决结果。</p> <p>死刑案件综合报告应当包括以下内容：</p> <p>（一）被告人、被害人的基本情况。被告人有前科或者曾受过行政处罚的，应当写明；</p> <p>（二）案件的由来和审理经过。案件曾经发回重新审判的，应当写明发回重新审判的原因、时间、案号等；</p> <p>（三）案件侦破情况。通过技术侦查措施抓获被告人、侦破</p>	<p><b>Article 347</b> A report requesting for review and approval shall bear in writing the causes of action, a synopsis of case facts, the adjudicating process and the judgment.</p> <p>A comprehensive report on the death penalty case shall include the following items:</p> <p>(1) basic information about the defendant and the victim. Where the defendant has criminal records or has been subjected to administrative punishment, it shall be so stated [in the report];</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>案件，以及与自首、立功认定有关的情况，应当写明；</p> <p>（四）第一审审理情况。包括控辩双方意见，第一审认定的犯罪事实，合议庭和审判委员会意见；</p> <p>（五）第二审审理或者高级人民法院复核情况。包括上诉理由、检察机关意见，第二审审理或者高级人民法院复核认定的事实，证据采信情况及理由，控辩双方意见及采纳情况；</p> <p>（六）需要说明的问题。包括共同犯罪案件中另案处理的同案犯的定罪量刑情况，案件有无重大社会影响，以及当事人的反应等情况；</p> <p>（七）处理意见。写明合议庭和审判委员会的意见。</p>	<p>(2) the origin of the case and the adjudicating process. Where a case has been remanded for re-trial, the reasons for remanding the case for re-trial as well as the timing and serial/reference number of the [original] case shall be stated therein;</p> <p>(3) investigative circumstances of the case. Circumstances where the defendant is captured or the case is resolved through technical investigations, or in which the defendant has turned him or herself in or has rendered meritorious service, shall be stated therein;</p> <p>(4) the adjudicating process of the first instance trial. Including the defending opinions and the prosecution opinions, criminal facts established during the first instance trial as well as the opinions of the collegiate panel and those of the adjudication committee;</p> <p>(5) the second instance trial or the review conducted by the higher people's court. Including grounds for appeal, opinions of the procuratorate, case facts established through review by the second instance trial or the review conducted by a higher people's court, the admission of evidence and reasons therefor, defending and prosecution opinions as well as the adoption thereof;</p> <p>(6) other matters for which explanation is necessary. Including the guilt/innocence and/or sentencing for co-defendants of a conspiracy crime</p>
--	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>adjudicated in a separate proceeding, whether or not the case has major social impact and the responses of the parties;</p> <p>(7) suggestions for handling the case. Opinions of both the collegial panel and the adjudication committee shall be clearly stated therein.</p>
<p><b>第三百四十八条</b> 复核死刑、死刑缓期执行案件，应当全面审查以下内容：</p> <p>（一）被告人的年龄，被告人有无刑事责任能力、是否系怀孕的妇女；</p> <p>（二）原判认定的事实是否清楚，证据是否确实、充分；</p> <p>（三）犯罪情节、后果及危害程度；</p> <p>（四）原判适用法律是否正确，是否必须判处死刑，是否必须立即执行；</p> <p>（五）有无法定、酌定从重、从轻或者减轻处罚情节；</p> <p>（六）诉讼程序是否合法；</p> <p>（七）应当审查的其他情况。</p>	<p><b>Article 348</b> When reviewing a death sentence or a death sentence with a two-year reprieve, [the Supreme People’s Court] shall conduct a comprehensive examination into the following items:</p> <p>(1) the age of the defendant, whether or not the defendant has the capacity to bear criminal liability and whether [the defendant] is a pregnant woman;</p> <p>(2) whether or not the facts established in the original judgment are clear and whether or not the evidence is reliable and sufficient;</p> <p>(3) the circumstances, consequence and the degree of severity of the crime;</p> <p>(4) whether or not the application of law was appropriate in the original judgment, whether or not the death sentence must be imposed and whether or not it must be a death sentence that has to be immediately executed.</p> <p>(5) whether or not there are statutorily prescribed circumstances that require heavier or lesser punishments within the legally prescribed limits of</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>punishment, circumstances that allow, within a court's discretion, heavier or lesser punishments within the legally prescribed limits of punishment, or circumstances that require or allow within the court's discretion punishments lesser than the legally prescribed minimum;</p> <p>(6) whether or not the proceedings were lawfully conducted</p> <p>(7) other circumstances that shall be examined.</p>
<p><b>第三百四十九条</b> 高级人民法院复核死刑缓期执行案件，应当按照下列情形分别处理：</p> <p>（一）原判认定事实和适用法律正确、量刑适当、诉讼程序合法的，应当裁定核准；</p> <p>（二）原判认定的某一具体事实或者引用的法律条款等存在瑕疵，但判处被告人死刑缓期执行并无不当的，可以在纠正后作出核准的判决、裁定；</p> <p>（三）原判认定事实正确，但适用法律有错误，或者量刑过重的，应当改判；</p> <p>（四）原判事实不清、证据不足的，可以裁定不予核准，并撤销原判，发回重新审判，或者依法改判；</p> <p>（五）复核期间出现新的影响定罪量刑的事实、证据的，可</p>	<p><b>Article 349</b> A higher people's court shall handle cases of death sentence with a two-year reprieve that are subject to its review and approval correspondingly in each the following circumstances:</p> <p>(1) where the original judgment is correct in its application of law and appropriate in sentencing and the proceedings were lawfully conducted, the original judgment shall be approved;</p> <p>(2) where some specific fact established in the original judgment or the application of some law is flawed, yet it is not inappropriate to sentence the defendant to death sentence with a two-year reprieve, a rectification may be made and the death sentence with a two-year reprieve then approved;</p> <p>(3) where the facts established in the original judgment are accurate but the application of law is erred, or where the sentenced imposed is disproportionately</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>以裁定不予核准，并撤销原判，发回重新审判，或者依照本解释第二百二十条规定审理后依法改判；</p> <p>（六）原审违反法定诉讼程序，可能影响公正审判的，应当裁定不予核准，并撤销原判，发回重新审判。</p> <p>高级人民法院复核死刑缓期执行案件，不得加重被告人的刑罚。</p>	<p>severe, the original judgment shall be modified;</p> <p>(4) where the facts established in the original judgment are unclear and evidence is insufficient, either may the death sentence with a two-year reprieve be disapproved, the original judgment overturned and the case remanded for re-adjudication; or the original judgment may be modified according to law;</p> <p>(5) where new facts or evidence that may affect guilt/innocence and/or the sentence emerges when a case is under review, either may the death sentence with a two-year reprieve may be disapproved, the original judgment overturned and the case remanded for re-adjudication; or the original judgment may be modified after [the higher people’s court] adjudicates the case following Article 220 of this Interpretation.</p> <p>(6) where there were procedural improprieties in the original adjudicating, which may affect the fairness of the trial, the death sentence with a two-year reprieve shall be disapproved, the original judgment overturned and the case remanded for re-adjudication.</p> <p>When reviewing a death sentence with a two-year reprieve, a higher people’s court must not impose a sentence that is heavier than the original one.</p>
<p><b>第三百五十条</b> 最高人民法院复核死刑案件，应当按照下列情形分别处理：</p>	<p><b>Article 350</b> The Supreme People’s Court shall handle death penalty cases subject to its review accordingly in each of the following circumstances:</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(一) 原判认定事实和适用法律正确、量刑适当、诉讼程序合法的，应当裁定核准；</p> <p>(二) 原判认定的某一具体事实或者引用的法律条款等存在瑕疵，但判处被告人死刑并无不当的，可以在纠正后作出核准的判决、裁定；</p> <p>(三) 原判事实不清、证据不足的，应当裁定不予核准，并撤销原判，发回重新审判；</p> <p>(四) 复核期间出现新的影响定罪量刑的事实、证据的，应当裁定不予核准，并撤销原判，发回重新审判；</p> <p>(五) 原判认定事实正确，但依法不应当判处死刑的，应当裁定不予核准，并撤销原判，发回重新审判；</p> <p>(六) 原审违反法定诉讼程序，可能影响公正审判的，应当裁定不予核准，并撤销原判，发回重新审判。</p>	<p>(1) where the establishment of the facts and application of law the original judgment are, the sentence imposed is appropriate and the proceedings were lawfully conducted, the death penalty shall be approved;</p> <p>(2) where some specific fact established in the original judgment or the application of some law therein is flawed, yet it is not inappropriate to impose the death sentence, rectification may be made and the death penalty then approved;</p> <p>(3) where the facts established in the original judgment are unclear and evidence is insufficient, the death sentence shall be disapproved, the original judgment overturned and the case remanded for re-adjudication;</p> <p>(4) where new facts or evidence that can affect guilt/innocent and/or sentence emerges when the case is under review, the death sentence shall be disapproved, the original judgment overturned and the case remanded for re-adjudication;</p> <p>(5) where the facts established in the original judgment are accurate yet the death sentence is not legally warranted, the death sentence shall be disapproved, the original judgment overturned and the case remanded for re-adjudication;</p>
---	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(6) where there were procedural improprieties in the original adjudicating proceedings, may affect the fairness of the trial, the death sentence shall be disapproved, the original judgment overturned and the case remanded back for re-adjudication.</p>
<p><b>第三百五十一条</b> 对一人有两罪以上被判处死刑的数罪并罚案件，最高人民法院复核后，认为其中部分犯罪的死刑判决、裁定事实不清、证据不足的，应当对全案裁定不予核准，并撤销原判，发回重新审判；认为其中部分犯罪的死刑判决、裁定认定事实正确，但依法不应当判处死刑的，可以改判，并对其他应当判处死刑的犯罪作出核准死刑的判决。</p>	<p><b>Article 351</b> Where a defendant is sentenced to death for committing more than one crime and the Supreme People’s Court, after review, believes that the facts are unclear and the evidence is insufficient in regard to the death sentence for a portion of the crimes, all death sentences originally imposed in the case shall be disapproved, the original judgment overturned and the case remanded for re-adjudication; where [the Supreme People’s Court] believes that the establishment of the case facts is correct yet the death sentence is not legally warranted for a portion of the crimes, the original judgment may be modified and the death sentences concerning other crimes where the death sentence is warranted shall be approved.</p>
<p><b>第三百五十二条</b> 对有两名以上被告人被判处死刑的案件，最高人民法院复核后，认为其中部分被告人的死刑判决、裁定事实不清、证据不足的，应当对全案裁定不予核准，并撤销原判，发回重新审判；认为其中部分被告人的死刑判决、裁定认定事实正确，但依法不应当判处死刑的，可以改判，并对其他应当判处死刑的被告人作出核准死刑的判决。</p>	<p><b>Article 352</b> Where there are more than one defendant being sentenced to death in a case and the Supreme People’s Court, after review, believes that the death sentences imposed on some of the defendants are not supported by clear facts and sufficient evidence, all death sentences in the case shall be disapproved, the original judgment overturned and the case remanded for retrial; where [the Supreme People’s Court] believes that, although the establishment of facts is correct, the death sentences imposed on some of the defendants are inappropriate, the specific death sentences may be modified and the death sentences appropriately imposed on other defendants shall be approved.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第三百五十三条</b> 最高人民法院裁定不予核准死刑的，根据案件情况，可以发回第二审人民法院或者第一审人民法院重新审判。</p> <p>第一审人民法院重新审判的，应当开庭审理。第二审人民法院重新审判的，可以直接改判；必须通过开庭查清事实、核实证据或者纠正原审程序违法的，应当开庭审理。</p>	<p><b>Article 353</b> Where the Supreme People’s Court rules to disapprove a death sentence, the case, depending on its circumstances, may be remanded to the people’s court that served as the second instance court or the people’s court that served as the first instance court for retrial.</p> <p>Where the people’s court that served as the first instance court retries the case, the case shall be adjudicated in open court. Where the people’s court that served as the second instance court retries the case, the original judgment may be directly modified; where the clarification of facts, verification of evidence or rectification of the procedural improprieties in the original adjudicating proceedings must be done in open court, the case shall be adjudicated in open court.</p>
<p><b>第三百五十四条</b> 高级人民法院依照复核程序审理后报请最高人民法院核准死刑，最高人民法院裁定不予核准，发回高级人民法院重新审判的，高级人民法院可以依照第二审程序提审或者发回重新审判。</p>	<p><b>Article 354</b> Where a higher people’s court submits a case to the Supreme People’s Court for approval of death sentence after reviewing the case by itself following the review procedure and the Supreme People’s Court rules to disapprove the death sentence and remands the case to the higher people’s court for retrial, the higher people’s court may try the case itself following second instance procedures, or it may remand the case for retrial.</p>
<p><b>第三百五十五条</b> 最高人民法院裁定不予核准死刑，发回重新审判的案件，原审人民法院应当另行组成合议庭审理，但本解释第三百五十条第四项、第五项规定的案件除外。</p>	<p><b>Article 355</b> Where the Supreme People’s Court rules to disapprove a death sentence and remands the case for retrial, the people’s court that delivered the original judgment shall assemble another collegial panel to adjudicate the case, except for in cases otherwise stipulated in Subparagraph (4) and subparagraph (5) of Article 350 of this Interpretation.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第三百五十六条</b> 死刑复核期间，辩护律师要求当面反映意见的，最高人民法院有关合议庭应当在办公场所听取其意见，并制作笔录；辩护律师提出书面意见的，应当附卷。</p>	<p><b>Article 356</b> When a case is under death penalty review [before the Supreme People’s Court] and defense attorneys of the case wish to submit opinions in a face-to-face manner, the collegial panel concerned at the Supreme People’s Court shall meet the defense attorney at office premises to hear their opinions and produce transcripts of the meetings; where the defense attorneys submit written opinions, those opinions shall be included in the case file.</p>
<p><b>第三百五十七条</b> 死刑复核期间，最高人民检察院提出意见的，最高人民法院应当审查，并将采纳情况及理由反馈最高人民检察院。</p>	<p><b>Article 357</b> When a case is under death penalty review [before the Supreme People’s Court] and the Supreme People’s Procuratorate provides advice, the Supreme People’s Court shall review [the advice] and give feedback to the Supreme People’s Procuratorate in regard to whether its advice is adopted and for what reasons.</p>
<p><b>第三百五十八条</b> 最高人民法院应当根据有关规定向最高人民检察院通报死刑案件复核结果。</p>	<p><b>Article 358</b> The Supreme People’s Court shall inform the Supreme People’s Procuratorate of the results of death penalty reviews in accordance with applicable regulations.</p>
<p></p>	<p></p>
<p><b>第十六章 查封、扣押、冻结财物及其处理</b></p>	<p><b>Chapter 16 Sealing, Seizing and Freezing of Property and Its Processing</b></p>
<p><b>第三百五十九条</b> 人民法院对查封、扣押、冻结的被告人财物及其孳息，应当妥善保管，并制作清单，附卷备查；对人民检察院随案移送的被告人财物及其孳息，应当根据清单核查后妥善保管。任何单位和个人不得挪用或者自行处理。</p> <p>查封不动产、车辆、船舶、航空器等财物，应当扣押其权利证书，经拍照或者录像后原地封存，或者交持有人、被告人的近亲属保</p>	<p><b>Article 359</b> The people’s court shall preserve and keep on file for future reference the sealed, seized or frozen property and proceeds of the accused. After inspection, the property and proceeds of the defendant that have been transferred with the case by the people’s procuratorate shall be preserved in accordance with the inventory. No unit or individual shall embezzle such property or dispose of it without authorization.</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>管，登记并写明财物的名称、型号、权属、地址等详细情况，并通知有关财物的登记、管理部门办理查封登记手续。</p> <p>扣押物品，应当登记并写明物品名称、型号、规格、数量、重量、质量、成色、纯度、颜色、新旧程度、缺损特征和来源等。扣押货币、有价证券，应当登记并写明货币、有价证券的名称、数额、面额等，货币应当存入银行专门账户，并登记银行存款凭证的名称、内容。扣押文物、金银、珠宝、名贵字画等贵重物品以及违禁品，应当拍照，需要鉴定的，应当及时鉴定。对扣押的物品应当根据有关规定及时估价。</p> <p>冻结存款、汇款、债券、股票、基金份额等财产，应当登记并写明编号、种类、面值、张数、金额等。</p>	<p>For the sealing of real estate, motor-vehicles, boats, aircraft and similar property, the document of title shall be seized, and after taking photographs or video records of the property, such property shall be sealed in situ, or returned to the owner, or an immediate family member of the accused for safekeeping after registering in writing the name, model, ownership, address or other details. Departments responsible for registration and seizure of property shall be notified that they must handle the sealing and registration formalities.</p> <p>Seized goods shall be registered in writing according to name, model, dimensions, amount, weight, quality, purity, grade, color, age, damage, origin, etc. Seized currency and securities shall be registered in writing according to the type of currency, the security name, quantity, denomination, etc. Currency shall be stored in a dedicated bank account and the name of the deposit certificate and contents shall be registered. Seized cultural relics, precious metals, jewels, rare calligraphy as well as other precious items and contraband shall be photographed, and where necessary, valued in a timely manner.</p> <p>Frozen deposits, money transfers, bonds, stocks, fund shares and related property shall be registered in writing according to serial number, class, denomination, number, value, etc.</p>
<p><b>第三百六十条</b> 对被害人的合法财产，权属明确的，应当依法及时返还，但须经拍照、鉴定、估价，并在案卷中注明返还的理由，</p>	<p><b>Article 360</b> The victim’s lawful property with clear title shall be returned in a timely manner in accordance with the law. However, it shall be subject to</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>将原物照片、清单和被害人的领取手续附卷备查；权属不明的，应当在人民法院判决、裁定生效后，按比例返还被害人，但已获退赔的部分应予扣除。</p>	<p>photographic record, forensic analysis, price estimation and a record explaining the reason for return, which shall be archived; the original photographs, inventory documents and withdrawal documents shall be stored in the case file for future reference. Where title is unclear, it shall be proportionately returned to the victim, once the people’s court’s ruling or judgment has become effective, however if the victim has already been awarded restitution, then so much shall be deducted from the apportionment of the property.</p>
<p><b>第三百六十一条</b> 审判期间，权利人申请出卖被扣押、冻结的债券、股票、基金份额等财产，人民法院经审查，认为不损害国家利益、被害人利益，不影响诉讼正常进行的，以及扣押、冻结的汇票、本票、支票有效期即将届满的，可以在判决、裁定生效前依法出卖，所得价款由人民法院保管，并及时告知当事人或者其近亲属。</p>	<p><b>Article 361</b> During adjudication, the title owner may apply to sell seized or frozen bonds, stocks, fund shares or other property. The people’s court shall examine such applications, ensuring that they pose no harm to the interests of the victim or the State, and will not affect the ordinary proceeding of the action. If seized or frozen money orders, promissory notes or checks are shortly due to expire, the people’s court may re-adjudicate, or, in accordance with the law, sell the property before the judgment or ruling takes effect. The people’s court shall take custody of the proceeds of such sale and shall notify the parties or their immediate family members in a timely manner.</p>
<p><b>第三百六十二条</b> 对作为证据使用的实物，包括作为物证的货币、有价证券等，应当随案移送。第一审判决、裁定宣告后，被告人上诉或者人民检察院抗诉的，第一审人民法院应当将上述证据移送第二审人民法院。</p>	<p><b>Article 362</b> Physical objects that are being used as evidence, including currency and securities, shall be transferred with the case. If the accused or the people’s procuratorate appeal after the delivery of the first instance decision or judgment, then the aforementioned evidence shall be transferred to the people’s court of second instance.</p>
<p><b>第三百六十三条</b> 对不宜移送的实物，应当根据情况，分别审查以下内容：</p>	<p><b>Article 363</b> Physical objects not suitable for transfer shall be divided, according to the circumstances, into the following categories:</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(一) 大宗的、不便搬运的物品，查封、扣押机关是否随案移送查封、扣押清单，并附原物照片和封存手续，注明存放地点等；</p> <p>(二) 易腐烂、霉变和不易保管的物品，查封、扣押机关变卖处理后，是否随案移送原物照片、清单、变价处理的凭证（复印件）等；</p> <p>(三) 枪支弹药、剧毒物品、易燃易爆物品以及其他违禁品、危险物品，查封、扣押机关根据有关规定处理后，是否随案移送原物照片和清单等。</p> <p>上述不宜移送的实物，应当依法鉴定、估价的，还应当审查是否附有鉴定、估价意见。</p> <p>对查封、扣押的货币、有价证券等未移送的，应当审查是否附有原物照片、清单或者其他证明文件。</p>	<p>(1) if the objects are large and inconvenient to move; the sealing or seizing authority shall transfer with the case an inventory of the objects along with original photographs, storage documents and a written account of the storage location, etc.;</p> <p>(2) if the objects are perishable and inconvenient to store, the sealing or seizing authority, after selling off the objects, shall transfer with the case the inventory and valuation documents (copies), etc.;</p> <p>(3) if the objects are firearms and ammunition, toxins, flammable objects, or other contraband or hazardous materials, the sealing or seizing authority shall, after disposing of the property according the relevant regulations, transfer original photographs and the inventory, etc.</p> <p>The above-mentioned objects unsuitable for transfer shall be forensically analyzed and be valued in accordance with the law and shall be examined for any attached prior forensic analysis and valuation opinions.</p> <p>Sealed or seized currency and valuable securities that have not been transferred shall be examined for attached original photos, inventories, and other evidentiary documents.</p>
<p><b>第三百六十四条</b> 法庭审理过程中，对查封、扣押、冻结的财物</p>	<p><b>Article 364</b> During trial proceedings, the ownership of sealed, seized and frozen</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>及其孳息，应当调查其权属情况，是否属于违法所得或者依法应当追缴的其他涉案财物。</p> <p>案外人对查封、扣押、冻结的财物及其孳息提出权属异议的，人民法院应当审查并依法处理。</p> <p>经审查，不能确认查封、扣押、冻结的财物及其孳息属于违法所得或者依法应当追缴的其他涉案财物的，不得没收。</p>	<p>property shall be investigated, including whether said property and its proceeds consists of illegal income or other case-related property that must be recovered in accordance with the law.</p> <p>Non-parties may submit title objections regarding sealed, seized and frozen property. The people’s court shall investigate and process such objections in accordance with the law.</p> <p>If, after investigation, sealed, seized and frozen property cannot be confirmed as either illegal gains or property that must be recovered according to law to persons other than those involved in the case, it must not be confiscated.</p>
<p><b>第三百六十五条</b> 对查封、扣押、冻结的财物及其孳息，应当在判决书中写明名称、金额、数量、存放地点及其处理方式等。涉案财物较多，不宜在判决主文中详细列明的，可以附清单。</p> <p>涉案财物未随案移送的，应当在判决书中写明，并写明由查封、扣押、冻结机关负责处理。</p>	<p><b>Article 365</b> The name, monetary value, storage location and manner of processing of sealed, seized and frozen property and its proceeds shall be written in the court’s opinion. If there is a relatively large amount of case-related property, and it is not convenient to provide a detailed list within the main body of the court’s opinion, an inventory can be attached.</p> <p>If any case-related property has not been transferred, it shall be listed in the opinion, along with the sealing, seizing and freezing authority responsible for processing.</p>
<p><b>第三百六十六条</b> 查封、扣押、冻结的财物及其孳息，经审查，确属违法所得或者依法应当追缴的其他涉案财物的，应当判决返还被害人，或者没收上缴国库，但法律另有规定的除外。</p>	<p><b>Article 366</b> Sealed, seized or frozen property and its proceeds that after investigation are determined to be illegal income or other case-related property which must be recovered in accordance with the law, shall be returned by court</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaalaw@nyu.edu](mailto:usasiaalaw@nyu.edu).

<p>判决返还被害人的涉案财物，应当通知被害人认领；无人认领的，应当公告通知；公告满三个月无人认领的，应当上缴国库；上缴国库后有人认领，经查证属实的，应当申请退库予以返还；原物已经拍卖、变卖的，应当返还价款。</p> <p>对侵犯国有财产的案件，被害单位已经终止且没有权利义务继受人，或者损失已经被核销的，查封、扣押、冻结的财物及其孳息应当上缴国库。</p>	<p>order to the victim or shall be confiscated and transferred to the State, unless otherwise prescribed by law.</p> <p>When returning illegal gains to the victim by court order, victim claimants shall be notified. Where there is no claimant, public notice shall be issued. After three months public notice, if no one submits a claim, the property shall be transferred to the State. If transfer to the State has already occurred, the claimant shall submit a petition for return. If the original property has already been auctioned or sold, the proceeds shall be returned.</p> <p>In cases involving offences against state property, where the injured unit no longer exists and has not designated a successor in law, or the loss has already been written-off, the sealed, seized or frozen property shall be transferred to the State.</p>
<p><b>第三百六十七条</b> 随案移送的或者人民法院查封、扣押的财物及其孳息，由第一审人民法院在判决生效后负责处理。</p> <p>涉案财物未随案移送的，人民法院应当在判决生效后十日内，将判决书、裁定书送达查封、扣押机关，并告知其在一个月内将执行回单送回。</p>	<p><b>Article 367</b> The people’s court of first instance shall be responsible, after its ruling comes into effect, for processing property transferred with the case, or property sealed or seized by the people’s court</p> <p>When case-related property has not been transferred with the case, the people’s court shall serve the sealing and seizing authority with the written ruling or judgment within 10 days of the ruling coming into effect, and notify them to return an implementation receipt within one month.</p>
<p><b>第三百六十八条</b> 对冻结的存款、汇款、债券、股票、基金份额</p>	<p><b>Article 368</b> When frozen deposits, money transfers, bonds, stock, fund shares</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>等财产判决没收的，第一审人民法院应当在判决生效后，将判决书、裁定书送达相关金融机构和财政部门，通知相关金融机构依法上缴国库并在接到执行通知书后十五日内，将上缴国库的凭证、执行回单送回。</p>	<p>and similar property have been confiscated by court order, the people's court of first instance, after the ruling comes into effect, shall transfer the written judgment or ruling to the relevant financial authorities, and notify those authorities to transfer the funds to the treasury in accordance with the law, and to return the transfer certificate and receipt of execution within 15 days of receiving the enforcement notice.</p>
<p><b>第三百六十九条</b> 查封、扣押、冻结的财物与本案无关但已列入清单的，应当由查封、扣押、冻结机关依法处理。</p> <p>查封、扣押、冻结的财物属于被告人合法所有的，应当在赔偿被害人损失、执行财产刑后及时返还被告人；财物未随案移送的，应当通知查封、扣押、冻结机关将赔偿被害人损失、执行财产刑的部分移送人民法院。</p>	<p><b>Article 369</b> Sealed, seized and frozen property unrelated to the present case but that has been entered into the inventory documents shall be processed by the sealing, seizing and freezing authority in accordance with the law.</p> <p>Sealed, seized and frozen property that is legally possessed by the accused, shall, after compensating the victim and carrying out financial penalties, be returned to the accused in a timely manner. When property has not been transferred with the case, the sealing, seizing and freezing authority shall be notified that they must be used to compensate the victim, or as part of the execution of a penalty by way of asset forfeiture to the people's court.</p>
<p><b>第三百七十条</b> 查封、扣押、冻结财物及其处理，本解释没有规定的，参照适用法律、其他司法解释的有关规定。</p>	<p><b>Article 370</b> In regards to sealing, seizing and freezing property, and its processing, if anything is not specified by this interpretation, consult the applicable law, and the relevant provisions of other judicial interpretations.</p>
<p><b>第十七章 审判监督程序</b></p>	<p><b>Chapter 17 Adjudication Supervision Procedure</b></p>
<p><b>第三百七十一条</b> 当事人及其法定代理人、近亲属对已经发生法律效力效力的判决、裁定提出申诉的，人民法院应当审查处理。</p>	<p><b>Article 371</b> If a party, his or her agent ad litem or immediate family member files</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>案外人认为已经发生法律效力判决、裁定侵害其合法权益，提出申诉的，人民法院应当审查处理。</p> <p>申诉可以委托律师代为进行。</p>	<p>a petition for collateral relief of a judgment or ruling that has already taken legal effect, the people's court must review and address the petition for collateral relief.</p> <p>If a person not associated with the case believes that a judgment or ruling that has already taken legal effect infringes upon his legal rights or interests, and files a petition for collateral relief, the people's court must review and address the petition for collateral relief.</p> <p>An attorney may be engaged to pursue a petition for collateral relief on one's behalf.</p>
<p><b>第三百七十二条</b> 向人民法院申诉，应当提交以下材料：</p> <p>（一）申诉状。应当写明当事人的基本情况、联系方式以及申诉的事实与理由；</p> <p>（二）原一、二审判判决书、裁定书等法律文书。经过人民法院复查或者再审的，应当附有驳回通知书、再审决定书、再审判决书、裁定书；</p> <p>（三）其他相关材料。以有新的证据证明原判决、裁定认定的事实确有错误为由申诉的，应当同时附有相关证据材料；申请人民法院调查取证的，应当附有相关线索或者材料。</p>	<p><b>Article 372</b> In order to file a petition for collateral relief with the people's court, the following materials must be submitted:</p> <p>(1) collateral relief petition form. The basic circumstances, contact information and facts and reasons in support of the petition for collateral relief must be clearly specified in writing;</p> <p>(2) original first and second instance official judgments or order documents and other legal documents. For those cases that have undergone people's court review or re-adjudication, the written notice of dismissal, re-adjudication decision, verdict upon re-adjudication, or ruling, must be appended;</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>申诉不符合前款规定的，人民法院应当告知申诉人补充材料；申诉人对必要材料拒绝补充且无正当理由的，不予审查。</p>	<p>(3) other related materials. If there is new evidence indicating that the factual findings in the original judgment or ruling contain definite error, constituting grounds for collateral relief, the evidentiary materials must be attached; if an application is filed with people’s court requesting it to investigate and collect evidence, the leads or materials supporting the application must be appended.</p> <p>If the petition for collateral relief does not meet the above requirements, the people’s court must notify the petitioner for collateral relief to provide supplementary materials; if the petitioner refuses to provide the necessary supplementary materials and does not provide a legitimate reason, the people’s court will not review the collateral appeal.</p>
<p><b>第三百七十三条</b> 申诉由终审人民法院审查处理。但是，第二审人民法院裁定准许撤回上诉的案件，申诉人对第一审判决提出申诉的，可以由第一审人民法院审查处理。</p> <p>上一级人民法院对未经终审人民法院审查处理的申诉，可以告知申诉人向终审人民法院提出申诉，或者直接交终审人民法院审查处理，并告知申诉人；案件疑难、复杂、重大的，也可以直接审查处理。</p> <p>对未经终审人民法院及其上一级人民法院审查处理，直接向上级人民法院申诉的，上级人民法院可以告知申诉人向下级人民法院提出。</p>	<p><b>Article 373</b> Review and processing of petitions for collateral relief are conducted by the highest people’s court to have heard the case. However, where a second instance people’s court has permitted the withdrawal of an appeal, if the petitioner files a petition for collateral relief based upon the first instance judgment, it may be reviewed and handled by the first instance people’s court.</p> <p>If a petition for collateral relief has not yet been reviewed and handled by the highest people’s court to have heard the case, the people’s court one level above that court may notify a petitioner for collateral relief to file the petition with the highest people’s court to have heard the case, or may refer it directly to the highest people’s court to have heard the case for review and processing, and</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	<p>notify the petitioner; if the case is difficult, complex, or particularly serious, the people’s court one level above may also review and process it directly.</p> <p>If a petition for collateral relief has not yet been reviewed by the highest people’s court to have heard the case, nor by the people’s court one level above it, and a petition for collateral relief is filed directly with a higher people’s court, the higher people’s court may notify the petitioner to file the petition for collateral relief in a lower people’s court.</p>
<p><b>第三百七十四条</b> 对死刑案件的申诉,可以由原核准的人民法院直接审查处理,也可以交由原审人民法院审查。原审人民法院应当写出审查报告,提出处理意见,层报原核准的人民法院审查处理。</p>	<p><b>Article 374</b> In petitions for collateral relief in death penalty cases, the people’s court that conducted the original death penalty review and approval may also directly review and handle the petition for collateral relief, or it may refer the review it to the people’s court that conducted the original adjudication of the case. The people’s court that conducted the original adjudication must write a review report, provide its opinion on the handling of the matter, and report up the court hierarchy to the people’s court that conducted the original review and approval for its review and processing of the petition.</p>
<p><b>第三百七十五条</b> 对立案审查的申诉案件,应当在三个月内作出决定,至迟不得超过六个月。</p> <p>经审查,具有下列情形之一的,应当根据刑事诉讼法第二百四十二条的规定,决定重新审判:</p> <p>(一)有新的证据证明原判决、裁定认定的事实确有错误,可能影响定罪量刑的;</p>	<p><b>Article 375</b> When petitions for collateral relief are being reviewed prior to a determination as to whether a file will be opened for the case or not, a decision on opening a file must be reached within three months, which period must not exceed six months in total.</p> <p>If, following review, any one of the following circumstances exists, a decision must be made to re-adjudicate the case, according to the provisions of</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(二) 据以定罪量刑的证据不确实、不充分、依法应当排除的;</p> <p>(三) 证明案件事实的主要证据之间存在矛盾的;</p> <p>(四) 主要事实依据被依法变更或者撤销的;</p> <p>(五) 认定罪名错误的;</p> <p>(六) 量刑明显不当的;</p> <p>(七) 违反法律关于溯及力规定的;</p> <p>(八) 违反法律规定的诉讼程序, 可能影响公正裁判的;</p> <p>(九) 审判人员在审理该案件时有贪污受贿、徇私舞弊、枉法裁判行为的。</p> <p>申诉不具有上述情形的, 应当说服申诉人撤回申诉; 对仍然坚持申诉的, 应当书面通知驳回。</p>	<p>Article 242 of the Criminal Procedure Law:</p> <p>(1) there is new evidence indicating that the factual findings in the original judgment or ruling contain definite error which could influence the conviction or sentence;</p> <p>(2) evidence that constituted a basis for conviction or sentencing is not accurate or complete, and shall be excluded according to the law;</p> <p>(3) contradictions exist among the principal items of evidence that proved the facts of the case;</p> <p>(4) the law forming the basis for an important factual finding has been altered or revoked;</p> <p>(5) the offense of conviction is in error;</p> <p>(6) the sentence is clearly improper;</p> <p>(7) a law or regulation regarding retroactive effect was violated;</p> <p>(8) litigation procedures in violation of the law or regulations occurred that could influence the impartiality of the judgment;</p>
--	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(9) adjudication personnel, when adjudicating the case, had engaged in corruption or accepted bribes, manipulated the justice system for personal gain, or engaged in capricious or arbitrary acts.</p> <p>If the petition for collateral relief does not involve any of the abovementioned circumstances, the petitioner must be persuaded to withdraw the petition for collateral relief; if the petitioner nevertheless insists on pursuing the petition for collateral relief, he or she must be notified in writing of its rejection.</p>
<p><b>第三百七十六条</b> 具有下列情形之一，可能改变原判决、裁定据以定罪量刑的事实的证据，应当认定为刑事诉讼法第二百四十二条第一项规定的“新的证据”：</p> <p>（一）原判决、裁定生效后新发现的证据；</p> <p>（二）原判决、裁定生效前已经发现，但未予收集的证据；</p> <p>（三）原判决、裁定生效前已经收集，但未经质证的证据；</p> <p>（四）原判决、裁定所依据的鉴定意见，勘验、检查等笔录或者其他证据被改变或者否定的。</p>	<p><b>Article 376</b> If one of the following circumstances exists, evidence of facts underlying the conviction or sentence, which could alter the original judgment or ruling, must be designated as “new evidence” pursuant to Article 242, paragraph 1 of the Criminal Procedure Law:</p> <p>(1) evidence was newly discovered following the effective date of the original judgment or ruling;</p> <p>(2) evidence was already discovered but was not collected prior to the effective date of the original judgment or ruling;</p> <p>(3) evidence was already collected but was not examined by the opposing party prior to the effective date of the original judgment or decision;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	(4) forensic analyst opinions, crime scene investigation, inspection, related reports, or other evidence that constituted a basis for the original judgment or ruling, was changed or contradicted.
<p><b>第三百七十七条</b> 申诉人对驳回申诉不服的,可以向上一级人民法院申诉。上一级人民法院经审查认为申诉不符合刑事诉讼法第二百四十二条和本解释第三百七十五条第二款规定的,应当说服申诉人撤回申诉;对仍然坚持申诉的,应当驳回或者通知不予重新审判。</p>	<p><b>Article 377</b> The petitioner for collateral relief who objects to the rejection of the petition may file the petition for collateral relief with the people’s court one level above. If, following review, the people’s court one level above finds that the petition for collateral relief does not satisfy the provisions of Article 242 of the Criminal Procedure Law and Article 375, paragraph 2 of the present Interpretation, the petitioner must be persuaded to withdraw the petition for collateral relief; if the petitioner still insists on pursuing the petition for collateral relief, it must be rejected, or the petitioner must be notified that there will not be a re-adjudication.</p>
<p><b>第三百七十八条</b> 各级人民法院院长发现本院已经发生法律效力效力的判决、裁定确有错误的,应当提交审判委员会讨论决定是否再审。</p>	<p><b>Article 378</b> If the court president of a people’s court at any level realizes, after a judgment or ruling of that court has taken legal effect, that the judgment or ruling contains definite error, the court president must submit the matter to the adjudication committee for discussion of the decision whether or not to re-adjudicate the case.</p>
<p><b>第三百七十九条</b> 上级人民法院发现下级人民法院已经发生法律效力效力的判决、裁定确有错误的,可以指令下级人民法院再审;原判决、裁定认定事实正确但适用法律错误,或者案件疑难、复杂、重大,或者有不宜由原审人民法院审理情形的,也可以提审。</p> <p>上级人民法院指令下级人民法院再审的,一般应当指令原审</p>	<p><b>Article 379</b> If any higher level people’s court realizes that a judgment or ruling of a lower level people’s court, which has already taken legal effect, contains definite error, it may instruct the lower level people’s court to re-adjudicate the case; if the facts underlying the original judgment or ruling are correct but the law was incorrectly applied, or if the case is difficult, complex or particularly serious, or if it is inappropriate to have the people’s court that conducted the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>人民法院以外的下级人民法院审理；由原审人民法院审理更有利于查明案件事实、纠正裁判错误的，可以指令原审人民法院审理。</p>	<p>original trial adjudicate the case, the higher court may take jurisdiction over and adjudicate it.</p> <p>If any higher level people’s court instructs a lower level people’s court to re-adjudicate a case, it shall generally instruct a lower level people’s court other than the one that conducted the original trial to adjudicate the case; but where having the people’s court that conducted the original trial adjudicate the case would aid in the ability to investigate the facts clearly or to correct errors in the judgment, the higher level people’s court may instruct the people’s court that conducted the original trial to adjudicate the case.</p>
<p><b>第三百八十条</b> 对人民检察院依照审判监督程序提出抗诉的案件，人民法院应当在收到抗诉书后一个月内立案。但是，有下列情形之一的，应当区别情况予以处理：</p> <p>（一）对不属于本院管辖的，应当将案件退回人民检察院；</p> <p>（二）按照抗诉书提供的住址无法向被抗诉的原审被告人送达抗诉书的，应当通知人民检察院在三日内重新提供原审被告人的住址；逾期未提供的，将案件退回人民检察院；</p> <p>（三）以有新的证据为由提出抗诉，但未附相关证据材料或者有关证据不是指向原起诉事实的，应当通知人民检察院在三日内补送相关材料；逾期未补送的，将案件退回人民检察院。</p> <p>决定退回的抗诉案件，人民检察院经补充相关材料后再次抗</p>	<p><b>Article 380</b> For cases in which the people’s procuratorate files a procuratorial appeal pursuant to adjudication supervision procedure, the people’s court must open a case file within one month of receiving the written procuratorial appeal. However, if any one of the following circumstances exists, the case must be handled in different manners depending upon the circumstances:</p> <p>(1) if outside the jurisdiction of the court at issue, the case must be sent back to the people’s procuratorate;</p> <p>(2) if, using the residential address provided in the written procuratorial appeal, the appeal cannot be delivered to the respondent, the defendant in the original case, the people’s court must notify the people’s procuratorate within three days to provide the original defendant’s residential address again; if not</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>诉，经审查符合受理条件的，人民法院应当受理。</p>	<p>timely provided, the case is to be sent back to the people’s procuratorate;</p> <p>(3) if new evidence is the basis for the filing of a procuratorial appeal, but the related evidentiary materials are not appended or the evidence in question is not related to the facts of the original prosecution, the people’s procuratorate must be notified within three days to send supplementary materials; if supplementary materials are not timely sent, the case is to be sent back to the people’s procuratorate.</p> <p>For cases in which a procuratorial appeal is filed and a decision is made to send the case back, if, after the people’s procuratorate has provided supplementary materials, it files another procuratorial appeal, which, after review, satisfies the conditions for acceptance, the people’s court must accept the case.</p>
<p><b>第三百八十一条</b> 对人民检察院依照审判监督程序提出抗诉的案件，接受抗诉的人民法院应当组成合议庭审理。对原判事实不清、证据不足，包括有新的证据证明原判可能有错误，需要指令下级人民法院再审的，应当在立案之日起一个月内作出决定，并将指令再审决定书送达抗诉的人民检察院。</p>	<p><b>Article 381</b> For cases in which the people’s procuratorate files a procuratorial appeal pursuant to adjudication supervision procedure, the people’s court receiving the appeal must form a collegial panel to adjudicate the matter. If, in the original judgment, the facts were not clear or the evidence was not sufficient, including where new evidence indicates that the original judgment might contain error, where the people’s court needs to instruct the lower people’s court to re-adjudicate the case, it must make its decision within one month of the date upon which the case file is opened and send its written decision instructing that the case be re-adjudicated to the people’s procuratorate that filed the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	procuratorial appeal.
<p><b>第三百八十二条</b> 对决定依照审判监督程序重新审判的案件，除人民检察院抗诉的以外，人民法院应当制作再审决定书。再审期间不停止原判决、裁定的执行，但被告人可能经再审改判无罪，或者可能经再审减轻原判刑罚而致刑期届满的，可以决定中止原判决、裁定的执行，必要时，可以对被告人采取取保候审、监视居住措施。</p>	<p><b>Article 382</b> For cases in which it is decided, pursuant to adjudication supervision procedure, that a re-adjudication will be conducted, other than cases in which the people’s procuratorate files a procuratorial appeal, the people’s court must produce a written re-adjudication decision. The time period for re-adjudication does not suspend the effectiveness of the original judgment or ruling, but if, following re-adjudication, the defendant’s verdict could be changed to one of not guilty, or, if, following re-adjudication, the original punishment could be reduced, causing the sentence to expire, a decision can be made to temporarily halt the effectiveness of the original judgment or ruling, and when necessary, the defendant may be released on bail or guarantee, or under condition of residential surveillance.</p>
<p><b>第三百八十三条</b> 依照审判监督程序重新审判的案件，人民法院应当重点针对申诉、抗诉和决定再审的理由进行审理。必要时，应当对原判决、裁定认定的事实、证据和适用法律进行全面审查。</p>	<p><b>Article 383</b> In cases that are re-adjudicated pursuant to adjudication supervision procedure, the people’s court must focus on the bases for the petition for collateral relief, procuratorial appeal, and decision to re-adjudicate when conducting its adjudication. When necessary, it must conduct a complete examination of the facts found, the evidence, and the application of law in the original judgment or ruling.</p>
<p><b>第三百八十四条</b> 原审人民法院审理依照审判监督程序重新审判的案件，应当另行组成合议庭。</p> <p>原来是第一审案件，应当依照第一审程序进行审判，所作的判决、裁定可以上诉、抗诉；原来是第二审案件，或者是上级人</p>	<p><b>Article 384</b> When a case that is re-adjudicated pursuant to adjudication supervision procedure is adjudicated by the people’s court that originally adjudicated the case, it must first form a collegial panel.</p> <p>The original, first instance case shall be adjudicated according to first</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>民法院提审的案件,应当依照第二审程序进行审判,所作的判决、裁定是终审的判决、裁定。</p> <p>对原审被告人、原审自诉人已经死亡或者丧失行为能力的再 审案件,可以不开庭审理。</p>	<p>instance procedure, and all judgments and rulings may be directly appealed by the defense or the procuratorate; the original second instance case or a case over which a higher level people's court took jurisdiction shall be adjudicated according to second instance procedure, and all judgments and rulings are final.</p> <p>In re-adjudication cases in which the original defendant or complainant in a private prosecution is deceased or has become incapacitated, the adjudication may be conducted without a hearing in court.</p>
<p><b>第三百八十五条</b> 开庭审理的再审案件,再审决定书或者抗诉书只针对部分原审被告,其他同案原审被告人不出庭不影响审理的,可以不出庭参加诉讼。</p>	<p><b>Article 385</b> In cases that are re-adjudicated with a hearing in court, in which the written re-adjudication decision or written decision on procuratorial appeal involves only some of the defendants from the original case, if other co-defendants from the original case do not appear in court, this does not affect the adjudication; they may refrain from appearing in court and from participating in the proceedings.</p>
<p><b>第三百八十六条</b> 除人民检察院抗诉的以外,再审一般不得加重原审被告人的刑罚。再审决定书或者抗诉书只针对部分原审被告人的,不得加重其他同案原审被告人的刑罚。</p>	<p><b>Article 386</b> In cases other than those in which the people's procuratorate files a procuratorial appeal, re-adjudication generally must not increase the severity of the original defendant's punishment. If the written re-adjudication decision or written procuratorial appeal involves only a portion of the defendants in the original case, the severity of punishment of other co-defendants in the original case must not be increased.</p>
<p><b>第三百八十七条</b> 人民法院审理人民检察院抗诉的再审案件,人民检察院在开庭审理前撤回抗诉的,应当裁定准许;人民检察院接到出庭通知后不派员出庭,且未说明原因的,可以裁定按撤回</p>	<p><b>Article 387</b> In re-adjudication cases in which the people's court is adjudicating an appeal by the people's procuratorate, if the people's procuratorate withdraws its appeal prior to the hearing in court, the people's court must enter a ruling that</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>抗诉处理，并通知诉讼参与人。</p> <p>    人民法院审理申诉人申诉的再审案件，申诉人在再审期间撤回申诉的，应当裁定准许；申诉人经依法通知无正当理由拒不到庭，或者未经法庭许可中途退庭的，应当裁定按撤回申诉处理，但申诉人不是原审当事人的除外。</p>	<p>permission is granted; if, after receiving a notice to appear in court, the people’s procuratorate does not send an officer to appear in court, and does not provide a reason, the court may enter a ruling disposing of the matter as though the procuratorial appeal had been withdrawn, and notify everyone who participated in the proceedings.</p> <p>    When a people’s court is re-adjudicating a case due to a petition for collateral relief by a petitioner, if the petitioner withdraws the petition for collateral relief within the time permitted for re-adjudication, the court must enter a ruling that permission is granted; if, after notice in accordance with law, and without a legitimate reason, the petitioner for collateral relief refuses to appear in court, or if he or she leaves the court during the proceedings without obtaining the court’s permission, the court must enter a ruling disposing of the petition for collateral relief as though it had been withdrawn, except that if the petitioner for collateral relief was not a party in the original case, the above does not apply.</p>
<p><b>第三百八十八条</b> 开庭审理的再审案件，系人民法院决定再审的，由合议庭组成人员宣读再审决定书；系人民检察院抗诉的，由检察人员宣读抗诉书；系申诉人申诉的，由申诉人或者其辩护人、诉讼代理人陈述申诉理由。</p>	<p><b>Article 388</b> In court hearings of re-adjudication cases, for those that the people’s court decides to re-adjudicate, the re-adjudication judgment is read aloud by members of the collegial panel; for those in which the people’s procuratorate filed a procuratorial appeal, the written appeal is read aloud by a member of the procuratorate; for those that result from a petition for collateral relief by a petitioner, the bases for the petition for collateral relief are stated by the petitioner, his or her defender or litigation advocate.</p>
<p><b>第三百八十九条</b> 再审案件经过重新审理后，应当按照下列情形</p>	<p><b>Article 389</b> After a re-adjudication case has been adjudicated, it must be handled</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>分别处理：</p> <p>（一）原判决、裁定认定事实和适用法律正确、量刑适当的，应当裁定驳回申诉或者抗诉，维持原判决、裁定；</p> <p>（二）原判决、裁定定罪准确、量刑适当，但在认定事实、适用法律等方面有瑕疵的，应当裁定纠正并维持原判决、裁定；</p> <p>（三）原判决、裁定认定事实没有错误，但适用法律错误，或者量刑不当的，应当撤销原判决、裁定，依法改判；</p> <p>（四）依照第二审程序审理的案件，原判决、裁定事实不清或者证据不足的，可以在查清事实后改判，也可以裁定撤销原判，发回原审人民法院重新审判。</p> <p>原判决、裁定事实不清或者证据不足，经审理查明事实已经查清的，应当根据查清的事实依法裁判；事实仍无法查清，证据不足，不能认定被告人有罪的，应当撤销原判决、裁定，判决宣告被告人无罪。</p>	<p>according to the circumstances below, respectively:</p> <p>(1) if the determination of the facts and application of the law in the original judgment or ruling were correct, the petition for collateral relief or procuratorial appeal must be ruled rejected, and the original judgment or ruling must be upheld;</p> <p>(2) if the conviction was accurate and the sentence was proper in the original judgment or ruling, but there were minor defects in the determination of the facts, the application of the law, or other aspects, the original judgment or ruling must be corrected and upheld;</p> <p>(3) if the facts determined in the original judgment or ruling contained no error, but there was error in the application of the law, or if the sentence was improper, the original judgment or ruling must be revoked and the judgment must be modified in accordance with law;</p> <p>(4) in cases adjudicated under second instance procedure, if the facts were not clear or the evidence was insufficient in the original judgment or ruling, the judgment may be modified following investigation that clarifies the facts, a ruling may enter revoking the original judgment, and the case may be remanded to the original adjudicating people's court for re- adjudication.</p>
--	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>If the facts were not clear or the evidence was insufficient in the original judgment or ruling, but the previously adjudicated facts have been clarified through investigation, the case must be decided according to the clarified facts, pursuant to law; if there is still no way to clarify the facts through investigation, and the evidence is insufficient, the defendant's guilt cannot be determined, and the original judgment or ruling must be revoked, and the judgment will declare that the defendant is not guilty.</p>
<p><b>第三百九十条</b> 原判决、裁定认定被告人姓名等身份信息有误,但认定事实和适用法律正确、量刑适当的,作出生效判决、裁定的人民法院可以通过裁定对有关信息予以更正。</p>	<p><b>Article 390</b> If there were errors involving the determination of the defendant's name or other identity information in the original judgment or ruling, but the facts determined and the application of the law were correct and the sentence was proper, the people's court that issued the judgment or ruling that has already taken effect may order that the relevant information be corrected.</p>
<p><b>第三百九十一条</b> 对再审改判宣告无罪并依法享有申请国家赔偿权利的当事人,人民法院宣判时,应当告知其在判决发生法律效力后可以依法申请国家赔偿。</p>	<p><b>Article 391</b> In cases in which a party is declared not guilty when a verdict is overturned in a judgment on re-adjudication, and in which the party enjoys the lawful right to apply to the national government for compensation, when the people's court pronounces its judgment, it must notify the party that after the judgment takes legal effect, he or she may apply to the national government for compensation.</p>
<p><b>第十八章 涉外刑事案件的审理和司法协助</b></p>	<p><b>Chapter 18 Adjudication and Judicial Assistance in Criminal Cases Involving Foreign Jurisdictional Issues</b></p>
<p><b>第三百九十二条</b> 本解释所称的涉外刑事案件是指:</p>	<p><b>Article 392</b> What this interpretation calls criminal cases involving foreign</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(一) 在中华人民共和国领域内，外国人犯罪的或者我国公民侵犯外国人合法权利的刑事案件；</p> <p>(二) 符合刑法第七条、第十条规定情形的我国公民在中华人民共和国领域外犯罪的案件；</p> <p>(三) 符合刑法第八条、第十条规定情形的外国人对中华人民共和国国家或者公民犯罪的案件；</p> <p>(四) 符合刑法第九条规定情形的中华人民共和国在所承担国际条约义务范围内行使管辖权的案件。</p>	<p>jurisdictional issues refers to:</p> <p>(1) criminal cases committed within the territory of the People's Republic of China, involving crimes committed by foreigners or violations of foreigners' legal rights by Chinese citizens;</p> <p>(2) cases involving crimes committed outside the territory of the People's Republic of China, in accordance with circumstances stipulated by Articles 7 and Article 10 of the Criminal Law;</p> <p>(3) offenses by foreigners against the government or citizens of the People's Republic of China, in accordance with circumstances stipulated by Articles 8 and Article 10 of the Criminal Law;</p> <p>(4) cases over which the People's Republic of China exercises jurisdiction within the scope of obligations prescribed by international treaties that it agrees to perform, in accordance circumstances stipulated by Article 9 of the Criminal Law.</p>
<p><b>第三百九十三条</b> 第一审涉外刑事案件，除刑事诉讼法第二十条至第二十二条规定的以外，由基层人民法院管辖。必要时，中级人民法院可以指定辖区内若干基层人民法院集中管辖第一审涉外刑事案件，也可以依照刑事诉讼法第二十三条的规定，审理基层人民法院管辖的第一审涉外刑事案件。</p>	<p><b>Article 393</b> Basic people's courts shall have jurisdiction over all criminal cases involving foreign jurisdictional issues, except for cases stipulated by Articles 20 through Article 22 of the Criminal Law. When necessary, an intermediate people's court may designate a certain number of basic people's courts within its jurisdiction to collectively exercise jurisdiction over first-instance criminal cases</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>involving foreign jurisdictional issues; or it may also adjudicate first-instance criminal cases involving foreign jurisdictional issues over which a basic people's court has jurisdiction, in accordance with Article 23 of the Criminal Law.</p>
<p><b>第三百九十四条</b> 外国人的国籍，根据其入境时的有效证件确认；国籍不明的，根据公安机关或者有关国家驻华使、领馆出具的证明确认。</p> <p>国籍无法查明的，以无国籍人对待，适用本章有关规定，在裁判文书中写明“国籍不明”。</p>	<p><b>Article 394</b> Foreigner's citizenship shall be determined on the basis of valid documents at the time of entry into China; if a person's citizenship is unclear, it shall be determined on the basis of proof provided by a public security organ or the embassy or consulate of the relevant country.</p> <p>If impossible to identify a defendant's nationality, the court shall treat the defendant as one without nationality, apply relevant rules in this chapter and notes "nationality unknown" in the written judgment.</p>
<p><b>第三百九十五条</b> 在刑事诉讼中，外国籍当事人享有我国法律规定的诉讼权利并承担相应义务。</p>	<p><b>Article 395</b> In criminal litigation, parties of foreign nationality shall enjoy litigation rights stipulated by the laws of the People's Republic of China, and perform corresponding obligations.</p>
<p><b>第三百九十六条</b> 涉外刑事案件审判期间，人民法院应当将下列事项及时通报同级人民政府外事主管部门，并通知有关国家驻华使、领馆：</p> <p>（一）人民法院决定对外国籍被告人采取强制措施的情况，包括外国籍当事人的姓名（包括译名）、性别、入境时间、护照或者证件号码、采取的强制措施及法律依据、羁押地点等；</p> <p>（二）开庭的时间、地点、是否公开审理等事项；</p>	<p><b>Article 396</b> During the period of adjudicating a criminal case involving foreign jurisdictional issues, the people's court shall promptly relay the following matters to the department responsible for foreign affairs in the people's government of the corresponding level, and notify the embassy or consulate of the relevant country:</p> <p>(1) the circumstances of any forceful measures adopted through court decision against a defendant with foreign nationality, including the name (including translated name), gender, date of entry, and passport number or</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(三) 宣判的时间、地点。</p> <p>涉外刑事案件宣判后,应当及时将处理结果通报同级人民政府外事主管部门。</p> <p>对外国籍被告人执行死刑的,死刑裁决下达后执行前,应当通知其国籍国驻华使、领馆。</p> <p>外国籍被告人在案件审理中死亡的,应当及时通报同级人民政府外事主管部门,并通知有关国家驻华使、领馆。</p>	<p>supporting documents number of the party with foreign nationality, as well as the forceful measure adopted, its legal basis, and the location of detention, etc;</p> <p>(2) matters such as the location and time the hearings, as well as whether a trial will be open to the public, etc;</p> <p>(3) the location and time of announcement of judgment.</p> <p>After announcing the judgment for a case involving foreign jurisdictional issues, the trial outcome shall be relayed to the department responsible for foreign affairs in the people's government of the corresponding level.</p> <p>Where a capital punishment is to be enforced against a foreigner, his or her embassy or consulate shall be notified after the verdict is rendered and before the punishment is carried out.</p> <p>If a defendant with foreign nationality dies while a case is being tried, the department responsible for foreign affairs in the people's government of the corresponding level, as well as the embassy or consulate of the relevant country shall be notified.</p>
<p><b>第三百九十七条</b> 需要向有关国家驻华使、领馆通知有关事项的,应当层报高级人民法院,由高级人民法院按照下列规定通知:</p>	<p><b>Article 397</b> Where it is necessary to notify an embassy or consulate of a relevant matter, it shall be reported up the hierarchy to the High People's Court, and the High People's Court shall sent out notice according to the following</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(一) 外国籍当事人国籍国与我国签订有双边领事条约的, 根据条约规定办理; 未与我国签订双边领事条约, 但参加《维也纳领事关系公约》的, 根据公约规定办理; 未与我国签订领事条约, 也未参加《维也纳领事关系公约》, 但与我国有外交关系的, 可以根据外事主管部门的意见, 按照互惠原则, 根据有关规定和国际惯例办理;</p> <p>(二) 在外国驻华领馆领区内发生的涉外刑事案件, 通知有关外国驻该地区的领馆; 在外国领馆领区外发生的涉外刑事案件, 通知有关外国驻华使馆; 与我国有外交关系, 但未设使、领馆的国家, 可以通知其代管国家驻华使、领馆; 无代管国家或者代管国家不明的, 可以不通知;</p> <p>(三) 双边领事条约规定通知时限的, 应当在规定的期限内通知; 无双边领事条约规定的, 应当根据或者参照《维也纳领事关系公约》和国际惯例尽快通知, 至迟不得超过七日;</p> <p>(四) 双边领事条约没有规定必须通知, 外国籍当事人要求不通知其国籍国驻华使、领馆的, 可以不通知, 但应当由其本人出具书面声明。</p> <p>高级人民法院向外国驻华使、领馆通知有关事项, 必要时, 可以请人民政府外事主管部门协助。</p>	<p>rules: :</p> <p>(1) for a party with foreign nationality whose home country has signed bilateral consular treaties with the People's Republic of China, requirements stipulated by those treaties shall be adhered to; if the home country has not signed any bilateral consular treaty with the People's Republic of China but is a party to the Vienna Convention on Consular Relations, requirements stipulated by the Convention shall be adhered to; if the home country has neither signed any bilateral consular treaty with the People's Republic of China nor become a party to the Vienna Convention on Consular Relations, but has foreign relations with the People's Republic of China, upon advice of the department responsible for foreign relations, may handle the case on the basis of principles of reciprocity and in accordance with relevant provisions and international customs;</p> <p>(2) for criminal cases involving foreign jurisdictional issues that happened within the consular area of a foreign consulate in China, the relevant foreign consulate shall be notified; for criminal cases involving foreign jurisdictional issues that happened outside of a consular area of the foreign consulate, the relevant embassy shall be notified; if a country has foreign relations with the People's Republic of China but does not have an embassy or consulate within China, an embassy or consulate of a country that handles that country's affairs in China may be notified; if there is not a substitute country, or such a substitute country is unclear, notification need not be given;</p>
--	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(3) if a time period for notification is stipulated by a bilateral consular treaty, notification shall be made within that time period; if there is not a bilateral consular treaty, notification shall be given as soon as possible in accordance with the Vienna Convention on Consular Relations or international customs, and shall not be more than 7 days the latest;</p> <p>(4) if notification is not required by a bilateral consular treaty, notification need not be made provided that the party with foreign nationality requests not to notify his or her embassy or consulate, but a written statement shall be provided by the party.</p> <p>If necessary, the High People's Court may ask the department responsible for foreign affairs within people's government to provide assistance on matters relating to notification of a foreign embassy or consulate in China.</p>
<p><b>第三百九十八条</b> 人民法院受理涉外刑事案件后,应当告知在押的外国籍被告人享有与其国籍国驻华使、领馆联系,与其监护人、近亲属会见、通信,以及请求人民法院提供翻译的权利。</p>	<p><b>Article 398</b> After a people's court accepts a criminal case involving foreign jurisdictional issues, it shall notify the detained defendant with foreign nationality that he or she has the right to contact the embassy or consulate of his or her home country, meet or communicate with his or her legal guardian or immediate family members, and request the people's court to provide translation service.</p>
<p><b>第三百九十九条</b> 涉外刑事案件审判期间,外国籍被告人在押,其国籍国驻华使、领馆官员要求探视的,可以向受理案件的人民</p>	<p><b>Article 399</b> During the trial involving foreign jurisdictional issues, if a defendant with foreign nationality is in custody, an official from the defendant's embassy</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

法院所在地的高级人民法院提出。人民法院应当根据我国与被告  
人国籍国签订的双边领事条约规定的时限予以安排；没有条约规  
定的，应当尽快安排。必要时，可以请人民政府外事主管部门协  
助。

涉外刑事案件审判期间，外国籍被告人在押，其监护人、近  
亲属申请会见的，可以向受理案件的人民法院所在地的高级人民  
法院提出，并依照本解释第四百零三条的规定提供与被告关系  
的证明。人民法院经审查认为不妨碍案件审判的，可以批准。

被告人拒绝接受探视、会见的，可以不予安排，但应当由其  
本人出具书面声明。

探视、会见被告人应当遵守我国法律规定。

or consulate requesting to visit the defendant may raise this issue with the High  
People's Court located where the people's court accepting the case is also located.  
The people's court shall arrange meeting within the time limit stipulated in  
bilateral consular treaties entered into by the People's Republic of China and the  
defendant's home country, if there is not any such treaty, meeting shall be  
arranged soon as possible. When necessary, the department responsible for  
foreign affairs within people's government may be requested to provide  
assistance.

During the trial of a case involving foreign jurisdictional issues, legal  
guardians or immediate family members of a defendant with foreign nationality  
in custody who wishes to visit the defendant may file an application with the  
High People's Court located where the people's court accepting the case is also  
located, and provide proof of his or her relationship with the defendant in  
accordance with Article 403 of this interpretation. The people's court may  
approve such request if, after investigation, it is determines that the trial of the  
case will not be disrupted.

If a defendant refuses visits or meetings, arrangements may be refrained  
from being made; but a written statement shall be provided by the defendant.

Visits or meetings with the defendant shall be conducted in observance of  
legal rules of the People's Republic of China.

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第四百条</b> 人民法院审理涉外刑事案件，应当公开进行，但依法不应公开审理的除外。</p> <p>公开审理的涉外刑事案件，外国籍当事人国籍国驻华使、领馆官员要求旁听的，可以向受理案件的人民法院所在地的高级人民法院提出申请，人民法院应当安排。</p>	<p><b>Article 400</b> Adjudication of criminal cases involving foreign jurisdictional issues shall be open to the public, except for cases that shall not be tried publicly according to the law.</p> <p>For criminal cases involving foreign jurisdictional issues the trial of which is open to the public, officials from the embassy or consulate for parties with foreign nationality who wish to observe the trial may submit application to the High People's Court located where the people's court accepting the case is located, for which the people's court shall make arrangements.</p>
<p><b>第四百零一条</b> 人民法院审判涉外刑事案件，使用中华人民共和国通用的语言、文字，应当为外国籍当事人提供翻译。</p> <p>人民法院的诉讼文书为中文本。外国籍当事人不通晓中文的，应当附有外文译本，译本不加盖人民法院印章，以中文本为准。</p> <p>外国籍当事人通晓中国语言、文字，拒绝他人翻译，或者不需要诉讼文书外文译本的，应当由其本人出具书面声明。</p>	<p><b>Article 401</b> During the adjudication of criminal cases involving foreign jurisdictional issues, when the commonly used language is used for speaking and writing, a people's court shall provide parties with foreign nationality with translation service.</p> <p>Chinese shall be used in litigation documents in a people's court. If a party with foreign nationality is not familiar with Chinese, foreign language translation shall be attached. The foreign translation document does not bear the seal of the people's court, and the Chinese language document shall prevail.</p> <p>If a party with foreign nationality is familiar with the oral or written Chinese and declines translation, or if he or she does not need a translation of the litigation documents, a written statement shall be provided by the party.</p>
<p><b>第四百零二条</b> 外国籍被告人委托律师辩护，或者外国籍附带民事诉讼原告人、自诉人委托律师代理诉讼的，应当委托具有中华</p>	<p><b>Article 402</b> If a defendant with foreign nationality retains lawyers to defense the case, or if a plaintiff with foreign nationality in a related civil suit or a private</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>人民共和国律师资格并依法取得执业证书的律师。</p> <p>外国籍被告人在押的，其监护人、近亲属或者其国籍国驻华使、领馆可以代为委托辩护人。其监护人、近亲属代为委托的，应当提供与被告人关系的有效证明。</p> <p>外国籍当事人委托其监护人、近亲属担任辩护人、诉讼代理人的，被委托人应当提供与当事人关系的有效证明。经审查，符合刑事诉讼法、有关司法解释规定的，人民法院应当准许。</p> <p>外国籍被告人没有委托辩护人的，人民法院可以通知法律援助机构为其指派律师提供辩护。被告人拒绝辩护人辩护的，应当由其出具书面声明，或者将其口头声明记录在案。被告人属于应当提供法律援助情形的，依照本解释第四十五条规定处理。</p>	<p>prosecutor retains lawyers to represent him or her in the litigation, the lawyer shall be one who is qualified to practice law in the People's Republic of China and has obtained a license to practice according to the law.</p> <p>Legal guardians, immediate family members, or officials from the embassy or consulate for a defendant with foreign nationality in custody may retain defense advocate on behalf of the defendant. In the case of legal guardians or immediate family members, valid proof of their relationship with the defendant must be provided.</p> <p>If a party with foreign nationality entrusts his or her legal guardian or immediate family members as defense advocate or legal advocate, the latter shall provide valid proof of his or her relationship with the party. A people's court shall grant permission if, after review, it is determines to be in compliance with the Criminal Procedure Law and relevant Judicial Interpretation provisions..</p> <p>If a foreign defendant has not retained legal advocate, a people's court may inform a legal aid agency to appoint a lawyer for the defendant. If the defendant refuses to have the defender defense his or her case, he or she shall provide written statement or have his or her statements noted in the case file. If the defendant belongs to the categories for which legal aid shall be provided, the situation shall be handled according to Article 45 of this interpretation.</p>
<p><b>第四百零三条</b> 外国籍当事人从中华人民共和国领域外寄交或</p>	<p><b>Article 403</b> Engagement letters mailed or passed from outside of the territory of</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>者托交给中国律师或者中国公民的委托书，以及外国籍当事人的监护人、近亲属提供的与当事人关系的证明，必须经所在国公证机关证明，所在国中央外交主管机关或者其授权机关认证，并经我国驻该国使、领馆认证，但我国与该国有互免认证协定的除外。</p>	<p>the People's Republic of China to a Chinese lawyer or a Chinese citizen, as well as any evidence of a relationship between a party with foreign nationality and his or her legal guardian or immediate family members must be certified by the home country's notary organ, authenticated by the central organ responsible for foreign affairs or an organ with its authorization, and attested by Chinese embassy or consulate in the home country, except for cases in which the home country and China have entered into an agreement to exempt authentication by each other.</p>
<p><b>第四百零四条</b> 对涉外刑事案件的被告人，可以决定限制出境；对开庭审理案件时必须到庭的证人，可以要求暂缓出境。作出限制出境的决定，应当通报同级公安机关或者国家安全机关；限制外国人出境的，应当同时通报同级人民政府外事主管部门和当事人国籍国驻华使、领馆。</p> <p>人民法院决定限制外国人和中国公民出境的，应当书面通知被限制出境的人在案件审理终结前不得离境，并可以采取扣留护照或者其他出入境证件的办法限制其出境；扣留证件的，应当履行必要手续，并发给本人扣留证件的证明。</p> <p>对需要在边防检查站阻止外国人和中国公民出境的，受理案件的人民法院应当层报高级人民法院，由高级人民法院填写口岸阻止人员出境通知书，向同级公安机关办理交控手续。控制口岸不在本省、自治区、直辖市的，应当通过有关省、自治区、直辖市公安机关办理交控手续。紧急情况下，确有必要的，也可以先向边防检查站交控，再补办交控手续。</p>	<p><b>Article 404</b> Defendants in a criminal case involving foreign jurisdictional issues may be restricted from leaving the country; witnesses who must appear in court for a trial open to the public may be required to defer leaving the country. Any decisions to restrict the departure from the country shall be relayed to the public security organ or the state safety organ of the corresponding level or to the national security organ; decisions to limit the departure of a foreigner shall simultaneously be relayed to the department responsible for foreign affairs at the people's government of the corresponding level and to the embassy or consulate of the party's home country.</p> <p>A people's court that decides to limit the departure of a foreigner or a Chinese citizen shall notify the person subject to departure restriction in writing that he or she may not leave the country prior to termination of the trial and may seize the person's passport or other border exit and entry certificates to restrict his or her departure; seizure of documents shall follow the necessary formalities, and proof must be given to show seizure of certificate.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>If a foreigner or a Chinese citizen must be prevented from leaving China at a boarder control station, the people's court accepting the case shall report up the hierarchy to the High People's Court, and a written notification of preventing person from departing through entry-exit port shall be issued by the Highest People's Court, and work with the public security organ of the corresponding level for handle control formalities. If the control port is not within the same province, autonomous region, or municipality directly under the central government, the public security organ in the relevant province, autonomous region, or municipality directly under the central government shall be contacted for the handle control formalities. Under emergency situations, if necessary, may first have the border control prevent departure and complete control formalities later.</p>
<p><b>第四百零五条</b> 对来自境外的证据材料, 人民法院应当对材料来源、提供人、提供时间以及提取人、提取时间等进行审查。经审查, 能够证明案件事实且符合刑事诉讼法规定的, 可以作为证据使用, 但提供人或者我国与有关国家签订的双边条约对材料的使用范围有明确限制的除外; 材料来源不明或者其真实性无法确认的, 不得作为定案的根据。</p> <p>当事人及其辩护人、诉讼代理人提供来自境外的证据材料的, 该证据材料应当经所在国公证机关证明, 所在国中央外交主管机关或者其授权机关认证, 并经我国驻该国使、领馆认证。</p>	<p><b>Article 405</b> For all evidence coming from outside the territory of China, a people's court shall examine the origin, and provider of the document, the time it was provided, the person who retrieved it and its time of retrieval, etc. After examination, those proving facts related to the case and accords with provisions of the Criminal Procedure Law may be used as evidence, except restricted by any clear limitations on the scope of materials arising from bilateral treaties signed by the provider's or this country and relevant countries. If the source of a material is unidentifiable or the authenticity is unverifiable, it shall not be used as a basis for a verdict.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>If a party to a case, or his or her legal advocate, litigation advocate provides evidential material from outside the territory of China, that material shall be certified by a notary organ in the country from which it is coming, authenticated that country's central organ responsible for foreign affairs or an organ with its authorization, and attested by the Chinese embassy or consulate in that country</p>
<p><b>第四百零六条</b> 涉外刑事案件，符合刑事诉讼法第二百零二条第一款、第二百三十二条规定的，经有关人民法院批准或者决定，可以延长审理期限。</p>	<p><b>Article 406</b> For criminal cases involving foreign jurisdictional issues that meet the rules in Article 202, paragraph 1 and Article 232 of the Criminal Procedure Law, the maximum time allowed for trial may be extended after the approval or decision of a relevant people's court.</p>
<p><b>第四百零七条</b> 涉外刑事案件宣判后，外国籍当事人国籍国驻华使、领馆要求提供裁判文书的，可以向受理案件的人民法院所在地的高级人民法院提出，人民法院可以提供。</p>	<p><b>Article 407</b> After a verdict has been reached in a criminal case involving foreign jurisdictional issues, an embassy or consulate of the home country of a party with foreign nationality requesting written documentation of the judicial decision may apply to the High People's Court where the people's court that accepting the case is located, and people's court may provide such documentation.</p>
<p><b>第四百零八条</b> 根据中华人民共和国缔结或者参加的国际条约，或者按照互惠原则，人民法院和外国法院可以相互请求刑事司法协助。</p> <p>外国法院请求的事项有损中华人民共和国的主权、安全、社会公共利益的，人民法院不予协助。</p>	<p><b>Article 408</b> On the basis of any international treaty that the People's Republic of China has signed or joined as a party, or on the basis of principles of reciprocity, a people's court and a foreign court may request judicial assistance in criminal cases from each other.</p> <p>A people's court shall not provide assistance on matters requested by a foreign court that would damage the state sovereignty, security, or public interest of the People's Republic of China.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第四百零九条</b> 请求和提供司法协助,应当依照中华人民共和国缔结或者参加的国际条约规定的途径进行;没有条约关系的,通过外交途径进行。</p>	<p><b>Article 409</b> Judicial Assistance that is requested and provided shall be carried out through channels determined by international treaties that the People's Republic of China has signed or joined as a party to; for countries with which China does not have a treaty relationship, it shall be carried out through diplomatic channels.</p>
<p><b>第四百一十条</b> 人民法院请求外国提供司法协助的,应当经高级人民法院审查后报最高人民法院审核同意。</p> <p>外国法院请求我国提供司法协助,属于人民法院职权范围的,经最高人民法院审核同意后转有关人民法院办理。</p>	<p><b>Article 410</b> A people's court requesting judicial assistance from a foreign country shall, after reviewed by the High People's court, report this to the Supreme People's Court for examination and approval.</p> <p>Where a foreign court has requested judicial assistance from China, if that falls within the people's court's authority, the matter shall be turned over to the relevant people's court after the Supreme People's Court has examined and given its approval.</p>
<p><b>第四百一十一条</b> 人民法院请求外国提供司法协助的请求书及其所附文件,应当附有该国文字译本或者国际条约规定的其他文字文本。</p> <p>外国法院请求我国提供司法协助的请求书及其所附文件,应当附有中文译本或者国际条约规定的其他文字文本。</p>	<p><b>Article 411</b> Any written request and attachments related to a people's court's request for judicial assistance from a foreign country shall enclose translations in that country's language or any other language stipulated by international treaties.</p> <p>Any written request and attachments related to a foreign court's request for judicial assistance from China shall enclose translations in Chinese or any other language stipulated by international treaties.</p>
<p><b>第四百一十二条</b> 人民法院向在中华人民共和国领域外居住的当事人送达刑事诉讼文书,可以采用下列方式:</p> <p>(一) 根据受送达人所在国与中华人民共和国缔结或者共同</p>	<p><b>Article 412</b> A people's court that is serving parties who reside outside of the territory of the People's Republic of China with litigation documents related to a criminal trial may use the following methods:</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>参加的国际条约规定的方式送达；</p> <p>（二）通过外交途径送达；</p> <p>（三）对中国籍当事人，可以委托我国驻受送达人所在国的使、领馆代为送达；</p> <p>（四）当事人是自诉案件的自诉人或者附带民事诉讼原告人的，可以向有权代其接受送达的诉讼代理人送达；</p> <p>（五）当事人是外国单位的，可以向其在中华人民共和国领域内设立的代表机构或者有权接受送达的分支机构、业务代办人送达；</p> <p>（六）受送达人所在国法律允许的，可以邮寄送达；自邮寄之日起满三个月，送达回证未退回，但根据各种情况足以认定已经送达的，视为送达；</p> <p>（七）受送达人所在国法律允许的，可以采用传真、电子邮件等能够确认受送达人收悉的方式送达。</p>	<p>(1) service methods determined by international treaties that have been signed or joined by the People's Republic of China and the country in which the party being served resides;</p> <p>(2) service by diplomatic channels;</p> <p>(3) if the person being served is a party with Chinese nationality, may entrust the Chinese embassy or consulate in the country where the party reside to serve the documents;</p> <p>(4) if the party is a private prosecutor in a private prosecution case or the plaintiff in a related civil action, service may be effected through the litigation advocate authorized to receive service for the party;</p> <p>(5) if the party is a foreign unit, service may be effected through a representative organization, or a branch office or agent authorized to receive service, set up within the territory of the People's Republic of China;</p> <p>(6) if allowed by the laws of the country in which the party being served resides, may serve by mail; where return receipt is not returned within 3 months after the date the mail was sent, it may be view as proper service, provided that on the basis of various circumstances it is sufficient to infer that service has been delivered;</p>
--	---



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(7) if allowed by the laws of the country in which the party being served resides, methods like fax, email, etc., which may be used to confirm the receipt of service by the person being served.</p>
<p><b>第四百一十三条</b> 人民法院通过外交途径向在中华人民共和国领域外居住的受送达人送达刑事诉讼文书的，所送达的文书应当经高级人民法院审查后报最高人民法院审核。最高人民法院认为可以发出的，由最高人民法院交外交部主管部门转递。</p> <p>外国法院通过外交途径请求人民法院送达刑事诉讼文书的，由该国驻华使馆将法律文书交我国外交部主管部门转最高人民法院。最高人民法院审核后认为属于人民法院职权范围，且可以代为送达的，应当转有关人民法院办理。</p>	<p><b>Article 413</b> If a people's court employs the diplomatic channels to serve a person residing outside of the territory of the People's Republic of China with litigation documents related to a criminal trial, those documents shall, after review by the High People's Court, be reported to the Supreme People's Court for examination and approval. If the Supreme People's Court determines that they can be sent, the documents shall be passed on to the department responsible for foreign affairs in the Supreme People's Court for delivery.</p> <p>A foreign court employs the diplomatic channels to request a people's court serve litigation documents related to a criminal trial, the legal documents shall be submitted by the embassy or consulate of that country to the Chinese department responsible for foreign affairs for them to be passed on to the Supreme People's Court. If the Supreme People's Court after examination determines that it is within the people's court's authority, and that service on behalf of the foreign court may be effected, they shall be forwarded to the relevant people's court to be handled appropriately.</p>
<p><b>第四百一十四条</b> 涉外刑事案件审理过程中的其他事宜，依照法律、司法解释和其他有关规定办理。</p>	<p><b>Article 414</b> Other arrangements made during the adjudication of a criminal case involving foreign jurisdictional issues shall be handled in accordance with the law, judicial interpretation, and other relevant provisions.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<b>第十九章 执行程序</b>	<b>Chapter 19 Procedures for the Imposition of Sentences</b>
<b>第一节 死刑的执行</b>	<b>Section One Implementation of the Death Penalty</b>
<p><b>第四百一十五条</b> 被判处死刑缓期执行的罪犯，在死刑缓期执行期间故意犯罪的，应当由罪犯服刑地的中级人民法院依法审判，所作的判决可以上诉、抗诉。</p> <p style="padding-left: 40px;">认定构成故意犯罪的判决、裁定发生法律效力后，应当层报最高人民法院核准执行死刑。</p>	<p><b>Article 415</b> If a death sentence with reprieve has been imposed on a convicted offender, and he or she commits an intentional crime during the reprieve period, he or she shall be tried by the intermediate people’s court in the area where the prison is located. The defendant and the procuratorate may appeal the verdict.</p> <p style="padding-left: 40px;">After a judgment or ruling determining that an intentional crime is constituted takes legal effect, the people’s court shall report up the court hierarchy to the Supreme People’s Court for approval of the execution of the death penalty.</p>
<p><b>第四百一十六条</b> 死刑缓期执行的期间，从判决或者裁定核准死刑缓期执行的法律文书宣告或者送达之日起计算。</p> <p style="padding-left: 40px;">死刑缓期执行期满，依法应当减刑的，人民法院应当及时减刑。死刑缓期执行期满减为无期徒刑、有期徒刑的，刑期自死刑缓期执行期满之日起计算。</p>	<p><b>Article 416</b> The death penalty reprieve period is calculated beginning on the day when the court judgment or ruling is declared or served.</p> <p style="padding-left: 40px;">When the death penalty reprieve period expires, the law requires that the sentence be reduced, and the people’s court shall reduce the sentence in a timely manner. When a sentence of death penalty with reprieve is reduced to life in prison or a period of fixed-term imprisonment, the period of imprisonment is calculated beginning on the day when death penalty reprieve period expires.</p>
<p><b>第四百一十七条</b> 最高人民法院的执行死刑命令，由高级人民法院交付第一审人民法院执行。第一审人民法院接到执行死刑命令后，应当在七日内执行。</p>	<p><b>Article 417</b> An order to carry out a death sentence from the Supreme People’s Court will be delivered to the first instance people’s court by the High People’s</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>在死刑缓期执行期间故意犯罪，最高人民法院核准执行死刑的，由罪犯服刑地的中级人民法院执行。</p>	<p>Court, and shall be carried out by the first instance people’s court. The first instance people’s court shall execute the order within seven days after receiving it.</p> <p>If a convicted offender commits an intentional crime during the death penalty reprieve period, and the Supreme People’s Court approves the imposition of the death penalty, the execution order shall be carried out by the intermediate people’s court where the prison is located.</p>
<p><b>第四百一十八条</b> 第一审人民法院在接到执行死刑命令后、执行前，发现有下列情形之一的，应当暂停执行，并立即将请求停止执行死刑的报告和相关材料层报最高人民法院：</p> <p>（一）罪犯可能有其他犯罪的；</p> <p>（二）共同犯罪的其他犯罪嫌疑人到案，可能影响罪犯量刑的；</p> <p>（三）共同犯罪的其他罪犯被暂停或者停止执行死刑，可能影响罪犯量刑的；</p> <p>（四）罪犯揭发重大犯罪事实或者有其他重大立功表现，可能需要改判的；</p> <p>（五）罪犯怀孕的；</p>	<p><b>Article 418</b> After receiving an order to impose a death sentence, and before carrying out the order, if the first instance people’s court becomes aware that any one of the following circumstances exist, it must temporarily suspend the imposition of the order, and immediately send a report and related materials up the court hierarchy to the Supreme People’s Court requesting that the execution of the death sentence be stayed:</p> <p>(1) the offender may have committed other crimes;</p> <p>(2) other suspects in a jointly committed crime have been apprehended, which may affect the offender’s sentencing;</p> <p>(3) the execution of death sentences of co-offenders in a jointly committed crime have been temporarily suspended or halted, which may affect the offender’s sentencing;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(六) 判决、裁定可能有影响定罪量刑的其他错误的。</p> <p>最高人民法院经审查，认为可能影响罪犯定罪量刑的，应当裁定停止执行死刑；认为不影响的，应当决定继续执行死刑。</p>	<p>(4) the offender brings to light the facts of a major crime or renders other especially valuable cooperation or major meritorious service, causing a need for the sentence to be revised;</p> <p>(5) the offender is pregnant;</p> <p>(6) the judgment or ruling may contain other errors that would affect the sentencing.</p> <p>The Supreme Court shall rule to stay the execution of the death sentence if it determines through review that the offender’s sentence could be affected; if it finds that the sentence will not be affected, it shall determine that the death sentence proceed.</p>
<p><b>第四百一十九条</b> 最高人民法院在执行死刑命令签发后、执行前，发现有前条第一款规定情形的，应当立即裁定停止执行死刑，并将有关材料移交下级人民法院。</p>	<p><b>Article 419</b> After issuing an order to execute a death sentence, and before its implementation, if the Supreme People’s Court becomes aware that any of the circumstances enumerated under the first paragraph of the preceding article exist, the Supreme People’s Court shall rule to stay the execution of the death sentence immediately and transfer the relevant materials to the lower people’s court.</p>
<p><b>第四百二十条</b> 下级人民法院接到最高人民法院停止执行死刑的裁定后，应当会同有关部门调查核实停止执行死刑的事由，并及时将调查结果和意见层报最高人民法院审核。</p>	<p><b>Article 420</b> After receiving a ruling from the Supreme People’s Court to stay the execution of the death sentence, the lower people’s court, in conjunction with the relevant departments, shall investigate the facts and reasons for the stay of the death sentence, and report the results of the investigation and its opinion up the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaalaw@nyu.edu](mailto:usasiaalaw@nyu.edu).

	<p>court hierarchy to the Supreme People’s Court for review and approval in a timely manner.</p>
<p><b>第四百二十一条</b> 对下级人民法院报送的停止执行死刑的调查结果和意见，由最高人民法院原作出核准死刑判决、裁定的合议庭负责审查，必要时，另行组成合议庭进行审查。</p>	<p><b>Article 421</b> The investigation results and opinion regarding the stay of execution of the death sentenced reported by the lower people’s court will be reviewed by the same collegial panel that made the original judgment or ruling approving the death penalty; when necessary, a new collegial panel may be formed to undertake the review.</p>
<p><b>第四百二十二条</b> 最高人民法院对停止执行死刑的案件，应当按照下列情形分别处理：</p> <p>（一）确认罪犯怀孕的，应当改判；</p> <p>（二）确认罪犯有其他犯罪，依法应当追诉的，应当裁定不予核准死刑，撤销原判，发回重新审判；</p> <p>（三）确认原判决、裁定有错误或者罪犯有重大立功表现，需要改判的，应当裁定不予核准死刑，撤销原判，发回重新审判；</p> <p>（四）确认原判决、裁定没有错误，罪犯没有重大立功表现，或者重大立功表现不影响原判决、裁定执行的，应当裁定继续执行死刑，并由院长重新签发执行死刑的命令。</p>	<p><b>Article 422</b> Where the execution of a death sentence is stayed, the Supreme People’s Court must handle cases in the following different manners depending upon the circumstances:</p> <p>(1) if the offender’s pregnancy is confirmed, the sentence must be revised;</p> <p>(2) if it is confirmed that the offender has committed other crimes, these must be prosecuted according to the law; the Court shall rule to overturn the death sentence, revoke the original judgment, and remand for re-adjudication;</p> <p>(3) if it is confirmed that the original judgment or ruling contains error, or if the offender provides especially valuable cooperation or major meritorious service, the sentence needs to be revised, and the Court shall rule to overturn the death sentence, revoke the original judgment, and remand for re-adjudication;</p> <p>(4) if it is confirmed that the judgment or ruling does not contain error, and</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	<p>if the offender does not provide especially valuable cooperation or major meritorious service, or the especially valuable cooperation or major meritorious service do not affect the original judgment, the Supreme People’s Court shall rule to proceed with the execution of the death sentence and the Court President shall sign a new order of execution.</p>
<p><b>第四百二十三条</b> 第一审人民法院在执行死刑前,应当告知罪犯有权会见其近亲属。罪犯申请会见并提供具体联系方式的,人民法院应当通知其近亲属。罪犯近亲属申请会见的,人民法院应当准许,并及时安排会见。</p>	<p><b>Article 423</b> Before carrying out a death sentence, the first instance people’s court shall inform the offender that he has the right to visitation with his immediate family member(s). If the offender applies for visitation and provides specific contact information, the people’s court shall inform the offender’s immediate family member(s). If the offender’s immediate family members apply for visitation, the people’s court shall permit and arrange the visit in a timely manner.</p>
<p><b>第四百二十四条</b> 第一审人民法院在执行死刑三日前,应当通知同级人民检察院派员临场监督。</p>	<p><b>Article 424</b> Three days prior to an execution, the first instance people’s court shall inform the people’s procuratorate at the corresponding level to send an officer to monitor the execution.</p>
<p><b>第四百二十五条</b> 死刑采用枪决或者注射等方法执行。</p> <p>采用注射方法执行死刑的,应当在指定的刑场或者羁押场所内执行。</p> <p>采用枪决、注射以外的其他方法执行死刑的,应当事先层报最高人民法院批准。</p>	<p><b>Article 425</b> Executions shall be carried out by shooting or injection or via other methods.</p> <p>Execution by injection shall be carried out in a designated execution location or in a custodial facility.</p> <p>If an execution is to occur via a method other than shooting or injection, approval shall be requested in advance by reporting the request up through the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	court hierarchy to the Supreme People's Court.
<p><b>第四百二十六条</b> 执行死刑前，指挥执行的审判人员对罪犯应当验明正身，讯问有无遗言、信札，并制作笔录，再交执行人员执行死刑。</p> <p>执行死刑应当公布，禁止游街示众或者其他有辱罪犯人格的行为。</p>	<p><b>Article 426</b> Prior to an execution, the judge who oversees the execution shall verify the identity of the offender, question the offender regarding any final words or written testaments, and make a record of these, and then deliver him to the executioner for execution.</p> <p>The execution shall be publicly announced. However, parading the offender through the streets, or other degrading treatment, is prohibited.</p>
<p><b>第四百二十七条</b> 执行死刑后，应当由法医验明罪犯确实死亡，在场书记员制作笔录。负责执行的人民法院应当在执行死刑后十五日内将执行情况，包括罪犯被执行死刑前后的照片，上报最高人民法院。</p>	<p><b>Article 427</b> After execution, a forensic pathologist shall confirm the death of the offender and the court clerk at the scene shall make record of this. Within 15 days after execution, the people's court in charge of the execution shall report the circumstances of the execution to the Supreme People's Court, including photos of the offender before and after the execution.</p>
<p><b>第四百二十八条</b> 执行死刑后，负责执行的人民法院应当办理以下事项：</p> <p>（一）对罪犯的遗书、遗言笔录，应当及时审查；涉及财产继承、债务清偿、家事嘱托等内容的，将遗书、遗言笔录交给家属，同时复制附卷备查；涉及案件线索等问题的，抄送有关机关；</p> <p>（二）通知罪犯家属在限期内领取罪犯骨灰；没有火化条件或者因民族、宗教等原因不宜火化的，通知领取尸体；过期不领取的，由人民法院通知有关单位处理，并要求有关单位出具处理情况的说明；对罪犯骨灰或者尸体的处理情况，应当记录在案；</p>	<p><b>Article 428</b> The people's court in charge of the execution shall deal with the following matters following an execution:</p> <p>(1) review the record of the offender's final words and written testaments in a timely manner; if the contents of the record involve issues such as property inheritance, debt settlement, arrangement of family affairs, etc., the record of final words and written testaments shall be given to the offender's family members, and a copy shall simultaneously be filed and docketed for future reference; a copy of contents involving leads and other issues related to the case shall be sent to the relevant departments;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(三) 对外国籍罪犯执行死刑后，通知外国驻华使、领馆的程序和时限，根据有关规定办理。</p>	<p>(2) notify the offender’s family members to claim the ashes by a certain deadline; if the body cannot be cremated due to a lack of cremation facilities, the offender’s ethnicity, religion or other reasons, notify the offender’s family members to claim the body; if the deadline has elapsed, the people’s court shall notify other relevant authorities to deal with the ashes or body, and require the authority to submit a written description on the circumstances in which the ashes or body are disposed; the circumstances surrounding the disposal of the ashes or the body shall be recorded in the case file;</p> <p>(3) following the execution of a foreign offender, the procedures and deadlines for notification of the foreign embassy or consulate shall be handled pursuant to the relevant regulations.</p>
<p><b>第二节 死刑缓期执行、无期徒刑、有期徒刑、拘役的交付执行</b></p>	<p><b>Section Two Surrender for Service of Sentences to the Death Penalty with Reprieve, Life Imprisonment, Fixed-Term Imprisonment and Short-Term Imprisonment</b></p>
<p><b>第四百二十九条</b> 被判处死刑缓期执行、无期徒刑、有期徒刑、拘役的罪犯，交付执行时在押的，第一审人民法院应当在判决、裁定生效后十日内，将判决书、裁定书、起诉书副本、自诉状复印件、执行通知书、结案登记表送达看守所，由公安机关将罪犯交付执行。</p> <p>罪犯需要收押执行刑罚，而判决、裁定生效前未被羁押的，人民法院应当根据生效的判决书、裁定书将罪犯送交看守所羈</p>	<p><b>Article 429</b> If an offender is sentenced to the death penalty with reprieve, life imprisonment, fixed-term imprisonment or short-term imprisonment, and if the offender is in custody at the time a sentence is to be imposed, the first instance people’s court shall, within ten days after the effective date of the judgment or ruling, deliver the official judgment or ruling, certified copy of the indictment, photocopy of a private criminal complaint, notice of imposition of sentence, or notice of case disposition form to the detention center. Then the public security</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>押，并依照前款的规定办理执行手续。</p>	<p>organ will surrender the offender to begin serving the sentence.</p> <p>If an offender who will be serving a sentence of incarceration has not yet been taken into custody prior to the date on which the judgment or ruling takes legal effect, the people's court shall deliver the offender to the custody of a detention center and handle procedures for sentence imposition according to the preceding paragraph, pursuant to the effective judgment or ruling.</p>
<p><b>第四百三十条</b> 同案审理的案件中，部分被告人被判处死刑，对未被判处死刑的同案被告人需要羁押执行刑罚的，应当在其判决、裁定生效后十日内交付执行。但是，该同案被告人参与实施有关死刑之罪的，应当在最高人民法院复核讯问被判处死刑的被告人后交付执行。</p>	<p><b>Article 430</b> If some of the offender's codefendants in the case are sentenced to death, while other codefendants who did not receive a death sentence need to serve a custodial sentence, the latter shall be surrendered to serve their sentences within ten days following the legally effective date of the judgment or ruling. However, if the codefendants participated in crimes for which the others received the death penalty, they shall not be surrendered to serve their sentences until after the Supreme People's Court has conducted its review and questioned those codefendants who were sentenced to death.</p>
<p><b>第四百三十一条</b> 执行通知书回执经看守所盖章后，应当附卷备查。</p>	<p><b>Article 431</b> The proof of notice of sentence imposition shall be stamped by the detention center and then docketed in the case file for future reference.</p>
<p><b>第四百三十二条</b> 被判处无期徒刑、有期徒刑或者拘役的罪犯，符合刑事诉讼法第二百五十四条第一款、第二款的规定，人民法院决定暂予监外执行的，应当制作暂予监外执行决定书，写明罪犯基本情况、判决确定的罪名和刑罚、决定暂予监外执行的原因、依据等，通知罪犯居住地的县级司法行政机关派员办理交接手续，并将暂予监外执行决定书抄送罪犯居住地的县级人民检察院</p>	<p><b>Article 432</b> If an offender is sentenced to life imprisonment, fixed-term imprisonment or short-term imprisonment and meets the conditions of Article 254, paragraphs one and two of the Criminal Procedure Law, and the people's court decides that the sentence may be temporarily served outside of prison, the people's court must produce a notice of decision for temporary service of sentence outside of prison, specifying the basic circumstances of the crime, the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>和公安机关。</p> <p>人民检察院认为人民法院的暂予监外执行决定不当，在法定期限内提出书面意见的，人民法院应当立即对该决定重新核查，并在一个月内作出决定。</p>	<p>specific offenses and sentence confirmed in the judgment, the reasons for temporary service of sentence outside of prison, legal bases, etc. The people's court shall inform county-level judicial administrative organs in the county of the offender's domicile to send an officer to process the transfer, and shall send a copy of the court decision to the county-level people's procuratorate and public security organ in the county of the offender's domicile.</p> <p>If the people's procuratorate considers the people's court's decision for temporary service of sentence outside of prison improper, and if it submits its opinion in writing within the legally prescribed time limit, the people's court must immediately re-examine its decision, and must issue a decision within one month.</p>
<p><b>第四百三十三条</b> 暂予监外执行的罪犯具有下列情形之一的，原作出暂予监外执行决定的人民法院，应当在收到执行机关的收监执行建议书后十五日内，作出收监执行的决定：</p> <p>（一）不符合暂予监外执行条件的；</p> <p>（二）未经批准离开所居住的市、县，经警告拒不改正，或者拒不报告行踪，脱离监管的；</p> <p>（三）因违反监督管理规定受到治安管理处罚，仍不改正的；</p> <p>（四）受到执行机关两次警告，仍不改正的；</p>	<p><b>Article 433</b> If, when an offender is temporarily servicing a sentence outside of prison, any of the following circumstances are found to exist, and the people's court that originally issued the decision for temporary service of the sentence outside of prison receives an advisory notice to return the offender to prison from an enforcement authority, the people's court shall, within 15 days after receiving the notice, issue a decision that the offender be returned to prison:</p> <p>(1) the offender does not meet the conditions for temporary service of sentence outside of prison;</p> <p>(2) the offender left the city or county of his domicile without authorization</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(五) 保外就医期间不按规定提交病情复查情况, 经警告拒不改正的;</p> <p>(六) 暂予监外执行的情形消失后, 刑期未了的;</p> <p>(七) 保证人丧失保证条件或者因不履行义务被取消保证人资格, 不能在规定期限内提出新的保证人的;</p> <p>(八) 违反法律、行政法规和监督管理规定, 情节严重的其他情形。</p> <p>人民法院收监执行决定书, 一经作出, 立即生效。</p>	<p>and did not rectify the situation after receiving a warning, or refused to report his or her whereabouts and evaded supervision;</p> <p>(3) after violating the supervision regulations and receiving public security administrative punishment, the offender still did not correct his or her behavior;</p> <p>(4) after being warned twice by the enforcement authority, the offender still did not correct his or her behavior;</p> <p>(5) the offender refused to submit clinical reports as required by regulation while released for medical treatment, and did not rectify this after receiving a warning;</p> <p>(6) after the offender's term of temporary service of sentence outside of prison expired, the full term of the sentence was not yet complete;</p> <p>(7) the offender's guarantor no longer met the conditions necessary to be a guarantor, or was disqualified due to non-fulfillment of his or her obligations, and the offender could not provide a new guarantor prior to the expiration of the time limit prescribed by regulation;</p> <p>(8) the offender violated statutory laws, administrative regulations, supervision management rules, or other situations involving severe</p>
--	--

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>circumstances.</p> <p>A people’s court’s decision to return an offender to prison takes legal effect immediately upon issuance.</p>
<p><b>第四百三十四条</b> 人民法院应当将收监执行决定书送交罪犯居住地的县级司法行政机关，由其根据有关规定将罪犯交付执行。收监执行决定书应当同时抄送罪犯居住地的同级人民检察院和公安机关。</p>	<p><b>Article 434</b> The people’s court shall deliver the decision to return an offender to prison to the judicial administrative organ in the county of the offender’s domicile. The judicial administrative organ then surrenders the offender to serve the sentence according to relevant regulations. The people’s court shall send a copy of the decision to return the offender to prison to the people’s procuratorate and public security organ at the corresponding level in the vicinity of the offender’s domicile.</p>
<p><b>第四百三十五条</b> 被收监执行的罪犯有不计入执行刑期情形的，人民法院应当在作出收监决定时，确定不计入执行刑期的具体时间。</p>	<p><b>Article 435</b> When an offender is being returned to prison has periods of time that may not be counted toward the term of his sentence, the people’s court shall, when it issues its decision to return the offender to prison, confirm the specific amount of time that will be excluded from the calculation of time served.</p>
<p><b>第三节 管制、缓刑、剥夺政治权利的交付执行</b></p>	<p><b>Section Three Surrender for Service of Sentences to Controlled Release, Suspended Sentence, and Deprivation of Political Rights</b></p>
<p><b>第四百三十六条</b> 对被判处管制、宣告缓刑的罪犯，人民法院应当核实其居住地。宣判时，应当书面告知罪犯到居住地县级司法行政机关报到的期限和不按期报到的后果。判决、裁定生效后十日内，应当将判决书、裁定书、执行通知书等法律文书送达罪犯居住地的县级司法行政机关，同时抄送罪犯居住地的县级人民检察院。</p>	<p><b>Article 436</b> The people’s court shall verify the domicile of offenders sentenced to controlled release or a suspended sentence. When pronouncing the sentence, the people’s court shall inform the offender via written notice of the deadline by which he or she must report to the county-level judicial administrative organ in the area of his or her domicile, and of the consequences if he or she fails to report</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	<p>by the deadline. Within ten days after the judgment or ruling takes effect, the people’s court shall deliver the judgment, ruling, notice of imposition of sentence and other legal documents to the county-level judicial administrative organ in the vicinity of the offender’s domicile, and send copies of these documents to the county-level people’s procuratorate in the vicinity of the offender’s domicile.</p>
<p><b>第四百三十七条</b> 对单处剥夺政治权利的罪犯，人民法院应当在判决、裁定生效后十日内，将判决书、裁定书、执行通知书等法律文书送达罪犯居住地的县级公安机关，并抄送罪犯居住地的县级人民检察院。</p>	<p><b>Article 437</b> For offenders who are being deprived only of their political rights, within ten days after the judgment or ruling takes effect, the people’s court shall deliver the judgment, the ruling, the notice of imposition of sentence and other legal documents to the county-level public security organ in the vicinity of the offender’s domicile, and copy the above documents to the county-level people’s procuratorate in the vicinity of the offender’s domicile.</p>
<p><b>第四节 财产刑和附带民事裁判的执行</b></p>	<p><b>Section Four Enforcement of Property-related Penalties and Collateral Civil Judgments</b></p>
<p><b>第四百三十八条</b> 财产刑和附带民事裁判由第一审人民法院负责裁判执行的机构执行。</p>	<p><b>Article 438</b> Property-related penalties and collateral civil judgments shall be enforced by the department in charge of the enforcement of judgments in the first instance people’s court.</p>
<p><b>第四百三十九条</b> 罚金在判决规定的期限内一次或者分期缴纳。期满无故不缴纳或者未足额缴纳的，人民法院应当强制缴纳。经强制缴纳仍不能全部缴纳的，在任何时候，包括主刑执行完毕后，发现被执行人有可供执行的财产的，应当追缴。</p> <p>行政机关对被告人就同一事实已经处以罚款的，人民法院判处罚金时应当折抵，扣除行政处罚已执行的部分。</p>	<p><b>Article 439</b> Criminal fines shall be paid in full or in installments within the time limit required by the judgment. If the offender fails to pay the fine or fails to make full payment without a reasonable excuse within the time limit, the people’s court shall compel the offender to pay the fine. If, despite being compelled to pay, the offender cannot pay the fine in full, the people’s court shall, at any time, even if the incarceration term has already been served, recover</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>判处没收财产的，判决生效后，应当立即执行。</p>	<p>the property whenever it discovers that the judgment debtor has property available.</p> <p>If a defendant has already been fined by an administrative organ for the same facts, when imposing a criminal fine the people’s court shall deduct the portion already paid in administrative fines from the total amount of the criminal fine.</p> <p>Once a judgment for property confiscation takes effect, it shall be enforced immediately.</p>
<p><b>第四百四十条</b> 执行财产刑和附带民事裁判过程中，案外人对被执行财产提出权属异议的，人民法院应当参照民事诉讼有关执行异议的规定进行审查并作出处理。</p>	<p><b>Article 440</b> If, while enforcing a property-related penalty or collateral civil judgment, objections are raised by a third party based on ownership rights to the property subject to enforcement, the people’s court shall consult the civil procedure regulations on objections to enforcement, and review and handle the matter according to those regulations.</p>
<p><b>第四百四十一条</b> 被判处财产刑，同时又承担附带民事赔偿责任的被执行人，应当先履行民事赔偿责任。</p> <p>判处财产刑之前被执行人所负正当债务，需要以被执行的财产偿还的，经债权人请求，应当偿还。</p>	<p><b>Article 441</b> Offenders sentenced to property-related penalties, who also become judgment debtors in a collateral civil case, shall pay the civil compensation first.</p> <p>If, prior to being sentenced to a property-related penalty, the offender had outstanding legitimate debt obligations, which need to be paid using the same property that would be subject to enforcement, if the creditor sends a request to the court, the creditor must be paid.</p>
<p><b>第四百四十二条</b> 被执行人或者被执行财产在外地的，可以委托</p>	<p><b>Article 442</b> If the person or the property subject to enforcement is located in</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>当地人民法院执行。</p> <p>受托法院在执行财产刑后，应当及时将执行的财产上缴国库。</p>	<p>another jurisdiction, the people’s court may entrust the enforcement to a local people’s court in that jurisdiction.</p> <p>The court being entrusted with enforcement shall, after enforcing the property penalty, deliver the property to the State Treasury in a timely manner.</p>
<p><b>第四百四十三条</b> 执行财产刑过程中，具有下列情形之一的，人民法院应当裁定中止执行：</p> <p>（一）执行标的物系人民法院或者仲裁机构正在审理案件的争议标的物，需等待该案件审理完毕确定权属的；</p> <p>（二）案外人对执行标的物提出异议的；</p> <p>（三）应当中止执行的其他情形。</p> <p>中止执行的原因消除后，应当恢复执行。</p>	<p><b>Article 443</b> When enforcing property penalties, a people’s court shall rule to suspend the enforcement if any one of the following circumstances exists:</p> <p>(1) if the items subject to enforcement are currently the disputed subject matter of a case being adjudicated by a people’s court or arbitration institution, the people’s court must wait for the decision in that case regarding ownership rights;</p> <p>(2) a third party raises an objection on the items subject to enforcement;</p> <p>(3) other circumstances requiring the suspension of enforcement.</p> <p>Once the reasons for the suspension of enforcement no longer exist, the enforcement shall be resumed.</p>
<p><b>第四百四十四条</b> 执行财产刑过程中，具有下列情形之一的，人民法院应当裁定终结执行：</p> <p>（一）据以执行的判决、裁定被撤销的；</p>	<p><b>Article 444</b> While enforcing a property-related penalty, the people’s court shall rule to terminate the enforcement if any one of the following circumstances exists:</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(二) 被执行人死亡或者被执行死刑，且无财产可供执行的；</p> <p>(三) 被处罚金的单位终止，且无财产可供执行的；</p> <p>(四) 依照刑法第五十三条规定免除罚金的；</p> <p>(五) 应当终结执行的其他情形。</p> <p>裁定终结执行后，发现被执行人的财产有被隐匿、转移等情形的，应当追缴。</p>	<p>(1) the judgment or ruling upon which the enforcement was based is revoked;</p> <p>(2) the person subject to enforcement dies or is executed pursuant to a death sentence, and has no property remaining for the enforcement of the judgment;</p> <p>(3) a unit sentenced to a criminal fine closes down, and has no property remaining for the enforcement of the judgment;</p> <p>(4) the person is exempted from fines pursuant to Article 53 of the Criminal Law;</p> <p>(5) other circumstances requiring the termination of enforcement.</p> <p>After ruling that enforcement be terminated, if a people’s court discovers that the property of the person subject to enforcement had been concealed, transferred, etc., the people’s court shall recover the property.</p>
<p><b>第四百四十五条</b> 财产刑全部或者部分被撤销的，已经执行的财产应当全部或者部分返还被执行人；无法返还的，应当依法赔偿。</p>	<p><b>Article 445</b> If a property-related penalty is revoked in full or in part, the property already collected shall be returned in full or in part to the person subject to enforcement; if the property cannot be returned, compensation shall be paid.</p>
<p><b>第四百四十六条</b> 因遭遇不能抗拒的灾祸缴纳罚金确有困难，被执行人申请减少或者免除罚金的，应当提交相关证明材料。人民</p>	<p><b>Article 446</b> If, due to an unavoidable disaster the payment of a fine would cause true hardship, the person subject to enforcement shall submit relevant supporting</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>法院应当在收到申请后一个月内作出裁定。符合法定减免条件的，应当准许；不符合条件的，驳回申请。</p>	<p>materials to apply for a reduction or exemption from the fine. The people's court shall issue a ruling on the matter within one month after receiving such an application. If the person subject to enforcement meets the legal requirements for reduction or exemption, the people's court shall rule to permit reduction of or exemption from the fine; if not, it shall reject the application.</p>
<p><b>第四百四十七条</b> 财产刑和附带民事裁判的执行，本解释没有规定的，参照适用民事执行的有关规定。</p>	<p><b>Article 447</b> The enforcement of property-related penalties and collateral civil judgments shall be processed according to regulations related to civil enforcement if there are no corresponding provisions in this Interpretation.</p>
<p style="text-align: center;"><b>第五节 减刑、假释案件的审理</b></p>	<p style="text-align: center;"><b>Section Five Adjudication of Sentence Reduction and Release on Parole</b></p>
<p><b>第四百四十八条</b> 被判处死刑缓期执行的罪犯，在死刑缓期执行期间，没有故意犯罪的，死刑缓期执行期满后，应当裁定减刑；死刑缓期执行期满后，尚未裁定减刑前又犯罪的，应当依法减刑后对其所犯新罪另行审判。</p>	<p><b>Article 448</b> If an offender sentenced to death with reprieve does not commit an intentional crime during the reprieve period, the death sentence shall be ruled reduced at the time of expiration of the period of reprieve. If, after the expiration of the reprieve period but prior to the sentence reduction ruling, the offender commits additional crimes, following the ruling reducing the death sentence, any new crimes shall be adjudicated pursuant to law.</p>
<p><b>第四百四十九条</b> 对减刑、假释案件，应当按照下列情形分别处理：</p> <p style="padding-left: 2em;">（一）对被判处死刑缓期执行的罪犯的减刑，由罪犯服刑地的高级人民法院根据同级监狱管理机关审核同意的减刑建议书裁定；</p> <p style="padding-left: 2em;">（二）对被判处无期徒刑的罪犯的减刑、假释，由罪犯服刑地的高级人民法院，在收到同级监狱管理机关审核同意的减刑、</p>	<p><b>Article 449</b> Sentence reduction and parole cases shall be handled according to the following provisions:</p> <p style="padding-left: 2em;">(1) sentence reductions for offenders sentenced to death with reprieve shall be ruled upon by the high people's court where the offender is serving his sentence, according to the written recommendation regarding sentence reduction reviewed and approved by the prison administrative authority at the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>假释建议书后一个月内作出裁定，案情复杂或者情况特殊的，可以延长一个月；</p> <p>（三）对被判处有期徒刑和被减为有期徒刑的罪犯的减刑、假释，由罪犯服刑地的中级人民法院，在收到执行机关提出的减刑、假释建议书后一个月内作出裁定，案情复杂或者情况特殊的，可以延长一个月；</p> <p>（四）对被判处拘役、管制的罪犯的减刑，由罪犯服刑地中级人民法院，在收到同级执行机关审核同意的减刑、假释建议书后一个月内作出裁定。</p> <p>对暂予监外执行罪犯的减刑，应当根据情况，分别适用前款的有关规定。</p>	<p>corresponding level;</p> <p>(2) sentence reductions and release on parole for offenders sentenced to life imprisonment shall be ruled upon by the high people’s court where the offender is serving his sentence, within one month after receiving the written recommendation regarding sentence reduction or parole reviewed and approved by the prison administrative authority at the corresponding level; if the facts of the case are complex or there are other special circumstances, this deadline may be extended by one month;</p> <p>(3) sentence reductions and release on parole for offenders sentenced to fixed-term imprisonment or whose sentences were reduced to fixed-term imprisonment shall be ruled upon by the intermediate people’s court where the offender is serving his sentence, within one month after receiving the written recommendation regarding sentence reduction or parole proposed by the enforcement authority; if the facts of the case are complex or there are special circumstances, this deadline may be extended by one month;</p> <p>(4) sentence reductions for offenders sentenced to short-term imprisonment or controlled release shall be ruled upon by the intermediate people’s court where the offender is serving his sentence, within one month after receiving the written recommendation regarding sentence reduction or parole examined and approved by the enforcement authority at the corresponding level.</p>
---	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>Regarding sentence reductions for offenders temporarily serving their sentences outside of prison, the people’s court shall refer to the relevant provisions above and make its decision according to the circumstances.</p>
<p><b>第四百五十条</b> 受理减刑、假释案件，应当审查执行机关移送的材料是否包括下列内容：</p> <p>（一）减刑、假释建议书；</p> <p>（二）终审法院的裁判文书、执行通知书、历次减刑裁定书的复制件；</p> <p>（三）证明罪犯确有悔改、立功或者重大立功表现具体事实的书面材料；</p> <p>（四）罪犯评审鉴定表、奖惩审批表等；</p> <p>（五）罪犯假释后对所居住社区影响的调查评估报告；</p> <p>（六）根据案件情况需要移送的其他材料。</p> <p>经审查，材料不全的，应当通知提请减刑、假释的执行机关补送。</p>	<p><b>Article 450</b> When a sentence reduction or parole case is accepted, the materials transferred to the court by the enforcement authorities must be examined by the court to ascertain whether they include the following contents:</p> <p>(1) written recommendation regarding sentence reduction or parole;</p> <p>(2) copies of judgment documents, written notice of imposition of sentence, and all previous rulings regarding sentence reductions of the highest court to have heard the case;</p> <p>(3) specific written materials showing that the offender has displayed remorse or rendered meritorious or extremely meritorious service or cooperation;</p> <p>(4) the offender’s assessment appraisal form, record of approved rewards and punishments while incarcerated, etc.;</p> <p>(5) an investigative evaluation report on the potential effects of the offender’s release on parole upon the residential community;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(6) any other materials sent to the court based upon the needs of the case.</p> <p>Following examination, if the materials are incomplete, the court must notify the enforcement authority requesting sentence reduction or release on parole to send supplementary materials.</p>
<p><b>第四百五十一条</b> 审理减刑、假释案件，应当审查财产刑和附带民事裁判的执行情况，以及罪犯退赃、退赔情况。罪犯积极履行判决确定的义务的，可以认定有悔改表现，在减刑、假释时从宽掌握；确有履行能力而不履行的，在减刑、假释时从严掌握。</p>	<p><b>Article 451</b> When adjudicating sentence reduction and parole cases, the court shall examine the enforcement status of property-related penalties and collateral civil judgments, and any relinquishment of unlawful gains or restitution by the offender. Where the offender has actively fulfilled his obligations under the judgment, and his expressions of remorse can be confirmed, the court will be lenient in its handling of sentence reduction or parole; if the offender has the ability to fulfill his obligations under the judgment but does not do so, the court will be severe in its handling of sentence reduction or conditional release.</p>
<p><b>第四百五十二条</b> 审理减刑、假释案件，应当对以下内容予以公示：</p> <p>（一）罪犯的姓名、年龄等个人基本情况；</p> <p>（二）原判认定的罪名和刑期；</p> <p>（三）罪犯历次减刑情况；</p> <p>（四）执行机关的减刑、假释建议和依据。</p>	<p><b>Article 452</b> When adjudicating sentence reduction and parole cases, the following information must be publicized:</p> <p>(1) the name, age and other basic personal information about the offender;</p> <p>(2) the original offense of conviction and duration of the sentence;</p> <p>(3) circumstances related to the offender’s previous sentence reduction(s);</p> <p>(4) the enforcement authority’s recommendation regarding sentence</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>公示应当写明公示期限和提出意见的方式。公示地点为罪犯服刑场所的公共区域；有条件的地方，可以面向社会公示。</p>	<p>reduction or parole and the bases therefor.</p> <p>The public announcement must provide clearly, in writing, the deadline and means for the public to submit its opinions. The announcement is to be located in a public area in the vicinity of the location where the offender is serving his prison term; where the means are available, this can be publicized to the broader public.</p>
<p><b>第四百五十三条</b> 审理减刑、假释案件，应当组成合议庭，可以采用书面审理的方式，但下列案件应当开庭审理：</p> <p>（一）因罪犯有重大立功表现提请减刑的；</p> <p>（二）提请减刑的起始时间、间隔时间或者减刑幅度不符合一般规定的；</p> <p>（三）社会影响重大或者社会关注度高的；</p> <p>（四）公示期间收到投诉意见的；</p> <p>（五）人民检察院有异议的；</p> <p>（六）有必要开庭审理的其他案件。</p>	<p><b>Article 453</b> When adjudicating sentence reduction or parole cases, a collegial panel must be constituted, and an examination based upon the written record alone is permitted; however, in the following cases, an adjudication hearing must be held in court:</p> <p>(1) if the request for sentence reduction is based on the offender’s especially valuable cooperation or major meritorious service;</p> <p>(2) if a request for sentence reduction is made prior to the earliest date upon which it is normally permitted, during a period of incarceration in which no requests for reduction are normally permitted, or if the amount of reduction requested is greater than that which is usually permitted, in variance with the usual regulations;</p> <p>(3) if the effects on the community would be especially great or if the community is paying a great amount of attention to the case;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	<p>(4) during the publicity period, complaints are received;</p> <p>(5) the people’s procuratorate has objections;</p> <p>(6) other cases that necessitate the holding of an adjudication hearing in court.</p>
<p><b>第四百五十四条</b> 人民法院作出减刑、假释裁定后，应当在七日内送达提请减刑、假释的执行机关、同级人民检察院以及罪犯本人。人民检察院认为减刑、假释裁定不当，在法定期限内提出书面纠正意见的，人民法院应当在收到意见后另行组成合议庭审理，并在一个月内作出裁定。</p>	<p><b>Article 454</b> Within seven days after issuing a ruling on sentence reduction or parole, the people’s court shall send the ruling to the enforcement authority requesting the sentence reduction or parole, to the people’s procuratorate at the corresponding level, and to the offender himself. If the people’s procuratorate determines that sentence reduction or release on parole is improper, and if it provides a written correction opinion within the legally prescribed period of time, the people’s court shall, after receiving that opinion, constitute another collegial panel to adjudicate the matter, and shall issue a ruling within one month.</p>
<p><b>第四百五十五条</b> 减刑、假释裁定作出前，执行机关书面提请撤回减刑、假释建议的，是否准许，由人民法院决定。</p>	<p><b>Article 455</b> If, prior to the issuance of a ruling regarding sentence reduction or parole, an enforcement authority submits a written request to withdraw its recommendation for sentence reduction or parole, the people’s court will determine whether or not to permit the request to withdraw the recommendation.</p>
<p><b>第四百五十六条</b> 人民法院发现本院已经生效的减刑、假释裁定确有错误的，应当另行组成合议庭审理；发现下级人民法院已经生效的减刑、假释裁定确有错误的，可以指令下级人民法院另行组成合议庭审理。</p>	<p><b>Article 456</b> If a people’s court discovers that its own ruling regarding sentence reduction or parole, which has already taken effect, contains definite error, it shall constitute another collegial panel to adjudicate the matter; if it discovers that a lower people’s court’s ruling regarding sentence reduction or parole, which</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	has already taken effect, contains definite error, it may instruct the lower people's court to constitute another collegial panel to adjudicate the matter.
<b>第六节 缓刑、假释的撤销</b>	<b>Section Six Revocation of Release on Probation or Parole</b>
<b>第四百五十七条</b> 罪犯在缓刑、假释考验期限内犯新罪或者被发现在判决宣告前还有其他罪没有判决，应当撤销缓刑、假释的，由审判新罪的人民法院撤销原判决、裁定宣告的缓刑、假释，并书面通知原审人民法院和执行机关。	<b>Article 457</b> If, during a period of release on probation or parole, the offender commits a new crime, or if it is discovered that prior to the issuance of the judgment he or she had other pending criminal cases, the release on probation or parole shall be revoked, the original judgment or ruling granting probation or parole shall be revoked by the people's court adjudicating the new crime, and it shall notify the original people's court and enforcement authorities in writing.
<b>第四百五十八条</b> 罪犯在缓刑、假释考验期限内，有下列情形之一的，原作出缓刑、假释判决、裁定的人民法院应当在收到执行机关的撤销缓刑、假释建议书后一个月内，作出撤销缓刑、假释的裁定：  （一）违反禁止令，情节严重的；  （二）无正当理由不按规定时间报到或者接受社区矫正期间脱离监管，超过一个月的；  （三）因违反监督管理规定受到治安管理处罚，仍不改正的；  （四）受到执行机关三次警告仍不改正的；  （五）违反有关法律、行政法规和监督管理规定，情节严重的其他情形。	<b>Article 458</b> If, during the initial trial period of probation or parole, one of the following events occurs, the people's court that issued the original probation or parole judgment or ruling, shall, within one month after receiving the written revocation of probation or parole from the enforcement authority, issue a ruling revoking the probation or parole:  （1） a violation of a court prohibition order occurs, and the circumstances are serious;  （2） without a legitimate reason, failing to report as required by law or, during the period of community corrections, evading supervision for over one month;  （3） if, after receiving public security administration punishment as the result

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>人民法院撤销缓刑、假释的裁定，一经作出，立即生效。</p> <p>人民法院应当将撤销缓刑、假释裁定书送交罪犯居住地的县级司法行政机关，由其根据有关规定将罪犯交付执行。撤销缓刑、假释裁定书应当同时抄送罪犯居住地的同级人民检察院和公安机关。</p>	<p>of violating the supervision regulations, the behavior is still not corrected;</p> <p>(4) if, after receiving three warnings from the enforcement authority, the behavior is still not corrected;</p> <p>(5) other serious violations of relevant statutory law, administrative law or regulation, and supervision regulations, and other situations in which the circumstances are serious.</p> <p>Rulings by the people’s court revoking probation or parole take effect immediately upon issuance.</p> <p>People’s courts shall send written rulings revoking probation to the county-level judicial administrative authorities in the vicinity of the offender’s domicile, and those authorities will surrender the offender into custody to serve his sentence, pursuant to related regulations. Copies of written rulings revoking probation or parole shall be sent simultaneously to the people’s procuratorate and public security organ at the corresponding level, in the vicinity of the offender’s domicile.</p>
<p><b>第二十章 未成年人刑事案件诉讼程序</b></p>	<p><b>Chapter 20 Adjudication Procedures for Juvenile Criminal Cases</b></p>
<p><b>第一节 一般规定</b></p>	<p><b>Section One General Provisions</b></p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第四百五十九条</b> 人民法院审理未成年人刑事案件，应当贯彻教育、感化、挽救的方针，坚持教育为主、惩罚为辅的原则，加强对未成年人的特殊保护。</p>	<p><b>Article 459</b> People’s Courts trying juvenile criminal cases shall carry out the education, reform and rescue directive and persist in the principle of education over punishment, to strengthen the special protection of minors.</p>
<p><b>第四百六十条</b> 人民法院应当加强同政府有关部门以及共青团、妇联、工会、未成年人保护组织等团体的联系，推动未成年人刑事案件人民陪审、情况调查、安置帮教等工作的开展，充分保障未成年人的合法权益，积极参与社会管理综合治理。</p>	<p><b>Article 460</b> The people’s courts shall strengthen communication between the relevant government departments as well as the Communist Youth League, Women’s Federations, Worker’s Unions, child welfare organizations and other groups, to promote the implementation of people’s adjudication, investigation of circumstances , placement assistance and other work in juvenile case; and fully ensure the lawful rights and interests of minors and actively participate in social management and comprehensive administration.</p>
<p><b>第四百六十一条</b> 审理未成年人刑事案件，应当由熟悉未成年人身心特点、善于做未成年人思想教育的审判人员进行，并应当保持有关审判人员工作的相对稳定性。</p> <p>未成年人刑事案件的人民陪审员，一般由熟悉未成年人身心特点，热心教育、感化、挽救失足未成年人工作，并经过必要培训的共青团、妇联、工会、学校、未成年人保护组织等单位的工作人员或者有关单位的退休人员担任。</p>	<p><b>Article 461</b> The trial of juvenile criminal cases shall be carried out by judicial officers familiar with the physical and psychological characteristics of minors and adept at providing minors with ideological education; and thee the relative secrecy of this work by judicial officers shall be preserved.</p> <p>People’s assessors in juvenile criminal cases shall ordinarily be workers or retired personnel from groups such as the Communist Youth League, the Woman’s Federation, worker’s unions, schools, or child welfare organizations, who are familiar with the physical and psychological characteristics of minors, enthusiastic about the education, reform and rescue of troubled minors, and who have undergone mandatory training.</p>
<p><b>第四百六十二条</b> 中级人民法院和基层人民法院可以设立独立建制的未成年人案件审判庭。尚不具备条件的，应当在刑事审判</p>	<p><b>Article 462</b> Intermediate people’s courts and basic level people’s courts may establish an independent juvenile criminal division. Those that lack the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>庭内设立未成年人刑事案件合议庭，或者由专人负责审理未成年人刑事案件。</p> <p>高级人民法院应当在刑事审判庭内设立未成年人刑事案件合议庭。具备条件的，可以设立独立建制的未成年人案件审判庭。</p> <p>未成年人案件审判庭和未成年人刑事案件合议庭统称少年法庭。</p>	<p>resources, shall establish a collegial panel for juvenile criminal cases within the criminal division, or have specialized personnel try juvenile criminal cases.</p> <p>High people's courts shall establish a collegial panel for handling juvenile criminal case within the criminal division. Those that have the resources may establish an independent juvenile criminal division.</p> <p>Juvenile case divisions and collegial panels for juvenile criminal cases shall be collectively referred to as juvenile courts.</p>
<p><b>第四百六十三条</b> 下列案件由少年法庭审理：</p> <p>（一）被告人实施被指控的犯罪时不满十八周岁、人民法院立案时不满二十周岁的案件；</p> <p>（二）被告人实施被指控的犯罪时不满十八周岁、人民法院立案时不满二十周岁，并被指控为首要分子或者主犯的共同犯罪案件。</p> <p>其他共同犯罪案件有未成年被告人的，或者其他涉及未成年人的刑事案件是否由少年法庭审理，由院长根据少年法庭工作的实际情况决定。</p>	<p><b>Article 463</b> The following cases are to be tried by juvenile courts:</p> <p>(1) Cases where the defendant was not yet 18 when he committed the crime accused and not yet 20 when the case was filed by a people's court;</p> <p>(2) joint criminal cases where the defendant who is charged with being the ringleader or principal offender was not yet 18 when he committed the crime accused and not yet 20 when the case was filed by a people's court.</p> <p>Whether other joint criminal cases with juvenile defendants or other cases that involve minors shall be tried by the juvenile court will be decided by the court president based on the actual conditions of the juvenile court's work.</p>
<p><b>第四百六十四条</b> 对分案起诉至同一人民法院的未成年人与成年人共同犯罪案件，可以由同一个审判组织审理；不宜由同一个</p>	<p><b>Article 464</b> Joint crimes by a juvenile and an adult where the cases were filed separately with the same people's court may be tried by the same trial</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usiasialaw@nyu.edu](mailto:usiasialaw@nyu.edu).

<p>审判组织审理的，可以分别由少年法庭、刑事审判庭审理。</p> <p>未成年人与成年人共同犯罪案件，由不同人民法院或者不同审判组织分别审理的，有关人民法院或者审判组织应当互相了解共同犯罪被告人的审判情况，注意全案的量刑平衡。</p>	<p>organization; where trial by the same trial organization is not appropriate, they may be separately tried by the juvenile court and the criminal division.</p> <p>In joint crimes by a juvenile and an adult that are tried by different people's courts or different trial organizations, the relevant people's courts or trial organizations shall have a mutual understanding of the trial conditions of the joint crime's defendants, and pay attention to the sentencing balance across the entire case.</p>
<p><b>第四百六十五条</b> 对未成年人刑事案件，必要时，上级人民法院可以根据刑事诉讼法第二十六条的规定，指定下级人民法院将案件移送其他人民法院审判。</p>	<p><b>Article 465</b> When it is necessary in a juvenile criminal case, a higher people's court may, on the basis of the provisions of Criminal Procedure Law Article 26, assign a lower people's court to send the case to a different people's court for trial.</p>
<p><b>第四百六十六条</b> 人民法院审理未成年人刑事案件，在讯问和开庭时，应当通知未成年被告人的法定代理人到场。法定代理人无法通知、不能到场或者是共犯的，也可以通知未成年被告人的其他成年亲属，所在学校、单位、居住地的基层组织或者未成年人保护组织的代表到场，并将有关情况记录在案。</p> <p>到场的其他人员，除依法行使刑事诉讼法第二百七十条第二款规定的权利外，经法庭同意，可以参与对未成年被告人的法庭教育等工作。</p> <p>适用简易程序审理未成年人刑事案件，适用前两款的规定。</p>	<p><b>Article 466</b> People's courts handling juvenile criminal cases, shall notify the juvenile defendant's legal agent to appear in court during questioning and court hearings. If there is no way to notify the legal agent, the agent cannot appear or is an accomplice, the defendant's other adult relatives, a representative of his school, workplace or basic residential organization, or a representative of a child welfare organization, may be notified to appear, and the relevant circumstance shall be noted in the case.</p> <p>In addition to lawfully exercising the rights provided in Article 270 of the Criminal Procedure Law, other persons appearing in court may, with the court's consent, participate in work such as the courtroom education of the defendant.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>询问未成年被害人、证人，适用第一款、第二款的规定。</p>	<p>The provisions of the previous two paragraphs apply in juvenile criminal cases using the simplified trial procedures.</p> <p>Apply the provisions of paragraph 1 and 2 when questioning juvenile victims or witnesses.</p>
<p><b>第四百六十七条</b> 开庭审理时被告人不满十八周岁的案件，一律不公开审理。经未成年被告人及其法定代理人同意，未成年被告人所在学校和未成年人保护组织可以派代表到场。到场代表的人数和范围，由法庭决定。到场代表经法庭同意，可以参与对未成年被告人的法庭教育工作。</p> <p>对依法公开审理，但可能需要封存犯罪记录的案件，不得组织人员旁听。</p>	<p><b>Article 467</b> Cases where the defendant is not yet 18 years old when trial begins, shall without exception, not be tried openly. With the consent of the juvenile defendant and his legal representative, the juvenile defendant's current school and child welfare organizations may send representatives to appear in court. The number and range of representatives appearing in court is decided by the court. With the court's permission, representatives appearing in court may participate in the work of defendant's courtroom education.</p> <p>In cases that are tried openly in accordance with law, but might require that a criminal record be sealed, personnel must not be organized to observe.</p>
<p><b>第四百六十八条</b> 确有必要通知未成年被害人、证人出庭作证的，人民法院应当根据案件情况采取相应的保护措施。有条件的，可以采取视频等方式对其陈述、证言进行质证。</p>	<p><b>Article 468</b> Where there is a real need to notify juvenile victims or witnesses to appear in court and testify, the people's court shall adopt protective measures in accordance with the conditions of the case. Where resources are available, methods such as video casting may be adopted for questioning and verification of their statements or testimony.</p>
<p><b>第四百六十九条</b> 审理未成年人刑事案件，不得向外界披露该未成年人的姓名、住所、照片以及可能推断出该未成年人身份的其</p>	<p><b>Article 469</b> When handling juvenile criminal cases, the juvenile's name, residence, picture and other materials from which the juvenile's identity might be</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>他资料。</p> <p>查阅、摘抄、复制的未成年人刑事案件的案卷材料，不得公开和传播。</p> <p>被害人是未成年人的刑事案件，适用前两款的规定。</p>	<p>deduced must not be revealed to the outside world.</p> <p>Case file materials in juvenile criminal cases that are read, copied or photocopied must not be disclosed or transmitted.</p> <p>The provisions of the previous two paragraphs apply to criminal cases in which the victim is a minor.</p>
<p><b>第四百七十条</b> 审理未成年人刑事案件，本章没有规定的，适用本解释的有关规定。</p>	<p><b>Article 470</b> In trying juvenile criminal cases, where this chapter has no provisions, apply relevant provisions from this interpretation.</p>
<p style="text-align: center;"><b>第二节 开庭准备</b></p>	<p style="text-align: center;"><b>Section Two Trial Preparation</b></p>
<p><b>第四百七十一条</b> 人民法院向未成年被告人送达起诉书副本时，应当向其讲明被指控的罪行和有关法律规定，并告知其审判程序和诉讼权利、义务。</p>	<p><b>Article 471</b> When sending a copy of the indictment to a juvenile criminal defendant, the people’s court shall clearly state the criminal conduct charged and the relevant laws and regulations, and inform him of trial procedures and his litigation rights and duties.</p>
<p><b>第四百七十二条</b> 审判时不满十八周岁的未成年被告人没有委托辩护人的，人民法院应当通知法律援助机构指派律师为其提供辩护。</p>	<p><b>Article 472</b> Where juvenile criminal defendants not yet 18 years-old at the time of trial have not retained a lawyer, the people’s court shall notify a legal aid organization to appoint a lawyer to provide him with a defense.</p>
<p><b>第四百七十三条</b> 未成年被害人及其法定代理人因经济困难或者其他原因没有委托诉讼代理人的，人民法院应当帮助其申请法律援助。</p>	<p><b>Article 473</b> If juvenile victims or their legal representatives have not retained an agent ad litem due to financial difficulties or other reasons, the people’s court shall help them apply for legal aid.</p>
<p><b>第四百七十四条</b> 对未成年人刑事案件，人民法院决定适用简易程序审理的，应当征求未成年被告人及其法定代理人、辩护人的意见。上述人员提出异议的，不适用简易程序。</p>	<p><b>Article 474</b> In juvenile criminal cases where a people’s court decides to apply simplified trial procedures, it shall solicit the opinions of the juvenile defendant,</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	<p>his legal representative and defender. If the persons above object, the simplified procedures will not be used.</p>
<p><b>第四百七十五条</b> 被告人实施被指控的犯罪时不满十八周岁，开庭时已满十八周岁、不满二十周岁的，人民法院开庭时，一般应当通知其近亲属到庭。经法庭同意，近亲属可以发表意见。近亲属无法通知、不能到场或者是共犯的，应当记录在案。</p>	<p><b>Article 475</b> If a defendant was not yet 18 years-old when committing the alleged crime, but is already 18 years old, but not yet 20 years-old when trial begins, his close relatives shall ordinarily be notified to appear in court. With the court’s consent, the close relatives may present their opinions. If there is no way to notify the relatives, or they cannot appear or are accomplices, a record shall be made in the case.</p>
<p><b>第四百七十六条</b> 对人民检察院移送的关于未成年被告人性格特点、家庭情况、社会交往、成长经历、犯罪原因、犯罪前后的表现、监护教育等情况的调查报告，以及辩护人提交的反映未成年被告人上述情况的书面材料，法庭应当接受。</p> <p>必要时，人民法院可以委托未成年被告人居住地的县级司法行政机关、共青团组织以及其他社会团体组织对未成年被告人的上述情况进行调查，或者自行调查。</p>	<p><b>Article 476</b> The court shall accept the investigation report sent by the people’s procuratorate regarding characteristics of a juvenile defendant’s personality, his home conditions, social relations, upbringing, reasons for the crime, behavior before and after the crime, supervision and education conditions and other such circumstances, as well as written materials provided by the defender in response reflecting on the above circumstances.</p> <p>When necessary, a people’s court may entrust the county level judicial administrative organ, communist you league organization or other social group organizations from the juvenile defendant’s residence to investigate the above circumstances, or may personally investigate.</p>
<p><b>第四百七十七条</b> 对未成年人刑事案件，人民法院根据情况，可以对未成年被告人进行心理疏导；经未成年被告人及其法定代理人同意，也可以对未成年被告人进行心理测评。</p>	<p><b>Article 477</b> For juvenile criminal cases, the people’s courts, according to the circumstances, may carry out psychological counseling for the juvenile defendant; with the consent of the juvenile defendant and his legal representative, it may also carry out psychological evaluation.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第四百七十八条</b> 开庭前和休庭时，法庭根据情况，可以安排未成年被告人及其法定代理人或者刑事诉讼法第二百七十条第一款规定的其他成年亲属、代表会见。</p>	<p><b>Article 478</b> Before court opens and during recesses, the court, according to circumstances, may arrange meetings with the juvenile criminal defendant and his legal agent or other adult family members or representatives listed in the first paragraph of article 270 of the Criminal Procedure Law.</p>
<p style="text-align: center;"><b>第三节 审判</b></p>	<p style="text-align: center;"><b>Section Three Trial</b></p>
<p><b>第四百七十九条</b> 人民法院应当在辩护台靠近旁听区一侧为未成年被告人的法定代理人或者刑事诉讼法第二百七十条第一款规定的其他成年亲属、代表设置席位。</p> <p style="padding-left: 2em;">审理可能判处五年有期徒刑以下刑罚或者过失犯罪的未成年人刑事案件，可以采取适合未成年人特点的方式设置法庭席位。</p>	<p><b>Article 479</b> Where the defense platform nears the observers' area, people's courts shall arrange a seat for juvenile defendants' legal agents or other adult relatives or representatives provided for in paragraph 1 of Criminal Procedure Law Article 270.</p> <p style="padding-left: 2em;">When hearing juvenile criminal cases that might result in a judgment of 5 years or less imprisonment or on crime of negligence, the court may adopt a seat arrangement suitable to the characteristics of juvenile defendants.</p>
<p><b>第四百八十条</b> 在法庭上不得对未成年被告人使用戒具，但被告人人身危险性大，可能妨碍庭审活动的除外。必须使用戒具的，在现实危险消除后，应当立即停止使用。</p>	<p><b>Article 480</b> Restraints must not be used on juvenile defendants in court, except where the defendant is significantly dangerous and might obstruct court activity. When it is necessary to use restraints, their use shall be stopped when the current threat has dissipated.</p>
<p><b>第四百八十一条</b> 未成年被告人或者其法定代理人当庭拒绝辩护人辩护的，适用本解释第二百五十四条第一款、第二款的规定。</p> <p style="padding-left: 2em;">重新开庭后，未成年被告人或者其法定代理人再次当庭拒绝辩护人辩护的，不予准许。重新开庭时被告人已满十八周岁的，可以准许，但不得再另行委托辩护人或者要求另行指派律师，由</p>	<p><b>Article 481</b> If minors or their legal representatives refuse the defenders defense at court, apply paragraph 1 and 2 of Article 254 of this interpretation.</p> <p style="padding-left: 2em;">If, after beginning trial anew, the juvenile defendant or his legal agent again refuses the defender's defense, it shall not be permitted. If when trial begins</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>其自行辩护。</p>	<p>anew the defendant is already 18 years-old, it may be permitted but he must then carry out his own defense and not separately hire a defender or request a lawyer be appointed to him.</p>
<p><b>第四百八十二条</b> 法庭审理过程中, 审判人员应当根据未成年被告人的智力发育程度和心理状态, 使用适合未成年人的语言表达方式。</p> <p>发现有对未成年被告人诱供、训斥、讽刺或者威胁等情形的, 审判长应当制止。</p>	<p><b>Article 482</b> Over the course of trial, adjudicatory personnel shall use language and means of expression appropriate to the juvenile defendants degree of intellectual development and psychological state.</p> <p>If it is discovered that there has been an enticement to confess, derision, mocking, threatening or other such treatment of the defendant, the chief judge shall stop it.</p>
<p><b>第四百八十三条</b> 控辩双方提出对未成年被告人判处管制、宣告缓刑等量刑建议的, 应当向法庭提供有关未成年被告人能够获得监护、帮教以及对所居住社区无重大不良影响的书面材料。</p>	<p><b>Article 483</b> If the prosecution or defense makes a sentencing suggestion that a juvenile defendant be sentenced to controlled release or have probation announced, they shall present written materials to the court regarding the juvenile defendant's ability to receive sufficient supervision and education, and showing that he will not be a significantly unwholesome influence on his residential area.</p>
<p><b>第四百八十四条</b> 对未成年被告人情况的调查报告, 以及辩护人提交的有关未成年被告人情况的书面材料, 法庭应当审查并听取控辩双方意见。上述报告和材料可以作为法庭教育和量刑的参考。</p>	<p><b>Article 484</b> The court shall review and hear the comments of both sides regarding the investigative report on a juvenile defendant's circumstances and any written materials provided by the defender on the defendant's circumstances. The report and materials described above may referenced for courtroom education and sentencing.</p>
<p><b>第四百八十五条</b> 法庭辩论结束后, 法庭可以根据案件情况, 对未成年被告人进行教育; 判决未成年被告人有罪的, 宣判后, 应当对未成年被告人进行教育。</p>	<p><b>Article 485</b> At the conclusion of courtroom debate, the court may, on the basis of the case circumstances, carry out education; when finding a juvenile defendant</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>对未成年被告人进行教育，可以邀请诉讼参与人、刑事诉讼法第二百七十条第一款规定的其他成年亲属、代表以及社会调查员、心理咨询师等参加。</p> <p>适用简易程序审理的案件，对未成年被告人进行法庭教育，适用前两款的规定。</p>	<p>guilty, education of the juvenile defendant shall be carried out.</p> <p>When performing education of juvenile defendants, persons such as litigation participants, adult relatives and representatives provided for in paragraph 1 of Criminal Procedure Law Article 270, and social investigators and psychological counselors may be invited to participate.</p> <p>In cases applying the simplified trial procedures, the provisions of the preceding two paragraphs shall apply to carrying out education of the juvenile criminal defendant.</p>
<p><b>第四百八十六条</b> 未成年被告人最后陈述后，法庭应当询问其法定代理人是否补充陈述。</p>	<p><b>Article 480</b> After a juvenile defendant's final statement, the court shall inquire whether his legal agent will supplement the statement.</p>
<p><b>第四百八十七条</b> 对未成年人刑事案件宣告判决应当公开进行，但不得采取召开大会等形式。</p> <p>对依法应当封存犯罪记录的案件，宣判时，不得组织人员旁听；有旁听人员的，应当告知其不得传播案件信息。</p>	<p><b>Article 487</b> In juvenile criminal cases, proclamation of the verdict shall be done openly, but methods such as large meetings shall not be adopted.</p> <p>In cases where criminal records shall be sealed in accordance with law, persons may not be organized to observe the announcement of the verdict; if there are observers, they shall be told that they may not transmit case information.</p>
<p><b>第四百八十八条</b> 定期宣告判决的未成年人刑事案件，未成年被告人的法定代理人无法通知、不能到庭或者是共犯的，法庭可以通知刑事诉讼法第二百七十条第一款规定的其他成年亲属、代表到庭，并在宣判后向未成年被告人的成年亲属送达判决书。</p>	<p><b>Article 488</b> In juvenile criminal cases where the time for the announcement of the verdict has been set, if the juvenile defendant's legal representative cannot be notified, cannot appear in court or is a co-criminal, the court may notify other adult relatives or representatives provided for in paragraph 1 of Criminal</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	Procedure Law article 270 to appear in court, and deliver the verdict to the juvenile defendant's adult relatives after judgment is announced.
<b>第四节 执行</b>	<b>Section Four Enforcement</b>
<b>第四百八十九条</b> 将未成年罪犯送监执行刑罚或者送交社区矫正时, 人民法院应当将有关未成年罪犯的调查报告及其在案件审理中的表现材料, 连同有关法律文书, 一并送达执行机关。	<b>Article 489</b> When delivering juvenile offenders to prison to serve their sentences or sending them to community corrections, the people's courts shall also send the investigative report on the juvenile offender and the materials on his behavior at trial together with relevant legal certificates to the enforcement organ.
<b>第四百九十条</b> 犯罪时不满十八周岁, 被判处五年有期徒刑以下刑罚以及免除刑事处罚的未成年人的犯罪记录, 应当封存。  2012年12月31日以前审结的案件符合前款规定的, 相关犯罪记录也应当封存。  司法机关或者有关单位向人民法院申请查询封存的犯罪记录的, 应当提供查询的理由和依据。对查询申请, 人民法院应当及时作出是否同意的决定。	<b>Article 490</b> The record of minors who were not yet 18 years old at the time of the crime and who were sentenced to five years or less imprisonment or excused from punishment, shall be sealed.  The relevant criminal records from cases where trial concluded before December 31, 2012, shall also be sealed.  When judicial organs or concerned work units submit a request to review sealed criminal records to a people's court, they shall state the reason and basis for the request. The people's court shall promptly a decision as to whether or not it consents to such a request.
<b>第四百九十一条</b> 人民法院可以与未成年罪犯管教所等服刑场所建立联系, 了解未成年罪犯的改造情况, 协助做好帮教、改造工作, 并可以对正在服刑的未成年罪犯进行回访考察。	<b>Article 491</b> People's courts may establish communication with reform schools and other penal centers, learn about the circumstances of juvenile offenders' reform, coordinate the successful mentorship and reformation work, and may have follow up inspections with juvenile offenders currently serving a sentence.

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第四百九十二条</b> 人民法院认为必要时，可以督促被收监服刑的未成年罪犯的父母或者其他监护人及时探视。</p>	<p><b>Article 492</b> When people's courts find it is necessary, they may urge the parents of incarcerated juveniles or other guardians to visit them without delay.</p>
<p><b>第四百九十三条</b> 对被判处管制、宣告缓刑、裁定假释、决定暂予监外执行的未成年罪犯，人民法院可以协助社区矫正机构制定帮教措施。</p>	<p><b>Article 493</b> The people's courts may assist community corrections organizations in formulating mentorship measures for juvenile offenders sentenced to controlled release, under probation, parole, or temporarily serving their sentence outside of prison.</p>
<p><b>第四百九十四条</b> 人民法院可以适时走访被判处管制、宣告缓刑、免除刑事处罚、裁定假释、决定暂予监外执行等的未成年罪犯及其家庭，了解未成年罪犯的管理和教育情况，引导未成年罪犯的家庭承担管教责任，为未成年罪犯改过自新创造良好环境。</p>	<p><b>Article 494</b> People's courts may occasionally visit juvenile offenders sentenced to controlled released, granted probation, excused from criminal punishment, on parole or temporarily serving their sentence outside of prison, as well as their families, to understand the conditions of their supervision and education and guide the family of the juvenile offender in undertaking the responsibility of education and supervision so as to create an environment conducive to reform.</p>
<p><b>第四百九十五条</b> 被判处管制、宣告缓刑、免除刑事处罚、裁定假释、决定暂予监外执行等的未成年罪犯，具备就学、就业条件的，人民法院可以就其安置问题向有关部门提出司法建议，并附送必要的材料。</p>	<p><b>Article 495</b> People's court may make suggestions to the relevant departments in making arrangements for juvenile offenders that have the capacity for schooling or employment and are sentence to controlled release, on probation, excused from criminal punishment, granted parole, or temporarily serving their sentence outside of prison.</p>
<p><b>第二十一章 当事人和解的公诉案件诉讼程序</b></p>	<p><b>Chapter 21 Procedure for Public Prosecutions Where There is a Criminal Reconciliation Between the Parties to the Case</b></p>
<p><b>第四百九十六条</b> 对符合刑事诉讼法第二百七十七条规定的公诉案件，事实清楚、证据充分的，人民法院应当告知当事人可以自行和解；当事人提出申请的，人民法院可以主持双方当事人协</p>	<p><b>Article 496</b> For public prosecution cases qualifying under Article 277, if the facts are clear and the evidence is sufficient, a people's court shall inform the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>商以达成和解。</p> <p>根据案件情况，人民法院可以邀请人民调解员、辩护人、诉讼代理人、当事人亲友等参与促成双方当事人和解。</p>	<p>parties that they are permitted to reconcile voluntarily. On the application of the parties, a people’s court may preside over the negotiation between the parties to reach reconciliation.</p> <p>Based on the circumstances of the case, the people’s court may invite people’s mediators, the defense advocate(s), the litigation advocate(s), the parties’ family members and friends and others to participate in order to bring about a reconciliation between the parties.</p>
<p><b>第四百九十七条</b> 符合刑事诉讼法第二百七十七条规定的公诉案件，被害人死亡的，其近亲属可以与被告人和解。近亲属有多人的，达成和解协议，应当经处于同一继承顺序的所有近亲属同意。</p> <p>被害人系无行为能力或者限制行为能力人的，其法定代理人、近亲属可以代为和解。</p>	<p><b>Article 497</b> For public prosecution cases qualifying under Article 277, where the victim is deceased, the victim’s immediate family members may undertake a reconciliation with the defendant. When there are multiple immediate family members, reconciliation requires consent from all the immediate family members of the deceased who have equal priority in inheritance.</p> <p>If the victim lacks capacity for the conduct of their case or has diminished capacity, his or her guardian <i>ad litem</i> or immediate family members may reconcile with the defendant on his or her behalf.</p>
<p><b>第四百九十八条</b> 被告人的近亲属经被告人同意，可以代为和解。</p> <p>被告人系限制行为能力人的，其法定代理人可以代为和解。</p> <p>被告人的法定代理人、近亲属依照前两款规定代为和解的，</p>	<p><b>Article 498</b> A defendant’s immediate family members with the defendant’s consent may reconcile with the victim on his or her behalf.</p> <p>If the defendant is a person with diminished capacity, his or her guardian <i>ad litem</i> may reconcile with the victim on his or her behalf.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>和解协议约定的赔礼道歉等事项，应当由被告人本人履行。</p>	<p>When the defendant’s guardian <i>ad litem</i>, immediate family members reconcile with the victim on the defendant’s behalf according to the above two proceeding paragraphs, the defendant shall carry out performance of the terms of the reconciliation agreement such as making an apology.</p>
<p><b>第四百九十九条</b> 对公安机关、人民检察院主持制作的和解协议书，当事人提出异议的，人民法院应当审查。经审查，和解自愿、合法的，予以确认，无需重新制作和解协议书；和解不具有自愿性、合法性的，应当认定无效。和解协议被认定无效后，双方当事人重新达成和解的，人民法院应当主持制作新的和解协议书。</p>	<p><b>Article 499</b> If a party disputes a reconciliation agreement presided over by a public security organ or a people’s procuratorate, a people’s court shall conduct a review. After the review, if the reconciliation is found to be voluntary and lawful, the reconciliation agreement shall be affirmed and there shall be no need to produce a new reconciliation agreement; if the reconciliation is found to be involuntary or unlawful, the reconciliation agreement shall be invalidated. After the reconciliation agreement has been invalidated, if the parties reach a new reconciliation, a people’s court shall preside over the formation of a new reconciliation agreement.</p>
<p><b>第五百条</b> 审判期间，双方当事人和解的，人民法院应当听取当事人及其法定代理人等有关人员的意见。双方当事人在庭外达成和解的，人民法院应当通知人民检察院，并听取其意见。经审查，和解自愿、合法的，应当主持制作和解协议书。</p>	<p><b>Article 500</b> During adjudication, if the parties reconcile, the people’s court shall hear the opinions of the parties, the opinions of their advocates, and the opinions of other relevant persons. If the parties reach reconciliation outside the courtroom, the people’s court shall inform the people’s procuratorate and hear its opinion. After a review, if the reconciliation is voluntary and lawful, the people’s court shall preside over the formation of a new reconciliation agreement.</p>
<p><b>第五百零一条</b> 和解协议书应当包括以下内容：</p> <p>（一）被告人承认自己所犯罪行，对犯罪事实没有异议，并真诚悔罪；</p>	<p><b>Article 501</b> A written reconciliation agreement shall include the following information:</p> <p>(1) that the defendant has confessed the crime he or she</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(二) 被告人通过向被害人赔礼道歉、赔偿损失等方式获得被害人谅解; 涉及赔偿损失的, 应当写明赔偿的数额、方式等; 提起附带民事诉讼的, 由附带民事诉讼原告人撤回附带民事诉讼;</p> <p>(三) 被害人自愿和解, 请求或者同意对被告人依法从宽处罚。</p> <p>和解协议书应当由双方当事人和审判人员签名, 但不加盖人民法院印章。</p> <p>和解协议书一式三份, 双方当事人各持一份, 另一份交人民法院附卷备查。</p> <p>对和解协议中的赔偿损失内容, 双方当事人要求保密的, 人民法院应当准许, 并采取相应的保密措施。</p>	<p>committed, has no objection to the facts of the crime, and has demonstrated sincere remorse;</p> <p>(2) that the defendant obtains the victim's forgiveness by compensating for the loss, making an apology, or other means of obtaining the victim's forgiveness; if compensation is involved, the amount of damages and the payment method shall be specified; if a collateral civil action has been brought, the fact that the plaintiff has withdrawn the action shall be specified;</p> <p>(3) that the victim voluntarily wishes to reconcile, and requests or agrees that the criminal suspect be granted leniency in punishment.</p> <p>The reconciliation agreement shall be signed by the parties and adjudication personnel without the official seal of the people's court.</p> <p>Three copies of the reconciliation agreement shall be made, with one copy kept by each of the parties, and one copy submitted to the people's court for attachment to the case file for future reference.</p> <p>With respect to the terms of damages under a reconciliation agreement, if the parties require that the people's court keep such information confidential, this request shall be granted and corresponding measures shall be taken to keep the</p>
---	--

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaalaw@nyu.edu](mailto:usasiaalaw@nyu.edu).

	information confidential.
<p><b>第五百零二条</b> 和解协议约定的赔偿损失内容, 被告人应当在协议签署后即时履行。</p> <p>和解协议已经全部履行, 当事人反悔的, 人民法院不予支持, 但有证据证明和解违反自愿、合法原则的除外。</p>	<p><b>Article 502</b> With respect to the terms of damages under the reconciliation agreement, the defendant shall perform the terms of the agreement in a timely manner after signing the reconciliation agreement.</p> <p>Where Parties recant after completing performance of the reconciliation agreement, the people’s court shall not uphold such claims, unless the evidence establishes that the reconciliation was reached in violation of the principles of voluntariness and legality.</p>
<p><b>第五百零三条</b> 双方当事人 在侦查、审查起诉期间已经达成和解协议并全部履行, 被害人或者其法定代理人、近亲属又提起附带民事诉讼的, 人民法院不予受理, 但有证据证明和解违反自愿、合法原则的除外。</p>	<p><b>Article 503</b> When parties reach a reconciliation agreement and completely fulfill their performance obligations during the time for investigation and review of an indictment, if the victim or his or her agent <i>ad litem</i> or immediate family member later seeks to bring a collateral civil action, the people’s court shall not accept the case, unless the evidence establishes that the reconciliation was reached in violation of the principles of voluntariness and legality.</p>
<p><b>第五百零四条</b> 被害人或者其法定代理人、近亲属提起附带民事诉讼后, 双方愿意和解, 但被告人不能即时履行全部赔偿义务的, 人民法院应当制作附带民事调解书。</p>	<p><b>Article 504</b> When the victim or his or her legal representative or immediate family members brings a collateral civil action, if both parties wish to reconcile but the defendant is not immediately able to fulfill their entire obligation to make payment of damages, the people’s court shall make a mediation agreement for the collateral civil action.</p>
<p><b>第五百零五条</b> 对达成和解协议的案件, 人民法院应当对被告人从轻处罚; 符合非监禁刑适用条件的, 应当适用非监禁刑; 判处法定最低刑仍然过重的, 可以减轻处罚; 综合全案认为犯罪情节</p>	<p><b>Article 505</b> A people’s court shall give the defendant a lighter sentence in cases where a reconciliation agreement is reached; if the defendant meets the</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>轻微不需要判处刑罚的，可以免除刑事处罚。</p> <p>共同犯罪案件，部分被告人与被害人达成和解协议的，可以依法对该部分被告人从宽处罚，但应当注意全案的量刑平衡。</p>	<p>applicable conditions for a non-custodial sentence, the non-custodial sentence shall be imposed; if the statutory minimum sentence is too heavy, the punishment may be reduced; if, based on the all the circumstances of the case, the case is considered to be of a minor nature and there is no need to impose criminal punishment, criminal punishment may be dispensed with.</p> <p>For joint criminal cases where some but not all defendants reach a reconciliation agreement with the victim, those defendants who reach a reconciliation agreement may be given a lenient punishment, giving due consideration to balanced sentencing for the case when considered as a whole.</p>
<p><b>第五百零六条</b> 达成和解协议的，裁判文书应当作出叙述，并援引刑事诉讼法的相关条文。</p>	<p><b>Article 506</b> When a reconciliation agreement is reached, the written decision of the court shall describe the agreement in reference to the relevant provisions of the <i>Criminal Procedure Law</i>.</p>
<p><b>第二十二章 犯罪嫌疑人、被告人逃匿、死亡案件违法所得的没收程序</b></p>	<p><b>Chapter 22 Procedure for the Confiscation of Illegal Income in Cases involving the Escape or Death of a Criminal Suspect or Defendant</b></p>
<p><b>第五百零七条</b> 依照刑法规定应当追缴违法所得及其他涉案财产，且符合下列情形之一的，人民检察院可以向人民法院提出没收违法所得的申请：</p> <p>（一）犯罪嫌疑人、被告人实施了贪污贿赂犯罪、恐怖活动犯罪等重大犯罪后逃匿，在通缉一年后不能到案的；</p> <p>（二）犯罪嫌疑人、被告人死亡的。</p>	<p><b>Article 507</b> When illegal income and other property involved in a case shall be confiscated in accordance with the Criminal Law, upon meeting any of the following circumstances, the people’s procuratorate may submit an application to the people’s court for confiscation of illegal income:</p> <p>（1）the criminal suspect or defendant escapes after committing a serious crime such as embezzlement, bribery, or terrorist activity, and cannot be present in court after being wanted for 1 year;</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	(2) the criminal suspect or defendant is dead.
<p><b>第二百零八条</b> 具有下列情形之一的,应当认定为刑事诉讼法第二百八十条第一款规定的“重大犯罪案件”:</p> <p>(一) 犯罪嫌疑人、被告人可能被判处无期徒刑以上刑罚的;</p> <p>(二) 案件在本省、自治区、直辖市或者全国范围内有较大影响的;</p> <p>(三) 其他重大犯罪案件。</p>	<p><b>Article 508</b> Under any of the following circumstances, a case shall be determined as the “case involving a serious crime” under Article 280, Paragraph 1 of the Criminal Procedure Law:</p> <p>(1) the criminal suspect or the defendant may be sentenced to life imprisonment or a heavier penalty;</p> <p>(2) the case has a significant impact within a province, an autonomous region, a municipality directly under the central government or nationally;</p> <p>(3) other cases involving serious crimes.</p>
<p><b>第二百零九条</b> 实施犯罪行为所取得的财物及其孳息,以及被告人非法持有的违禁品、供犯罪所用的本人财物,应当认定为刑事诉讼法第二百八十条第一款规定的“违法所得及其他涉案财产”。</p>	<p><b>Article 509</b> Property gained through the commission of a crime and its interest thereof, as well as contraband possessed by the defendant and personal property used to commit the crime, shall be determined as the “illegal income and other property involved in a case” under Article 281, Paragraph 1 of the Criminal Procedure Law.</p>
<p><b>第五百一十条</b> 对人民检察院提出的没收违法所得申请,人民法院应当审查以下内容:</p> <p>(一) 是否属于本院管辖;</p>	<p><b>Article 510</b> When a people’s procuratorate submits an application for confiscation of illegal income, the people’s court shall review the following content:</p> <p>(1) whether the court has jurisdiction;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(二) 是否写明犯罪嫌疑人、被告人涉嫌有关犯罪的情况，并附相关证据材料；</p> <p>(三) 是否附有通缉令或者死亡证明；</p> <p>(四) 是否列明违法所得及其他涉案财产的种类、数量、所在地，并附相关证据材料；</p> <p>(五) 是否附有查封、扣押、冻结违法所得及其他涉案财产的清单和相关法律手续；</p> <p>(六) 是否写明犯罪嫌疑人、被告人的近亲属和其他利害关系人的姓名、住址、联系方式及其要求等情况；</p> <p>(七) 是否写明申请没收的理由和法律依据。</p>	<p>(2) whether relevant circumstance of the crime the criminal suspect or defendant suspected of having committed are clearly stated, and relevant evidentiary material is attached;</p> <p>(3) whether the wanted notice or the death certificate is attached;</p> <p>(4) whether the category, quantity, and location of the illegal income and other property involved in the case are clearly listed, and relevant evidentiary material is attached;</p> <p>(5) whether the list of illegal income and other property involved in the case being seized, impounded and frozen, and relevant legal formality for the seizure, impoundment, freeze are attached;</p> <p>(6) whether the names, domicile address, contact information and requests of immediate family members of or other interested persons to the criminal suspect or defendant are clearly stated;</p> <p>(7) whether the reason and legal ground for the confiscation of property are clearly stated.</p>
<p><b>第五百一十一条</b> 对没收违法所得的申请，人民法院应当在七日内审查完毕，并按照下列情形分别处理：</p>	<p><b>Article 511</b> For an application for confiscation of illegal income, the people's court shall finish review within 7 days and handle respectively according to the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>(一) 不属于本院管辖的，应当退回人民检察院；</p> <p>(二) 材料不全的，应当通知人民检察院在三日内补送；</p> <p>(三) 属于违法所得没收程序受案范围和本院管辖，且材料齐全的，应当受理。</p> <p>人民检察院尚未查封、扣押、冻结申请没收的财产或者查封、扣押、冻结期限即将届满，涉案财产有被隐匿、转移或者毁损、灭失危险的，人民法院可以查封、扣押、冻结申请没收的财产。</p>	<p>circumstances below:</p> <p>(1) if outside the court’s jurisdiction, [the people’s court] shall send it back it to the people’s procuratorate;</p> <p>(2) if the material is incomplete, [the people’s court] shall notify the people’s procuratorate to amend delivery [of materials] within 3 days;</p> <p>(3) if within the scope of cases that apply the procedure of confiscation of illegal income and the jurisdiction of the people’s court, and the material is complete, [the court] shall accept the case.</p> <p>Where the property to be confiscated upon application has not been seized, impounded or frozen by the people’s procuratorate or the term for the seizure, impoundment or freezing is about to expire, or there is a risk that property involved in the case may be concealed, transferred, destroyed or lost, the people’s court may seize, impound or freeze the property to be confiscated upon application.</p>
<p><b>第五百一十二条</b> 人民法院决定受理没收违法所得的申请后，应当在十五日内发出公告，公告期为六个月。公告应当写明以下内容：</p> <p>(一) 案由；</p>	<p><b>Article 512</b> After deciding to accept an application for confiscation of illegal income, the people’s court shall make a public announcement within 15 days for 6 months. The public announcement shall clearly state the following content:</p> <p>(1) cause of action;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(二) 犯罪嫌疑人、被告人通缉在逃或者死亡等基本情况;</p> <p>(三) 申请没收财产的种类、数量、所在地;</p> <p>(四) 犯罪嫌疑人、被告人的近亲属和其他利害关系人申请参加诉讼的期限、方式;</p> <p>(五) 应当公告的其他情况。</p> <p>公告应当在全国公开发行的报纸或者人民法院的官方网站刊登,并在人民法院公告栏张贴、发布;必要时,可以在犯罪地、犯罪嫌疑人、被告人居住地、申请没收的不动产所在地张贴、发布。</p> <p>人民法院已经掌握犯罪嫌疑人、被告人的近亲属和其他利害关系人的联系方式的,应当采取电话、传真、邮件等方式直接告知其公告内容,并记录在案。</p>	<p>(2) basic information such as the escape or death of the criminal suspect or defendant wanted;</p> <p>(3) the category, quantity and location of the property to be confiscated upon application;</p> <p>(4) the format and maximum time limit for immediate family members of or other interested persons to the criminal suspect or defendant to apply to participate in the litigation;</p> <p>(5) other information that shall be publicly announced.</p> <p>The public announcement shall be published in a nationally-circulated newspaper or on the official website of the people's court, and shall be posted or promulgated on the bulletin board of the people's court; when necessary, the announcement may posted or promulgated at the location that the crime is committed, the domicile of the criminal suspect or the defendant, and the location of real estate to be confiscated upon application.</p> <p>Where the people's court has at hand the contact information of the immediate family members of or other interested persons to the criminal suspect or defendant, [the people's court] shall directly inform them about the</p>
--	---

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>information in the public announcement through methods such as phone, fax, or email, and note in the case file.</p>
<p><b>第五百一十三条</b> 对申请没收的财产主张所有权的人,应当认定为刑事诉讼法第二百八十一条第二款规定的“其他利害关系人”。</p> <p>犯罪嫌疑人、被告人的近亲属和其他利害关系人申请参加诉讼的,应当在公告期间提出。犯罪嫌疑人、被告人的近亲属应当提供其与犯罪嫌疑人、被告人关系的证明材料,其他利害关系人应当提供申请没收的财产系其所有的证据材料。</p> <p>犯罪嫌疑人、被告人的近亲属和其他利害关系人在公告期满后申请参加诉讼,能够合理说明原因,并提供证明申请没收的财产系其所有的证据材料的,人民法院应当准许。</p>	<p><b>Article 513</b> Person, who claims ownership of the property to be confiscated upon application, shall be determined as “other interested persons” under Article 281, Paragraph 2 of the Criminal Procedure Law.</p> <p>Immediate family members of or other interested persons to the criminal suspect or defendant applying to participate in the litigation, shall file their application within the period of the public announcement. Immediate family members of the criminal suspect or defendant shall provide evidentiary material proving the relationship with the criminal suspect or defendant, other interested persons shall provide evidentiary material supporting their ownership of the property to be confiscated upon application.</p> <p>Where immediate family members of or other interested persons apply to participate in the litigation after the period for public announcement ends, and if they are able to reasonably explain the cause and provide evidentiary material proving their ownership of the property to be confiscated upon application, the people’s court shall allow such application.</p>
<p><b>第五百一十四条</b> 公告期满后,人民法院应当组成合议庭对申请没收违法所得的案件进行审理。</p> <p>利害关系人申请参加诉讼的,人民法院应当开庭审理。没有</p>	<p><b>Article 514</b> Upon expiration of the public announcement period, the case of confiscation of illegal income shall be heard by a collegial panel of the people’s court.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>利害关系人申请参加诉讼的，可以不开庭审理。</p>	<p>If any interested person applies to participate in the litigation, the people’s court shall try the case in an open court session. If no interested person applies to participate in the litigation, the case may be heard without an open court session.</p>
<p><b>第五百一十五条</b> 开庭审理申请没收违法所得的案件，按照下列程序进行：</p> <p>（一）审判长宣布法庭调查开始后，先由检察员宣读申请书，后由利害关系人、诉讼代理人发表意见；</p> <p>（二）法庭应当依次就犯罪嫌疑人、被告人是否实施了贪污贿赂犯罪、恐怖活动犯罪等重大犯罪并已经通缉一年不能到案，或者是否已经死亡，以及申请没收的财产是否依法应当追缴进行调查；调查时，先由检察员出示有关证据，后由利害关系人发表意见、出示有关证据，并进行质证；</p> <p>（三）法庭辩论阶段，先由检察员发言，后由利害关系人及其诉讼代理人发言，并进行辩论。</p> <p>利害关系人接到通知后无正当理由拒不到庭，或者未经法庭许可中途退庭的，可以转为不开庭审理，但还有其他利害关系人参加诉讼的除外。</p>	<p><b>Article 515</b> When trying a case of confiscation of illegal income in open court, the court session shall be conducted in accordance with the following procedures:</p> <p>(1) after the chief judge announces the beginning of the investigation in court, the litigation advocate shall read the application first, followed by the interested persons, litigation agents presenting opinions;</p> <p>(2) the court shall investigate in order whether the criminal suspect or defendant has committed a serious crime such as embezzlement, bribery, terrorist activities and has been wanted for one year but not made present in court, or has been dead, and whether the property to be confiscated upon application has been investigated according to law; during the investigation, the prosecutor shall present relevant evidence first, followed by the interested persons [shall] presenting their opinions and supporting evidence, and then conducting cross-examinations.</p> <p>(3) at the stage of the oral argument, the prosecutor shall speak first, followed by interested parties and their litigation advocates, and then the parties debate.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>Where an interested party, after receiving notification, refuses to appear in court without justified reason, or withdraws from a hearing without permission from the court, the case may then be tried without a open court session, except when there are other interested persons participating in the litigation.</p>
<p><b>第五百一十六条</b> 对申请没收违法所得的案件，人民法院审理后，应当按照下列情形分别处理：</p> <p>（一）案件事实清楚，证据确实、充分，申请没收的财产确属违法所得及其他涉案财产的，除依法返还被害人的以外，应当裁定没收；</p> <p>（二）不符合本解释第五百零七条规定的条件的，应当裁定驳回申请。</p>	<p><b>Article 516</b> A people’s court, after hearing a case of confiscation of illegal income, shall handle the case respectively according to the following situations:</p> <p>(1) where the facts of the case are clear, evidence is definite and sufficient, and the property to be confiscated upon application is indeed illegal income or other property involved in the case, except for those ought to be returned to the victim in accordance with law, the court shall rule to confiscate.</p> <p>(2) where the conditions in Article 507 of this Interpretation are not met, the court shall rule to dismiss the application.</p>
<p><b>第五百一十七条</b> 对没收违法所得或者驳回申请的裁定，犯罪嫌疑人、被告人的近亲属和其他利害关系人或者人民检察院可以在五日内提出上诉、抗诉。</p>	<p><b>Article 517</b> For a ruling to confiscate illegal income or dismiss an application for confiscation of illegal income, immediate family members of or other interested persons to the criminal suspect or defendant or the people’s procuratorate may appeal or protest within 5 days.</p>
<p><b>第五百一十八条</b> 对不服第一审没收违法所得或者驳回申请裁定的上诉、抗诉案件，第二审人民法院经审理，应当按照下列情形分别作出裁定：</p>	<p><b>Article 518</b> After hearing an appeal or a protest against the first instance ruling to confiscate or dismiss an application to confiscate illegal income, a people’s court of second instance shall handle the case respectively according to the following situations :</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p>(一) 原裁定正确的, 应当驳回上诉或者抗诉, 维持原裁定;</p> <p>(二) 原裁定确有错误的, 可以在查清事实后改变原裁定; 也可以撤销原裁定, 发回重新审判;</p> <p>(三) 原审违反法定诉讼程序, 可能影响公正审判的, 应当撤销原裁定, 发回重新审判。</p>	<p>(1) the original ruling is correct, [the people’s court of second instance] shall dismiss the appeal or protest and uphold the original ruling;</p> <p>(2) the original ruling is erroneous, [the people’s court of second instance] may modify the original ruling after ascertaining the facts of the case; or may revoke the original ruling and send the case back for a retrial;</p> <p>(3) where there is a violation of statutory procedure during the original trial that may affect a fair trial, [the people’s court of second instance] shall revoke the original ruling and send the case back for a retrial.</p>
<p><b>第五百一十九条</b> 在审理申请没收违法所得的案件过程中, 在逃的犯罪嫌疑人、被告人到案的, 人民法院应当裁定终止审理。人民检察院向原受理申请的人民法院提起公诉的, 可以由同一审判组织审理。</p>	<p><b>Article 519</b> During the trial period of a case of confiscation of illegal income, if the fugitive criminal suspect or defendant presents in court, the people’s court shall rule to terminate the trial. For a case where the people’s procuratorate initiates the public prosecution in the original people’s court that accepted the application to confiscate, [the case] may be heard by the same adjudicative decision-making body.</p>
<p><b>第五百二十条</b> 在审理案件过程中, 被告人死亡或者脱逃, 符合刑事诉讼法第二百八十条第一款规定的, 人民检察院可以向人民法院提出没收违法所得的申请。</p> <p>人民检察院向原受理案件的人民法院提出申请的, 可以由同一审判组织依照本章规定的程序审理。</p>	<p><b>Article 520</b> During the trial, if the defendant dies or escapes, the people’s procuratorate may apply to the people’s court for confiscation of illegal income, provided that the conditions under Article 280, Paragraph 1 of the Criminal Procedure Law are met.</p> <p>An application submitted by the people’s procuratorate to the original</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>people’s court that accepts the criminal case [the case] may be heard by the same adjudicative decision-making bodies according to procedures specified in this Chapter.</p>
<p><b>第五百二十一条</b> 审理申请没收违法所得案件的期限，参照公诉案件第一审普通程序和二审程序的审理期限执行。</p> <p>公告期间和请求刑事司法协助的时间不计入审理期限。</p>	<p><b>Article 521</b> The maximum time limit for the trial period for cases of confiscation of illegal income shall be counted by referring to the maximum time limit for the trial period for public prosecution cases of the first and second instance.</p> <p>The time of public announcement and the time requesting for judicial assistance in criminal cases shall not be counted in the period of trial.</p>
<p><b>第五百二十二条</b> 没收违法所得裁定生效后，犯罪嫌疑人、被告人到案并对没收裁定提出异议，人民检察院向原作出裁定的人民法院提起公诉的，可以由同一审判组织审理。</p> <p>人民法院经审理，应当按照下列情形分别处理：</p> <p>（一）原裁定正确的，予以维持，不再对涉案财产作出判决；</p> <p>（二）原裁定确有错误的，应当撤销原裁定，并在判决中对有关涉案财产一并作出处理。</p> <p>人民法院生效的没收裁定确有错误的，除第一款规定的情形外，应当依照审判监督程序予以纠正。已经没收的财产，应当及时返还；财产已经上缴国库的，由原没收机关从财政机关申请退库，予以返还；原物已经出卖、拍卖的，应当退还价款；造成犯罪嫌疑人、被告人以及利害关系人财产损失的，应当依法赔偿。</p>	<p><b>Article 522</b> After a ruling to confiscate illegal income becomes effective, when the criminal suspect or defendant presents in court and objects to the ruling to confiscate, and people’s procuratorate initiates a public prosecution in the people’s court that renders the ruling to confiscate, [the case] may be heard by the same adjudicative decision-making body.</p> <p>The people’s court after hearing the case, shall handle the case according to the following situations respectively:</p> <p>(1) where the original ruling is correct, [the people’s court] shall uphold the ruling and refrain from deciding on the property involved;</p> <p>(2) where the original ruling is erroneous, [the people’s court] shall revoke the original ruling, and decide claims on the relevant property involved in the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>same judgment.</p> <p>A ruling to confiscate entered into by a people’s court proves to be erroneous, except for those under number 1, shall be corrected by following the trial supervision procedure. Property already being confiscated shall be timely returned; property turned over to the National Treasury shall be returned after the original confiscating authority applies to the treasury department to send back the property; for the property already sold or sold in an auction, the proceeds of which shall be returned; any property damages resulting on the criminal suspect or defendant or interested persons shall be compensated in accordance with law.</p>
<p><b>第五百二十三条</b> 人民法院审理申请没收违法所得的案件，本章没有规定的，参照适用本解释的有关规定。</p>	<p><b>Article 523</b> When trying a case of confiscation of illegal income, the people’s court shall refer to relevant rules in this Interpretation when not prescribed under this Chapter.</p>
<p><b>第二十三章 依法不负刑事责任的精神病人的强制医疗程序</b></p>	<p><b>Chapter 23 Procedures for Compulsory Treatment of Mentally Ill Persons Not Bearing Criminal Responsibility in Accordance with Law</b></p>
<p><b>第五百二十四条</b> 实施暴力行为，危害公共安全或者严重危害公民人身安全，社会危害性已经达到犯罪程度，但经法定程序鉴定依法不负刑事责任的精神病人，有继续危害社会可能的，可以予以强制医疗。</p>	<p><b>Article 524</b> Compulsory treatment may be granted for mentally ill persons who have been found through statutory procedures to not bear criminal responsibility and who exhibit violent conduct that endangers public safety or seriously endangers citizens' physical safety, where the threat to society has already reached the level of a crime and there is a possibility that they will continue to endanger society.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第五百二十五条</b> 人民检察院申请对依法不负刑事责任的精神病人强制医疗的案件，由被申请人实施暴力行为所在地的基层人民法院管辖；由被申请人居住地的人民法院审判更为适宜的，可以由被申请人居住地的基层人民法院管辖。</p>	<p><b>Article 525</b> In a case where the people’s procuratorate applies to have a mentally ill person who does not lawfully bear criminal responsibility given compulsory treatment, the basic people’s court at the place where the application’s subject exhibited violent conduct has jurisdiction, if it is more suitable for the basic people’s court at the place of the application’s subject’s residence to adjudicate, the basic court at the application’s subjects residence may have jurisdiction.</p>
<p><b>第五百二十六条</b> 对人民检察院提出的强制医疗申请，人民法院应当审查以下内容：</p> <p>（一）是否属于本院管辖；</p> <p>（二）是否写明被申请人的身份，实施暴力行为的时间、地点、手段、所造成的损害等情况，并附相关证据材料；</p> <p>（三）是否附有法医精神病鉴定意见和其他证明被申请人属于依法不负刑事责任的精神病人的证据材料；</p> <p>（四）是否列明被申请人的法定代理人的姓名、住址、联系方式；</p> <p>（五）需要审查的其他事项。</p>	<p><b>Article 526</b> The people’s courts shall review the following content in applications for compulsory treatment submitted by the people's procuratorates:</p> <p>(1) whether it is within that court’s jurisdiction;</p> <p>(2) whether the subject of the application’s identity and circumstances of the violent conduct, such as the time, place , method, and any harm caused, are clearly written with relevant evidentiary materials attached;</p> <p>(3) whether a forensic medical examiner’s examination opinion and other evidentiary materials proving that the application’s subject is a mentally ill person lawfully not bearing criminal responsibility are attached;</p> <p>(4) whether the subject of the application’s legal representative’s name, address and contact information are clearly listed;</p> <p>(5) other matters that need to be reviewed.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

<p><b>第五百二十七条</b> 对人民检察院提出的强制医疗申请，人民法院应当在七日内审查完毕，并按照下列情形分别处理：</p> <p>（一）不属于本院管辖的，应当退回人民检察院；</p> <p>（二）材料不全的，应当通知人民检察院在三日内补送；</p> <p>（三）属于强制医疗程序受案范围和本院管辖，且材料齐全的，应当受理。</p>	<p><b>Article 527</b> The people’s courts shall complete the review of applications for compulsory treatment raised by the people’s procuratorates within 7 days and handle the matter according to distinct situations listed below:</p> <p>(1) is not under the jurisdiction of the Court, and shall be returned to the people's procuratorate;</p> <p>(2) materials are incomplete; notify the people’s procuratorate to supplement within 3 days;</p> <p>(3) within the scope for accepting cases on compulsory treatment procedures and within the court’s jurisdiction, the materials are complete; the case shall be accepted.</p>
<p><b>第五百二十八条</b> 审理强制医疗案件，应当通知被申请人或者被告人的法定代理人到场。被申请人或者被告人没有委托诉讼代理人，应当通知法律援助机构指派律师担任其诉讼代理人，为其提供法律帮助。</p>	<p><b>Article 528</b> When trying a compulsory treatment case, the subject of the application's or the defendant’s legal representative shall be notified to appear. If the subject of the application or defendant has not retained an agent ad litem, a legal aid organization shall be contacted to appoint a lawyer to serve as his agent ad litem and to provide him with legal assistance.</p>
<p><b>第五百二十九条</b> 审理强制医疗案件，应当组成合议庭，开庭审理。但是，被申请人、被告人的法定代理人请求不开庭审理，并经人民法院审查同意的除外。</p> <p>审理人民检察院申请强制医疗的案件，应当会见被申请人。</p>	<p><b>Article 529</b> When trying a compulsory treatment case, a collegial panel shall be formed and courtroom hearing held, with an exception however, if the subject of the application's or defendant’s legal representative requests that there not be a courtroom hearing, and the court consents upon review.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	<p>When trying cases where the people’s procuratorate has requested compulsory treatment, a meeting shall be had with the subject of the application.</p>
<p><b>第五百三十条</b> 开庭审理申请强制医疗的案件，按照下列程序进行：</p> <p>（一）审判长宣布法庭调查开始后，先由检察员宣读申请书，后由被申请人的法定代理人、诉讼代理人发表意见；</p> <p>（二）法庭依次就被申请人是否实施了危害公共安全或者严重危害公民人身安全的暴力行为、是否属于依法不负刑事责任的精神病人、是否有继续危害社会的可能进行调查；调查时，先由检察员出示有关证据，后由被申请人的法定代理人、诉讼代理人发表意见、出示有关证据，并进行质证；</p> <p>（三）法庭辩论阶段，先由检察员发言，后由被申请人的法定代理人、诉讼代理人发言，并进行辩论。</p> <p>被申请人要求出庭，人民法院经审查其身体和精神状态，认为可以出庭的，应当准许。出庭的被申请人，在法庭调查、辩论阶段，可以发表意见。</p> <p>检察员宣读申请书后，被申请人的法定代理人、诉讼代理人无异议的，法庭调查可以简化。</p>	<p><b>Article 530</b> When opening court to hear a case of an application for compulsory treatment, the following procedures shall be followed:</p> <p>(1) after the chief judge announces that the in-court investigation has begun, the procurator will first read the application, then the subject of the application’s legal representative or agent ad litem will make comments;</p> <p>(2) the court will sequentially inquire into the issues of whether the subject of the application has exhibited violent conduct that endangered public security or seriously harmed individual’s physical safety, whether he is a mentally ill person who does not lawfully bear criminal responsibility and whether there is a possibility of the threat to society continuing. When making the inquiry, the procurator will first present relevant evidence and then the subject of the application’s litigation agent will make comments, present evidence and challenge evidence;</p> <p>(3) during the courtroom debate, the procurator speaks first, then the subject of the application’s legal representative or agent ad litem will speak and debate.</p> <p>If the subject of the application requests to appear in court, and the</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasialaw@nyu.edu](mailto:usasialaw@nyu.edu).

	<p>people’s court, having reviewed his physical and mental condition, feels he may appear in court, it shall give approval. When appearing in court, the subject of the application may make comments during the courtroom investigation and debate phases.</p> <p>After the procurator has read the application, if the subject of the application’s legal representative or agent ad litem has no objections, the courtroom investigation may be simplified.</p>
<p><b>第五百三十一条</b> 对申请强制医疗的案件，人民法院受理后，应当按照下列情形分别处理：</p> <p>（一）符合刑事诉讼法第二百八十四条规定的强制医疗条件的，应当作出对被申请人强制医疗的决定；</p> <p>（二）被申请人属于依法不负刑事责任的精神病人，但不符合强制医疗条件的，应当作出驳回强制医疗申请的决定；被申请人已经造成危害结果的，应当同时责令其家属或者监护人严加看管和医疗；</p> <p>（三）被申请人具有完全或者部分刑事责任能力，依法应当追究刑事责任的，应当作出驳回强制医疗申请的决定，并退回人民检察院依法处理。</p>	<p><b>Article 531</b> In cases of an application for compulsory treatment, the people’s court, after trial, shall handle the matter according to the distinct situations listed below:</p> <p>(1) meets the requirements for compulsory treatment set forth in Article 284 of the Criminal Procedure Law; a decision shall be made for compulsory treatment of the subject of the application;</p> <p>(2) the subject of the application is a mentally ill person not bearing criminal responsibility under law, but not meeting the standards for compulsory treatment; it shall be decided that the application for compulsory treatment be rejected; where the subject of the application has already caused harmful consequences, his family or guardian shall be ordered to closely look after him and treat him;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>(3) the subject of the application has full or partial capacity for criminal responsibility and criminal responsibility shall be pursued in accordance with law; a decision shall be made to reject the application for compulsory treatment and return the case to the people’s procuratorate to handle the case according to law.</p>
<p><b>第五百三十二条</b> 第一审人民法院在审理案件过程中发现被告人可能符合强制医疗条件的，应当依照法定程序对被告人进行法医精神病鉴定。经鉴定，被告人属于依法不负刑事责任的精神病人的，应当适用强制医疗程序，对案件进行审理。</p> <p>开庭审理前款规定的案件，应当先由合议庭组成人员宣读对被告人的法医精神病鉴定意见，说明被告人可能符合强制医疗的条件，后依次由公诉人和被告人的法定代理人、诉讼代理人发表意见。经审判长许可，公诉人和被告人的法定代理人、诉讼代理人可以进行辩论。</p>	<p><b>Article 532</b> If a people’s court of first instance discovers during the course of trial that the defendant might meet the requirements for compulsory treatment, it shall follow the statutory procedures for carrying out a forensic medicine psychiatric assessment. Where, having been examined, the defendant is a mentally ill person not bearing criminal responsibility under law, the procedures for compulsory treatment shall be used to carry out trial.</p> <p>When opening court for trial of a case described in the above section, first, a member of the collegial panel shall read the defendant’s forensic medicine psychiatric examination opinion, explain that the defendant might meet the requirements for compulsory treatment, and then, in succession, the prosecution and defendant’s legal representative or agent ad litem will make comments. With the chief judge’s permission, the procurator and the defendant’s legal representative or litigation agent may debate.</p>
<p><b>第五百三十三条</b> 对前条规定的案件，人民法院审理后，应当按照下列情形分别处理：</p> <p>（一）被告人符合强制医疗条件的，应当判决宣告被告人不</p>	<p><b>Article 533</b> In cases provided for in the preceding article, after trial, the people’s court shall handle the case according to the following distinct circumstances:</p> <p>(1) the defendant meets the requirements for compulsory therapy;</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>负刑事责任，同时作出对被告人强制医疗的决定；</p> <p>（二）被告人属于依法不负刑事责任的精神病人，但不符合强制医疗条件的，应当判决宣告被告人无罪或者不负刑事责任；被告人已经造成危害结果的，应当同时责令其家属或者监护人严加看管和医疗；</p> <p>（三）被告人具有完全或者部分刑事责任能力，依法应当追究刑事责任的，应当依照普通程序继续审理。</p>	<p>judgment will be pronounced that the defendant lacks criminal responsibility and at the same time a decision will made for the defendant to receive compulsory treatment;</p> <p>(2) the defendant is a mentally ill person not bearing criminal responsibility under law, but does not meet the requirements for compulsory treatment, judgment shall be pronounced that the defendant does not bear criminal responsibility, if the defendant has already caused harmful consequences, his family or guardian shall be instructed at the same time, to carefully look after and treat him;</p> <p>(3) the defendant has full or partial capacity for criminal responsibility, and criminal responsibility shall be pursued in accordance with law; trial shall continue under ordinary procedures.</p>
<p><b>第五百三十四条</b> 人民法院在审理第二审刑事案件过程中，发现被告人可能符合强制医疗条件的，可以依照强制医疗程序对案件作出处理，也可以裁定发回原审人民法院重新审判。</p>	<p><b>Article 534</b> Where a people’s court in the course of hearing the second-instance trial of a criminal case discover that a defendant might meet the requirements for compulsory treatment, it may handle the case according to the compulsory treatment procedures, it may also decide to return the case to the original trial court for a new judgment.</p>
<p><b>第五百三十五条</b> 人民法院决定强制医疗的，应当在作出决定后五日内，向公安机关送达强制医疗决定书和强制医疗执行通知书，由公安机关将被决定强制医疗的人送交强制医疗。</p>	<p><b>Article 535</b> People’s courts deciding on compulsory treatment shall, within 5 days of making a decision, deliver the compulsory treatment decision documents and a notification of enforcement of compulsory treatment to the public security organs and the public security organs shall deliver the person found subject to</p>



This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	compulsory treatment to their compulsory treatment.
<p><b>第五百三十六条</b> 被决定强制医疗的人、被害人及其法定代理人、近亲属对强制医疗决定不服的，可以自收到决定书之日起五日内向上一级人民法院申请复议。复议期间不停止执行强制医疗的决定。</p>	<p><b>Article 536</b> When the person found subject to compulsory treatment, the victim and his legal representative, or close relatives do not accept the compulsory treatment verdict, they may appeal to the people’s court at the level above, within 5 days of when they received the decision document, for reconsideration of the application. During the reconsideration, enforcement of the decision for compulsory treatment is not stopped.</p>
<p><b>第五百三十七条</b> 对不服强制医疗决定的复议申请，上一级人民法院应当组成合议庭审理，并在一个月内，按照下列情形分别作出复议决定：</p> <p>（一）被决定强制医疗的人符合强制医疗条件的，应当驳回复议申请，维持原决定；</p> <p>（二）被决定强制医疗的人不符合强制医疗条件的，应当撤销原决定；</p> <p>（三）原审违反法定诉讼程序，可能影响公正审判的，应当撤销原决定，发回原审人民法院重新审判。</p>	<p><b>Article 537</b> For requests to reconsider the compulsory treatment decision, the people’s court at the level above shall form a collegial panel and, within one month, make a reconsideration opinion according to the distinct circumstances listed below:</p> <p>(1) the person that it has been found subject to compulsory treatment meets the requirement for compulsory treatment; the application for reconsideration shall be rejected and the original judgment maintained;</p> <p>(2) the person that it has been decided will receive compulsory treatment does not meet the requirements for compulsory treatment; the original verdict will be repealed;</p> <p>(3) the original trial violated statutory litigation procedures so that the fairness of the in adjudication may have been affected; the original judgment shall be annulled and returned to the original trial court for a new judgment.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第五百三十八条</b> 对本解释第五百三十三条第一项规定的判决、决定，人民检察院提出抗诉，同时被决定强制医疗的人、被害人及其法定代理人、近亲属申请复议的，上一级人民法院应当依照第二审程序一并处理。</p>	<p><b>Article 538</b> For judgments or decisions under article 533(1) of this interpretation, where the people's procuratorate requests an appeal, and at the same time, the person who it has been decided will receive compulsory treatment, the victim and his legal representative, and close family members request reconsideration, the people's court at the level above shall follow procedures for second-instance trials and handle the matters together.</p>
<p><b>第五百三十九条</b> 审理强制医疗案件，本章没有规定的，参照适用公诉案件第一审普通程序和第二审程序的有关规定。</p>	<p><b>Article 539</b> In cases of an application for compulsory treatment, where there is no provision in this chapter, refer to relevant provisions in the public prosecution ordinary first-instance and second instance procedures.</p>
<p><b>第五百四十条</b> 被强制医疗的人及其近亲属申请解除强制医疗的，应当向决定强制医疗的人民法院提出。</p> <p>被强制医疗的人及其近亲属提出的解除强制医疗申请被人民法院驳回，六个月后再次提出申请的，人民法院应当受理。</p>	<p><b>Article 540</b> When a person subjected to compulsory treatment or his close family apply to remove compulsory treatment, they shall make the request to the people's court that made that compulsory treatment decision.</p> <p>When the application of a person subjected to compulsory treatment or his close family for removal of compulsory treatment is rejected by the people's court, if another application is made after six-months, the people's court shall accept the case.</p>
<p><b>第五百四十一条</b> 强制医疗机构提出解除强制医疗意见，或者被强制医疗的人及其近亲属申请解除强制医疗的，人民法院应当审查是否附有对被强制医疗的人的诊断评估报告。</p> <p>强制医疗机构提出解除强制医疗意见，未附诊断评估报告的，人民法院应当要求其提供。</p>	<p><b>Article 541</b> When compulsory treatment establishments put forward an opinion to remove compulsory treatment or the person subjected to involuntary treatment or his close family apply to remove compulsory treatment, the people's court shall review whether there is a diagnostic evaluation report of the person under compulsory treatment attached.</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p>被强制医疗的人及其近亲属向人民法院申请解除强制医疗，强制医疗机构未提供诊断评估报告的，申请人可以申请人民法院调取。必要时，人民法院可以委托鉴定机构对被强制医疗的人进行鉴定。</p>	<p>When compulsory treatment establishments put forward an opinion for removing compulsory treatment and there is not a diagnostic evaluation report attached, the people's court shall request it be provided.</p> <p>Where the person subjected to compulsory treatment and his close relatives apply to a people's court to remove compulsory treatment, and the compulsory treatment establishment has not provided a diagnostic evaluation report, the applicant may apply to the people's court to obtain it. If necessary, the people's court may appoint an assessment agency to perform an assessment of the person under compulsory treatment.</p>
<p><b>第五百四十二条</b> 强制医疗机构提出解除强制医疗意见，或者被强制医疗的人及其近亲属申请解除强制医疗的，人民法院应当组成合议庭进行审查，并在一个月内，按照下列情形分别处理：</p> <p>（一）被强制医疗的人已不具有人身危险性，不需要继续强制医疗的，应当作出解除强制医疗的决定，并可责令被强制医疗的人的家属严加看管和医疗；</p> <p>（二）被强制医疗的人仍具有人身危险性，需要继续强制医疗的，应当作出继续强制医疗的决定。</p> <p>人民法院应当在作出决定后五日内，将决定书送达强制医疗机构、申请解除强制医疗的人、被决定强制医疗的人和人民检察院。决定解除强制医疗的，应当通知强制医疗机构在收到决定书的当日解除强制医疗。</p>	<p><b>Article 542</b> When compulsory treatment establishments submit an opinion to have compulsory treatment removed or the person subjected to compulsory treatment and his close family apply for removal of compulsory treatment, the people's court shall form a collegiate panel to perform a review, and, within one month, handle the matter according to the following distinct situations:</p> <p>(1) where the person under compulsory treatment is no longer dangerous and there is no need to continue compulsory treatment; a decision shall be made to remove compulsory treatment and the family of the person under compulsory treatment may be ordered to carefully watch over and treat him;</p> <p>(2) where the person under compulsory treatment still remains dangerous, and there is a need to continue compulsory treatment, a decision shall be made to</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

	<p>continue compulsory treatment.</p> <p>Within five days of making a decision, people’s courts shall deliver the decision to the compulsory treatment establishment, the person applying to remove compulsory treatment, the person under compulsory treatment, and the people’s procuratorate. If the decision is to terminate compulsory treatment, the compulsory treatment establishment shall be notified to cease compulsory treatment on the day they receive the decision.</p>
<p><b>第五百四十三条</b> 人民检察院认为强制医疗决定或者解除强制医疗决定不当，在收到决定书后二十日内提出书面纠正意见的，人民法院应当另行组成合议庭审理，并在一个月内作出决定。</p>	<p><b>Article 543</b> When the people’s procuratorate feels that a compulsory treatment decision or a decision to cease compulsory treatment is incorrect, and submits a written correction opinion within 20 days of receiving the decision document, the people’s court shall separately for a collegiate panel to try the matter and make a decision within one month.</p>
<p><b>第二十四章 附 则</b></p>	<p><b>Chapter 24 Supplementary Provisions</b></p>
<p><b>第五百四十四条</b> 人民法院讯问被告人，宣告判决，审理减刑、假释案件，根据案件情况，可以采取视频方式进行。</p>	<p><b>Article 544</b> To interrogate a defendant, pronounce a judgment, adjudicate a case involving reduction of sentence or release on parole, a people’s court may, depending upon the situation of the case, adopt the audio-video method.</p>
<p><b>第五百四十五条</b> 向人民法院提出自诉、上诉、申诉、申请等的，应当以书面形式提出。书写有困难的，除另有规定的以外，可以口头提出，由人民法院工作人员制作笔录或者记录在案，并向口述人宣读或者交其阅读。</p>	<p><b>Article 545</b> Filing with a people’s court for private prosecution, an appeal, a petition, an application, etc, shall be made in writing. Unless otherwise provided, [filer] having difficulty in writing may file verbally, then employee in a people’s court shall transcribe or note in the case file, and read it to the person or give it to</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasiaLaw@nyu.edu](mailto:usasiaLaw@nyu.edu).

<p><b>第五百四十六条</b> 诉讼期间制作、形成的工作记录、告知笔录等材料，应当由制作人员和其他有关人员签名、盖章。宣告或者送达判决书、裁定书、决定书、通知书等诉讼文书的，应当由接受宣告或者送达的人在诉讼文书、送达回证上签名、盖章。</p> <p>诉讼参与人未签名、盖章的，应当捺指印；刑事被告人除签名、盖章外，还应当捺指印。</p> <p>当事人拒绝签名、盖章、捺指印的，办案人员应当在诉讼文书或者笔录材料中注明情况，有相关见证人见证，或者有录音录像证明的，不影响相关诉讼文书或者笔录材料的效力。</p>	<p>the person for him or her to read.</p> <p><b>Article 546</b> Work record or transcript made or rendered during the litigation period, shall be signed or sealed by the author and other relevant persons. For litigation documents such as announcements or delivery of judgments, rulings, decisions, notifications served, etc, the litigation document or its service acknowledgment shall be signed and sealed by the addressee of the announcement or the document.</p> <p>Litigation participants who have not signed or sealed shall attach finger-print; criminal defendants shall attach finger-print in addition to signing or sealing.</p> <p>Where a party refuses to sign, seal or attach his or her fingerprint, the case-handling personnel shall record the situation in the litigation document or transcript material, and the effectiveness of relevant litigation document or transcript material is not undermined if authenticated by relevant authenticating witness or proved by audio-video tapes.</p>
<p><b>第五百四十七条</b> 本解释的有关规定适用于军事法院、铁路运输法院等专门人民法院。</p>	<p><b>Article 547</b> This Interpretation shall be applicable to special people’s courts such as the military courts and railroad transportation courts.</p>
<p><b>第五百四十八条</b> 本解释自 2013 年 1 月 1 日起施行，最高人民法院 1998 年 9 月 2 日公布的《关于执行〈中华人民共和国刑事诉讼法〉若干问题的解释》同时废止；最高人民法院以前发布的司法解释和规范性文件，与本解释不一致的，以本解释为准。</p>	<p><b>Article 548</b> This Interpretation becomes effective on January 1st of 2013, and the <i>Interpretation On Several Issues Regarding The Implementation Of The Criminal Procedure Law Of The People’s Republic Of China</i> promulgated by the Supreme People’s Court on September 2nd of 1998 shall be repealed at the same time; any</p>

This draft translation is done by the US-Asia Law Institute at New York University School of Law in collaboration with the Danish Institute For Human Rights and with the assistance of a group of volunteers. It is purely for research purposes and does not constitute an official translation. If you would like to report a translation error or inaccuracy, please email us at [usasia@nyu.edu](mailto:usasia@nyu.edu).

	prior judicial interpretation or regulatory documents issued by the Supreme People's court in conflict with this Interpretation shall be overridden by this Interpretation.
--	---

© U.S.-Asia Law Institute